

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 I

August 7, 2026

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TAB 1

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

COURT OF APPEAL FOR ONTARIO

BETWEEN:

THE ATTORNEY GENERAL OF ONTARIO

Appellant
(Intervener)

-AND-

THE REGIONAL MUNICIPALITY OF WATERLOO

Appellant
(Applicant)

-AND-

**JOSEPHINA DUGAS, TERRA-LYNN WEBER, AVERY AMENT,
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CHARLES KOCHER, ALINE JEFFERY, MICHAEL JEFFERY, and
PERSONS UNKNOWN AND TO BE ASCERTAINED**

Respondent
(Respondents/Cross-Applicants)

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

NOTICE OF APPEAL

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

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

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

THE GROUNDS OF APPEAL are as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V. Other Grounds

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

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

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

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

Dated this 22nd day of June, 2026.

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Respondents

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TAB 2

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

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

THE REGIONAL MUNICIPALITY OF WATERLOO

Applicant
(Appellant)

and

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

Respondents
(Respondents in Appeal)

NOTICE OF APPEAL

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

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

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

as amended January 9, 2026 by By-law Number 26-001 (the “**Amended By-law**”), complies with the *Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982(U.K.), 1982 c. 11 (“**Charter**”);

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

THE GROUNDS OF APPEAL are as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

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

Dated this June 22, 2026

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Amicus Curiae

THE REGIONAL MUNICIPALITY OF WATERLOO
Applicant (Appellant)

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

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF APPEAL

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Lawyers for the Applicant (Appellant),
The Regional Municipality of Waterloo

TAB 3



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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE GIBSON

)
)
)

THURSDAY, THE
21ST DAY OF May, 2026

BETWEEN:

(Court Seal)

THE REGIONAL MUNICIPALITY OF WATERLOO

Applicant

and

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

Respondents/Cross-Applicants

JUDGMENT

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

ON HEARING AND READING the submissions of the parties:

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

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

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

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

ALEX NOBLE
Digitally signed by ALEX
NOBLE
Date: 2026.07.27
14:31:56 -04'00'
(Signature of judge, officer or registrar)

THE REGIONAL MUNICIPALITY OF WATERLOO
Applicant

-and- JOSEPHINA DUGAS et al.
Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
WATERLOO REGION

JUDGMENT

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Lawyers for the Applicant,
The Regional Municipality of Waterloo

TAB 4

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

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
THE REGIONAL MUNICIPALITY	)	
OF WATERLOO	)	
	)	
Applicant	)	Gordon Capern, Andrew Lokan, Kartiga
	)	Thavaraj and Greta Hoaken, for the Applicant
	)	
– and –	)	
	)	
JOSEPHINA DUGAS, TERRA-LYNN	)	
WEBER, AVERY AMENT, AARON	)	
PRICE, JEREMY LINTON, JEREMY	)	
NICHOL, JAMES HAMMOND, JAKOB	)	
STUBBS, JAMES DAVIS, JASON PAUL,	)	
NOAH HELSBY, JOSEPH BRADLEY,	)	
JOSEPH SADLER, JULIE YOUNG, KYLE	)	
YORK, MEGAN LOPES, STEPHANIE	)	
MCMILLAN, JEFFREY COUTO,	)	
JORDAN CAMM, TERRANCE COLE,	)	
XANDER HARKER, CHARLES	)	
KOCHER, ALINE JEFFERY, MICHAEL	)	
JEFFERY, AND PERSONS UNKNOWN	)	
	)	
Respondents/Cross-Applicants	)	Shannon K. Down, Ashley Schuitema,
	)	Joanna Mullen and Anna Rosenbluth, for the
	)	Named Respondents
	)	
	)	Mercedes Perez, Jen Danch and Karen A.
	)	Steward, for the <i>Amicus Curiae</i> , Mental
	)	Health Legal Committee
	)	
	)	Andrea Bolieiro and Sara Badawi, for the
	)	intervener, Attorney General of Ontario
	)	
	)	Kristen Allen and Simone Truemner-Caron,
	)	for the intervener, The Canadian Civil
	)	Liberties Association

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

GIBSON J.

REASONS FOR DECISION

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Overview

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Background

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

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

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

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

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

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

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

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

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

The Region's Application

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

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

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

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

The Respondents’ Cross-Application

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Injunction and the hearing of the applications

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

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

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

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

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

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

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

Participants in the hearing

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

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

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

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

Background Facts

The Regional Municipality of Waterloo

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

The 100 Victoria Property

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

The Kitchener Central Transit Hub

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

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

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

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

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

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

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

Encampment and its residents

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

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

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

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

Court refused Region’s previous application to clear the Encampment

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

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

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

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

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

Homelessness and accessible shelter in the Region

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

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

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

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

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

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

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

Region passes Site-Specific By-Law

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

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

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

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

The Amended By-Law

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

Current status of the Encampment

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

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

Issues

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

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

Positions of the Parties

Position of the Applicant Region

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Position of Respondents (Cross-Applicants)

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

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

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

Evidence

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

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

Analysis

First Preliminary Issue: Expert Evidence

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

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

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

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

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

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

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

should be admitted, subject to weight.

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

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

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

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

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

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

Second Preliminary Issue: Horizontal Stare Decisis

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

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

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

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

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

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

Proper approach to Charter Interpretation

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

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

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

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

The Application of International Law

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

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

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

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

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

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

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

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

tools in understanding what the *Charter* protects.

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

The Right to Adequate Housing in International Law

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

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

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

resources”.

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

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

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

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

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

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

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

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

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

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

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

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

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

International Obligations Adopted by Canada and the Region

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 7

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

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

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

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

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

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

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

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

challenging behaviours.

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

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

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

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

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

in Canada: A Human Rights Approach”.

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

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

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

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

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

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

Section 7 analysis framework

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

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

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

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

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

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

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

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

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

deemed by the Region to be “Residents”.

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

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

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

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

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

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

Section 15

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Application of Kanyinda

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

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

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

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

Disproportionate impact upon women

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

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

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

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

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

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

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

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

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

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

Physical, Mental Health and Addiction Disabilities

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

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

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

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

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

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

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

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

than the Encampment.

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

Indigenous Identity

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Illegality under s.273 Municipal Act

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

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

Conclusion

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

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

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

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

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

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

Remedy

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

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

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

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

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

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

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

At para. 87, they concluded:

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

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

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

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

At page 30, he continues:

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

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

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

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

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

Order

[258] The Court Declares that:

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

[259] The Court Orders that:

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

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

Costs

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

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

A handwritten signature in blue ink, reading "M R Gibson".

M.R. Gibson J.

Date: May 21, 2026

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

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

THE REGIONAL MUNICIPALITY
OF WATERLOO

Applicant

– and –

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

Respondents/Cross-Applicants

REASONS FOR DECISION

M.R. Gibson J.

Released: May 21, 2026

TAB 5

CITATION: The Regional Municipality of Waterloo v. Persons
Unknown and to be Ascertained, 2025 ONSC 4774
COURT FILE NO.: CV-25-00000750-0000
DATE: 2025/08/20

2025 ONSC 4774 (CanLII)

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
THE REGIONAL MUNICIPALITY	)	
OF WATERLOO	)	
	)	
Applicant/Responding Party	)	Andrew Lokan, Kartiga Thavaraj and Greta
on Motion for an Injunction	)	Hoaken, Counsel for the
	)	Applicant/Responding Party
	)	
– and –	)	
	)	
	)	
	)	
PERSONS UNKNOWN AND TO	)	
BE ASCERTAINED	)	
	)	
Respondents/Moving Parties	)	Shannon K. Down, Ashley Schuitema,
on Motion for an Injunction	)	Joanna Mullen, Counsel for the
	)	Respondents/Moving Parties
	)	
	)	Mercedes Perez, Jen Danch, Karen A.
	)	Steward, Counsel for the <i>Amicus Curiae</i> ,
	)	Mental Health Legal Committee
	)	
	)	Andrea Bolieiro and Sara Badawi, Counsel
	)	for the Intervener, Attorney General of
	)	Ontario
	)	
	)	
	)	HEARD: August 8, 2025

GIBSON J.

REASONS FOR DECISION
MOTION FOR AN INTERLOCUTORY INJUNCTION

Overview

[1] Homelessness poses significant challenges to our contemporary society. It is an extraordinarily difficult problem to grapple with. It presents a complex multi-faceted phenomenon of diverse origins not susceptible to facile resolution. There is no prevailing academic or policy consensus about the best way to address it. What is clear is that all levels of government, and other actors in the public and private sectors, including healthcare, mental health and addiction supports, the justice system, charitable and religious organizations, and others, are required to work together to address this challenge. It highlights chronic public policy tensions between unhoused individuals who are amongst the most disadvantaged in society (and their advocates), and other citizens who tire of the violence, drug use, squalor and derogation from public order that often attends homeless encampments, the disruption to neighboring residents and businesses, the significant expenditure of public funds in attempting to mitigate these, as well as the impediments to projects of significant public importance and benefit which may arise from them. It requires a compassionate, empathetic and respectful response, one worthy of the aspirations and values of our Canadian society and duly attentive to the dignity and rights of the unhoused, but also one that is clear-eyed in attempting to achieve the appropriate balance between rights of individuals and the broader public interest. This litigation throws this tension into sharp relief.

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

[3] In addition to *Persons Unknown 2023*, there have been several other significant cases in Ontario in recent years which have also dealt with the question of homeless encampments: *The Corporation of the City of Kingston v. Doe*, 2023 ONSC 6662; *Poff v. City of Hamilton*, 2021

ONSC 7224; *Heegsma v. Hamilton (City)*, 2024 ONSC 7154; *Church of St. Stephen et al. v. Toronto*, 2023 ONSC 6566; and *Black et al. v. City of Toronto*, 2020 ONSC 6398. The decision in *Heegsma*, in which Ramsay J. dismissed an application by 14 homeless individuals who applied for a declaration that the City of Hamilton’s enforcement of its parks by-law breached their s.7 and s.15 *Charter* rights, is currently under appeal to the Court of Appeal for Ontario. The Court of Appeal is not expected to hear that appeal until February 2026.

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

[5] Two other recent cases are of particular import to this decision. Notwithstanding that they did not deal with the issue of homelessness, they address the assessment of the relevant criteria in injunction cases concerning contentious social issues: *Cycle Toronto et al v. Attorney General of Ontario et al.*, 2025 ONSC 2424, and *The Neighbourhood Group et al. v. HMKRO*, 2025 ONSC 1934.

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

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

[8] The present case, however, is more limited in scope than *Persons Unknown 2023*, which sought the approval of the Court for a By-Law which the Region intended to be of general application to all its property in Waterloo Region. The Region and its contractual partner Metrolinx require 100 Victoria Street North for the specific purpose of constructing the Kitchener Central Transit Hub (“KCTH”) for the benefit of the entire population of the Region. Site remediation is scheduled for December 2025, to prepare for construction commencing March 2026.

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

[10] Under the Region’s Plan, the approximately 40 Existing Residents will be offered alternative accommodation over a 7-month period by the Region’s team of licensed professional unsheltered support workers (“USWs”), who will work with the residents to develop individual housing plans (“IHPs”) for them, tailored to their specific needs. The Region has allocated additional funding to try to ensure that they have a place to go. The Region indicates that it is confident that they can be transitioned to alternative accommodations by December 1, 2025. As of July 31, 2025, 20 of the original 40 Existing Residents have made this transition (and 7 of the Existing Residents have left the Encampment of their own accord).

[11] The Applicant in the present case, the Regional Municipality of Waterloo (the “Region”), initiated an application on June 9, 2025 seeking various forms of relief, including a declaration that its By-law Number 25-021, A By-law Respecting the Use of 100 Victoria Street North, Kitchener (as Owned by the Regional Municipality of Waterloo) to facilitate the Kitchener Central Transit Hub and other Transit Development (the “Site-Specific By-law”) complies with the *Canadian Charter of Rights and Freedoms* (“Charter”). The By-law contains prohibitions respecting 100 Victoria Street, a vacant lot that is the site of an outdoor encampment of vulnerable unhoused individuals. Prohibitions include a ban on erecting temporary structures (such as tents).

Contravening the By-law constitutes an offence with a penalty upon conviction of fines up to \$5,000.00. The By-law permits immediate enforcement of its provisions by police upon “Non-Residents” of the Encampment, defined as individuals who are assumed to have started residing on the property after April 16, 2025, the Public Notice date of the By-law, regardless of whether such individuals have alternative housing available to them. “Existing Residents” of the Encampment (those persons assumed to have already been residing on the property as of April 16, 2025) cannot be removed until December 1, 2025, the date that the prohibition against all persons from entering onto, residing on or occupying 100 Victoria, takes full effect.

[12] As with Non-Residents, eviction from the Encampment of Existing Residents on December 1, 2025 can occur regardless of whether housing has been secured for them elsewhere.

[13] The Moving Parties are all unhoused individuals struggling with dire life circumstances, including intersecting vulnerabilities caused by extreme poverty, social and economic marginalization, and co-morbid disabilities. Of the 22 named respondents, some are Existing Residents of the Encampment, but most are not.

[14] The Moving Parties have initiated a responding application and notice of constitutional question seeking, *inter alia*, a declaration that the Site-Specific By-law violates their s. 7 and 15(1) *Charter* rights.

[15] They also seek an interlocutory injunction restraining the Region from enforcing or acting on any part of the By-law until their *Charter* claims are finally determined by the Court. This motion for an interlocutory injunction is the subject of these Reasons for Decision.

[16] This motion is brought by 22 named respondents (the “Moving Parties”) who are chronically homeless persons sheltering on a vacant lot owned by the Region. They are among the Region’s most vulnerable and marginalized. They shelter at the encampment during periods they cannot access indoor shelter that meets their needs.

[17] Persons have been sheltering at this location since 2021. In 2023, the Region applied to the Superior Court of Justice for permission to clear the site pursuant to a by-law prohibiting temporary

structures on Region-owned lands (the “Code of Use By-Law”). In *Persons Unknown* 2023, Valente J. declined this request. Justice Valente declared that By-Law constitutionally inoperable in relation to the site, “insofar, and only insofar, as it applies to prevent the residents of the encampment from living on and erecting temporary shelters without a permit on the Property when the number of homeless persons exceeds the number of available accessible shelter beds in the Region”.

[18] Since then, the Region has provided basic services to the encampment such as waste disposal and portable toilets. Chronically homeless residents could count on it being available for no-barrier shelter of last resort. However, the Region has now enacted a new by-law with the specific objective of clearing this site by November 30, 2025, so that it can be converted for use as a “lay-down” site for the equipment needed to construct a transit hub (the “Site Specific By-Law”). That construction is tentatively scheduled to begin in March 2026, though the date is subject to change. The Region does not propose to permit outdoor sheltering anywhere else after the encampment is closed. The Moving Parties contend that they will be left with nowhere to go when they cannot access indoor shelter that meets their needs. In the compelling words of one encampment resident: “[we] are at the bottom and now [they] are just taking away the bottom.”

[19] The Moving Parties submit that this Court should grant the interlocutory injunction because each element of the relevant legal test weighs in favour of doing so. They assert that there are serious issues to be tried, both with respect to the constitutionality of the By-Law and its legality. With respect to constitutionality, the conditions that led the Court to declare the Code of Use By-Law constitutionally inoperable in relation to this site have, they say, only worsened since 2023. The Region is candid that its homeless population continues to exceed its shelter spaces. With respect to legality, the Moving Parties assert, the Region’s failure to follow its own consultation process in developing the Site-Specific By-Law gives rise to an inference of illegality for the purpose of s. 273 of the *Municipal Act, 2001*. The Moving Parties will suffer irreparable harm, they say, if the encampment is converted to a construction site before this Court can determine the constitutionality and legality of the By-Law. The Region asserts it will offer alternative accommodation to those persons who were physically present at the encampment on April 16, 2025, referred to by the Region as the “Existing Residents”. It is unclear how many of the 22

Moving Parties are “Existing Residents”, but only four of the 15 Moving Parties who provided affidavits are deemed “Existing Residents”. The By-Law does not make the eviction of Existing Residents contingent on alternative accommodation being offered, and even they will be left with no shelter of last resort to return to if accommodation offered by the Region is only temporary. The Region has not made any formal commitments to the remaining 11 Moving Parties that provided affidavits, who will, they assert, have nowhere to go if evicted. Eviction will have serious physical and psychological consequences for these vulnerable people, which cannot be remedied through damages. In contrast, the Moving Parties submit, there is no evidence in the record that the Region will incur prejudice if a brief interlocutory injunction is granted, causing the balance of convenience to weigh in favour of the Moving Parties.

[20] The application hearing is currently scheduled for November 19 - 21, 2025, making it likely this Court will determine the constitutionality and legality of the By-Law after November 30, 2025, but well in advance of the tentative March 2026 construction date. While an injunction could potentially delay construction by a matter of months, the Moving Parties submit, given time required to remediate the site, there is no evidence that such a minor delay would cause meaningful prejudice to the Region.

[21] The Region opposes the motion for an interlocutory injunction. The Attorney General of Ontario, who is acting as an Intervener on the motion, and who will also do so on the hearing of the Applications in November, also submits that the motion for an interlocutory injunction should be dismissed.

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

[23] These Reasons for Decision explain why the motion for an interlocutory injunction will be granted.

Facts*The Regional Municipality of Waterloo*

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

The 100 Victoria Property

[25] The Encampment site is a gravel parking lot located at 100 Victoria Street in the City of Kitchener. The Region owns the Property at 100 Victoria, which is on the corner of Victoria and Weber Streets in downtown Kitchener. VIA Rail/GO Transit and bus stations are to its east, with a commercial plaza to the west, a Metrolinx-owned rail corridor to the north, and a variety of businesses and a church to the south.

The Kitchener Central Transit Hub

[26] 100 Victoria is also the site of activities to be undertaken as part of the construction of the Kitchener Central Transit Hub ("KCTH"), a significant public transportation project. The Region says that Metrolinx requires the Property for construction set to begin in March 2026, and the Region requires vacant possession of the site by December 1, 2025, to carry out preparatory work, including site remediation.

[27] The Regions says that the KCTH is a landmark project that will create significant economic and social growth for residents of the Waterloo region. Once completed, the KCTH will act as a gateway to the Waterloo area, serving current and future residents, as well as visitors, and will redefine how people connect, commute, and experience the Waterloo community. The Region says

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

[28] Metrolinx has advised the Region that it requires use of the Property for construction staging and laydown purposes. Staging and laydown are critical preparation activities for the construction of a physical project. They involve positioning and organizing construction materials (such as steel, concrete, bricks, wood), equipment and tools (including large construction machines and vehicles) and other items such as temporary structures for access during a project, to ensure worker safety and maintain workflow. The proximity, size and grade of a staging and laydown site are important factors to consider in choosing such a site. Since large construction equipment and materials are transported from the laydown site to or from the construction site, a laydown site that is even a short distance away can increase the chance of worker injury by increasing the distance materials or equipment needed to travel. On similar rail construction projects, workers have been injured by equipment falling over while traversing a grade raising or on shaky ground. This can also, on aggregate, add significant additional time to a project.

[29] The Region submits that 100 Victoria is the only space owned by the Region that is proximate to the construction work to be conducted by Metrolinx, of an adequate size, and on-grade with the construction site. The Region must provide the Property to Metrolinx in a condition fit for use, which means the Region will require time to engage in remediation and preparation of the Property prior to turnover to Metrolinx. This may include clean up, investigations, geotechnical testing, soil testing and scraping, removal of hazardous materials, and/or groundwater monitoring. It will take the Region up to three months to complete this work.

[30] The Region has considered whether it could provide Metrolinx with an alternative site but

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

Encampment and its residents

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

[32] The Moving Parties' backgrounds reflect those of the Region's homeless. All of the Moving Party affiants have disabilities - eleven have mental health or cognitive disabilities, eight have substance use disabilities, and at least four have mobility impairments. Four of the affiants are Indigenous. A further four identify as LGBTQ2S+. Seven of the affiants affirm to having survived childhood physical and sexual abuse, domestic violence, and/or sexual assault. Three shelter together with their partners. Six are women or identify as gender-diverse.

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

Court refused Region's previous application to clear the Encampment

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

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

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

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

Homelessness and accessible shelter in the Region

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

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

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

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

[40] Approximately 15 months following the decision in *Persons Unknown 2023*, the Waterloo Regional Council passed a Plan to End Chronic Homelessness (“PECH”). Region staff had developed this document over more than a year, in collaboration with a Lived Expertise Prototyping Cohort and a group of “cocreators” consisting of system leaders and service staff. The Report is co-authored by the Region and the Social Development Centre Waterloo Region (“Social Development Centre”), an organization that facilitates inclusion of lived experience in policy development. The contributions of the Social Development Centre were facilitated by David Alton. The PECH prescribes a “human rights approach” to homelessness, where “people experiencing homelessness are treated as rights holders” and “the Region has a duty of care for their housing needs”. It requires the Region to ensure that national and international human rights law are “appropriately prioritized amidst other legal obligations such as those regarding property rights, privacy and liability”. This “human rights approach” is set out in detail through the principles articulated in the UN Special Rapporteur on the Right to Adequate Housing’s “National Protocol for Homeless Encampments in Canada”, including Principle 2: Meaningful engagement and effective participation of homeless encampment residents, which provides that residents are entitled to meaningful participation in the design and implementation of policies, programs, and

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

Region passes Site-Specific By-Law

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

[42] The By-Law authorizes the Region to, among other actions, erect fencing around the site to prevent entry, remove persons’ personal property from the site, and take steps under the *Trespass to Property Act* to enforce the By-Law. The Region’s Commissioner of Community Services affirms that the Region recognizes “approximately 40” persons as having resided in the encampment on April 16, 2025, that being the date “notice” of the By-Law was given. This count includes only four of the 15 Moving Parties that provided affidavits (the “Existing Residents”).

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

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

Issues

[45] The Moving Parties seek an interlocutory injunction restraining the Region from enforcing the Site-Specific By-Law while the decision on the merits of their application is pending.

[46] This requires the Court to consider whether:

- (i) there is a serious issue to be tried;
- (ii) the Moving Parties will suffer irreparable harm if the injunction is refused; and
- (iii) the balance of convenience favors the Moving Parties.

Law

The test for interlocutory injunctions

[47] Section 101 of the *Courts of Justice Act* provides that an interlocutory injunction may be granted where it appears to a judge of the court to be just or convenient to do so. In *RJR-Macdonald v. Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 S.C.R. 311 (“*RJR*”), the Supreme Court of Canada articulated a three-part test for injunctions in *Charter* cases where the interim relief sought involves the execution or enforceability of legislation. The motion judge must determine: (a) whether there is a serious issue to be tried, (b) whether irreparable harm will

be suffered by the moving parties if the injunction is not granted; and (c) whether the balance of convenience favours granting or refusing the injunction. In addition, where a *Charter* remedy is sought, as is the case here in the main Application, s.24(1) of the *Charter* permits a court to grant an interlocutory injunction “to preserve the rights of the parties pending a final resolution of constitutional rights”: *RJR*, at p. 332.

[48] The *RJR* criteria are not watertight compartments and are not to be rigidly applied. Strength in one part of the test can make up for weakness in another.

[49] The onus is on the moving party to establish the above criteria.

Serious issue to be tried

[50] While there are no specific requirements that need to be met to satisfy the first branch of the *RJR* test, the Supreme Court has stated that the threshold is low. The determination of whether the threshold of a “serious issue to be tried” is met is based on common sense and an extremely limited review of the case on the merits – a prolonged assessment is unnecessary and undesirable. The complex nature and sizeable evidentiary record of *Charter* litigation generally means that most motions courts will be unable, in the time required, to engage in a careful and thorough review of the merits. In most cases, the Court need only be satisfied that the moving party’s claims are neither vexatious nor frivolous – even if the Court is of the opinion that the moving party is unlikely to succeed at trial. There are two exceptions to the general rule that a motion judge should not undertake an extensive review of the merits. The first is where granting the interlocutory motion will amount to a final determination of the action. In these cases, the judge must consider whether the moving party has established a strong *prima facie* case – such a finding will then be weighed in the analyses of the second and third steps of the injunction test. The second exception arises where the constitutional question presents as a simple question of law that can be determined by the motions judge. These two exceptions, however, are extremely rare. Neither apply here.

Will the Moving Parties suffer irreparable harm?

[51] Irreparable harm is established where there is a risk that, if the injunction is denied, the Moving Parties will suffer personal injury or psychological harm that is more than transient or

trifling if the injunction is not granted. Absolute certainty is not required – the test is relative and flexible - rather, the evidence must establish an increased risk that goes beyond speculation and satisfies the balance of probabilities. “Irreparable” refers to the nature of the harm, not its magnitude – it is understood as harm that cannot be compensated or cured monetarily. Under this branch of the injunction test it is only the risk of harm to the Moving Parties that is considered; any alleged harms to the public interest are weighed in the balance of convenience analysis.

Where does the balance of convenience lie?

[52] The balance of convenience requires a determination of which party will suffer the greater harm from the granting or refusal of an interlocutory injunction, pending a decision on the merits. The factors to be considered in assessing “balance of convenience” will vary with each case. Where a moving party seeks injunctive relief in the form of the suspension of a law, a Court assessing the balance of convenience must assume that the law was enacted to further the public good and therefore serves a valid public purpose: *Harper v. Canada (Attorney General)*, 2000 SCC 57, at para. 9. A public authority is presumed to be acting in the best interests of the public: *City of Waterloo v. Persons Unknown*, 2025 ONSC 1572, at para. 28. However, this is a rebuttable presumption. Government does not have a monopoly on the public interest: *The Neighbourhood Group et al. v. HMKRO*, 2025 ONSC 1934, at para. 50. The presumption of the public good does not prevent injunctive relief in all cases: *Cycle Toronto et al. v. Attorney General of Ontario et al.*, 2025 ONSC 2424, at para. 20. In *RJR*, the Supreme Court confirmed that the “public interest” includes both the concerns of society generally and the particular interests of identifiable groups and that, as a result, the public interest will not always favour the enforcement of existing legislation. In particular, in balancing the assumed good of the legislation against the public interest in preventing harm, the potential harm to the constitutional rights of the Moving Party must be considered: *Cycle Toronto*, at para. 32.

[53] It is important to distinguish between a suspension and an exemption order when considering the balance of convenience. As noted by Callahan J. at para. 47 in *The Neighbourhood Group*:

[47] It is important to distinguish between a suspension and an exemption order

when considering the balance of convenience. These public interest considerations will carry less weight in exemption cases than in suspension cases: *RJR*, at p. 348-349. An exemption is where certain people are exempt from the impact of the new law, whereas a suspension stays the implementation of the law. The public interest in favour of the legislation is said to be less important in exemption cases, as the law would still be generally enforceable. Nevertheless, the public interest must not be discounted in exemption cases; it continues to be a pressing concern, especially in cases involving wide application of the impugned legislation: *Thibault v. Attorney General of Ontario*, 2024 ONSC 3168 (Div. Ct.), at paras. 68-69, citing *Metropolitan Stores*, at p. 14.

Positions of the Parties

Position of Respondents (Moving Party on the motion for an Injunction)

[54] The Moving Party Respondents submit that they have established all three prongs of the *RJR* criteria. They contend that there is clearly a serious issue to be in relation to s. 7 of the *Charter*. Even leaving aside the issue of s. 15, they contend, in *Persons Unknown 2023* Valente J. has already held that application of a municipal By-Law to restrict sheltering at this very site deprived encampment residents of their life, liberty, and security of the person in a manner that was overbroad and grossly disproportionate, and therefore not in accordance with the principles of fundamental justice, and that he further found that the resulting infringement of s. 7 of the *Charter* was not justified by s. 1 of the *Charter*. Since that time, the conditions that led the Court to find a deprivation of life, liberty, and security of the person have only worsened. It is true, they note, that the principles of fundamental justice at issue - overbreadth and gross disproportionality - turn on assessing the infringement to life, liberty, or security of the person against the objectives of the By-Law. The Moving Parties recognize that the Region's new By-Law has a new objective. It specifies that it is enacted "to specifically regulate and govern 100 Victoria Street and to obtain vacant possession as of December 1, 2025", whereas the Code of Use By-Law was intended to "prevent disruption to the Region's operations", among other purposes. However, at issue in the *Persons Unknown 2023* decision was whether the Code of Use By-Law permitted the Region to obtain vacant possession of the site so that it could ultimately be used as an equipment lay-down

site for construction of the transit hub. This is the very use that is to be before this Court in the underlying application. In this context, the issue of whether it would violate s. 7 to apply the Site-Specific By-Law to evict the Moving Parties is far from “frivolous” or “vexatious”. Rather, given the previous declaration, there is a strong case that the Site-Specific By-Law violates s. 7 of the *Charter*. This factor weighs heavily in favour of the granting of an interlocutory injunction. The Region should not be permitted, the Moving Parties insist, to use an unconstitutional By-Law to remove vulnerable persons from their shelter of last resort.

[55] The Moving Parties also contend that there is a serious issue in relation to By-Law illegality. Nor is the issue of the By-Law’s illegality under s. 273 of the *Municipal Act, 2001* frivolous or vexatious. A by-law is “illegal” for the purpose of s. 273 if it is passed in “bad faith”, which will be indicated where the by-law is enacted “without the degree of fairness, openness, and impartiality required of a municipal government”. Indicia of bad faith may include a failure to consult on the by-law, and a failure to provide meaningful notice to affected stakeholders. The Moving Parties assert that these indicia are established here based on, among other factors, the Region’s failure to advise encampment residents of the By-Law in a manner sufficient for them to provide meaningful input, and the Region’s failure to comply with the consultation processes approved by Council. Based on the record, the Moving Parties contend that their assertion that the indicia of bad faith are present is not frivolous or vexatious.

[56] The Moving Parties also assert that they will suffer irreparable harm. “Irreparable harm” refers to the nature of the harm suffered, rather than its magnitude. Harm is “irreparable” if it cannot be quantified in monetary terms or if it cannot be cured if the eventual decision does not accord with the decision on the interlocutory motion. The Court need only be satisfied that refusing an injunction will increase the risk of a moving party incurring irreparable harm. It need not be certain the harm will occur. They cite *Clinique juridique itinérante c. Procureur général du Québec - Ministère des Transports et de la Mobilité durable du Québec*, 2025 QCCS 2087, in which the Quebec Superior Court found irreparable harm based on evidence that an encampment eviction could cause residents to experience: a. social marginalization; b. loss of trust in authorities; c. significant stress impacting mental health; and d. distress, destabilization, and trauma.

[57] Courts have also found irreparable harm where the conduct sought to be enjoined increased the risk that: moving parties with substance dependence would use drugs alone, leaving them more vulnerable to fatal overdose, moving parties would face physical injury or assault, or moving parties could incur psychological harm that was more than transient or trifling. In *Black et al. v. City of Toronto*, 2020 ONSC 6398, the Court recognized that encampment eviction would result in irreparable harm, in part because the City of Toronto's status as a municipality prevented an award of damages unless there was underlying or intentional wrongdoing. All of the Moving Parties submit that they will suffer irreparable harm if, effective December 1, 2025, the Region is permitted to remove them from their shelters, dispose of their belongings and erect a fence around the site to prevent their return. The Moving Parties who are not deemed Existing Residents by the Region further assert irreparable harm if the Region is permitted to restrict them from the encampment leading up to December 1, 2025. The irreparable harm the Moving Parties assert includes: (a) loss of emotional and physical support of their community; (b) loss of access to mental health, addiction, food, and housing supports; (c) increased risk of overdose, dehydration, and starvation arising from being forced to relocate to remote locations to avoid detection; (d) increased risk of assault, frostbite, sunstroke, and loss of life and limb arising from sleeping outdoors without the benefit of the belongings removed by the Region under the By-Law; and (e) a loss of trust in authorities, exacerbating the Moving Parties' social exclusion and increasing their reluctance to seek health and social supports.

[58] The Moving Parties submit that it is important for municipalities and municipal actors to recognize that forced evictions of encampments make people more unsafe and expose them to a greater risk of violence and harm a person's safety, health, dignity and may even cost them their life. Evictions destabilize people, remove them from their support systems, and cause them to lose the tools and equipment they need to survive. These harms are irreparable because, as in *Black*, they cannot be adequately remedied through an award of damages. In *Matsqui-Abbotsford Impact Society v. Abbotsford (City)*, the British Columbia Supreme Court commented, with respect to similar harm, that "[t]he Court must take these claims seriously, acknowledging that forced displacement can result in irreversible consequences, particularly for vulnerable populations". This is not a case like *Poff v. City of Hamilton*, they submit, where irreparable harm did not arise from encampment eviction because the five moving parties had all been offered alternative

accommodation. Here, only four of the Moving Party affiants have been prioritized for accommodation plans, and no such plans existed for them as of the date they swore their affidavits. Further, in *Poff*, the Court was not in a position to consider the circumstances of residents other than the five moving parties because other residents were not represented before the Court. Here, however, the Persons Unknown are represented through *Amicus*. Nor is this a case, they submit, like *Church of Saint Stephen et al. v. Toronto*, where all encampment residents had been offered motel spaces prior to eviction and the Court accepted that they could remain at the motels throughout the winter. The Moving Parties have not been provided with motel accommodation in this case, let alone accommodation that meets their needs. However, more significantly, the Court's determination in *Saint Stephen* is contrary to this Court's finding in *Persons Unknown 2023* that motel accommodation in this Region is subject to discretion of motel operators. It is also contrary to the evidence before this Court, evidence which does not appear to have been before the Court in *Saint Stephen*, that motel accommodation is unreliable for persons who have disabilities that make it likely they will be evicted from motels. Finally, this case is not analogous to *Matsqui-Abbotsford Impact Society v. Abbotsford (City)*, where the "serious" risks that the Court recognized encampment residents would face from eviction could be mitigated by the City taking steps to gradually relocate existing residents while at the same time preventing new arrivals to the encampment. In that case, the *City of Abbotsford* sought to enforce trespass notices against residents of an encampment located outside its City Hall. Significantly, Abbotsford permitted outdoor sheltering in other areas of the City, and, at the time City staff served the notices, they also provided residents with a list of locations where outdoor sheltering was permitted. In that context, the irreparable harm could be mitigated by providing accessible accommodation to only counted residents because chronically homeless residents who had not been counted could still access other outdoor shelter of last resort. Unlike in this case, the City of Abbotsford had not "taken away the bottom." Further, in *Abbotsford*, the encampment residents were in a position to enforce the mitigation terms ordered by the Court because these formed part of the Court's order. Here, however, the By-Law does not require the Region to take any steps to mitigate the harms eviction will cause. The By-Law sets no consequence for the Region failing to meet its assurances. The approach put forward by the Region is insufficient, the Moving Parties contend, to mitigate the irreparable harm By-Law enforcement will cause.

[59] The Moving Parties further submit that the balance of convenience favours granting the injunction. The Court may consider harm to non-parties to this injunction motion when addressing the balance of convenience, including the Region's homeless population at large. The presumption of public interest in a still-valid law may also be overcome where a moving party has a particularly strong case and will suffer irreparable harm, or where it can demonstrate compelling and competing public interests other than those asserted by the government. Where the application of a law is at issue in an injunction motion, the Court may consider whether temporarily suspending the law would simply preserve the *status quo* when assessing balance of convenience. In *Cycle Toronto*, this was relevant where, as here, refusing the injunction would effectively grant ultimate success to the government party, permitting it to move ahead with construction. Here, the irreparable harm asserted by the Moving Parties includes increased marginalization, which Callahan J. at para. 53 in *The Neighbourhood Group* recognized as a "significant public interest" in "avoiding further marginalization of those with disabilities and other vulnerable people." They submit that the Region has not tendered evidence that there would be any particular harm to the public interest if construction of the transit hub is briefly delayed until the Court can determine the constitutionality and legality of the By-Law. The underlying application is to be argued November 19 - 21. The Court will therefore be in a position to determine the application well in advance of the March 2026 date currently set for construction to begin. At most, having regard to time required for remediation, an interlocutory injunction may delay the commencement of construction by a matter of months, should Metrolinx adhere to the March 2026 date. Even this minor delay would only arise if Metrolinx were in a position to meet the March date, which it has advised is subject to change.

[60] Courts have granted injunctions temporarily suspending the implementation of a law for periods where there was no evidence that doing so would have a negative effect on the public interest. The Region implies it will be prejudiced if it cannot prevent new residents from entering the encampment leading up to November 30, 2025 because it is focused on transitioning the Existing Residents to alternative accommodation and "an influx of new residents" makes the Region less able to meet those needs. The Moving Parties say that this is an indication of the inadequacy of the Region's plan in meeting the needs of its homeless, who are not limited to the persons the Region counted on April 16. It is not a factor that properly weighs against injunction.

Given the insufficient public interest considerations on the side of the Region and the significant harms caused by displacing unhoused residents, the Moving Parties contend, the balance of convenience favours granting the injunction.

[61] The Moving Parties seek an exemption to the requirement that Moving Parties on a motion for an injunction provide an undertaking as to damages in the event that their application fails. The Moving Parties seek this exemption as they are homeless and clearly not in a viable pecuniary position. Exemptions are typically reserved for rare or exceptional cases. However, courts have held that greater flexibility ought to be granted in cases such as this one which have broader public interest significance, which concern human rights as opposed to commercial and pecuniary interests, and which include *Charter*-based relief.

Position of the Region (Responding Party on the motion for an Injunction)

[62] The Region submits that the Site-Specific By-law is fundamentally different in its purpose, scope, and context from the Code of Use By-law before Justice Valente in *Persons Unknown 2023*. In particular: (a) The Code of Use By-law applies to all Region-owned property throughout the Waterloo region. The By-law in this case applies only to 100 Victoria. (b) The Region took the position in *Persons Unknown 2023* that it would use the court's order as a precedent for other encampments across the Waterloo region, and relied upon the generic purpose of the Code of Use By-law for the s.7 analysis. In this case, the s.7 analysis turns on the specific purpose of the Site-Specific By-law. (c) The Region had not taken any specific steps to provide for the encampment residents in *Persons Unknown 2023*. The USW team did not yet exist (having been created in 2023), and there were no IHPs for the residents. In the present case, the Region says it is confident that it will be able to transition the willing Existing Residents successfully to alternative accommodation before December 1, 2025. (d) In *Persons Unknown 2023*, the court found that the existing emergency shelter capacity was likely less than the number of encampment residents (53) at the time. In the present case, the Region has provided net new funding to create additional capacity to accommodate the 40 Existing Residents as part of its Plan. (e) At the time that *Persons Unknown 2023* was argued, it was anticipated that the Region would require possession of 100 Victoria at some future point for KCTH construction, but there was no firm date. In the present case, there is a fixed date by which the Region requires possession of the Property, in order to

conduct site remediation and hand over the Property to Metrolinx for construction commencing in March 2026. (f) At the time *Persons Unknown 2023* was argued, the Region had taken some significant steps to address homelessness, but not on the scale of its recent efforts. Between 2022 and 2025, the Region’s operating budget for homelessness programs and services more than doubled, from \$30.9 to \$65.5 million. From the Encampment’s establishment in 2021, it has almost tripled (from \$23.1 million).

[63] The Region enacted the Site-Specific By-law on April 23, 2025. Public Notice of the By-law was given on April 16, 2025. The By-law only purports to regulate activity on 100 Victoria, unlike the Code of Use By-law at issue in *Persons Unknown 2023*. The Region proactively seeks the guidance of this court on its plan to close the encampment. It is unusual, if not unprecedented, the Region says, for a government to seek a declaration that a duly enacted law complies with the *Charter*. In broad outline, the By-law, in the context of the Region’s Plan, has these features: (a) The date by which the approximately 40 Existing Residents must leave is set for December 1, 2025, more than 7 months after the By-law was enacted, giving the Region time to work with them to transition them to alternative accommodation. (b) In the interim, the Region’s team of USWs (licensed professionals comprising social workers, social support workers, and a registered nurse) has been attending the site daily to meet with encampment residents and develop IHPs with them, to tailor their housing solutions to their specific needs. (c) The Region has budgeted an additional \$814,333 in net new funding in 2025 alone, to ensure that there are additional resources for housing solutions for the residents who will need to transition to other accommodations because of the anticipated closure. This is intended to ensure that other unhoused people in the Waterloo region are not negatively affected (e.g., displaced or moved further down waiting lists) by the closure. (d) While the \$814,333 is nominally allocated specifically among additional rent supplements, motel rooms, and supportive housing, Region staff have the discretion to move funds between these categories to meet the specific needs of residents. The Region recognizes that the needs of residents are diverse, and some may be more suited to one form of accommodation rather than another. The By-law prohibits the carrying out of defined “Prohibited Activities” on the Property, including residing on the Property. However, the By-law makes two key distinctions which affect its application: first, between Existing Residents and those who are not Existing Residents and, second, between the transitional period of April 16, 2025 to November 30, 2025 (the “Transitional

Period”) and from December 1, 2025 onwards. The By-law defines an individual who was residing at the Property as of the date of Public Notice of the By-law (April 16, 2025) as a “Resident”. Only Residents (also referred to as “Existing Residents”) are entitled to remain at the Property during the Transitional Period. The Transitional Period and the By-law’s prohibition on new individuals joining the Encampment are motivated by the need to assist Existing Residents, who are already at the Property, to find alternative shelter for when the Property is no longer available.

[64] As the Moving Parties’ own evidence indicates, the Region submits, evictions that are rushed and on short notice can be damaging for individuals living in encampments. By providing over 7 months’ notice for Existing Residents to find alternative shelter arrangement with the help of USWs – and enabling the Region to prevent newcomers from joining the Encampment in the interim who are not prioritized for the additional resources and would not be able to benefit from this same lengthy period before the Encampment must close – the Region has designed the By-law to be responsive to the very concerns raised by the Moving Parties. After the Transitional Period ends, all unauthorized individuals, be they Existing Residents or not, may be removed from the Property under the By-law. This reflects the fact that the Region requires vacant possession of the Property by December 1, 2025, to ensure that it can deliver the Property to Metrolinx ready for use by March 2026.

[65] The Encampment has existed on the Property since approximately December 2021. Given the inherent dangers of Encampment living, the Region has taken significant steps to ameliorate the living conditions on the site. This includes hiring on-site security and pest control, arranging for regular cleaning of the Property and waste-bins onsite to address the significant garbage that accumulates at the Encampment, and installing and servicing onsite portable toilets. Despite the Region’s significant efforts, the evidence before this court, the Region submits – including that of the Moving Parties themselves – demonstrates that the Encampment continues to be a site of widespread public drug use, potentially volatile self-policing and physical violence, and fires.

[66] There have been five reported deaths at the Encampment since January 2022. This likely underreports the true number of deaths related to the Encampment because it does not include cases where an individual is found at the Encampment but pronounced dead in hospital, or where

long-term health effects that contribute to a death are related to the Encampment but the deceased passes away off-site. Deaths also occur in the shelter system, but it appears that they may occur at a lower rate.

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

[68] While the Region has devoted significant resources to improve health outcomes at the Encampment in the interim, its public position has always been that the Encampment will not be permitted to exist in perpetuity. This is consistent with guidance from the National Working Group on Homeless Encampments, that encampments “should not be understood as a solution to homelessness and should not be permanent”, and with the PECH. This has been underscored by the Region’s publicized need to use the Property for KCTH construction, a fact that has been publicly advertised for years. However, as set out above, the Region only received confirmation from Metrolinx in December 2024 of the date by which it required vacant possession of the site.

[69] This motion is much more limited in scope than the Application, the Region insists, which will be fully heard on the merits in November. At that time, the court will have a much better understanding of the case, based on the full record and full argument of the issues. All that the court must decide now, the Region submits, is whether interlocutory injunctive relief is needed pending the November hearing, and if so, on what terms. Issues as to whether the court should grant injunctive relief beyond the November hearing dates are best left to that hearing. No injunctive relief was needed for the 3 months from enactment of the By-law to the present, and there is no reason why such relief is required in the remaining 3 months, the Region asserts, before

the November hearing. There is no pressing problem that the court needs to fix.

[70] On the *RJR* test, the Region submits that the Moving Parties have not demonstrated a serious issue as to the By-law's validity. The Region maintains that the By-law does not infringe the *Charter* and is not illegal under s.273 of the *Municipal Act, 2001*. The By-law has a fundamentally different purpose, scope, and context than the general region-wide Code-of-Use By-law at issue in *Persons Unknown 2023*, which changes the s.7 analysis. Measured against the specific purpose of obtaining possession of 100 Victoria for construction of the KCTH, the By-law (in light of the Plan for residents) is neither overbroad nor grossly disproportionate to the substantial public benefit that the KCTH will bring to the entire region. The By-law does not contravene any principle of fundamental justice under s.7. It also cannot be bad faith, the Region submits, for the Region to enact a By-law that it promptly brings to the court for guidance as to whether it contravenes the *Charter*.

[71] The Region further contends that the By-law will not cause any irreparable harm to the Existing Residents before the November hearing. Nor – in light of the Region's commitment to offer services to all unhoused people and the "light touch" approach that the Region has taken to enforcement – will it cause any irreparable harm even to those who have come to the encampment since the By-law was enacted.

[72] Moreover, the Region contends, the balance of convenience favours denying the motion. An injunction is not needed at this point. Many of the Moving Parties' complaints are about the Region's management of the site. However, the Region has an obligation to maintain safety and order for the benefit of all residents and the general public. Existing Residents have the right under the By-law to remain until after the November hearing, if they choose. For newcomers who have come to the site since April, the Region's USWs have worked and will continue to work with them to establish IHPs. Although they have lower priority than Existing Residents for additional resources under the Plan, they are engaged with the Region's housing stability system and the Region will do whatever it can to find solutions for them. Likewise, unhoused persons who are not at the site remain eligible for the full array of programs and services that the Region offers. They cannot shelter at 100 Victoria, but they are in no worse position than they were before the By-law.

Further, nothing in the By-law itself prevents them from sheltering elsewhere. On the other hand, if an injunction is granted preventing the Region from enforcing the By-law, the Region will be unable to carry out an orderly wind-down of the encampment. Newcomers will likely come to the encampment up until the last moment, and the Region's USWs will not have time or resources to develop IHPs with them. The Region will be unable to contain or respond to dangerous activities at the site, exposing its residents to risk. The USWs will be impeded in their work.

[73] The Region requests that the motion be dismissed. It submits that an order that allows for a continuing influx of new residents up until the day of closure would not permit the Region to carry out its obligations and find individually tailored solutions for these new residents. Rather, it would create the very harm that the Moving Parties claim they wish to avoid – the possible negative effects of a closure on those residents without proper planning and resources being in place.

Position of the Intervener Attorney General of Ontario

[74] The Attorney General of Ontario ("Ontario") intervenes in this matter as of right pursuant to s. 109 of the *Courts of Justice Act*. Ontario intends to make further submissions on the merits of the constitutional arguments at the hearing on the merits.

[75] Ontario submits that interlocutory injunctions against still-valid laws are granted "only in clear cases." While a constitutional challenge is pending, the court should rarely restrain the enforcement of duly enacted laws that are presumed to further the public good. This is particularly true where the court does not have all the evidence and argument on the constitutional issues, and where the claimant is asserting novel *Charter* claims.

[76] This is not, Ontario submits, a "clear case" for interlocutory relief. The Moving Parties' request for interlocutory relief is premature and does little to serve the public interest nor would an injunction contribute to the maintenance of the *status quo*. Both the By-law itself and the Region's enforcement activities to date are designed to maintain the *status quo* at the encampment until the application can be heard on the merits.

[77] Any claim that the *Charter* prevents the Region from stopping new individuals from

joining the encampment is novel, has little support in the case law, and does not outweigh the public interest in enforcing the By-law. Ontario submits that this Court should not grant interlocutory relief without the benefit of a full record and full arguments on the merits.

[78] Ontario submits that the motion for interlocutory injunctive relief should be dismissed. Any further requests for injunctive relief should be directed to the hearing of the application on the merits.

[79] Ontario takes no position on steps 1 and 2 of the *RJR* test. However, Ontario submits that at step 3, the balance of convenience strongly favours that presumptively constitutional laws stay in force while a constitutional challenge is pending. The court should grant injunctive relief against still-valid laws “only in clear cases.” Where the strength of the claimant’s case and the nature and extent of the potential harm do not outweigh the public interest in the enforcement of the law, an interlocutory injunction is not warranted.

[80] Ontario submits that the Moving Parties have not presented a clear case demonstrating why interlocutory relief should be granted before the return of the application. Any such relief is premature, harms the public interest in the continued operation of the By-law, and risks exacerbating health and safety conditions at the encampment. Neither the By-law itself nor the Region’s enforcement activities to date implicate the Moving Parties’ *Charter* rights in a manner that necessitates interlocutory relief against the By-law before the return of the application. The By-law currently authorizes only limited, preliminary enforcement activity to monitor the encampment and stabilize the number of individuals living there. The By-law expressly contemplates that no existing resident living on the encampment before April 16 will be removed before December 1, after the return of the application. To the extent the By-law restricts new individuals from living at the encampment, that action is aimed at assisting the Region’s efforts to find alternative accommodation for existing residents. Increasing numbers of individuals living at the encampment also exacerbates challenges relating to garbage and waste management, conflict between residents, the volume of drugs that find their way into the encampment community, the potential for overdose deaths and health crises, fires that can cause injury and destruction of property, and pest control. In any event, the Region’s evidence is that enforcement to date has been

limited. The Region has not removed a single person from the encampment since the By-law was enacted, including new individuals who started living at the encampment after April 16. Existing residents and visitors are permitted to come and go from the encampment and donations of supplies may continue to be dropped off on site or at the adjacent parking lot. Paramedic services can still access the site in the case of an emergency. Both the text of the By-law and the Region's limited enforcement activities are aimed at maintaining, rather than altering, the *status quo* at the encampment until this Court hears the application.

[81] Ontario submits that, to the extent the Moving Parties argue that individuals not already living at the encampment have a *Charter* right to come and live there, that is a wholly novel claim that does not outweigh the public interest in enforcing the By-law until the application is heard. The caselaw does not contemplate any *Charter* protection for individuals seeking a positive right to join an encampment and does not impose a positive obligation on the government to provide any person with housing.

Analysis

Serious Issue to be tried

[82] It is patent in this case that there is a serious issue to be tried. The lower threshold serious issue to be tried standard applies in this case. The *Charter* and municipal law claims raised by the Moving Parties do not consist of simple questions of law and instead will require the Court to resolve complex and contested questions of both fact and law. Preserving the *status quo* through the granting of injunctive relief will not finally determine the Region's application. The hearing on the merits of both the Region's and the Moving Parties' applications is scheduled from November 19 to 21, 2025, well in advance of the proposed March 2026 anticipated start date for Metrolinx's use of the Encampment site for construction staging and laydown. At worst, the Region's remediation plans for the site, which purportedly require a start date of December 1, 2025, might be delayed if the Region's Application is ultimately granted. The possibility of delaying the start date of December 1, 2025 to January 1, 2026 has already been broached by the Region itself. Further, there is currently some uncertainty as to the timing of Metrolinx's plans for the Encampment site.

[83] The interests of justice and procedural fairness require a careful and meticulous review of a full evidentiary record by the Court given the vulnerability of the individuals that face forced eviction from the Encampment, as well as the complexity, importance, and evolutive nature of the *Charter* issues at stake. The Court will not rush to failure.

[84] The evidentiary record in this case is currently far from complete – for example, reply and expert evidence still needs to be delivered, key cross-examinations are still to be conducted, and requests for undertakings remain outstanding. A full evidentiary record, particularly expert evidence, is crucial to ensure that all factors relevant to the *Charter* rights of potentially incapable persons residing at the Encampment who cannot speak for themselves is made available to the Court.

[85] With respect to the lower threshold, the Moving Parties' *Charter* and municipal law claims are neither frivolous nor vexatious. The claims center on the fundamental human rights of vulnerable unhoused persons, some of whom may lack the capacity to retain and instruct counsel. In other cases, concerning injunctions to laws seeking to clear homeless encampments, moving parties have succeeded in establishing the low threshold of serious issues to be tried due to the nature of the *Charter* rights engaged.

[86] I find that the Moving Parties also meet the higher standard of a strong *prima facie* case. On the evidentiary record currently available, the Moving Parties' s. 7 *Charter* rights are clearly engaged in ways that are not in keeping with the principles of fundamental justice. Section 7 protects foundational and fundamental human rights. I agree with the submission of *Amicus* that the *Charter* accords rights which can only be fully enjoyed by people who are fed, are clothed, are sheltered, have access to necessary health care, to education, and to a minimum level of income.

[87] The s. 7 right to life is engaged where the law or state action imposes death or an increased risk of death on a person, either directly or indirectly. Liberty is engaged when state compulsions or prohibitions affect fundamental life choices and extends beyond mere freedom from physical restraint. It includes the right to an irreducible sphere of personal autonomy wherein individuals may make inherently private choices free from state interference and relates to matters that are fundamentally or inherently personal such that they implicate basic choices going to the core of

what it means to enjoy individual dignity and independence. The right to security of the person protects both the physical and psychological integrity of the individual. This right is infringed by “serious state-imposed psychological stress”, objectively measured, that need not rise to the level of nervous shock or psychiatric illness.

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

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

[90] A comparison of Point in Time counts from September 2021 (1,085 persons experiencing homelessness including 412 “living rough”) and October 2024 (2,371 experiencing homelessness,

with 1,009 “living rough”) demonstrates that the problem of homelessness, including unsheltered chronic homelessness, has significantly exacerbated over the past three years.

[91] As of June 6, 2025, the Region’s overall emergency shelter capacity was 377 beds, a number that falls well short of the unhoused population’s needs. The capacity of 377 also needs to be contextualized since not all shelter beds are available to every individual, some for example may only be accessible to youth or women. It was acknowledged by one of the Region’s witnesses that very few of the 1,009 people “living rough” would be able to readily access a shelter bed, interim housing, or motels because these shelter options are already at high capacity. Emergency shelters are not always appropriate or available for people who lack capacity, have serious mental health, and/or substance use issues. Shelters can be destabilizing (by requiring people to move their belongings every morning) and overwhelming or overstimulating (by causing people with delusions to feel frightened or threatened). Risks in shelters include transmission of pathogens like tuberculosis and COVID-19, bed bugs, sleep deprivation, and violence. Further, if someone has previously been barred from a shelter (i.e. for behavioural issues or drug use) it is extremely difficult for them to regain access. Similarly, motels are not suitable nor safe for some people, particularly those who lack capacity, have serious cognitive, mental health, and/or substance use issues. Motels do not provide the levels of support required for high-needs individuals; behavioural issues frequently lead to eviction and unsupervised drug use can lead to overdose with no one nearby to notice or assist (a risk that may be mitigated by the “buddy system” in the Encampment). Risks at motels include sex trafficking, drugs, and violence.

[92] The *Charter* rights of both Existing Residents and Non-Residents are impacted by the By-law and must be considered by the Court. The Moving Parties consist of both Existing Residents and Non-Residents.

[93] The evidence to-date supports the proposition that there is a serious issue to be tried and a *prima facie* concern that the By-law deprives the Moving Parties’ rights to life, liberty, and security of the person in ways that are not in accordance with the principles of fundamental justice, specifically in a manner that is grossly disproportionate to the By-law’s object. The s.7 analysis is only concerned with the question of whether the impugned law or State action infringes – or risks

infringing – the *Charter* claimant’s rights. As stated by the Supreme Court, “[t]he question of justification on the basis of an overarching public goal is at the heart of s.1 but it plays no part in the s.7 analysis”: *Canada (Attorney General) v. Bedford*, 2013 SCC 72, at para. 125. Further, gross disproportionality is not concerned with the number of people who experience grossly disproportionate effects; a grossly disproportionate effect on just one individual is sufficient to violate the norm: *Bedford*, at para. 122. The inquiry into the purpose of the law therefore focuses on the nature of the object, not on its efficacy.

[94] The primary purpose of the Region’s By-law is to obtain vacant possession by December 1, 2025 of the property where Existing Residents of the Encampment, vulnerable homeless individuals, have erected temporary shelters in circumstances where housing options are unavailable and/or inaccessible to them. Another purpose of the By-law is to prohibit Non-Residents, who are also vulnerable homeless individuals, from erecting temporary shelters at the property after April 16, 2025. As noted above, the risks to the Encampment residents include lack of stability, difficulty accessing services, increased health problems, exacerbation of mental health challenges, and risk of death. *Amicus* submits, and Justice Valente in *Persons Unknown 2023* accepted, that these consequences are more severe for Encampment residents who suffer from mental illness or substance abuse to the extent that they may lack capacity to understand the legal consequences of the By-law’s enforcement.

[95] Although not necessarily conclusive, a judgment already rendered on the merits will be a “relevant and weighty consideration” in determining whether a serious issue to be tried exists: *RJR*, at p. 348. The decision in *Persons Unknown 2023* considered similar by-law prohibitions against erecting temporary shelters specifically in the context of the 100 Victoria Street encampment. Justice Valente held that (a) the by-law violated the encampment residents’ s. 7 *Charter* rights to life, liberty, and security of the person in ways that were not in accordance with the principles of fundamental justice, and (b) that the violations could not be saved by s. 1 of the *Charter*. The Court declared the by-law in that case inoperative insofar as it applied to prevent residents of the encampment from residing and erecting temporary shelters without a permit on the property while the number of homeless persons continued to exceed the number and accessibility of shelter beds in the Region. Justice Valente’s ruling included an order that the

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

[96] Given the low threshold to be applied under this part of the *RJR* test, the evidence to-date combined with the prior decision in 2023 supports the conclusion that the Moving Parties have met their onus. Although not necessary, I find that the Moving Parties have also meet the higher *prima facie* standard.

There is a Serious Issue Respecting the Legality of the By-law

[97] Pursuant to s. 273 of the *Municipal Act, 2001*, the court may quash a municipal bylaw, in whole or in part, for illegality. Bad faith is a ground for quashing a by-law under this provision. Bad faith in the municipal law context does not require proof of malice, wrongdoing, or desire for personal advantage; rather, bad faith connotes a lack of candor, frankness, and impartiality. Indicators of bad faith include questionable timing; decisions made under false pretenses; improper motives; lack of notice; the usual practices and procedures are set aside; the parties most affected are kept in the dark; or the law targets one individual or property: *Bertrand v. Ramara (Township)*, 2024 ONSC 7291, at para.170.

[98] In the present application, the Moving Parties have raised a serious issue of bad faith on the part of the Region, regarding timing, motivation and notice, that meets the applicable low threshold as neither frivolous nor vexatious. The Region passed the By-law one week after it was posted online. Many Encampment residents do not have regular or any access to the internet, nor would they have known that they should be monitoring the Region’s website for notices that might apply to them. A physical copy of the By-law was not posted at the Encampment.

[99] The evidentiary record to date is insufficient to make any definitive findings on this issue at this time (and I do not do so). But it is apparent that it is sufficient to preclude the assertion

being deemed frivolous and vexatious.

Irreparable Harm

[100] The evidence in the application record to date includes evidence of risk of serious physical and/or psychological harm that may be inflicted by operation of the By-law upon an already physically, mentally and emotionally vulnerable population of Existing residents and Non-Residents of the Encampment. This is not harm that can be compensated or cured by monetary means or costs. It meets the necessary threshold of irreparable harm to satisfy the second prong of the *RJR* criteria.

The balance of convenience favours granting the interlocutory injunction

[101] *Amicus* submits, and I agree, that protecting Existing Residents and Non-Residents from the adverse impacts of the By-law is itself a significant matter of public interest and therefore serves a public good. The Supreme Court of Canada has repeatedly recognized that disabled individuals suffer from historical and ongoing disadvantage, are negatively stereotyped and subjected to social, cultural, and economic prejudice requiring *Charter* protection and ameliorative action by the State. The fact that temporary suspension of the By-law will itself serve the public interest as it relates to vulnerable individuals, weighs heavily in favour of granting the injunction.

[102] The risk of irreparable harm in this case includes risk of serious deteriorations in mental and physical health, increased marginalization, and risk of death. In the circumstances, the second irreparable harm branch of the *RJR* test, along with the first serious issues to be tried branch, merit a heavy weighting within the balance of convenience analysis.

[103] When considering the impact of suspending the By-law on other public interests, courts have considered the issue of urgency and what harm would be caused to the assumed public good if the impugned law is suspended: *Cycle Toronto*, at para. 34. Here, the Moving Parties have requested that the injunction only last until a decision is rendered in the merits application. Further, as explained above, the Region has already suggested that it might be possible to delay the December 1, 2025 deadline for commencing remediation of the Encampment site and further, there is some uncertainty as to whether Metrolinx will actually require the site by March 2026.

[104] Due consideration should be given to the observation of Goodman J. at para. 249 in *Poff* that “the complex and challenging social, economic and policy issues affecting homelessness “ought to be left to elected officials, health care and other professionals, social agencies and experts who are best equipped to address the welfare and needs of the homeless.” Their expertise should not be lightly discounted. But it must be counterbalanced against the autonomy, dignity, agency and self-determination of the Encampment residents.

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

[106] And I am cognizant of the guidance of the Supreme Court of Canada in *Harper* that there is a presumption that presumptively constitutional laws stay in force while a constitutional challenge is pending, and that courts should grant injunctive relief against still-valid laws only in clear cases. But this is a rebuttable presumption. The unique and salient factor that distinguishes the present case is the existence of Valente J.’s prior decision in *Persons Unknown 2023*. This found, in respect of the very same Property, that the Region’s efforts to evict homeless persons from the Property would violate s.7 and not be saved by s.1 of the *Charter* under circumstances where the number of people experiencing homelessness exceeded the available and accessible shelter beds in the Region. The evidence on this motion very clearly indicates that this continues to be the situation.

[107] The status of and weight to be given to Justice Valente ’s determination in *Persons Unknown 2023* regarding the application of s.7 of the *Charter* will be a key factor in the forthcoming hearing of the contending applications in November 2025. It was not appealed by the Region and has not been discounted by any subsequent appellate guidance in Ontario. As I

indicated to all counsel on the hearing of this motion, a key issue will be whether horizontal *stare decisis* applies to this decision, in light of the guidance of the Supreme Court of Canada in *R. v. Sullivan*, 2022 SCC 19: is Justice Valente's decision now binding upon this Court, or merely persuasive authority?

[108] Suspension of the By-law does not suspend the Region's efforts to develop individual housing plans for both Existing Residents and Non-Residents of the Encampment, regardless of whether Non-Residents commence residing at the Encampment after April 16, 2025. That necessary and positive work may continue.

[109] Granting the injunction will not prevent the police, paramedics, or the fire department from accessing the Encampment if there are concerns about safety.

[110] Harms to other individuals who are not parties to the litigation can be considered when assessing the balance of convenience: *The Neighbourhood Group*, at para. 50. Accordingly, this Court may also consider the public interest of other homeless persons in the Region who have no other accessible place to go, other than the Encampment. Homeless persons with mental health, cognitive and/or capacity issues, or drug or alcohol dependencies may find themselves barred from shelters, motels, or other types of housing.

[111] Weighing all these factors, I find that the balance of convenience weighs in favour of granting an interlocutory injunction staying enforcement of the Site-Specific By-law until the applications have been finally determined by this Court.

[112] I agree with the submission of the Moving Parties that, in the circumstances of this case, they should be exempt from the usual requirement that a party seeking injunctive relief provide an undertaking in damages.

Conclusion

[113] The motion for an interlocutory injunction will be granted.

[114] The import of this decision to grant an interlocutory injunction until the full hearing of the

applications in November 2025 should not be misconstrued. It is intended to preserve the *status quo* until a hearing on a full evidentiary record can be accomplished, when the Court will be in a position to give a full and measured consideration of all of the issues. The constellation of legal and factual issues here is complex and not amenable to final determination in the necessarily circumscribed and time-compressed context of a motion for an interlocutory injunction. A case can look very different when it is fully argued on a full record. The materials filed on this motion are not the full record that will be before the court on the Applications, nor has all the evidence been fully tested through cross-examination.

[115] The issues before the Court on this motion are complex, difficult and of vital significance to the lives of many of the people involved. The situation is fluid. The pressures which drive the issue of homelessness in Waterloo Region, and at the Encampment in particular, are not static. The Court will be in a much better position to address them upon a more fulsome evidentiary record at the hearing of the applications in November. There are inevitably some sharply differing views about the best way ahead. What is apparent to me at this stage however is that all parties should resist any temptation to caricature the positions or the motives of those with opposing views.

[116] This injunction will only be in place until the conclusion of the hearing on 21 November 2025. I will provide further direction at that time as to whether and for how long it will continue to be in effect.

[117] I wish to express my appreciation to all counsel for their valuable assistance and the quality of their written and oral submissions.

Order

[118] The Court Orders that:

1. There shall be an interim injunction restraining the Applicant, its servants, employees, agents, assigns, officers, directors and anyone else acting on its behalf from enforcing or acting on any part of the Site-Specific By-Law, including but not limited to:

- i) directly or indirectly evicting the Moving Parties from the Encampment;
 - ii) preventing the Moving Parties' entry to or use of the Encampment site, directly or indirectly, including without limitation the use of fences or other barriers;
 - iii) preventing the Moving Parties from relocating their temporary shelters to another part of the Encampment site;
 - iv) prohibiting entry onto the premises of non-residents, including prohibiting vehicle access to the premises; and
 - v) disposing of or removing any personal belongings, real or personal property belonging to the Moving Parties and located at the Encampment.
2. the implementation of the Site-Specific By-Law is stayed until the conclusion of the hearing on November 21, 2025. I will provide further direction at that time as to whether and for how long it will continue to be in effect.

Costs

[119] The parties are encouraged to agree upon appropriate costs. If the parties are not able to agree on costs, they may make brief written submissions to me (maximum three pages double-spaced, plus a bill of costs) by email to my judicial assistant at mona.goodwin@ontario.ca and to Kitchener.SCJJA@ontario.ca. The Moving Parties may have 14 days from the release of this decision to provide their submissions, with a copy to the Responding Party; the Responding Party a further 14 days to respond, with a copy to the Moving Parties; and the Moving Parties a further 7 days for a reply, if any. If no submissions are received within this timeframe, the parties will be deemed to have settled the issue of costs as between themselves. If I have not received any response or reply submissions within the specified timeframes after the Moving Parties initial submissions, I will consider that the parties do not wish to make any further submissions and will

decide on the basis of the material that I have received. There shall be no costs ordered against or in favour of *Amicus* or the Intervener the Attorney General of Ontario.

Date: August 20, 2025

M.R. Gibson J.

CITATION: The Regional Municipality of Waterloo v. Persons
Unknown and to be Ascertained, 2025 ONSC 4774
COURT FILE NO.: CV-25-00000750-0000
DATE: 2025/08/20

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

THE REGIONAL MUNICIPALITY
OF WATERLOO

Applicant/Responding Party
on Motion for an Injunction

– and –

PERSONS UNKNOWN AND TO
BE ASCERTAINED

Respondents/Moving Parties
on Motion for an Injunction

REASONS FOR DECISION
MOTION FOR INTERLOCUTORY INJUNCTION

M.R. Gibson J.

Released: August 20, 2025

TAB 6

CITATION: The Regional Municipality of Waterloo v. Persons Unknown and to be
Ascertained, 2023 ONSC 670

COURT FILE NO.: CV-22-717

DATE: 2023-01-27

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
The Regional Municipality of Waterloo	)	James J. Bennett and Erin Kadwell, for the
Applicant	)	Applicant
	)	
– and –	)	
	)	
Persons Unknown and to be Ascertained	)	
Respondent(s)	)	
	)	
Named Respondents – Jennifer Draper,	)	Shannon K. Down and Ashley Schuitema,
Sandra Hayward, Caleb Watson, Drew	)	for the Named Respondents (Applicants in
Zekai, Michael Wosik, Albert Tugwood,	)	the Constitutional Application)
Mark Duke, John Slade, Andrew Entwistle,	)	
Sean King, Andrew Mandic, Kathryn	)	
Bulgin, Lee-Anne Mason, Liam Flanagan,	)	
Jordan Aylott, and Sean Simpell	)	
Respondents	)	
	)	
<i>Amicus Curiae</i>	)	Mercedes Perez, Jen Danch and Karen A.
	)	Steward, as <i>Amicus Curiae</i>
	)	
Waterloo Regional Police Service and the	)	Gary Melanson, counsel for WRPS
Chief of Police	)	
Intervenor	)	
	)	
	)	HEARD: November 7, 8, and 16, 2022;
	)	Final Submissions received December 2,
	)	2022

THE HONOURABLE JUSTICE M.J. VALENTE

REASONS FOR JUDGMENT

Introduction

[1] The issue in this application of The Regional Municipality of Waterloo (the ‘Region’) concerns the prohibition against erecting any type of structure, including a tent, on the Region-

owned property, municipally known as 100 Victoria Street North, in the city of Kitchener (the ‘Property’). More generally, however, the Region’s application touches on the unfortunate, complex and nationwide social issue of homelessness.

The Parties and their Respective Positions

[2] In its application, the Region takes the position that the homeless persons who have erected shelters and are living on the Property are in breach of By-Law number 13-050, *A By-Law Respecting the Conduct of Persons Entering Upon Buildings, Grounds and Public Transportation Vehicles Owned or Occupied by the Region* (the ‘By-Law’). The Region seeks, in addition to other relief, a declaration that the homeless living on the Property are in breach of the By-Law together with interim and final orders restraining and enjoining them from breaching the By-Law by remaining and/or re-entering onto the Property pursuant to section 440 of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended (the ‘*Municipal Act*’).

[3] A number of the individuals living at the Property’s encampment have filed notices of appearance. These individuals are Jennifer Draper, Sandra Hayward, Caleb Watson, Drew Zekai, Michael Wosik, Albert Tugwood, Mark Duke, John Slade, Andrew Entwistle, Sean King, Andrew Mandic, Kathryn Bulgin, Lee-Anne Mason, Liam Flanagan, Jordan Aylott and Sean Simpell (collectively, the ‘Named Respondents’). The Named Respondents delivered a notice of constitutional question seeking remedies pursuant to sections 24(1) and 52(1) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982 c. 11 (the ‘*Charter*’). The Named Respondents allege that the By-law and the trespass notice issued under it breach their section 7 (right to life, liberty and security of person) and section 15(1) (equality) *Charter* rights in a manner that is not demonstrably justified in a free and democratic society.

[4] Prior to the matter coming before me for argument, I ordered the appointment of *amicus curiae* “for the purpose of advocating on behalf of individuals living in the encampment... whose capacity to engage or instruct counsel is in question, who have not retained counsel, and who have no other identified way to participate in these proceedings.”

[5] I also granted intervenor status to the Waterloo Region Police Service and the Chief of Police (collectively, the ‘WRPS’) which take no position on the application itself but have provided the Court with helpful submissions should I decide to accede to the Region’s request that WRPS be authorized to arrest and remove the homeless persons living in the Property’s encampment and remove both their shelters and belongings, as necessary.

[6] The Region’s position is that it does not require the Court’s assistance in the determination of its legal rights. It maintains that it may assert its legal rights to evict any trespasser on Region-owned property who are in breach of the By-Law. Rather, the Region brings this application to seek the direction of the Court in how it might enforce its legal rights. Once it has the Court’s direction, including a ruling that the *Charter* rights of the Named Respondents have not been violated, the Region proposes to use this Court’s order as a precedent for its treatment of other homeless encampments across the Region.

The By-Law

[7] It is undisputed that the *Municipal Act* gives the Region the express authority to pass by-laws respecting its public assets and the protection of persons and property (see *Municipal Act*, ss. 8, 9, and 11(2)). It is also acknowledged that the *Trespass to Property Act*, R.S.O. 1990, c.T21, as amended, ss. 3 to 8 (the ‘TPA’) allows an occupier of premises to prohibit or regulate entry onto premises and that the Courts have recognized municipalities as occupiers.

[8] Pursuant to the *Municipal Act*, the Region enacted the By-Law in December 2013. The By-Law prohibits certain activities on lands owned or occupied by the Region. The prohibited activities include erecting, without authorization, any form of structure on the lands as well as bringing any dangerous, illegal or flammable goods on the lands that are likely to cause injury or damage to the lands.

[9] The purpose of the By-Law is to (i) prevent physical damage to the lands owned or occupied by the Region (the ‘Designated Premises’) (ii) prevent the disruption of the Region’s operations on the Designated Premises; and (iii) regulate the use and enjoyment of the Designated Premises by other persons.

[10] The Region’s remedies pursuant to the By-Law are to lay a charge and/or exercise its available remedies under the *TPA*. These include issuing a written notice or posting a sign prohibiting the impugned conduct and/or requiring the person engaged in the prohibited activity to leave the property in question.

[11] Prior to December 2021, the By-Law was used by the Region to address and regulate homeless encampment complaints. In late November 2021, the Region’s by-law enforcement staff attended at a homeless encampment at 34 Stirling Street East, in the city of Kitchener (the ‘Stirling Encampment’) to enforce the provisions of the By-Law prohibiting unauthorized occupation of Region-owned public lands. To assist with the eviction of the encampment residents, and because of certain health and safety concerns for the Region staff and members of the public stemming from the presence of unsanitary conditions, broken glass, large items and drug paraphernalia, the Region’s enforcement staff enlisted the help of a road maintenance crew with heavy equipment to clear the Stirling Encampment.

[12] While the Region’s Planning, Development, and Legislative Services and Legal Services Report to Regional Council of December 15, 2021 (the ‘December 2021 Report’), maintains that the steps undertaken to evict the Stirling Encampment occupants “were consistent with the requirements of the [B]y-law,” the same Report concedes that “the manner in which these actions were carried out did not reflect the dignity of those living at the encampment.”

[13] As a result, the Region conducted a review of its then existing encampment eviction process and proposed a draft policy to Regional Council to supplement the By-Law as it specifically applies to homeless encampments. The draft policy was approved by Regional Council on December 15, 2021 (the ‘Encampment Policy’). The details of the Encampment Policy are discussed below.

100 Victoria Street North, Kitchener

[14] The Region acquired the Property in November 2012. The Property is located on the corner of Victoria and Weber Streets in the city of Kitchener and is approximately one-half acre in size. It is a gravel parking lot. The VIA Rail/GO Transit and bus stations are to the east of the Property, a commercial plaza lies directly to the west, and a Metrolinx owned rail corridor is to

the north. To the south of the Property are a variety of businesses and a church, including St. John's Kitchen, which provides meals during weekdays to persons in need.

[15] In May 2018, the Region and the province of Ontario entered into a Transfer Payment Agreement for the partial funding of the King Victoria Transit Hub (the 'Hub'). The Hub is a new train/bus station for the Region in close proximity to the Property. The Hub will require construction on Region lands. While there are no plans for any construction on the Property, the Region intends to use the Property in the short-term for additional motor vehicle parking for the VIA Rail and GO Transit stations across the street due to an anticipated increased use of the stations with the decline of the pandemic and as a lay-down area for the construction of the Hub. No evidence was, however, proffered by the Region respecting the immediate need for increased parking spaces to accommodate anticipated demand and although the evidence of Ellen McGaghey, the Region's Director of Facilities and Fleet Management, is that the construction of the Hub is projected for spring 2023, Ms. McGaghey admitted in cross-examination that there is no firm construction start date.

[16] In the long-term, the Region intends to use the Property for approximately one hundred dedicated transit customer parking spaces for the new Hub train/bus station. As a term of the Transfer Payment Agreement, the one hundred dedicated parking spaces are required of the Region upon the completion of the first stage of the Hub. It is projected that the contractually required parking will be required some time in late 2024, but there is no firm completion date.

Homelessness in the Region

[17] In 2014, the Region was the first Canadian community to count the number of people found to be experiencing homelessness. In 2018, the federal and provincial governments mandated bi-annual "Point in Time Counts" of the number of people experiencing homelessness. Based on the Region's Point in Time Count that was completed in September 2021, there were approximately 1,085 people experiencing homelessness in the Region. According to Kelly-Anne Salerno, Assistant Director of Housing Operations and Administration for the Region, the approximate 1,100 count is the most reliable information available on the extent of homelessness

in the Region. According to the September 2021 Point in Time Count report, the number of people experiencing homelessness in the Region tripled from 2018 to 2021.

[18] In addition to the number of homeless in the Region, the Point in Time Count report also contains data about the demographics of the homeless in the Region. Specifically, of the 1085 experiencing homelessness, 412 were living rough (living on the street, sleeping in parks or squatting in temporary shelter), 385 were experiencing hidden homelessness (provisionally accommodated; couch surfing), 191 were accessing emergency shelters and 63 were institutionalized. Of the individuals who completed a survey during the Point in Time Count, 75% had been experiencing homelessness for more than six months in the last year, 30% of those counted were women, 67% were men, 10% were transgender, Two-Spirit or non-binary. Additionally, of the individuals counted, 17% identified as Indigenous or First Nations and 15% identified as part of a racialized community.

The Encampment

[19] In or around December 2021, a small number of people began erecting tents on the Property without the Region's permission. Over the following six months, approximately 70 temporary shelters were erected to house some 50 people on the Property (the 'Encampment'). As of the hearing of the application, no current evidence was provided with respect to the number of tents and number of homeless persons living on the Property. The most reliable evidence is that, on July 27, 2022, the Region surveyed 53 residents living in the Encampment.

[20] In March 2022 the Region hired Barber Collins Security to monitor the Encampment, to respond to any disruptions and to respond to any complaints from the public, and specifically, from the businesses located in the plaza to the south of the Property. In May 2022, the Region authorized the Barber Collins security staff to be posted at the entrance of the St. John's Kitchen to permit overnight access to the washrooms located at this facility.

[21] As of July 2022, the Region's monthly costs associated with its response to the Encampment was approximately \$80,000. This cost not only included security services, but also garbage pick-up and janitorial services to clean the St. John's Kitchen washrooms.

The Encampment Residents

[22] The composition of the residents of the Encampment is reflective of the demographics of the Region's homeless population. They are individual men and women, couples, members of the 2SLGBTQ+ community, Indigenous people, members of racialized communities, as well as persons suffering from disabilities and substance abuse and domestic abuse survivors.

[23] Certain of the Named Respondents deposed to their personal histories and experiences as follows:

a) Kathryn Bulgin

Kathryn Bulgin testified that she is a 32-year-old victim of both physical and sexual assault and currently suffers from drug addiction. She has been homeless for approximately 6 years. Prior to June 2022 when she began living in the Encampment, she slept in hotel rooms, shelters, behind dumpsters and couch surfed. She found lining up for a shelter bed very stressful because there was no certainty if a bed would be available and because she did not have a watch or phone and could not always return at a designated time to claim a bed. If evicted from the Encampment, Ms. Bulgin will simply move to another campsite.

b) Jennifer Draper

Jennifer Draper testified that she is an Indigenous woman who is disconnected from her community. She suffers from depression, anxiety and a panic disorder. She is a user of crack cocaine and methamphetamines. Until she arrived at the Encampment, Ms. Draper had rented a home for herself and her 3 children, but when she lost her job, the family was evicted from the home and the children were apprehended by the local family and children services. She subsequently stayed at various shelters, including Mary's Place, and outdoors with her partner, and co-Named Respondent, Albert Tugwood. At Mary's Place, Ms. Draper was assaulted and robbed many times. If she left the shelter in the evening to spend time with Mr. Tugwood, shelter

staff threatened to give her bed away. Should Ms. Draper be evicted from the Encampment, she and Mr. Tugwood plan to sleep on the streets or in the bush.

c) Sean Simpell

Sean Simpell deposed that he suffers from drug addiction. He has been homeless since he was released from jail in June 2020. Prior to coming to the Encampment in March 2021, he bounced between a trailer, a Cambridge encampment, and a few shelters. As a drug user, Mr. Simpell found it difficult to be around other people in the shelter who were very judgmental. Unlike the shelters, where he was the subject of ridicule, at the Encampment: “we respect each other, we consider each other family and we don’t touch each other’s stuff. I have privacy here and no one steals from me.” If Mr. Simpell is forced to leave the Encampment, he fears that he will lose everything: “It is my greatest fear. This encampment may seem like garbage to some people, but to the people living there, it’s everything.”

d) Andrew Zekai

Andrew Zekai is Indigenous and suffers from drug addictions. He has been in and out of jail for the past 7 ½ years and homeless for most of the time when not incarcerated. Prior to living in the Encampment, he stayed in shelters but found them to be triggering for his drug use and ripe for theft of his personal belongings. He prefers the Encampment over the available housing options because he has easy access to St. John’s Kitchen for food and his sanitary needs as well as access to safe injection supplies from the nearby Consumption and Treatment Site. If evicted, Mr. Zekai testified that he believes he has nowhere to go and he will lose “most of his belongings and his stability.”

The Encampment Policy

[24] The December 2021 Report recommending Regional Council’s acceptance of the Encampment Policy states that the By-Law “has broad application to a wide range of prohibited activities” and “[a]s a result, specific direction as to the timing and manner of enforcement is not set out in the bylaw.” The Encampment Policy, as adopted by Regional Council on December 15, 2021, is intended to provide that direction for enforcement.

[25] The Encampment Policy seeks to guide Regional staff in providing outreach services to homeless persons living on the Region's lands and to balance the need to provide "appropriate supports to vulnerable individuals and the civic responsibility of maintaining the use of these lands for the public and/or operational requirements of the municipality."

[26] The Encampment Policy specifies 4 guiding principles that are to be followed prior to undertaking any encampment eviction. These guiding principles, as quoted from the Encampment Policy, are as follows:

1. The Region's priority is to assist individuals to access safer, sustainable, and healthier alternatives, not enforcement. Enforcement will only occur after all reasonable support efforts have been attempted without success and with reasonable advance notice of the requirement to vacate a public space. In exceptional circumstances, however, more immediate intervention may be required to address public safety concerns.
2. Regional staff, supported by community social service agencies, will work with individuals living outside to respond to their individual needs on a case-by-case basis by providing access to services, supports and shelter. The Region will use a co-ordinated approach between Regional departments in responding to the needs and issues related to individuals living rough or experiencing homelessness.
3. The Region will engage in ongoing proactive communication with individuals experiencing homelessness, service providers, regional councillors, community agencies and other groups.
4. The Region acknowledges that individuals living rough cannot be forced to accept services and supports. However, the refusal of an individual to accept services and supports is not sufficient reason to prevent the enforcement of Regional by-laws.

[27] In practical terms, the Encampment Policy provides for a two-step approach prior to enforcement of the By-Law.

[28] The first step calls for the Region's Community Services department to reach out to persons experiencing homelessness to encourage and assist them in accessing safer and healthier alternatives, including housing, support services, shelter and more permanent housing options. The anticipation of the Region is that, over time, individuals who are being so assisted will choose these better alternatives and will voluntarily leave the Region's encampments.

[29] Step two requires that enforcement occur only after all reasonable outreach and support efforts have been provided without success and after reasonable notice of the need to vacate has been given. Once the prescribed protocols have been followed and a decision to evict is made, enforcement shall be completed in a way that respects both the safety of all concerned and the dignity of the individuals experiencing homelessness.

[30] The Minutes of the December 15, 2021, meeting of Regional Council approving the Encampment Policy, record the solicitor for the Region, Jeff Schelling, having advised Council prior to their vote that the "new policy provides a greater emphasis on outreach and communication, with enforcement as a last option."

[31] Because Regional Council passed a by-law to confirm its action of December 15, 2021, the Named Respondents would have me find that the Encampment Policy has the authority of a by-law. While I do not agree that Regional Council's confirmation by-law has the effect proposed by the Named Respondents, I find that the Encampment Policy supplements the By-Law by providing specific principles and processes to be followed when addressing homeless encampment issues.

Steps Initiated by the Region Pursuant to the Encampment Policy

[32] It is the Region's evidence that a number of steps were taken by it pursuant to the Encampment Policy prior to its decision to disband the Encampment, the posting of its notice on June 6, 2022, requiring the residents as trespassers to vacate the Property by 9:00 a.m. on June 30, 2022 (the 'Trespass Notice'), and the commencement of this application on July 5, 2022.

[33] Based on the record, I find that the Region offered the following services and supports to the Encampment residents prior to its enforcement of the By-Law on June 6, 2022, with the posting of the Trespass Notice. These initiatives, as outlined by Ms. Salerno in cross-examination on her affidavit, are as follows:

- i. Starting in April 2022, Region staff met with the staff of Saugeen Health Centre and The Working Centre to ensure that person-centred supports and services were offered to the Encampment residents.
- ii. On May 25, 2022, two Region Ontario Works caseworkers began visiting the Encampment 3 times a week to provide support and services. For the six-week period from May 25, 2022, to June 30, 2022, the caseworkers spoke to a total of 38 individuals; of these 38 residents 22 were spoken to on one occasion.
- iii. Four service fairs were held on May 18, 19, and June 8 and 9, 2022, at the downtown YWCA to offer people the opportunity to connect with such community services as Lutherwood Housing Services, Saugeen Health Centre, and The Working Centre. A total of 40 people attended the service fairs, but it is unclear from Ms. Salerno's evidence how many of the attendees were residents of the Encampment.

[34] In addition to the support services listed above, at its June 22, 2022, meeting, Regional Council passed a motion “[t]hat staff develop a plan to establish interim housing solutions for the regional residents experiencing homelessness including those currently residing in encampment.”

[35] In response to the June 22, 2022, motion, Regional staff moved quickly to provide a number of recommendations to Regional Council at its August 18, 2022, meeting, including:

- a) the development of a Homelessness Master Plan detailing the strategies and resources necessary to end homelessness in the Region; and
- b) the implementation of interim housing solutions to support those experiencing homelessness in the following order:

1. expansion of the Transition Housing Program, including the Indigenous-focused and led site;
2. expansion of the Home-Based Support Program;
3. expansion of the Emergency Shelter Program; and
4. establishment of a managed hybrid/outdoor shelter model.

[36] All of these recommendations were approved by Regional Council at its mid-August 2022 meeting.

The Risk Assessment

[37] In May 2022, the Region developed a risk assessment tool (the 'Risk Assessment') to address the growing size and risks of the Encampment. It is unclear from the evidence whether the Risk Assessment was undertaken in contemplation of the Encampment Policy's principles and procedures or independent of it. The Risk Assessment addressed 15 categories of risk (for example, surrounding areas, known risks to safety, number of structures, types of items on-site, number of adults on-site) and assessed each of the 15 categories with a low/medium/high risk rating. The Risk Assessment also included empirical information on the number of inhabitants and reported incidents to allow the Region to determine any upward or downward trends.

[38] On May 12, 2022, and May 26, 2022, the Region completed two risk assessments. The Region concluded there was high risk in relation to the number of tents and individuals on-site but medium to low risk in all thirteen of the remaining categories. The Risk Assessment defined above 8 tents and individuals as a medium risk and above 20 as indicative of a high risk. On May 12, 2022, there were approximately 40 tents and 32 Encampment residents and on May 17, 2022, the Region counted some 63 tents and 50 individuals living in the Encampment.

[39] The Region also concluded that there was a significant increase in the number of Encampment incidents and a corresponding increase in the involvement of WRPS between March 25, 2022 and May 16, 2022. The Region points to a 18.77 % increase in the daily average number of incidents and a 116.33% increase in the daily average number of WRPS involvement between the week of March 25, 2022, and the week of May 16, 2022.

[40] Overall, it was the Region's determination that the conditions at the Encampment posed a risk to the health and safety of the Encampment residents as well as to that of others. As a result, the Region determined that the Encampment had to be disbanded.

[41] There may have been undisclosed reasons why the Region moved to evacuate the Encampment with the posting of the Trespass Notice, but I find that the results of the Risk Assessment are insufficient reason to justify the clearing of the Encampment.

[42] Apart from the fact that 13 of the 15 categories were rated as medium to low risk, Erin Rowles, the Region's Director of its Strategic and Quality Initiative Division, admitted on cross-examination that the Risk Assessment was not well researched. It was based on a risk assessment tool prepared for the City of Sudbury. That assessment tool chose 8 tents as indicative of high risk. The Region chose 20 tents as an indicator of high risk because it thought "20 made good sense." The twenty-tent mark was also based on feedback from community partners: 20 tents was "their best guidance and guess as well" according to Ms. Powles. I find that there was little or no analysis to justify the decision to assign 20 tents as a numerical indicator of high risk.

[43] The Risk Assessment also fails to include any qualitative analysis of the events reported as "incidents" and events requiring the response of WRPS. The total number of incidents recorded is 136 but a closer look at these "incidents" reveals such innocuous and unexplained events as 8 counts of "unauthorized guest belongings" (where else but on the Property would the residents store their possessions?), 8 counts each of "suspicious persons" (without any definition of such persons) and "loitering" (which one might expect from the Encampment residents), 11 "parking complaints" (how this may be a risk for the Encampment is less than clear), and 5 counts of "unauthorized vehicle" (given that no one had authorization to be at the Encampment, it is unclear how this factor contributes to the relative risk).

[44] Furthermore, while the Region is accurate in reporting an 18.77% increase in the relative number of daily average of incidents and a 116.33% increase in the relative number of daily average of incidents with WRPS involvement for the period of March 25 to May 16, 2022, as compared to the period of May 3 to May 16, 2022, the Region's statistics are far less compelling when presented by way of the actual number of increases. The actual increase in the daily

average of incidents is 0.18 incidents per day and the actual increase in the daily average number of WRPS involvement is 0.126 incidents per day. To my mind, the actual numerical daily increase provides a more realistic perspective on how many incidents were occurring and how much their frequency actually increased.

[45] Ms. Rowles, as the Region's Director of Strategic and Quality Initiatives, also admitted in cross-examination that, in developing the risk assessment tool and its collection of the information included in it, the Region did not consult with any of the Encampment's residents. Instead, the Region relied on the verbal reports of the local fire and police departments as well as those from community partners providing outreach services.

[46] Finally, the Risk Assessment omits any consideration of the potential risks associated with the eviction of the Encampment residents. Because there is no comparative risk assessment, in my opinion, the Risk Assessment as a tool is not tethered; or in other words, it has no way to measure the relative risk of choosing between eviction, allowing the Encampment residents to stay, or pursuing other options.

Adverse Impacts of the Encampment

[47] Shannon Walls, Corporate Security Supervisor for Barber Collins Security, in cross-examination on her affidavit, describes encampments and shelters as equally "dangerous and volatile" subject to the caveat that encampments are more unpredictable. Apart from the specific risks that I have identified above, the Region points to a number of other risks that contribute to the Encampment's dangerous and chaotic living environment. These additional risks include the following:

- a) rat droppings and rodent burrows;
- b) human feces and urine on the Property;
- c) the consumption of alcohol and drugs;
- d) the presence of barbeques and propane tanks in and around the tents creating a potential fire hazard;
- e) physical altercations; and

- f) repeated trespasses onto the neighbouring commercial plaza and complaints from local business owners.

[48] Albeit that the Region has assessed these issues in the medium to low-risk category, I accept the Region's position that each of these matters, with the exception of the trespassing onto neighbouring lands, have an adverse impact on the Encampment's living environment. Having reached that conclusion, however, I am also of the opinion that, absent suitable housing, does not closing the Encampment simply moves all of these risks elsewhere. Furthermore, does not the Region have some responsibility to take further steps to mitigate these risks? Is that not within the letter, or at least the spirit, of the Encampment Policy?

[49] For example, while the Region contracted with Abell Pest Control to control the rat population, bait and traps were placed only on the eastern boundary of the Encampment with the adjacent property. No bait or traps were placed within the Encampment or along the other three sides of the Encampment's perimeter. Likewise, the problem with human waste could have easily been addressed had the Region facilitated earlier access to the washrooms located at St. John's Kitchen and/or installed the two portable toilets on the Encampment sooner than it had. Furthermore, it is disappointing that the Region's policies prevented its representatives at the Encampment from approaching the residents with a view of educating them on health and safety issues which, according to the testimony of Chris Komorowski, Manager of the Region's Health Protection and Investigation Division, likely contributed to the Encampment residents receiving no education on these issues.

[50] As far as the adjacent property owners are concerned, those who testified admitted that they had not personally witnessed much behaviour that troubled them. They were more concerned with the potential dangers of the Encampment and the fear of the unknown.

Risk of being Homeless

[51] Unlike the Risk Assessment, which does not consider the potential risks of eviction, the expert evidence of the Named Respondents addresses these risks in specific detail.

[52] While the Region did not attempt to disqualify the Named Respondents' expert testimony, it submits that this expert evidence is of little relevance because none of the Named Respondents' experts, save for one, visited the Encampment or spoke to any of its residents. Rather, the expert testimony is based on noncontroversial opinions respecting the issues that contribute to homelessness in Canadian society. For this reason, however, and because the opinions of Dr. Andrea Sereda, in particular, were not effectively challenged on cross-examination respecting the negative consequences of homelessness and the benefits of encampments, I find the Named Respondents' expert testimony helpful in considering the issues before me.

[53] Dr Andrea Sereda is a physician practicing at the London Intercommunity Health Centre in London, Ontario. The Health Centre serves patients who experience barriers to healthcare in the traditional healthcare system. Dr. Sereda's practice focuses on people experiencing homelessness, people who inject drugs, and women working in the sex trade. Most of Dr. Sereda's patients are unhoused, living in encampments, staying in shelters, couch surfing, or any combination thereof. Dr. Sereda has provided health care to the homeless for 12 years.

[54] In Dr. Sereda's opinion, there are many health risks associated with homelessness. Dr. Sereda explains these risks as follows:

- a) The forced transience faced by unhoused people, which includes eviction from encampments, interrupts the ability of healthcare teams to complete diagnostic and treatment plans.
- b) Other healthcare problems created by encampment evictions include:
 - i. the inability to locate patients once they have been forced to leave can lead to their discharge from programs which require regular attendance;
 - ii. acute conditions such as frostbite, exposure, and heatstroke due to the loss of tents, clothing, and medications;
 - iii. the exacerbation of such mental health conditions as depression, anxiety, PTSD, and panic disorders; and

- iv. increased substance use and fatal overdoses.
- c) For individuals experiencing homelessness, most of each day is spent on survival living, including accessing food, shelter, and hygiene. Because most of the day is consumed with securing these basics, acute and chronic health conditions are often not prioritized by patients experiencing homelessness.
- d) Physically locating a patient who is homeless can be very difficult which often results in a delayed diagnosis and treatment of both acute and chronic conditions.
- e) “People who have nowhere to sleep commonly have profound sleep deprivation, which can impact physical and mental health but also contribute to a greater risk of death through mechanisms like overdose.”
- f) Because of the persistent onslaught of environmental factors such as heat, cold, rain and snow, individuals living unhoused are subject to injuries and acute illnesses. In these circumstances, it is difficult for healthcare providers to help the homeless move beyond the treatment of the acute illness at the cost of not addressing chronic conditions. The focus on acute care rather than preventative care for chronic conditions “increases morbidity and mortality from those chronic conditions.”

[55] In contrast, Dr. Sereda describes the advantages of living in an encampment as compared to living in a public space in this way:

- a) Encampments decrease forced transiency which increases the odds that the unhoused can maintain a connection to such outreach services as healthcare, street outreach for basic needs (food, clothing), delivery of medications and harm reduction supplies.
- b) Encampments decrease isolation and risk of fatality. By being forced to move into the margins, people place themselves at greater risk of harm because they are alone and disconnected from routine services. This

places them at greater risk of violence, overdose, and loss of connection to medical services.

- c) Encampments give people sense of community. The benefits of this include increased mental health stabilization, increased chances of being helped during an overdose, and emotional support.
- d) Encampments minimize sleep deprivation. Many unhoused people with nowhere to sleep need to stay up all night due to fear of violence and theft if they sleep alone in the open.
- e) Encampments provide physical and mental rest. It is both physically and mentally exhausting to have to constantly move and search for new places to shelter. Being able to remain in one place gives people a chance to rest and focus on recovery.

[56] Dr. Sereda also opines with respect to the advantages of living in an encampment over a shelter. She explains those advantages as follows:

- a) In encampments, couples or “survival partners” can remain together. Almost always, there is insufficient shelter options for couples.
- b) Shelter stays are inherently unpredictable and precarious. Many people can find themselves abruptly evicted in any weather condition.
- c) Shelter spaces are often abstinence-based with policies that refuse to adopt a harm reduction approach to provide increased safety and support for people who are experiencing homelessness and using substances.
- d) Encampments provide relief from the physical burden of leaving and entering shelters every day. Additionally, when people must leave the shelter each day, they are left with nowhere to rest or decompress until they return at night.
- e) Shelters can be re-traumatizing for people with a history of trauma or abuse. People with this history may be triggered by a congregate setting of strangers.

The Region's Efforts to Expand Resources for its Homeless

[57] Dr. Sereda is of the opinion that the new initiatives of the Region to address the homelessness problem are both good and helpful. I share Dr. Sereda's opinion.

[58] The Region has increased the number of beds in its Emergency Shelter Program with new spaces planned for the near future. It has expanded its Home-Based Support Program with additional funding of \$1.3 million to assist 50 more people experiencing chronic homelessness find and keep a home in the private rental market. Thirdly, the Region doubled its funding to its Street Outreach Services Program to assist people experiencing homelessness connect to services and it has extended the interim housing program at an annual cost of \$2.8 million to fund the lease of space at 139 University Avenue in Waterloo. The Region has also accelerated the development of affordable housing tenfold with 837 new affordable homes in development and a total of 153 homes already occupied this year.

[59] The Region is funding the operating costs of the House of Friendship's new shelter in Waterloo. Once operational later this year, this program will have capacity for up to 100 people. The Region is also funding The Working Centre emergency shelter that opened in October 2022. Additionally, the Region is funding a 60-bed emergency shelter in downtown Kitchener.

[60] Finally, the Region is seeking service providers to implement the various interim housing programs approved by Regional Council at its August 18, 2022 meeting. The Region is looking to find service providers and locations for the proposed interim housing programs. In particular, the Region's intention is to have one or more hybrid outdoor managed shelter properties, managed by a third party, up and running for the Region's homeless sometime in winter 2023.

[61] All of the Region's efforts are both proactive and laudable.

The Region's Current Emergency Shelter Capacity

[62] The Region currently operates an emergency shelter program (the 'Emergency Shelter Program') which includes six third-party service providers. Individuals experiencing

homelessness can access the Emergency Shelter Program through a Region-funded call centre that operates 24 hours a day. The Emergency Shelter Program not only includes congregate living settings but also access to motel rooms throughout the Region.

[63] It is the Region's position that, since January 2022, there has been a week over week surplus capacity in its shelter system. An emergency shelter occupancy report compiled by the Region for the period of July 1, 2022, to November 3, 2022, shows an increase in total bed capacity from 371 as at July 1, 2022, to 416 as at November 3, 2022, as well as an increase in average weekly capacity of daily unoccupied beds ranging from a low of 45 beds to a high of 85 beds as recently as November 3, 2022. While these numbers include 20 motel beds located at the Cambridge Shelter Overflow, they do not include the motel rooms available through the YWCA Kitchener which accommodate 23 families and The Working Centre motel spaces to support approximately 58 individuals. In short, the Region argues that there is more than sufficient capacity to accommodate the approximately 50 Encampment residents were the Encampment to be cleared.

[64] The Region has offered emergency shelter accommodation to 7 of the 16 Named Respondents, all of whom have refused the Region's offer. Nonetheless the Region is committed to reserving spots for the Encampment residents at its emergency shelter locations.

[65] Apart from Ms. Salerno's admission on cross-examination that the Region does not have sufficient emergency shelter capacity to accommodate its best estimate of the approximate 1,100 homeless individuals living within its boundaries, the Named Respondents assert that the Region's available bed capacity as of November 3, 2022, is, in reality, only 30 beds. The Named Respondents base their position on a number of observations including the following:

- a) The Region asserts that The Working Centre University Avenue facility has a total bed capacity of 80 with 13 beds available in early November 2022. However, Ms. Salerno admitted on cross-examination that, of these 13 beds, an unknown number are in fact not accessible because of necessary repairs to be undertaken in the units. Ms. Salerno also agreed on cross-examination that, because the facility provides interim housing,

that there is not a lot of turnovers, and therefore, it is unlikely that someone could secure a bed through the call centre.

- b) Like The Working Centre, House of Friendship is also an interim housing facility. Therefore, although it may have a 26-bed capacity, its inclusion in the Region's emergency shelter system makes little sense when the bed turnover is minimal.
- c) The Kinsmen COVID-19 Isolation Facility is a congregate living space for those isolating due to COVID-19 symptoms. Although this facility has a total bed capacity of 24 beds, they are not available to the Encampment Residents unless they are suffering from COVID-19. On her cross-examination, Ms. Salerno agreed that these beds should not be included in the Region's emergency shelter capacity numbers.
- d) Ms. Salerno also conceded on cross-examination that there are issues with the accuracy of the Cambridge Shelter's ('Bridges') recorded daily capacity. The stipulated availability may not be accurate because Bridges is more of a permanent shelter where a bed is saved nightly for a person staying there. If that person is not present at curfew, the bed is held. Should the individual not return, the bed is counted as an 'empty space' although it cannot be accessed by anyone else on that particular night.
- e) The YWCA Shelter with an available capacity for 5 beds as at November 3, 2022 accepts only women and gender diverse individuals so like the Kinsmen Facility, these beds are available to only a select number of the Encampment residents.
- f) Ms. Salerno admitted on cross-examination that The Working Centre Shelter ('Schwaben Club') was, week after week, at or above capacity between July and September 2022. Throughout October this location had a 'phased approach' to reaching its current total capacity of 70 beds and the shelter currently has a waitlist every night of 10 or more people.

- g) Finally, the two oneROOF Shelters and the Safe Haven Shelter are exclusively youth facilities. The oneROOF Shelters serve individuals aged 16 to 25 while the Safe Haven Shelter exclusively serves individuals 12 to 18 years of age. It is therefore the position of the Named Respondents that these facilities, with the very limited cumulative availability of only 5 spaces as of November 3, 2022, are of little to no consequence to the Encampment residents.
- h) Respecting the motel rooms available through the YWCA, the Named Respondents argue that because these are for families that include children, none of the Encampment residents would have access to the rooms. In cross-examination, Ms. Salerno admitted that, although The Working Centre has access to some 45 motel rooms, the rooms are predominantly for those with acute or severe medical needs. Otherwise, the rooms are available at the motel operator's discretion and throughout 2022 these rooms were at capacity.

[66] While I cannot be certain that the Region's current average daily emergency shelter bed capacity is indeed 30, as the Named Respondents urge me to find, it is less than the 85 beds submitted by the Region, and in all the circumstances likely less than the 53 individuals living at the Encampment at last count.

Are the Shelter Beds Accessible?

[67] It is the Named Respondents' position, however, that an analysis of the available beds in the Region's shelter system does not end there. They submit in order for a bed to be considered available, it must be truly accessible to the Region's homeless given their specific circumstances. In light of the current research and the evidence of certain of the Encampment residents, the Named Respondents assert that few of the available beds are truly accessible.

[68] Dr. Kaitlin Schwan is the national director of the Women's National Housing and Homelessness Network and a senior researcher at the Canadian Observatory on Homelessness. She is also an assistant professor at the University of Toronto Faculty of Social Work and a

former senior researcher for the UN Special Rapporteur on the Right to Affordable Housing. In her evidence, Dr. Schwan refers to and endorses the project Willow Report (the ‘Willow Report’). It is a study of gender-based violence among women experiencing homelessness in the Region, published in June 2022. The study surveyed 48 and interviewed 13 women and gender-diverse individuals in the Region in 2020. The pertinent findings of the Willow Report include:

- a) 73% of the respondents stated they felt unsafe in co-ed shelters, and as a result, they avoided them;
- b) for some participants, the women’s emergency shelter system also felt unsafe; and
- c) 64% of the respondents said they avoided spaces they perceived to be male dominated because of safety concerns.

[69] The Pan-Canadian Women’s Housing and Homelessness Survey is the largest national gender-specific survey on housing needs and homelessness in Canada to date. It was completed by 500 women and gender-diverse people, authored by Dr. Schwan and published in September 2021 (the ‘Survey’). The Survey found that those participants that used substances reported being banned from shelters at a rate 3 times higher than those who did not.

[70] Based on Dr. Sereda’s findings, 95% of encampment residents are substance dependent. This estimation is supported by the evidence of 10 of the 11 Named Respondents who have testified that they have current or past substance use issues. It is also Dr. Sereda’s evidence that shelters have inconsistent practices around substance use. The inconsistency in shelter practice regarding substance use creates uncertainty for the homeless population. In a 2020 survey conducted by the Waterloo Region Crime Prevention Council, titled “Focus on Safe Supply”, 91% of the participants who regularly consume drugs and lack stable housing stated permitting substance use on-site in shelters is essential.

[71] The Named Respondents also submit that the existing emergency shelter system is unable to accommodate the needs of the Region’s homeless and is truly not low barrier because they live with survival partners, suffer from mental health or physical disabilities, are subject to

service restrictions at the shelters, or a combination of all of the above. These reasons align with the experience of the Named Residents. In particular,

- a) Jennifer Draper and Albert Tugwood attested to insufficient options for couples;
- b) Andrew Mandic, Sean Simpell, and Michael Wosik explained the physical burden and toll of having to leave and re-enter the shelter system every day with one's belongings;
- c) Jordan Aylott, Kathryn Bulgin, and Liam Flanagan attested to the weight of uncertainty of the availability of shelter space on any given night;
- d) Mark Duke, Liam Flanagan, and Andrew Zekai gave evidence respecting their conflicts with staff and other homeless individuals for a variety of reasons, including the shelter's inability to provide required services; and
- e) Sean Simpell, Albert Tugwood, and Andrew Zekai each attested to issues with substance use – either wanting to use substances in the face of abstinence rules and stigma or wanting to abstain from drug use but being surrounded by users.

[72] Having considered all of these accessibility factors, I find that, separately and cumulatively, they have the net effect of reducing the number of beds that would otherwise be available in the Region.

Does the *Charter* Apply?

[73] The goal of *Charter* interpretation is to secure for all people “the full benefit of the *Charter*’s protection.” The *Charter* is remedial in purpose and *Charter* rights must be interpreted purposively, generously, contextually and in a large and liberal manner: see *Quebec (Attorney General) v. 9147-0732 Quebec Inc.*, 2020 SCC 32, at para. 7.

[74] Section 32(1) of the *Charter* provides as follows:

32(1) This *Charter* applies

- a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and
- b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

[75] The Supreme Court of Canada's decision in *Godbout v. Longueuil (City)*, [1997] 3 S.C.R. 844, at paras. 50-51 [*Godbout*], clearly establishes that the *Charter* applies to municipalities and municipal by-laws.

[76] The Region argues, however, that the *Charter* does not apply in this instance because this case is about the allocation of resources. I disagree. I agree with the Named Respondents' submission that the matter before me calls into question the constitutionality of a prohibition contained in a by-law, the determination of which falls within the role and responsibility of the Courts: see *Victoria (City) v. Adams*, 2008, BCSC, 1363, 88 B.C.L.R. (4th) 116, at para 123 [*Adams BCSC*].

[77] The Region also submits that the *Charter* has no application to this case because the Named Respondents are looking to protect property rights, none of which are *Charter* protected. Again, I disagree. The Named Respondents are not claiming a right to the Property. To my mind, a preference to stay at the Encampment because it allows the residents easy access to a variety of services they regularly use (like St. John's Kitchen) and/or because they prefer the Encampment over the Region's shelters for a variety of accessibility reasons does not equate to a claim to a right to the Property. Further, as Justice Ross stated in *Adams BCSC*, at para 131:

Public properties are held for the benefit of the public, which includes the homeless. The government cannot prohibit certain activities on public property based on its ownership of the property if doing so involves a deprivation of the fundamental human right not to be deprived of the ability to protect one's own bodily integrity: see *Committee for the Commonwealth*

of Canada v Canada, [1991] 1 S.C.R. 139; Jeremy Waldron, “Homelessness and Community” (2000) 50 U.T.L.J. 371.

Section 7 of the *Charter*

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

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

[79] The onus is on the rights claimant under section 7 of the *Charter* to establish on a balance of probabilities that the impugned legislation deprives him or her of either life, liberty, of security of the person, and that the deprivation is not in accordance with the principles of fundamental justice. Should the claimant be successful in this respect, then the burden shifts to the respondent, under section 1 of the *Charter*, to justify the deprivation as a “reasonable” limit that is “demonstrably justified in a free and democratic society: see *R. v. Michaud*, 2015 ONCA 585, 127 O.R. (3d) 81, at para. 60. The same principles apply in regard to section 15(1) of the *Charter*: see *Abbotsford (City) v. Shantz*, 2015 BCSC 1909, at para.226 [*Shantz*].

[80] I add one qualification to the above section 7 analysis described by the Ontario Court of Appeal in *R. v. Michaud*, based on the statement of Chief Justice McLachlin in *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9, [2007] 1 S.C.R. 350, who explained, at para.12, that the first of the two steps to be established by the moving party are meant to examine whether “there has been or could be a deprivation of the right to life, liberty or security of the person.”

Section 7 and the History of the “Right to Shelter” Cases

[81] As homelessness continues to be a growing and problematic issue across Canada, the section 7 jurisprudence has continued to develop. In *Bamberger v. Vancouver (Board of Parks and Recreation)*, 2022 BCSC 49 [*Bamberger*], Justice Kirchner summarized the development of the British Columbia caselaw regarding the ‘right to shelter’ at paragraphs 11-20:

[11] In *Adams BCSC*, Madam Justice Ross found a Victoria bylaw prohibiting homeless persons from erecting temporary shelters in Victoria parks infringed their right to life, liberty, and security of the person, as guaranteed by s. 7 of the *Charter*. She found the number of homeless persons in Victoria far outnumbered the available shelter beds such that many of Victoria’s homeless were forced to sleep outside. Despite this, the city’s bylaw prohibited anyone from erecting temporary shelters, including tents, tarps, or even cardboard boxes, in public parks, leaving them exposed to serious and life-threatening conditions and depriving them of their dignity, independence, and ability to protect themselves.

[12] After a refinement of Ross J.’s order by the Court of Appeal, it was declared that the offending sections of Victoria’s *Park Regulation Bylaw* were “inoperative insofar and only insofar as they apply to prevent homeless people from erecting temporary overnight shelter in parks when the number of homeless people exceeds the number of available shelter beds in the City of Victoria”: *Adams BCCA* at para. 166.

[13] The constitutional right as articulated in *Adams* was thus circumscribed in two respects: (1) the right is exercisable when the number of homeless outnumbered the available indoor sheltering spaces, and (2) the right to erect a temporary shelter is confined to overnight hours.

[14] Since *Adams*, many municipal bylaws and government actions that seek to limit or restrict the ability of persons experiencing homelessness to erect and maintain shelters have come under challenge in this court, including in: *Vancouver Board of Parks and Recreation v. Williams*, 2014 BCSC 1926 [Williams]; *Abbotsford (City) v. Shantz*, 2015 BCSC 1909 [Shantz]; *British Columbia v. Adamson*, 2016 BCSC 584 [Adamson No. 1]; *British Columbia v. Adamson*, 2016 BCSC 1245 [Adamson No. 2]; *Nanaimo (City) v. Courtoreille*, 2018 BCSC 1629 [Courtoreille]; *Vancouver Fraser Port Authority v. Brett*, 2020 BCSC 876 [Brett]; and, most recently, *Prince George (City) v. Stewart*, 2021 BCSC 2089 [Stewart].

[15] The basic constitutional right as framed in *Adams* has remained largely unchanged. However, it is now recognized that it is not just the number of available indoor sheltering spaces that frames the right but also whether those spaces are truly accessible to those sheltering in parks. In *Shantz*, for example, Hinkson C.J.S.C. stated:

[82] Given the personal circumstances of the City’s homeless, the shelter spaces that are presently available to others in the City are impractical for many of the City’s homeless. They simply

cannot abide by the rules required in many of the facilities that I have discussed above, and lack the means to pay the required rents at others.

[16] More recently, in *Stewart*, Hinkson C.J.S.C. stated:

[74] It is apparent that very few of the emergency shelter beds are low barrier, and it appears that many of the homeless persons in the City are ineligible to stay in at least some of the shelters. While the City contends that the availability of 81 shelter beds in the City is sufficient to house the encampment occupants, I am not satisfied that these shelter spaces are in fact accessible to all of the occupants of the encampments.

[17] The question of sheltering in public parks during daytime hours has also arisen in the cases since *Adams*, but the jurisprudence, thus far, has not extended the s. 7 *Charter* right to include it, at least not expressly. In *Shantz* at para. 276, Hinkson C.J.S.C. found “there is a legitimate need for people to shelter and rest during the day and no indoor shelter in which to do so” but held that a “minimally impairing response to balancing that need with the interests of other users” of the parks would be to allow overnight sheltering between 7:00 p.m. and 9:00 a.m.

[18] However, in *Adamson No. 1* and *Stewart*, Hinkson C.J.S.C. declined to grant injunctions to close specific homeless encampments and made no specific qualification that those sheltering in the parks could only do so during overnight hours. In *Adamson No. 1*, Hinkson C.J.S.C. did not squarely address the issue of daytime sheltering but nor did he tailor a remedy to require the encampment to be removed at sunrise.

[19] In *Stewart*, he addressed the issue more directly, noting at para. 73 that the closure of shelter spaces due to COVID-19 resulted in scores of people having nowhere to shelter “in either the daytime or the nighttime.” He observed that these persons did not remove their tents or vacate the encampment each morning. In declining to grant the injunction, at least in respect of one, he did not consider or grant a more limited injunction that would restrict sheltering to overnight hours. He took judicial notice of the fact that “Prince George can be very cold in the fall and winter, and that people with nowhere warm to stay must find ways of keeping warm to stay alive”: *Stewart* at para. 64.

[20] Thus, while neither *Adamson No. 1* nor *Stewart* purport to expand the scope of the constitutional right to daytime sheltering, it was not specifically enjoined in either case.

[82] The essence of the British Columbia decisions is the establishment of a constitutional right to shelter oneself when the number of homeless persons exceed the number of available and accessible indoor shelter spaces within a given jurisdiction.

[83] While the Region acknowledges the British Columbia jurisprudence, it submits that these decisions have been distinguished by Ontario decisions on the basis of an *obiter* comment of the British Columbia Court of Appeal in *Victoria (City) v. Adams*, 2009 BCCA 563, 100 B.C.L.R. (4th) 28, [*Adams BCCA*] and the Region urges me to follow these Ontario rulings.

[84] The British Court of Appeal stated, at para. 109:

We agree with the trial judge that prohibiting the homeless from taking simple measures to protect themselves through the creation or utilization of rudimentary forms of overhead protection, in circumstances where there is no practicable shelter alternative, is a significant interference with their dignity and independence. The choice to shelter oneself in this context is properly included in the right to liberty under s. 7.

[85] However, the Court then goes on to comment in *obiter* as follows at para. 162:

If there were adequate shelter beds or appropriate designated areas outside of parks to accommodate the homeless, the Bylaw provisions that we are concerned with might well be valid.

[86] In the recent Ontario decisions of *Black v. Toronto (City)*, 2020 ONSC 6398, 152 O.R. (3d) 529 [*Black*] and *Poff v. City of Hamilton*, 2021 ONSC 7224 [*Poff*] homeless individuals sought an injunction to prevent the municipality from evicting them from city parks. In both instances, the Ontario Courts considered the British Columbia decisions and distinguished them on the basis of a factual finding that there were adequate shelter spaces to accommodate all of the cities' homeless.

[87] In *Black*, Justice Schabas found, at para. 149, that the city of Toronto had addressed the applicants' fears of COVID-19 in the shelter system "such that there are adequate safe alternatives to sleeping in encampments."

[88] Likewise, in *Poff*, Justice Goodman, at para. 235, differentiated the facts in *Adams* and *Shantz* from those before him on the basis that in the British Columbia cases the Court found "there was insufficient shelter space in the city to house all the city's homeless people.". This, according to Justice Goodman, at para. 236, "is not the situation in Hamilton."

[89] Given these factual findings, and in following the suggested path of the British Columbia Court of Appeal in *Adams*, the Ontario Courts ruled that there was no breach of section 7.

[90] In the alternative, to urge my following the *Black* and *Poff* decisions, the Region submits that provided I find that there is adequate capacity in the shelter system to accommodate the residents of the Encampment, I should nonetheless find that the By-Law does not violate the section 7 rights of the Encampment residents.

[91] Apart from the position that there are not sufficient available spaces in the Region to shelter its homeless population, the Named Respondents and *Amicus Curiae* submit that it is not simply the number of available shelter spaces that frames the section 7 rights but also whether those spaces are truly accessible to the homeless. They also argue that the Ontario decisions mentioned above are distinguishable from the case before me on the basis that the two encampments, each in the cities of Toronto and Hamilton, were located in municipal parks and not in a vacant lot. Whereas the Ontario Courts found that there was significant public interest in ensuring that everyone had access to the parks, there is no such public interest in the Property.

[92] Based on the record before me, I find that despite the Region's past and current impressive efforts to accommodate its homeless population, there are not sufficient shelter spaces. I find that the number of homeless persons in the Region far outnumber the available shelter beds such that many of the Region's homeless have no alternative but to sleep outside. The most reliable evidence is that the Region has a homeless population of approximately 1,100 individuals. Excluding the motel spaces (because their availability is at the discretion of the motel operators and in many cases the rooms are available only to those with acute or severe

medical needs or families), the most current information is that the Region has a maximum capacity of 416 shelter spaces. Even with the inclusion of the rooms at the YWCA and Working Centre (the Cambridge Shelter Overflow beds having already been included in the 416 available shelter spaces) the Region has a current capacity to shelter approximately 553 individuals (calculated on the assumption that each of the 23 families to be housed through the YWCA motel booking have 4 members). The available shelter spaces, unfortunately, fall short by some 50% of what is required. This result, in my opinion, does not equate to “adequate safe alternatives to sleeping in encampments” in the words of Justice Schabas.

[93] Furthermore, I accept that it is simply not a matter of counting the number of spaces. To be of any real value to the homeless population, the space must meet their diverse needs, or in other words, the spaces must be truly accessible. If the available spaces are impractical for homeless individuals, either because the shelters do not accommodate couples, are unable to provide required services, impose rules that cannot be followed due to addictions, or cannot accommodate mental or physical disability, they are not low barrier and accessible to the individuals they are meant to serve. Although not binding on me, I adopt and follow the decisions of the British Columbia Supreme Court in *Shantz, Prince George (City) v. Stewart*, 2021 BCSC 2089, 57 B.C.L.R. (6th) 118 [Stewart], and *Bamberger*, all of which hold that in order for the shelter spaces to be truly available, they must in fact be low barrier or accessible to accommodate the homeless population.

[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. Finally, even if I were to accept the Region's suggested approach, I am not satisfied that the Region has adequate capacity to shelter the approximately 50 Encampment residents given that its shelters are not low barrier or truly accessible.

Does the By-Law Deprive the Encampment Residents of One of the Protected Section 7 Rights?

(a) Life

[95] The Supreme Court of Canada established in *Carter v. Canada (Attorney General)*, 2015 SCC 5, [2015] 1 SCR 331 [*Carter*], that the right to life is engaged in a narrow set of circumstances. It observed, at para. 62, that:

This Court has most recently invoked the right to life in *Chaoulli v. Quebec (Attorney General)*, 2005 SCC 35, [2005] 1 S.C.R. 791, where evidence showed that the lack of timely health care could result in death (paras. 38 and 50, per Deschamps J.; para. 123, per McLachlin C.J. and Major J.; and paras. 191 and 200, per Binnie and LeBel JJ.), and in *PHS*, where the clients of Insite were deprived of potentially lifesaving medical care (para. 91). In each case, the right was only engaged by the threat of death. In short, the case law suggests that the right to life is engaged where the law or state action imposes death or an increased risk of death on a person, either directly or indirectly.

[96] Just as the British Columbia cases have found, and as Justice Schabas acknowledged in *Black*, so too do I conclude that the ability to provide adequate shelter for oneself is a necessity of life that falls within the right to life protected by section 7 of the *Charter*. Like Justice Ross in *Adams BCSC*, I have reached this conclusion because the very clear and uncontroverted evidence before me is that exposure to the elements without adequate shelter can result in serious harm, inducing death. The risk of harm is substantially increased during the late fall and winter months in the Region. Just as Chief Justice Hinkson was prepared to take judicial notice in *Stewart* that Prince George can be very cold in the fall and winter (at para. 64), so too am I prepared to take judicial notice of this reality facing the Region's homeless.

[97] Because the By-Law prohibits the erection of shelter protection that is necessary to protect homeless individuals from risk of serious harm, and there is currently inadequate shelter beds in the Region, I conclude that it violates the *Charter* protected right to life.

(b) *Liberty*

[98] The concept of liberty as protected by section 7 of the *Charter* was defined by Justice Wilson in *R. v. Morgentaler*, [1988] 1 S.C.R. 30, at pages 164-166, in this way:

The *Charter* and the right to individual liberty guaranteed under it are inextricably tied to the concept of human dignity. Professor Neil MacCormick, Regius Professor of Public Law and the Law of Nature and Nations, University of Edinburgh, in his work entitled *Legal Right and Social Democracy: Essays in Legal and Political Philosophy* (1982), speaks of liberty as "a condition of human self-respect and of that contentment which resides in the ability to pursue one's own conception of a full and rewarding life" (p. 39). He says at p. 41:

To be able to decide what to do and how to do it, to carry out one's own decisions and accept their consequences, seems to me essential to one's self-respect as a human being, and essential to the possibility of that contentment. Such self-respect and contentment are in my judgment fundamental goods for human beings, the worth of life itself being on condition of having or striving for them. If a person were deliberately denied the opportunity of self-respect and that contentment, he would suffer deprivation of his essential humanity.

...

The idea of human dignity finds expression in almost every right and freedom guaranteed in the *Charter*. Individuals are afforded the right to choose their own religion and their own philosophy of life, the right to choose with whom they will associate and how they will express themselves, the right to choose where they will live and what occupation they will pursue. These are all examples of the basic theory underlying the *Charter*, namely that the state will respect choices made by individuals and, to the greatest extent possible, will avoid subordinating these choices to any one conception of the good life.

Thus, an aspect of the respect for human dignity on which the *Charter* is founded is the right to make fundamental personal decisions without interference from the state. This right is a critical component of the right to liberty. Liberty, as was noted in *Singh*, is a phrase capable of a broad range of meaning. In my view, this right, properly construed, grants the individual a degree of autonomy in making decisions of fundamental personal importance.

[99] In finding that a prohibition against the possession of marijuana for the treatment of epilepsy violated section 7 of the *Charter*, Justice Rosenberg for the Ontario Court of Appeal in *R. v. Parker*, (2000) 49 O.R. (3d) 481, discusses the liberty interest, at paras. 92, 102-103, in this way:

[92] Accordingly, I believe that I am justified in considering Parker's liberty interest in at least two ways. First, the threat of criminal prosecution and possible imprisonment itself amounts to a risk of deprivation of liberty and therefore must accord with the principles of fundamental justice. Second, as this case arises in the criminal law context (in that the state seeks to limit a person's choice of treatment through threat of criminal prosecution), liberty includes the right to make decisions of fundamental personal importance. Deprivation of this right must also accord with the principles of fundamental justice. I have little difficulty in concluding that the choice of medication to alleviate the effects of an illness with life-threatening consequences is such a decision. Below, I will discuss the principles of fundamental justice that would justify state interference with that choice.

...

[102] In my view, Parker has also established that the marijuana prohibition infringed the second aspect of liberty that I have identified -- the right to make decisions that are of fundamental personal importance. As I have stated, the choice of medication to alleviate the effects of an illness with life-threatening consequences is a decision of fundamental personal importance. In my view, it ranks with the right to choose whether to take mind-altering psychotropic drugs for treatment of mental illness, a right that Robins J.A. ranked as "fundamental and deserving of the highest order of protection" in *Fleming v. Reid* (1991), 1991 CanLII 2728 (ON CA), 4 O.R. (3d) 74 at p. 88, 82 D.L.R. (4th) 298 (C.A.).

[103] To intrude into that decision-making process through the threat of criminal prosecution is a serious deprivation of liberty.

[100] Finally, in *R. v. Heywood*, [1994] 3 S.C.R. 761 [*Heywood*], the Supreme Court of Canada held that a person's section 7 liberty interest is engaged when there are statutory duties not to loiter in or near areas such as school grounds, public parks, and bathing areas.

[101] I have found as a fact that there are not enough accessible shelter beds for the Region's homeless population. If evicted from the Encampment, the residents will likely be forced to live in the rough or set up camp somewhere else because there is an insufficient supply of low-barrier accessible beds in the Region. In these circumstances, creating shelter to protect oneself is, in my opinion, a matter critical to any individual's dignity and independence. The Region's attempt to prevent the homeless population from sheltering itself interferes with that population's choice to protect itself from the elements and is a deprivation of liberty within the scope of section 7.

(c) Security of the Person

[102] Security of the person includes the protection of both physical and psychological integrity. In *Chaoulli v. Quebec (Attorney General)*, 2005 SCC 35, 1 S.C.R. 791, at paras. 123-124, Chief Justice McLachlin and Justice Major stated as follows:

123 Not every difficulty rises to the level of adverse impact on security of the person under s. 7. The impact, whether psychological or physical, must be serious. However, because patients may be denied timely health care for a condition that is clinically significant to their current and future health, s. 7 protection of security of the person is engaged. Access to a waiting list is not access to health care. As we noted above, there is unchallenged evidence that in some serious cases, patients die as a result of waiting lists for public health care. Where lack of timely health care can result in death, s. 7 protection of life itself is engaged. The evidence here demonstrates that the prohibition on health insurance results in physical and psychological suffering that meets this threshold requirement of seriousness.

124 We conclude, based on the evidence, that prohibiting health insurance that would permit ordinary Canadians to access health care, in circumstances where the government is failing to deliver health care in a reasonable manner, thereby increasing the risk of complications and death, interferes with life and security of the person as protected by s. 7 of the *Charter*.

[103] In *R. v. Parker*, the Court noted at paras. 94 and 97:

[94] In *R. v. Monney*, 1999 CanLII 678 (SCC), [1999] 1 S.C.R. 652 at p. 685, 133 C.C.C. (3d) 129 at p. 156, Iacobucci J. held, relying upon *Singh v. Canada (Minister of Employment and Immigration)*, 1985 CanLII 65 (SCC), [1985] 1 S.C.R. 177, 17 D.L.R. (4th) 422, that "state action which has the likely effect of impairing a person's health engages the fundamental right under s. 7 to security of the person".

...

[97] ... I conclude that deprivation by means of a criminal sanction ... of access to medication reasonably required for the treatment of a medical condition that threatens life or health constitutes a deprivation of security of the person. Such a deprivation fits easily within any of the above statements.

[104] In the case before me, the Region does not have adequate accessible shelter spaces for its homeless population of some 1100 individuals. The Region has made it clear that any order in its favour on this application will be used as a precedent to evict other encampments in the Region. As I have previously stated, an order in the Region's favour would therefore force the Encampment residents to choose between living outside in the rough or risk setting up an encampment elsewhere only to be evicted once again. At the end of the day, the By-Law's prohibition to the erection of temporary shelter exposes the homeless of the Region to risk of significant health problems, both physical and psychological in nature. The evidence before me is clear in that respect. Just as in *R v. Parker*, the state's action has deprived the homeless of access to shelter required for adequate protection. I therefore find that the Region's By-Law amounts to a deprivation of the security of the person.

[105] Whereas I find that in the circumstances of the Encampment residents, the constitutional right to shelter is invoked where the number of homeless individuals exceed the number of available and truly accessible indoor sheltering spaces, I also find that the Encampment residents' right to shelter is not limited to the overnight hours. I have reached this conclusion for two reasons. Like Chief Justice Hinkson found in *Shantz*, at para. 276, I find on the evidence that "there is a legitimate need for people to rest and shelter during the day" but, unlike the British Columbia's Supreme Court's Chief Justice, I find that there is no need in the case of the Encampment to balance their needs with the rights of the Region's other residents. Unlike in

Adams and *Shantz*, the Property is not a park or other space designed with the purpose of being enjoyed by the public at large. Instead, the Property is a vacant lot to be used by the Region as a temporary parking lot and lay down construction area at some undefined future date. Therefore, based on these facts, there is no need to consider how the impact of the Encampment residents sheltering overnight may impair the interests and rights of other residents of the Region.

[106] Finally, I have considered the Region’s submission that personal “choice” negates any claim to a breach of the section 7 protected rights. While some of the Encampment residents have chosen to live in the Encampment because they feel relatively safe and have a sense of community there rather than attempting to access a shelter that may not meet their needs, personal “choice”, in my opinion, does not negate a claim that one’s section 7 *Charter* rights have been breached. In my view, the overriding context in the matter before me is not one of freedom in the exercise of autonomous choice. As the Named Respondents submit, it is a context characterized by poverty, drug addiction, disability, and insufficient shelter alternatives.

[107] The question is not whether the Encampment residents’ circumstances are self-made, but rather, whether enforcement of the By-Law will make the residents’ already dire predicament worse.

Is the Deprivation in Accordance with the Principles of Fundamental Justice?

[108] Having found the By-Law constitutes a deprivation of the Unnamed Respondents’ rights protected by section 7 of the *Charter*, the next issue is to determine whether this infringement is in accordance with the principles of fundamental justice.

(a) Overbreadth

[109] The Supreme Court of Canada makes clear in *Godbout* that the principles of fundamental justice require that any restriction on life, liberty, and security of the person must not be more broadly framed than necessary to achieve the legislative purpose. In *Shantz*, Chief Justice Hinkson articulated the principle at para. 200:

The overbreadth inquiry asks whether a law that takes away rights in a way that generally supports the object of the law, goes too far by denying the rights of some individuals in a way that bears no relation to the object.

[110] In *Heywood*, Justice Cory, for the majority, described the principle of overbreadth, at pp. 792-793, in this way:

Overbreadth analysis looks at the means chosen by the state in relation to its purpose. A court must consider whether those means are necessary to achieve the state objective. If the state, in pursuing a legitimate objective, uses means which are broader than is necessary to accomplish that objective, the principles of fundamental justice will be violated because the individual's rights will have been limited for no reason. The effect of overbreadth is that in some applications the law is arbitrary or disproportionate.

[111] In essence, whether a law is overbroad within the meaning of section 7 turns on the relationship between the law's purpose and its effect: see *R. v. Moriarity*, 2015 SCC 55, [2015] 3 S.C.R.485, at para. 24; *R. v. Safarzadeh-Markhali*, 2016 SCC 14, [2016] 1 S.C.R. 180, at para. 24. In *Adams BCSC*, Justice Ross applied the test for overbreadth from *Heywood* with approval of the British Columbia Court of Appeal.

[112] The Named Respondents and *Amicus Curiae* submit that the By-Law is overbroad to the extent that it denies the Region's homeless the right to shelter on lands owned or operated by the Region. The preamble to the By-Law, in their submission, makes its purpose clear: to regulate the conduct of persons on buildings, grounds, and public transportation vehicles (collectively, the "designated premises") owned or operated by the Region to prevent physical damage to the Designated Premises, prevent disruption of the Region's operations, and to prevent the disruption of the use and enjoyment of the Designated Premises by other people. I accept that this statement accurately describes the By-Law's purpose.

[113] The Named Respondents and *Amicus Curiae* argue that a much narrower prohibition would have been just as effective in achieving the By-Law's purpose. They argue the Region recognized this reality with the adoption of the Encampment Policy that is intended to guide

Regional staff with respect to the enforcement of the By-Law as it effects the homeless. They argue that because the By-Law prohibits any form of shelter regardless of the circumstances, it goes too far by sweeping conduct into its ambit that bears no relation to its objective.

[114] I agree with the position of the responding parties. If the Region's purpose is to prevent physical damage to the physical premises, prevent disruption to regional operations, and prevent the disruption of the use and enjoyment of the Designated Premises by others, the Region could have accomplished this goal without punishing everyone who erects a shelter when there is no accessible shelter alternative. The homeless population of the Region needs to be able to create some shelter. If there were sufficient, truly accessible shelter beds in the Region, and the homeless chose not to use them, the situation would be quite different, but that is not the case here. I have also concluded that the rights of the homeless population have been limited for no valid reason by means which are broader than are necessary to accomplish the stated objective because, based on the record before me, I am not convinced that the Encampment has caused damage of any significance to the Property's physical premises, disrupted the Region's operations, or disrupted its use by "other persons" including the Region which has no immediate need for the Property.

(b) Gross Disproportionality

[115] Gross disproportionality is another principle of fundamental justice. This principle is infringed when the impact of the restriction on the individual's life, liberty, or security of person is grossly disproportionate to any legitimate government interest: see *Shantz*, at para. 204. The focus is not on the impact of the law on society or the public or its effectiveness, which are matters for the section 1 analysis, but on its impact on the rights of the claimants: see *Carter*, at para. 89. The inquiry into gross disproportionality compares the law's objective with its negative effect on the rights of the claimant and "asks if this impact is completely out of sync with the object of the law": *Carter*, at para. 89.

[116] Gross disproportionality is not concerned with the number of people who experience grossly disproportionate effects but rather a grossly disproportionate effect on just one person is

sufficient to violate the norm: see *Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101, at para. 122 [*Bedford*].

[117] The responding parties argue that enforcement of the By-law to evict the Encampment residents would have multiple and severe negative consequences on them. Those negative consequences include lack of stability, difficulty accessing services, increased health problems, and risk of death. In addition to these harmful effects, *Amicus Curiae* submits, and I accept, the consequences are more severe for those Encampment residents who suffer from mental illness or substance abuse to the extent that they lack capacity to understand the legal consequences of the By-law's enforcement.

[118] On the other hand, the evidence points to the conclusion that there are many benefits to encampment living. Both the Named Respondents and Dr. Sereda have attested to these benefits which include a safe place to rest, access to social services and healthcare, a sense of community (which correlates with mental health stabilization and emotional support), and privacy.

[119] Given that the accepted purpose of the By-Law is to prevent physical damage to the Designated Premises and disruption to the Region's operations as well as the use and enjoyment of the Designated Premises by others, I find that the proposed eviction of the Encampment residents is grossly disproportionate to the By-Law's goal. In short, the impact of the enforcement of the By-Law is "completely out of sync with the object of the law."

Section 15(1) of the *Charter*

[120] Section 15(1) of the *Charter* states:

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

[121] To prove a *prima facie* violation of section 15(1), the onus is on the claimant to establish that:

- a) the impugned law, on its face or in its impact creates a distinction based on enumerated or analogous grounds; and
- b) the impugned law imposes a burden or denies a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating the disadvantage of the group: see *Fraser v. Canada (Attorney General)*, 2020 SCC 28, 450 D.L.R. (4th) 1, at paras. 72-75 [*Fraser*]).

[122] It is unnecessary for the moving party to prove that the discrimination affects all members of a protected group in the same manner. Policies or laws that do not affect all members of a protected group may still be discriminatory: *Fraser*, at paras. 72-75. What must be determined is whether the distinction raised by the moving party relates to personal characteristics of the individual or group which has the effect of imposing burdens, obligations, or disadvantages of such an individual or group that is not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society: *Fraser* at para. 70.

[123] The Named Respondents argue that while the By-law may be facially neutral, in practice, it places homeless women and gender-diverse people, many of whom have intersecting grounds of race and disability, at a heightened risk of gender-based violence, harassment, and abuse when they are displaced. The Named Respondents submit that the effect of the By-Law is to displace women and gender-diverse people from the Encampment and hinder their ability to be safe. The Named Respondents argue that women and gender diverse people who are experiencing homelessness have been historically disadvantaged and the impugned provisions serve to exacerbate and perpetuate that disadvantage.

[124] For its part, *Amicus Curiae* submits that the By-Law creates disproportionately negative impacts on Encampment Residents who suffer from mental illness and addictions. The greater disproportionate effects include psychological stress, exacerbation of existing mental illness, and the risks of starvation and fatal overdose. Furthermore, homeless persons with mental illness will be less able to find and maintain alternative safe shelter arrangements. *Amicus Curiae* submits that the By-Law has the effect of perpetuating this disadvantage.

[125] Although I agree with Justice Abella's statement in *Quebec (Attorney General) v. A*, 2013 SCC 5, [2013] 1 S.C.R. 61, at para. 354, that heterogeneity within the claimant group does not defeat a claim of discrimination, I agree with the Region's position that "homelessness" is not an analogous ground pursuant to section 15(1). The Region relies in part on the decision of Justice Lederer in *Tanudjaja v. Attorney General (Canada)*, 2013 ONSC 5410, 116 O.R. (3d) 574. His Honour rejected the argument that "homelessness" is an analogous ground on the following basis at paras. 129-130, 134 and 136 of that decision:

[129] The reliance of the applicants on *Falkiner* misses a fundamental point. In *Falkiner*, the analogous ground was the receipt of social assistance. This is not, strictly speaking, immutable. The identity of the people who are eligible to collect these benefits will change as the vagaries of life impact on the individuals involved, for good or ill. The fact remains that, at any moment in time, it is possible to identify those who are collecting social assistance. In the circumstances of this Application, it is not possible to identify who is "homeless". As I have already observed, homelessness is not, for the purposes of this Application, restricted to those without homes. Three of the four individual applicants have homes. It may be that what is being referred to as "the homeless" includes those without "affordable, adequate and accessible" housing. What is adequate housing? Presumably, this depends on the circumstances of the individuals involved. What is adequate for a single mother with two children (the applicant Jennifer Tanudjaja) is different from what would be adequate for a family of six. The difference would be more pronounced if two of the four children in the family of six were disabled and even more pronounced if one of the children required a wheelchair (the applicant Ansar Mahmood). The need of the wheelchair introduces a need for accessibility. It does not seem out of line to suggest that a determination of what is adequate housing may be a matter to be decided on an individual basis.

[130] Being without adequate housing is not a personal characteristic ("race, national or ethnic origin, colour, religion, sex, age or mental or physical disability") or a fact that can be determined on objective criteria ("social assistance recipient", "marital status", "Aboriginality-residence (off-reserve band members)", "employment status", and "citizenship"). There will be a subjective component that arises from the circumstances of the individual and what they and others believe is "adequate" or "accessible". The lack of adequate or accessible housing is not a shared quality, characteristic or trait.

...

[134] Homelessness is not a term that, in the context of this case, can be understood. Without an understanding of the common characteristics which defines the group, it cannot be established as an analogous ground under s. 15(1) of the *Charter*. Poverty or [page 631] economic status, which is seemingly the only common characteristic, is not an analogous ground.

...

[136] Homelessness is not an analogous ground under s. 15(1) of the *Charter*. The application does not propose to protect "discreet and insular minorities". It is an attempt to take "disparate and heterogeneous groups" and treat them as an analogous ground under s. 15(1) of the *Charter*. Such groups do not obtain this protection.

[126] Just as Chief Justice Hinkson in *Shantz* accepted Justice Lederer's conclusion that homelessness is not an analogous ground, so too do I. In reaching this finding, I am particularly persuaded by the reasoning that homelessness is not a personal characteristic, nor is it a fact that can be determined objectively. To my mind, there is inevitably a subjective element in determining what may or may not be accessible housing given an individual's particular circumstances. The evidence and submissions of the responding parties speak to this subjective element. Other than poverty, which is not an analogous ground, in my opinion there are no common characteristics that define those individuals experiencing homelessness in the Region. For that reason, and based on the facts of this case, I conclude that the homeless of the Region are not entitled to the protection of subsection 15(1).

[127] While I acknowledge without hesitation that women, gender-diverse individuals, and those who suffer from mental illness and addictions have been the subject of historic mistreatment, to my mind it does not follow that these groups of individuals, as compared to other groups, have been discriminated against in some way as a result of the By-Law.

Section 1 Analysis

[128] Having found that the responding parties have demonstrated on a balance of probabilities that the By-Law breaches the rights established by section 7 of the *Charter*, the focus now turns to whether the breach can be justified under section 1. The government bears the burden of

proving that a law that breaches section 7 is reasonable and demonstrably justified in a free and democratic society. The section 1 analysis requires (a) a pressing and substantial objective; (b) a rational connection between the impugned law and the government objective; (c) whether the law minimally impairs section 7 rights in pursuing the government objective; and (d) the Court is required to weigh the negative impact of the law on section 7 rights against the beneficial impact of the law in achieving the goal for the greater public good. Impacts are judged both qualitatively and quantitatively: see *Bedford* at para. 126.

[129] It is difficult to justify a section 7 violation. The rights protected are fundamental and not easily overridden by competing social interests. A section 7 breach will rarely be justifiable under section 1 except “in cases arising out of exceptional conditions, such as disasters, the outbreak of war, epidemics and the like.”: see *New Brunswick (Minister of Health and Community Services) v. G.(J.)*, [1999] 3 S.C.R. 46, at para. 99, citing *Reference re Motor Vehicle Act (British Columbia)*, [1985] 2 S.C.R. 486 at p.518. A section 7 breach is difficult to justify where the impugned law runs afoul of the principles of fundamental justice.

[130] None of the exceptional circumstance contemplated by the Supreme Court of Canada apply in the matter before me. The By-Law and its supplemental Encampment Policy are not intended to, nor do they, attempt to resolve the complex and intersecting economic, social, and medical issues facing the encampment residents. In light of the reality that there are insufficient shelter beds in the Region, evicting the Encampment residents from vacant public land cannot justify the section 7 breaches.

Section 440 of the *Municipal Act*

[131] If I am incorrect in my conclusion that the prohibition in the By-Law against the erection of tents and other temporary structures on the Property constitutes a deprivation of the rights to life, liberty, and security of the Encampment residents protected pursuant to section 7, I next turn my mind to whether the Region is entitled to the requested injunctive relief pursuant to section 440 of the *Municipal Act*.

[132] The legal test for a statutory injunction under section 440 of the *Municipal Act* is narrower than the legal test for an equitable injunction at common law as established in *RJR-*

MacDonald Inc. v. Canada (Attorney General), [1995] 3 S.C.R. 199. The Region need not ordinarily establish inadequacy of damages or irreparable harm and the balance of convenience favours the granting of the injunctive relief because the Region is presumed to be acting in the best interests of the public and a breach of the law is considered to be irreparable harm to the public interest: see *The Corporation of the City of Windsor v. Persons Unknown*, 2022 ONSC 1168 at paras. 51-56 [*City of Windsor*].

[133] For these reasons, the legal test for a statutory injunction, including an order under section 440 of the *Municipal Act*, requires only that the public authority establish a strong *prima facie* case, on a balance of probabilities, that there is a breach of the applicable statute: *City of Windsor*, at paras. 51-56. Where the applicant has successfully demonstrated that a statute has been breached, a restraining order does not, however, automatically follow; the Court retains discretion in ordering an injunction. Nonetheless, the exercise of the Court's discretion is limited to "exceptional circumstances." The onus lies with the respondent to establish exceptional circumstance: *City of Windsor*, at paras. 51-56.

[134] While there is no definition of what may constitute exceptional circumstances, the jurisprudence does provide some guidance. Justice Harley in *Gobalian v. Poxon*, 2020 ONSC 6750, suggests that an exceptional circumstance would arise where a municipality expressly approved a by-law contravention and then moved to restrain the conduct it authorized. Chief Justice Morawetz in *City of Windsor* summarizes other instances where Courts have exercised their discretion to decline to issue an injunction, at para. 56, including where:

- a) the offending party has ceased the activity and/or has provided clear and unequivocal evidence that the unlawful conduct will cease;
- b) the injunction is moot and would serve no purpose;
- c) there is a right that pre-existed the enactment that was breached;
- d) there is uncertainty regarding whether the offending party is flouting the law; and
- e) the conduct at issue is not the type of conduct that the enactment was intended to prevent.

[135] In my opinion, it is clear that the Encampment residents are in violation of the By-Law. The Region submits that there are no exceptional circumstances which permit me to exercise my residual jurisdiction to refuse the requested injunction. The Named Respondents, however, take the position that the Region's failure to follow the Encampment Policy constitutes an exceptional circumstance.

[136] I have already found that the Encampment Policy does not have the authority of a By-Law but that it does supplement the By-Law. Specifically, the Encampment Policy stipulates instructive principles and processes that are required to be followed by Regional staff prior to the enforcement of the By-Law.

[137] Some of the mandatory guiding principles include:

- a) prioritizing assisting the homeless to access safer, sustainable, and healthier alternatives rather than enforcement of the By-Law;
- b) working with homeless individuals to respond to their individual needs on a case-by-case basis by providing access to services, supports and shelter; and
- c) engaging in ongoing proactive communication with individuals experiencing homelessness along with service providers and other groups.

[138] According to the Encampment Policy, in practical terms these principles require Regional staff to reach out to the homeless to assist and encourage them to find safer and healthier shelter and to enforce the By-Law only after all reasonable outreach and support efforts have been made without success.

[139] The Region's Director of Housing Services, along with the Region's Director of Facilities and Fleet Management, and Director of Strategic and Quality Initiatives divisions, all acknowledged on cross-examination that it was their understanding that the Encampment Policy was to be followed whenever the Region was addressing the issue of its homeless encampments.

[140] The Named Respondents submit that, apart from relying on the poorly researched Risk Assessment that triggered the enforcement of the By-Law on June 6, 2022, with the posting of the Trespass Notice, the Region has failed to live up to the Encampment Policy in a number of ways, including:

- a) the Region's Ontario Works caseworkers began to visit the Encampment residents only on May 25, 2022, 9 days prior to the posting of the Trespass Notice;
- b) on the Region's own admission in the 6 weeks between May 25, 2022, and the eviction date of June 30, 2022, its caseworkers met with only 38 of the then 70 residents living at the Encampment and of the 38 residents, 22 were spoken to on only one occasion; and
- c) most of the support offered by the Region's outreach workers were for shelter spaces despite many of the Encampment residents feeling unsafe in shelters and/or the shelters having restrictions in place preventing them from accessing these shelters.

[141] The Named Respondents submit that if the Region was truly committed to fulfilling its obligations pursuant to the Encampment Policy, it would have provided the Encampment residents with the option of relocating to the encampment otherwise known as the hybrid shelter/outdoor model sanctioned by Regional Council in August 2022.

[142] I do not accept that prior to June 2, 2022, or for that matter June 30, 2022, the Region should have offered the sanctioned encampment option to the residents given that there was not approval for the hybrid shelter/outdoor model until mid-August. I am, however, troubled by the lack of effort the Region made to connect with Encampment residents and the options provided to them prior to both the date of the Trespass Notice and the Eviction Date. Indeed, each of Kathryn Bulgin, Drew Zekai, Albert Tugwood and Lee-Anne Mason stated that they were not contacted by the Region's outreach workers prior to June 30, 2022. Some of these same individuals together with Jennifer Draper and Andrew Mandic also attested that the services offered did not meet their personal needs. It is also disconcerting that none of the 4 well-

intentioned Region sponsored service fairs were held on the Encampment site and there is no evidence of how many, if any, Encampment residents attended the fairs.

[143] In my opinion, and notwithstanding the tremendous and praiseworthy efforts the Region has made and is continuing to make to address the plague of homelessness, it has fallen short of the principles and policies stipulated in the Encampment Policy. In this instance, prior to the enforcement of the By-Law, the Region did not use all reasonable outreach and support efforts to connect with the Encampment residents and “address their individual needs on a case-by-case basis by providing access to services, supports and shelter” as the Encampment Policy requires. As a consequence of the Region’s failure to meet its own self-imposed terms prior to any enforcement of the By-Law, I find that the Region’s actions in attempting to enforce the By-Law constitutes an ‘exceptional circumstance.’ On that basis, I am prepared to exercise my limited discretion and decline to grant the injunctive relief requested by the Region in the event that I have wrongly concluded that the By-Law deprives the Encampment residents of their section 7 protected rights of life, liberty, and security.

Remedy

[144] The Named Respondents and *Amicus Curiae* each seek declaratory relief pursuant to section 52(1) of the *Constitution Act, 1982* that the By-Law is inoperable with respect to the residents of the Encampment because it violates sections 7 and 15(1) of the *Charter*. I have found that the By-Law indeed violates section 7 but not section 15(1) of the *Charter*.

[145] There are two types of remedies for a violation of the *Charter*: section 24(1) of the *Charter* and section 52(1) of the *Constitution Act, 1982*, Part VII, of which the *Charter* is Part I.

[146] Section 24(1) of the *Charter* states:

Anyone whose rights or freedoms, as guaranteed by this *Charter*, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy, as the court considers appropriate and just in the circumstances.

[147] Section 52(1) of the *Constitution Act, 1982* provides:

The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

[148] Section 24(1) of the *Charter* provides remedies for acts of government that violate the *Charter* while section 52(1) of the *Constitution Act, 1982*, provides remedies for unconstitutional laws. The Supreme Court of Canada in *R. v. Ferguson*, 2008 SCC 6, [2008] 1 S.C.R. 96, considered the issue of whether a remedy lies under section 24(1) of the *Charter* or section 52(1) of the *Constitution Act, 1982*. Whereas section 52(1) of the *Constitution Act, 1982*, applies to unconstitutional legislation, section 24(1) of the *Charter* functions primarily as a remedy for unconstitutional government acts under the authority of legal regimes that are otherwise accepted as constitutional. As Chief Justice Hinkson points out in *Shantz*, it is, however, possible for litigants to seek both a section 24(1) and a section 52(1) remedy for an unconstitutional law and acts of government under that law.

[149] The unique factors of this case make the issue of an appropriate remedy somewhat difficult. The Named Respondents and *Amicus Curiae* concede that the By-Law is not generally unconstitutional. The By-Law does nonetheless violate the section 7 *Charter* rights of the Encampment residents because of complex economic, personal, and social circumstances, including the shortage of accessible shelter spaces in the Region for homeless persons. The homeless of the Region have no place to live, rest and sleep without severe risk to their health caused, in part, by the By-Law's prohibition to erecting any form of shelter on the Region's lands. In the circumstances, I agree with the submission of *Amicus Curiae* that the section 52(1) remedies of striking down or severance would not provide a tailored constitutional remedy.

[150] Furthermore, I also accept *Amicus Curiae's* position that because the By-Law includes such prohibited uses as smoking, loitering, and consuming alcohol, a declaration limited to the By-Law's prohibition to the erection of temporary shelters would not adequately shield Encampment residents from future eviction notices.

[151] On the other hand, I find that in the circumstances of this case, individual remedies crafted pursuant to section 24(1) of the *Charter* are equally unsatisfactory. *Amicus Curiae*

submits, and I accept, constitutional exemptions decided on a case-by-case basis leave the law uncertain and unpredictable and are generally an unreasonable solution for vulnerable individuals, like those experiencing homelessness, who can face unsurmountable barriers in litigating *Charter* issues.

[152] For these reasons, I find that a remedy under section 24(1) of the *Charter*, in the form of constitutional exemptions or otherwise, is not adequate or appropriate to protect the section 7 *Charter* rights of the Encampment residents. I am mindful, however, that in fashioning a remedy pursuant to section 52(1) of the *Constitution Act, 1982*, close attention must be paid to ensure that any declaration that laws are of no force or effect be limited only to the extent of their inconsistency with the *Charter*. Accordingly, I declare, pursuant to section 52(1) of the *Constitution Act, 1982*, that the By-Law violates section 7 of the *Charter* in that it deprives the homeless residents of the Encampment of life, liberty, and security of the person in a manner not in accordance with the principles of fundamental justice and is not otherwise saved by section 1 of the *Charter*. I also declare that the By-Law is inoperative insofar as it applies to prevent the Encampment residents from living and erecting temporary shelters on the Property when the number of homeless individuals in the Region exceed the number of accessible shelter beds.

[153] Because I am most impressed, however, with the Region's past and ongoing efforts to meet the needs of its homeless population, I am also prepared to order that the Region may apply to terminate my declaration at such a time when it is in a position to satisfy this Court that the By-Law no longer violates the section 7 rights of the Encampment residents.

Disposition

[154] For all of the above reasons:

[155] I decline to declare that the homeless individuals living in the Encampment on the Property are in breach of the By-Law.

[156] I dismiss the Region's requested injunctive relief pursuant to section 440 of the *Municipal Act*.

[157] I declare pursuant to section 52(1) of the *Constitution Act, 1982*, that the By-Law violates section 7 of the *Charter* in that it deprives the homeless residents of the Encampment of life, liberty and security of the person in a manner not in accordance with the principles of fundamental justice and is not saved by section 1 of the *Charter*.

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

[159] Finally, I order that the Region may apply to terminate my declaration upon it being in a position to satisfy this Court that the By-Law no longer violates the section 7 rights of the Encampment residents.

Costs

[160] I encourage the parties to agree on the issue of costs. If they are unable to do so, the party seeking costs shall deliver costs submissions within 15 days of the release of this decision and the responding party shall deliver responding costs submissions within 10 days of receipt of the submissions of the party seeking costs. Reply submissions, if any, are to be delivered within 5 days of receipt of the submissions on behalf of responding party. The initial and responding submissions are not to exceed ten (10) pages doubled spaced excluding costs outlines, offers to settle and authorities. Any reply submissions are not to exceed four (4) pages. All submissions are to be sent to my attention via my Judicial Secretary by email to Kelly.Flanders@ontario.ca with a copy to the Kitchener.SCJJA@ontario.ca email address.

M.J. Valente J.

Released: January 27, 2023

CITATION: The Regional Municipality of Waterloo v. Persons Unknown and to be
Ascertained, 2023 ONSC 670
COURT FILE NO.: CV-22-717
DATE: 2023-01-27

ONTARIO

SUPERIOR COURT OF JUSTICE

The Regional Municipality of Waterloo

– and –

Persons Unknown and to be Ascertained

REASONS FOR JUDGMENT

M.J. Valente J.

Released: January 27, 2023

TAB 7

Court File No. CV-25-00000750-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:



THE REGIONAL MUNICIPALITY OF WATERLOO

Applicant

and

PERSONS UNKNOWN AND TO BE ASCERTAINED

Respondents

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

FURTHER AMENDED NOTICE OF APPLICATION

TO THE RESPONDENT

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

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

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

at the following location:

85 Frederick Street, Kitchener, ON N2H 0A7

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

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

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

- 2 -

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

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

Date May 1, 2025 Issued by Ingrid Peters
Local Registrar

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

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

TO: PERSONS UNKNOWN AND TO BE ASCERTAINED

APPLICATION

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

- (a) a declaration that By-law Number 25-021 of the Regional Municipality of Waterloo, *A By-law Respecting the Use of 100 Victoria Street North, Kitchener (as Owned by The Regional Municipality of Waterloo) to facilitate the Kitchener Central Transit Hub and other Transit Development, as amended January 9, 2026 by By-law Number 26-001* (the “**Amended By-law**”), complies with the *Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982 c. 11 (“*Charter*”);
- (b) if requested, an interim and final order (“Injunction Order”) that any persons having notice of the Injunction Order are restrained and enjoined from breaching the Amended By-law by remaining on and/or re-entering the property municipally known as 100 Victoria Street North, City of Kitchener (the “**Property**”) except as in accordance with the Amended By-law;
- (c) an Order that service and notice of this Application is hereby dispensed with, provided that:
 - (i) a copy of this Notice of Application is posted in a prominent location on the Property; and

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

The Parties and the Encampment

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

The Persons Unknown Decision

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

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

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

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

The Kitchener Central Transit Hub

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

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

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

The By-law

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

- (t) The Amended By-law:
 - (i) prohibits certain activities from being carried out on the Property;
 - (ii) prior to ~~April~~December 1, 2026~~5~~, prohibits persons other than Existing Residents from erecting a shelter or residing on the Property; and
 - (iii) as of ~~April~~December 1, 2026~~5~~, prohibits all persons from entering, residing on, or occupying the Property unless that person is authorized by the Region to do so.
- (u) To facilitate the best possible outcomes for Existing Residents, the Region will continue to assist them in finding and transitioning to suitable alternative living arrangements;

Other Grounds for Relief

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

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

~~(Date of issue)~~
~~June 16, 2025~~
March 10, 2026

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Lawyers for the Applicant,
The Regional Municipality of Waterloo

THE REGIONAL MUNICIPALITY OF WATERLOO
Applicant

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
WATERLOO REGION

FURTHER AMENDED NOTICE OF APPLICATION

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Lawyers for the Applicant,
The Regional Municipality of Waterloo

TAB 8

Court File No. CV-25-00000750-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:



THE REGIONAL MUNICIPALITY OF WATERLOO

Applicant

and

PERSONS UNKNOWN AND TO BE ASCERTAINED

Respondents

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

AMENDED NOTICE OF APPLICATION

TO THE RESPONDENT

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

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

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

at the following location:

85 Frederick Street, Kitchener, ON N2H 0A7

on ~~May 15, 2025~~: November 19, 20, 21, 2025.

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

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

- 2 -

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

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Date May 1, 2025 Issued by Ingrid Peters
Local Registrar

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

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

TO: PERSONS UNKNOWN AND TO BE ASCERTAINED

APPLICATION

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

- (a) a declaration that By-law Number 25-021 of the Regional Municipality of Waterloo, *A By-law Respecting the Use of 100 Victoria Street North, Kitchener (as Owned by The Regional Municipality of Waterloo) to facilitate the Kitchener Central Transit Hub and other Transit Development* (the “**By-law**”), complies with the *Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982 c. 11 (“*Charter*”);
- (b) if requested, an interim and final order (“Injunction Order”) that any persons having notice of the Injunction Order are restrained and enjoined from breaching the By-law by remaining on and/or re-entering the property municipally known as 100 Victoria Street North, City of Kitchener (the “**Property**”) except as in accordance with the By-law;
- (c) an Order that service and notice of this Application is hereby dispensed with, provided that:
 - (i) a copy of this Notice of Application is posted in a prominent location on the Property; and
 - (ii) a copy of this Notice of Application is served on the Waterloo Region Community Legal Services; and

(d) such further and other Relief as this Honourable Court may grant.

2. The grounds for the application are:

The Parties and the Encampment

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

The Persons Unknown Decision

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

Vehicles Owned or Occupied by the Region (“**General Code of Use By-Law**”) against the residents of the Encampment;

- (f) In his decision (the “**Persons Unknown Decision**”), His Honour declared that the General Code of Use By-Law is inoperative insofar as it applies to prevent the Residents of the Encampment from living on and erecting temporary shelters without a permit on the Property when the number of homeless persons exceeds the number of available accessible shelter beds in the Region;
- (g) His Honour further provided that the Region may apply to terminate his declaration upon it being in a position to satisfy the Court that the General Code of Use By-Law no longer violates the section 7 *Charter* rights of the Residents of the Encampment;
- (h) The By-Law at issue in this Application is not the same as the General Code of Use By-Law previously at issue in the Persons Unknown Decision. Rather, it is a site-specific By-Law that:
 - (i) Has the specific purpose of providing for vacant possession of the Property by December 1, 2025, when such possession is required by the Region to facilitate construction of the Kitchener Central Transit Hub (“**KCTH**”);

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

The Kitchener Central Transit Hub

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

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

- (m) The KCTH will also bring significant economic opportunity to the Region, by creating connections with surrounding communities, and acting as an anchor for economic development;
- (n) Metrolinx requires the Property in connection with the construction of the KCTH construction by March of 2026;
- (o) The Region requires vacant possession of the Property by December 1, 2025 to prepare the site for Metrolinx's use;

The By-law

- (p) The Region enacted the By-law on April 23, 2025. The By-law came into force the following day;
- (q) Notice of the By-law was provided through the public release of the agenda of the Council meeting at which this By-law was considered (the “**Public Notice Date**”), being April 16, 2025;
- (r) The By-law was enacted pursuant to the Region's authority under the *Municipal Act, 2001*, S.P. 2001, c. 25;
- (s) The By-law:
 - (i) prohibits certain activities from being carried out on the Property;

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

Other Grounds for Relief

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

- 5 -

~~(Date of issue)~~
June 16, 2025

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Lawyers for the Applicant,
The Regional Municipality of Waterloo

THE REGIONAL MUNICIPALITY OF WATERLOO
Applicant

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
WATERLOO REGION

NOTICE OF APPLICATION

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Lawyers for the Applicant,
The Regional Municipality of Waterloo

TAB 9

**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*

NOTICE OF CONSTITUTIONAL QUESTION

The Applicant seeks a declaration confirming the constitutional validity of By-law Number 25-021 of the Regional Municipality of Waterloo, *A By-law Respecting the Use of 100 Victoria Street North, Kitchener (as Owned by The Regional Municipality of Waterloo) to facilitate the Kitchener Central Transit Hub and other Transit Development* (the “**By-law**”), under the *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11 (“Charter”).

The question is to be argued

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

at the following location:

85 Frederick Street, Kitchener, ON N2H 0A7

on a date and time to be set by the Court.

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

1. The Applicant is the Regional Municipality of Waterloo (the “**Region**”), an upper-tier Ontario municipality.
2. The Region owns the property municipally known as 100 Victoria Street North, City of Kitchener (the “**Property**”).
3. Since in or about December 2021, certain persons have been residing on the Property in tents and other makeshift dwellings (the “**Encampment**”).
4. The Region is undertaking the design and construction of the Kitchener Central Transit Hub (the “**KCTH**”), a milestone infrastructure development and strategic priority for the Region. The KCTH will be constructed by the Region in conjunction with Metrolinx. The KCTH will be located on the corner of King and Victoria Streets in Kitchener, a location that is proximate to the Property.
5. The Property will be required by Metrolinx as part of the construction of the KCTH by March 2026. In order to prepare the Property for Metrolinx’s use, the Region requires vacant possession of the Property by December 1, 2025.
6. The Region enacted the By-law on April 23, 2025 pursuant to its authority under the *Municipal Act, 2001*, S.P. 2001, c. 25. The By-law came into force the following day.
7. The By-law:
 - (a) prohibits certain activities from being carried out on the Property;

- (b) prior to December 1, 2025, prohibits persons other than Existing Residents from erecting a shelter or residing on the Property; and
 - (c) as of December 1, 2025, prohibits all persons from entering, residing on, or occupying the Property unless that person is authorized by the Region to do so.
- 8. The By-Law at issue in this Application is not the same as the General Code of Use By-Law (defined below) previously the subject of a constitutional challenge.
- 9. On January 27, 2023, Justice Valente of the Ontario Superior Court of Justice dismissed an application brought by the Region to enforce the Region's By-Law Number 13-050, *A By-Law Respecting the Conduct of Persons Entering Upon Buildings, Grounds and Public Transportation Vehicles Owned or Occupied by the Region* ("**General Code of Use By-Law**") against the residents of the Encampment.
- 10. In his decision, His Honour declared that the General Code of Use By-Law is inoperative insofar as it applies to prevent the Residents of the Encampment from living on and erecting temporary shelters without a permit on the Property when the number of homeless persons exceeds the number of available accessible shelter beds in the Region. His Honour further provided that the Region may apply to terminate his declaration upon it being in a position to satisfy the Court that the General Code of Use By-Law no longer violates the section 7 Charter rights of the Residents of the Encampment.

11. The By-law at issue in this Application is a site-specific bylaw that, unlike the General Code of Use By-law, was enacted specifically for the purpose of providing for vacant possession of the Property by December 1, 2025, when such possession is required by the Region to facilitate construction of the KCTH.
12. The By-Law Is intended to respect the *Charter* rights of those persons who were residing at the Encampment as of the date that public notice of the By-Law was provided (“Existing Residents”).
13. The By-Law Is accompanied by a plan (the “Plan”) to provide accessible shelter facilities to the Existing Residents, in a manner consistent with the Region’s Plan to End Chronic Homelessness. The Region is making additional resources available under the Plan that are intended to provide for the needs of the Existing Residents.

The following is the legal basis for the constitutional question:

1. Section 7 of the Charter provides: “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”
2. Section 7 is not infringed. The By-law does not deprive anyone of their interests as protected under s. 7 of the Charter. Under the Plan, these interests are if anything likely to be advanced.
3. In the alternative, any deprivation thereof is in accordance with the principles of fundamental justice.

4. The purpose of the By-Law is to obtain vacant possession of the Property to facilitate the construction of the KCTH, while specifically providing for alternative accommodation arrangements for the persons currently occupying the Encampment.
5. The By-law is not overbroad in relation to its purpose, nor is it grossly disproportionate to its purpose.
6. In the further alternative, any infringement of s. 7 of the Charter is justified under s. 1. The By-law's purpose is pressing and substantial, and the means chosen to achieve the purpose are proportionate.
7. Please see Notice of Application, attached.

May 5, 2025

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**Lawyers for the Applicant,
The Regional Municipality of Waterloo**

TO: WATERLOO REGION COMMUNITY LEGAL SERVICES

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Joanna Mullen (LSO # 64535V)

joanna.mullen@wrcls.clcj.ca

Tel: 519.743.0254 x. 15

Shannon K. Down LSO # 43894D

Email: shannonkdown@gmail.com

Lawyers for the Respondents

AND TO: THE ATTORNEY GENERAL OF ONTARIO

Constitutional Law Branch
720 Bay Street, 4th floor
Toronto, ON M5G 2K1

Email: clbsupport@ontario.ca

AND TO: THE ATTORNEY GENERAL OF CANADA

Ontario Regional Office
Department of Justice Canada
120 Adelaide Street West, Suite 400
Toronto, ON M5H 1T1

Email: NCQ-AQC.Toronto@justice.gc.ca

THE REGIONAL MUNICIPALITY OF WATERLOO
Applicant

-and- **PERSONS UNKNOWN AND TO BE ASCERTAINED**
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
WATERLOO REGION

NOTICE OF CONSTITUTIONAL QUESTION

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Lawyers for the Applicant,
The Regional Municipality of Waterloo

TAB 10

AMENDED THIS 22 DAY OF October, 2025
MODIFIÉ-CE Endorsement
PURSUANT TO THE ORDER OF Honourable Justice Gibson
CONFORMÉMENT À L'ORDONNANCE DE
DATED THE 5 DAY OF August, 2025
FAIT LE

LOCAL REGISTRAR, SUPERIOR COURT OF JUSTICE
GREFFIER LOCAL, COUR SUPÉRIEURE DE JUSTICE

Court File No. CV-25- 00001341-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

S. Chornak, a Commissioner, etc.,
Province of Ontario, for the Government of
Ontario, Minister of the Attorney General

BETWEEN:

JOSEPHINA DUGAS, TERRA-LYNN WEBER, AVERY AMENT, AARON PRICE,
JEREMY LINTON, JEREMY NICHOL, JAMES HAMMOND, JAKOB STUBBS, JAMES
DAVIS, JASON PAUL, MATTHEW STEFANAC, NOAH HELSBY, JOSEPH BRADLEY,
JOSEPH SADLER, JULIE YOUNG, KYLE YORK, MEGAN LOPES, AND STEPHANIE
MCMILLAN

Applicants

and

THE REGIONAL MUNICIPALITY OF WATERLOO

Respondents

APPLICATION UNDER Rule 14.05 OF THE *RULES OF CIVIL PROCEDURE*

AMENDED NOTICE OF APPLICATION

TO THE RESPONDENT

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

THIS APPLICATION will come on for a hearing

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

at the following location, Waterloo Region Courthouse, 85 Frederick Street, Kitchener, ON N2H 0A7 on February 5, 6, and 27, 2026 ~~November 24 and 25, 2025.~~

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

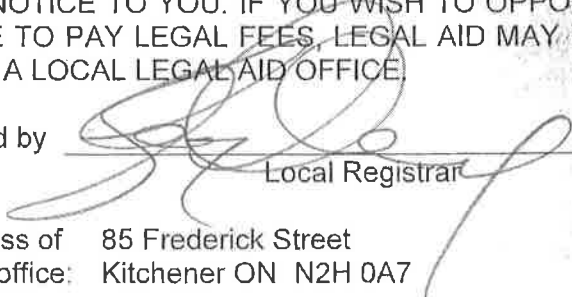
IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have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

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

Date July 14, 2025

July 29, 2025

Issued by


Local Registrar

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

Shelley Chornaby

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Lawyers for the Mental Health Legal
Committee (Intervener)

APPLICATION

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

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

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

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

2. The grounds for the application are:

The Parties

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

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

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

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

Background

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

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

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

Municipal Act s. 273 Issue

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

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

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

Constitutional Issues

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

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

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

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

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

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

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

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

International human rights law

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

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

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

3. The Applicant relies on the following legal instruments:

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

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

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

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

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

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

July 14, 2025

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

Court File No.: CV-25-_____

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at KITCHENER

AMENDED NOTICE OF APPLICATION

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Lawyers for the Applicants

TAB 11

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

THE REGIONAL MUNICIPALITY OF WATERLOO

Applicant (Respondent in Cross Application)

and

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

Respondents (Named Respondents are
Applicants in Cross Application)

NOTICE OF CONSTITUTIONAL QUESTION

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

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

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

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

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

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

Section 7 of the Charter

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

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

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

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

Section 15(1) of the Charter

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

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

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

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

12. The By-laws have the effect of reinforcing, perpetuating or exacerbating disadvantage of members of the above referenced groups.

Section 1 of the Charter

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

Charter interpreted in accordance with international law

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

Remedy Sought

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

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

February 26, 2026

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**THE REGIONAL MUNICIPALITY OF
WATERLOO**
Respondent

and

**PERSONS UNKNOWN/TO BE
ASCERTAINED**
Applicants

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

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at KITCHENER

NOTICE OF CONSTITUTIONAL QUESTION

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Lawyers for the Cross-Applicants

TAB 12

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 PETER SWEENEY

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

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

A. My Background

2. I have served as the Region’s Commissioner of Community Services since June 2022.

3. Prior to holding this role, I served as the Chief Executive Officer of the YMCA of Three Rivers for approximately 2 years (2020-2022), and as Chief Executive Officer of the YMCAs of Cambridge & Kitchener-Waterloo for approximately 4 years (2016-2020). From 2010 to 2016 I was President of the International Outreach Program at St. Joseph’s

from coming to the Property and joining the Encampment while my team is working to resettle individuals who were already living there before the site closure was announced

G. An Alternative Encampment Site is Not a Feasible or Desirable Option, and is Not Part of the Plan

52. The Region considered whether it could provide an alternative site to which the Encampment could be relocated. This is unfeasible for many reasons. Moreover, such an approach is inconsistent with the PECH, and in my view will perpetuate rather than solve the challenges facing Existing Residents.

53. First, the Region does not own vacant land that is reasonably proximate to the Encampment which would also allow for appropriate access to services Existing Residents need. Purchasing an empty lot that is located near the Property would be a multi-million-dollar endeavour, if it is even possible. In my view (and in the Region's view), this money is better invested directly in the sort of programming and housing options I have described above. As I will explain in more detail below, the Region has been steadily increasing the resources it allocates to my team's work for the past few years, and this is crucial to enabling the success of my team in developing and implementing IHPs. Moreover, there has been no approval from Regional Council to acquire or allocate a piece of land for that purpose.

54. Second, as I will explain below, the Region has invested significant resources in the day-to-day management of the Encampment given the health and safety risks that a site like this poses to Encampment residents and the wider community. Again, in my view, these resources are better directed into my team's efforts to find suitable accommodation

for unhoused individuals. Even more, if an alternative site becomes available and the Region effectively sanctions it as a long-term solution to homelessness, I expect that the population living on that site will increase, which will lead to increased risks and financial costs. Without this management, the Encampment would be an even more unsafe place than it is today.

55. Third, Encampment-based living is inconsistent with the Region's own commitments to addressing chronic homelessness (including those found in the PECH). The Region is committed to an evidence-based housing-first approach, which is a central tenet of its policies and procedures for addressing homelessness. Facilitating long-term encampment living is in stark opposition to this policy goal.

H. The Region Cannot Ensure that the “number of homeless persons” will not “exceed the number of available accessible shelter beds in the Region” in 2025

56. Like most other Canadian municipalities, the Region has been grappling with the complex and multi-faceted issue of homelessness in the last several years, and particularly since the pandemic.

57. With the PECH, the Region has adopted a long-term strategy for addressing the challenges of homelessness and has devoted substantial resources to ameliorating the conditions of the unhoused residents in the municipality. In 2024, approximately \$56.8 million was allocated to programs to support the needs of people experiencing homelessness in the Region. This is a substantial increase from the \$30.9 million allocated in 2022 (the year before the Persons Unknown Decision).

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

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

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

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

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

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

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

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

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

TAB 13

This is Exhibit "B" referred to in the Affidavit of Peter Sweeney affirmed by Peter Sweeney of the City of Cambridge, in the Regional Municipality of Waterloo, before me at the City of Toronto, in the Province of Ontario, on June 6, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

GRETA HOAKEN

BY-LAW NUMBER 25-021
OF
THE REGIONAL MUNICIPALITY OF WATERLOO

A By-law Respecting the Use of 100 Victoria Street North, Kitchener (as Owned by The Regional Municipality of Waterloo) to facilitate the Kitchener Central Transit Hub and other Transit Development

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 December 1, 2025 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 has enacted the Code of Use Bylaw, specifically By-law 13-050, as amended, respecting the conduct of persons entering upon certain buildings, grounds and public transportation vehicles owned or occupied by the Region;

AND WHEREAS the Region takes note of the decision of the Ontario Superior Court of Justice, in the decision of the *Region v. Persons Unknown and To Be Ascertained*, (the "Decision");

AND WHEREAS the Region wishes to specifically provide for the persons currently occupying the Encampment at 100 Victoria Street to ensure that a safer and more orderly environment is maintained;

AND WHEREAS the Region, since the Decision, has greatly expanded the number of available accessible shelter beds in the Region and has allocated additional resources to provide accommodation for all persons presently occupying the Encampment;

AND WHEREAS the Region is enacting this By-law to specifically regulate and govern 100 Victoria Street and to obtain vacant possession as of December 1, 2025;

AND WHEREAS the Region has the capacity, rights, powers and privileges of a natural person and the ability to govern its affairs as it considers appropriate pursuant to sections 8 and 9 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended;

AND WHEREAS the Region has the authority to enact by-laws respecting its public assets and the protection of persons and property pursuant to subsection 11(2) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended;

NOW THEREFORE THE COUNCIL OF THE REGIONAL MUNICIPALITY OF WATERLOO ENACTS AS FOLLOWS:

PART I - DEFINITIONS

1. In this By-law:
 - (1) **“Designated Personnel”** means those persons listed in Schedule “A” of this By-law;
 - (2) **“Municipal Act, 2001”** means the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, or any successor legislation;
 - (3) **“100 Victoria Street”** means the property municipally known as 100 Victoria Street North, in the City of Kitchener;
 - (4) **“Prohibited Activity”** means any activity that is listed in Schedule “B” of this By-law;
 - (5) **“Region”** means The Regional Municipality of Waterloo; and
 - (6) **“Trespass to Property Act”** means the *Trespass to Property Act*, R.S.O. 1990, c. T.21, as amended, or any successor legislation.
 - (7) **“Resident”** means anyone residing at 100 Victoria Street as of the date that notice of this bylaw is provided through the posting of the agenda for the Council meeting at which this By-law will be considered on the Region's website (“Public Notice Date”).

PART II – PROHIBITION

2. No person shall engage in a Prohibited Activity on 100 Victoria Street.
3. (1) Commencing on December 1, 2025, no person shall enter onto, reside on, or occupy 100 Victoria Street or any part thereof.

(2) Subsection (1) of this section shall not apply to an employee or contractor of the Region or other person who has the authorization of the Region to enter onto or occupy 100 Victoria Street or any part thereof.
4. Every person who contravenes sections 2 or 3 of this By-law is guilty of an offence and on conviction is liable to a fine not exceeding \$5,000, exclusive of costs.

PART III - TRESPASS

5. Without limiting Part II of this By-law, Designated Personnel may exercise any of the following enforcement options at 100 Victoria Street when a person is contravening or has contravened sections 2 or 3 of this By-law:
 - (1) Issue a verbal direction to refrain from a Prohibited Activity or the contravention of section 3 of this By-law;
 - (2) Subject to section 6 of this By-law, issue a verbal direction to leave 100 Victoria Street, citing as the reason the failure to refrain from a Prohibited Activity or the contravention of section 3 of this By-law;
 - (3) Serve a written notice upon a person prohibiting a Prohibited Activity or the contravention of section 3 of this By-law, citing as the reason the failure of the person to refrain from a Prohibited Activity or the contravention of section 3 of this By-law;
 - (4) Subject to section 6 of this By-law, serve a written notice upon a person

prohibiting entry upon 100 Victoria Street citing as the reason the failure of the person to refrain from a Prohibited Activity or the contravention of section 3 of this By-law;

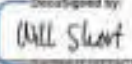
- (5) Post a sign so that the sign is clearly visible in daylight under normal conditions from the approach to each ordinary point of access to 100 Victoria Street prohibiting a Prohibited Activity or the contravention of section 3 of this By-law;
 - (6) Subject to section 6 of this By-law, post a sign so that the sign is clearly visible in daylight under normal conditions from the approach to each ordinary point of access to 100 Victoria Street prohibiting entry upon 100 Victoria Street by a person citing as the reason the failure to refrain from a Prohibited Activity or the contravention of section 3 of this By-law;
 - (8) Subject to section 6 of this By-law, erect fencing or other barriers prohibiting entry upon 100 Victoria Street or any part thereof by a person citing as the reason the failure to refrain from a Prohibited Activity or the contravention of section 3 of this By-law;
 - (9) Subject to section 6 of this By-law, remove any personal property or fixture upon 100 Victoria Street or any part thereof that is owned by a person citing as the reason the failure to refrain from a Prohibited Activity or the contravention of section 3 of this By-law; and
 - (10) Exercise any other rights or powers pursuant to the *Trespass to Property Act* that are reasonable in the circumstances.
6. From the date of passage of this By-law until November 30, 2025, 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, unless the Prohibited Activity creates or contributes to a serious risk to their own health or safety or the health or safety of another person. For greater certainty, nothing in this By-law permits a Resident to relocate their temporary shelter to another part of the premises at 100 Victoria Street without the permission of the Region.
 7. Designated Personnel may contact the Waterloo Regional Police Service, or any other police service having lawful jurisdiction, at any time to request assistance or to initiate any other action as the police service may deem necessary in the circumstances.
 8. For greater certainty, and without limiting the above, Designated Personnel may erect a fence or other barrier to prohibit entry to any unoccupied area of 100 Victoria Street.

PART IV - GENERAL

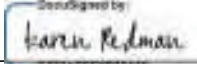
9. This By-law may be enforced by a Designated Personnel or a police officer.
10. This By-law may be cited as the "100 Victoria Street Code of Use By-law".
11. If any section or sections of this By-law or parts thereof are found by any Court to be illegal or beyond the power of Council of the Region to enact, such section or sections or parts thereof shall be deemed to be severable and all other sections or parts of this By-law shall be deemed to be separate and independent therefrom and shall continue in full force and effect unless and until similarly found illegal.

12. This By-law shall come into force and take effect on the date of final passage hereof.

By-law read a first, second and third time and finally passed in the Council Chamber in the Regional Municipality of Waterloo this 23rd day of April, A.D., 2025.

Decoded by:

SECRETARY

REGIONAL CLERK

Decoded by:

SECRETARY

REGIONAL CHAIR

SCHEDULE "A"

DESIGNATED PERSONNEL

1. The following are Designated Personnel:
 - (1) Supervisor, Security Services, for the Region, or any successor position thereto;
 - (2) a municipal law enforcement officer as appointed by the Region;
 - (3) a security guard under contract to the Region; and
 - (4) other persons from time to time as may be designated by Council of the Region.

SCHEDULE "B"

PROHIBITED ACTIVITIES

1. The following activities are Prohibited Activities:
 - (a) carrying any goods, without authorization, which are offensive, dangerous, toxic, corrosive, flammable or explosive in nature that are likely to alarm, inconvenience, cause discomfort or injure any person, or cause damage to property, whether or not such good are contained in an approved container;
 - (b) acts which are reasonably perceived as threatening, intimidating or sexual harassment;
 - (c) any activity contrary to the *Criminal Code of Canada*, R.S. 1985, c. C-46, as amended, other federal statutes, provincial statutes or municipal by-laws;
 - (d) erecting a shelter or other structure (provided, however, that this shall not apply to shelters or other structures that were in place on the Public Notice Date);
 - (e) residing on 100 Victoria unless the person is a Resident within the meaning of this bylaw.
 - (f) acts which interfere with the provision of services to residents of 100 Victoria Street; or acts which interfere with the use of 100 Victoria Street for the purposes of work relating to or in any way connected with KCTH; and
 - (g) acts which are contrary to any specific rules or terms of use for the Designated Premises provided that the specific rules or terms of use have been posted in a conspicuous location at the Designated Premises.

TAB 14

**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

2ND AFFIDAVIT OF PETER SWEENEY

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

1. I am the Commissioner of Community Services for the Applicant (the Respondent on this Motion), the Regional Municipality of Waterloo (the “**Region**”). As such, I have knowledge of the matters to which I depose below. Where my knowledge is based on information and belief, I indicate the source, and believe it to be true.
2. I previously affirmed an affidavit dated June 6, 2025, which was filed in the Region’s Application Record in the underlying proceeding (the “**1st Sweeney Affidavit**” or “**Original Affidavit**”). I understand that the 1st Sweeney Affidavit will be included in the Region’s Responding Motion Record for use on this injunction motion. I adopt and rely upon the 1st Sweeney Affidavit, and update certain matters below. I will continue to use the terms I defined in the 1st Sweeney Affidavit in this affidavit.

(b) Access to the Property

60. The Region has not taken steps to restrict access to the Property. Visitors and residents who were not present as of April 16, 2025 have been permitted to come and go as they please.

61. The Region has directed that in most cases, community vehicles (i.e., vehicles that are not affiliated with the Region or its employees/delegates/agents/etc.) should be redirected to the parking lot on the adjacent site located at 84 Victoria Street North, rather than being permitted to park on the Property. As I explained at paragraph 111 of my Original Affidavit, parking is not currently available directly at the Property for safety and space reasons – especially as tensions rise and given that the population of the Encampment has grown. It is worth noting here that Regional housing staff do not, and have not, parked at 100 Victoria when visiting the site to offer supports.

62. The exception to the prohibition on community vehicles parking on the Property is that anyone who has a physical disability and needs to access the Property may park directly onsite. For example, when counsel for the named Respondents raised the issue of a member of the WRCLS legal team requiring access to parking on-site at 100 Vic for mobility reasons, counsel for the Region provided WRCSL counsel with assurances that they could park at 100 Vic as long as they identified themselves to security. WRCLS counsel were also offered use of the on-site trailer to meet with their clients, provided they gave notice of when they would be attending, and provided such use did not conflict with the Region's use of the trailer. I attach an exchange of emails between counsel for the Region and WRCLS counsel dated ____ as **Exhibit D**.

67. To be clear, the Region has not prohibited donations from being dropped off at the Property and has no plans to do so. Instead, the Region has confirmed instructions to security that donations should be allowed to be dropped off onsite. Donations to the site are often large in volume and are not requested by people living on site. This results in a significant amount of waste (food and items/belongings) on site. Food waste contributes to active pest issues on site.

68. Indeed, as Julie Lukezic's affidavit explains at paragraphs 7-12, she was able to bring a donation to the Property following the passage of the By-law, even if she faced minor inconvenience by having to park in the adjacent lot instead of on the Property itself.

69. In Margaret Chee's affidavit, I was struck by the fact that she asserts at paragraph 4 that she feels as though she cannot drop off food at the Encampment anymore because she does "not want to have conflict with security". She makes this assertion apparently without having tried to drop off donations at the Property following the passage of the By-law. Contrary to her concern, as mentioned above, security has been directed to allow donations to the Encampment, so there would be no reason for conflict. Ms. Chee also mentions, at paragraph 7, that she has an injured leg and therefore she cannot carry her donations from the parking lot to the Property. As I explained above, this is precisely the sort of situation that Ms. Chee could mention to security, and that security has been directed by the Region to accommodate. It does not appear from her affidavit, however, that Ms. Chee has made this request.

TAB 15

**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

3RD AFFIDAVIT OF PETER SWEENEY

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

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

2. I have affirmed two prior affidavits in this proceeding: the first on June 6, 2025 (the "**1st Sweeney Affidavit**" or "**Original Affidavit**") and the second on July 2, 2025 (the "**2nd Sweeney Affidavit**"). I adopt and rely upon both the Original Affidavit and the 2nd Sweeney Affidavit and update certain matters below. I will continue to use the terms I defined in the 1st Sweeney Affidavit in this affidavit.

A. *An Update on the Status of the Encampment*

3. As explained in both my Original Affidavit and the 2nd Sweeney Affidavit, my team is not responsible for enforcement of the By-law. However, given that the Encampment

33. Based on the above, I would say that the Region is consistently consulting with those experiencing homelessness and their advocates.

34. In giving my input on the By-law, I considered what I have heard from these various interactions that my team and I have had with community leaders, activists, and those experiencing homelessness. With these engagements in mind, various elements of the By-law were designed with reference to general feedback given by groups and individuals that the Region consults on issues of homelessness.

35. For example, the seven-and-a-half-month period between when notice of the By-law was given and when vacant possession of the Property is needed was designed based on concerns heard from various people and groups that the Region engages with. Throughout this process, I have always been adamant that my team requires sufficient time to work with the unhoused population living at the Encampment to develop IHPs, and that any sudden eviction of those living at the Property would be inconsistent with what my team has heard from community members is in the residents' interest.

36. The seven-and-a-half-month period transitional period in the By-law between public notice of the By-law on April 16 and December 1 reflects the Region's response to concerns in the community about individuals not being forced to leave a site where they are sheltering abruptly, without notice or the ability to store their belongings. Under the By-law, Existing Residents have over seven months to find and appropriately transition to transition to new alternative arrangements (i.e., work with an USW to develop an IHP that meets their individual needs, move their physical belongings to their new location, avoid an eviction scenario that is time-limited and police-driven).

TAB 16

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 **Peter Sweeney** on his affidavits dated June 6, 2025, and July 2, 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

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

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

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

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

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

TAB 17

Court File No. CV-25-00000750-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

THE REGIONAL MUNICIPALITY OF WATERLOO

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and

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Respondents

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

AFFIDAVIT OF SHARON KOIVU

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

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

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

7. I have been a volunteer member of numerous organizations, including Street Level Women at Risk Committee, London, the London Homeless Coalition, the Sexual Assault Centre, London, Canadian Mental Health Association, St. Thomas, Violence Against Women Services, St. Thomas Ontario, Physicians for Social Responsibility, the Canadian Society of Addiction Medicine and Addiction Medicine Canada.

8. Many the patients that I see are vulnerably housed or experiencing homelessness. I have seen patients who are living in homeless shelters, in tent encampments, and in both environments.

9. Additionally, from 2013-2021 I lived in neighbourhoods in London in which many encampments formed. I regularly walked in the area and spoke with people living in the encampments, often providing food, clothing, sleeping bags or other essentials. I have not lived in the Waterloo Region and to the best of my knowledge, I have not treated any patients who are or were residents of the encampment at 100 Victoria Street North, Kitchener ("100 Vic").

10. A copy of my curriculum vitae is attached hereto as **Exhibit A**.

11. My executed Form 53 in respect of my opinion is attached hereto as **Exhibit B**.

12. Additionally, I confirm I have reviewed Rule 4.1 of the *Rules of Civil Procedure* with respect to the duty of an expert.

Instructions to Expert and Scope of Opinion

13. I have been asked to provide my opinion, from the perspective of my area of expertise, with respect to health outcomes for people experiencing homelessness who

17. Encampments pose extensive health and safety risks to the people living in the encampments as well as public health and safety risks to the community.^{6,8,9,17,18,19,27,35}

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

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

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

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

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

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

make people even more vulnerable. Gangrene resulting from frostbite can lead to sepsis and death.

24. Hypothermia, a decrease in body temperature from exposure to cold temperatures, is a problem in encampments and can lead to cardiac arrest and death.^{45, 46}

25. The risk of these injuries is increased in people who have a prolonged decrease level of consciousness, such as those using sedating drugs including opioids, benzodiazepines and alcohol.

26. Trying to stay warm while in an encampment can lead to dangerous practices. I have had patients who have received severe burns from tent fires. These have included burns which have made their face unrecognizable and burns which have involved large areas of their body, leading to damage of function of extremities. I am aware of several people dying in tent fires.^{47, 48, 49}

27. Fires are also used for cooking. This can occur all year long. People in encampments are at risk of burns from fires beyond the winter months.^{47, 49}

28. I am aware of risks from propane tanks used to heat tents, including explosions causing injury and death and carbon monoxide poisoning.⁵⁰

29. In June 2024, a tent at an encampment in Hamilton was set on fire as a targeted, violent attack. This was not anti-encampment statement. It illustrates risks of violence to people living in an encampment, including risk of burns.⁵¹

30. Prolonged exposure to damp and wet conditions can lead to another painful condition, a non-freezing cold injury, trench foot. Trench foot can occur without freezing temperatures. The moist environment created by condensation in a tent is a risk factor. Condensation occurs when warm moist air from breathing sweating or a heat source comes in contact with the cooler tent surface causing water vapor in the air to turn into liquid water. The feet can be affected in temperatures up to 16 C and the disease can develop in as little as 10 to 14 hours.⁴

31. I have seen trench foot complicated by skin breakdown and infection. Complications of trench foot can lead to amputation.⁵²

32. All cases of severe frostbite, hypothermia and trench foot that I have seen involved people living in tents in encampments. I did not see any cases in patients staying in shelters even when they left the shelter during the day.

33. Adverse weather events, including windstorms and lightning are dangerous to people living in encampments. Windstorms can destroy tents, lead to broken tree branches, and blowing debris that can cause injury and death.⁵⁴ I have had a patient who was killed by a falling branch. Lightning can strike a tent, tree, or the ground and cause harm.

34. Heat exposure also poses health risks for people in encampments. Extreme heat can result in heat stroke. Internal tent temperatures can quickly rise to 10-25 degrees Fahrenheit warmer than the outside temperature. This can be dangerous, as the human body struggles to dissipate heat at such high temperatures, leading to heat injury including heat stroke. ^{12, 53}

35. In everyday usage, tents have an outer surface and inner wall that interact with both the outdoor and indoor environments. Due to the influence of outdoor temperature and solar radiation, the outer surface temperature is higher than the ambient temperature outside. The elevated outer surface temperature transfers heat to the inner surface through the enclosure structure. The inner wall of the tent exchanges heat with the human body through radiation and convection, thereby impacting human thermal perception. When the inner surface temperature of the tent exceeds the body temperature, the body becomes unable to dissipate heat through radiation and may even absorb heat, leading to increased body temperature and discomfort.¹²

36. Tents have been studied. Using any tent resulted in higher daytime in-tent air temperature than ambient outside air temperature. Further, compared to a control tent, the air temperature within tents shaded with sunbrella, tarp, and white bedsheet had significantly higher air temperature at all times (2.36 °C, 2.46 °C, and 1.11 °C higher air temperature, respectively), controlling for air temperature and day/night.¹⁴

37. Adding cover materials over tents, which I have seen done at encampments, increases heat risk to an already vulnerable population. Higher in-tent air temperature is attributable to the reduced ability for heat and vapor to escape.¹⁴

38. There is an even a higher risk of heat strain (core temperature beyond 40°C) for people using substances.¹³

39. Heat, without accessible water can cause dehydration. Excessive heat exposure and dehydration can cause a very serious condition called rhabdomyolysis. Rhabdomyolysis is a condition in which there is skeletal muscle tissue breakdown and

cell death.³¹ This causes the release of various substances into the blood that can damage the kidneys.

40. Severe dehydration and overheating accelerate muscle breakdown. Kidneys are unable to dispose of the body's waste without plenty of fluids. This can cause kidney failure.³¹

41. Rhabdomyolysis can also occur directly as a direct result of drug use such as Methamphetamine.^{22, 25} The combination of heat, dehydration and Methamphetamine increases the risk of kidney failure. I have seen patients require dialysis as a result.

42. Tissue damage, particularly from lying in one place for an extending period, can also cause rhabdomyolysis and kidney failure. The risk of rhabdomyolysis increases in people who have a prolonged decreased level of consciousness, such as people using sedating drugs including opioids, benzodiazepines and alcohol. Complications of heat, dehydration and drug use can result in death.³¹

43. Rodents pose serious risks to people living in encampments and to neighbouring communities. I had a patient who woke after opioid use to discover that they had severe damage to their face. It is believed that the damage was caused by a rodent attack.

44. People in encampments are at risk of infectious diseases carried by rodents.^{55, 58}

45. Many infections are caused by exposure to rodent droppings or urine. These include Hantavirus which can cause Hantavirus Pulmonary Syndrome. Rodents can also be the source of other infections including Lyme Disease and Rat-bite fever. These harms can be spread to neighbouring communities.^{18, 27, 56, 57}

46. Rodents can also be a source of rabies. Fortunately, rabies is rare in Ontario. However, I have had an unhoused patient who was bitten by a skunk and required Rabies shots.

47. While people have expressed the benefit of having a dog in an encampment, I have seen patients who have had serious dog bites. These have included bites to the face, hands and forearm. There are also example of dogs posing a danger to people working in areas where there are encampments. Children could be at risk if encampments are in parks or near playgrounds.⁶¹

48. Due to lack or inadequate sanitation, people in encampments are at risk of developing infections spread through feces. There are examples of Hepatitis A outbreaks in encampments.^{6, 18, 29, 39, 40} I am informed by counsel that the Region's evidence on this application is that human feces, urine, and drug paraphernalia have all been found at the encampment at 100 Vic.

49. Viruses, bacterial, fungal and parasitic infections can spread through feces. Some can be severe, even life-threatening, particularly combined with malnutrition or dehydration.^{18, 27, 36}

50. While I was living in the neighbourhood in which an encampment formed it was common to see feces on the back steps and front entrances to businesses. This puts the community at risk of acquiring infections through fecal contact.^{8, 62}

51. Body fluids, including blood and urine, can also spread infections. Blood is more likely to be present in areas of violent assaults such as stabbings, and where there is inadequate access and disposal of menstrual products.

52. Sharing needles and paraphernalia increases the risk of spreading blood borne infections including HIV and Hepatitis C. Improperly discarded needles and contaminated products poses a risk to people in the encampments, including people living there, working, walking through or playing in the area. A needlestick injury can be very stressful and require bloodwork and possible treatment.^{9, 19, 24, 33, 36, 39, 60, 63, 67}

53. In my experience injection drug use in encampments increases the risk of infectious complications, including sepsis and spine infections, likely because of the unsanitary conditions and the method of using the paraphernalia.^{3, 66}

54. While there is a lack study of the environmental impact on urban homeless encampments there is an indication that they may contaminate urban surface water which can be a risk for people in the encampment and community.^{8, 62}

55. Porta-potties are now often installed to mitigate the risk of fecal contamination. If not kept clean they can be a site of transmission of bacteria, viruses and parasites including Ecoli, Norovirus, Salmonella and hepatitis A.^{6, 18, 29, 40}

56. There are numerous reports of people dying from overdose deaths in porta-potties.^{64, 65, 66} They get hotter than the outside air by several degrees making the risk higher if people take a sedating drug in a porta-potty during extreme heat.^{12, 13, 14} The

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

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

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

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

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

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

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

B. Some Comments on Respondents' Affidavits

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

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

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

65. The authors found that “cardiovascular disease (CVD) is a major cause of death among homeless adults, at rates that exceed those in non homeless individuals. A complex set of factors contributes to this disparity. In addition to a high prevalence of cigarette smoking and suboptimal control of traditional CVD risk factors such as hypertension and diabetes, a heavy burden of nontraditional psychosocial risk factors like chronic stress, depression, heavy alcohol use, and cocaine use may confer additional risk for adverse CVD outcomes beyond that predicted by conventional risk estimation methods. Poor health care access and logistical challenges to cardiac testing may lead to delays in presentation and diagnosis. The management of established CVD may be further challenged by barriers to medication adherence, communication, and timely follow-up.”²

66. They did not compare shelters and encampments. They concluded: “we wholeheartedly concur with policy recommendations calling for improved and immediate access to housing for homeless people.”^{2, 16} They did not recommend encampments.

67. A study in Vancouver compared chronic physical health conditions among people experiencing homelessness who were sheltered with those who were not sheltered including living in encampments. Those not in shelters had a statistically higher incidence of many conditions including neurological disorders, musculoskeletal disorders, long-term illness such as cancer, diabetes and anemia, gastro-intestinal disorders, cardiovascular disease and sensory disorders including glaucoma, cataracts and hearing loss when compared to those in shelters. There were no instances where being in a shelter posed a risk over not being sheltered.²¹ This study is consistent with my experience.

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

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

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

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

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

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

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

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

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

76. Another study referenced by Dr. Hwang found that “Homeless and vulnerably housed individuals with a lifetime history of TBI are more likely to be ED users, arrested or incarcerated, and victims of physical assault over a 1-year follow-up period even after adjustment for health status and other confounders. These findings have public health and criminal justice implications and highlight the need for effective screening, treatment, and rehabilitation for TBI in this population.”³⁰

77. This study did not compare people in shelter to those in encampments. In my experience the unsupervised environment within an encampment, as well as alcohol and drug use, put people at risk of having a traumatic brain injury by assault or other trauma

such as a fall. Encampment do not provide the screening, treatment or rehabilitation which can be available at or through a shelter.

78. In addition to violence that my patients have experienced, I am aware that encampments in other areas such as Hamilton have been the sites of violence including stabbings, beatings, shootings, theft and a tent being set on fire.^{51, 73, 74} It has also been reported that at an encampment in Barrie, one resident allegedly murdered and dismembered two other residents.⁸⁹

79. Sexual violence, sexual exploitation and sexual traffic are real concerns in encampments. I have had a patient inform me that they were sexually exploited and /or trafficked.

80. The CEO for Oneroof, an agency that has offered youth services in Kitchener, has publicly expressed concerns that girls as young as 12 are being groomed for sexual trafficking at a local encampment.^{70, 71, 72, 73}

81. One of the negative consequences of this sexual abuse is sexually transmitted illnesses (STIs). STIs are more common in people who experience homelessness than the general population. Among the homeless population the rates of all STIs are higher in in women and girls than among men and boys, including HIV, syphilis, chlamydia, and gonorrhea providing supporting data that women and girls are vulnerable to sexual exploitation.¹⁸

82. While sexual violence can happen within a shelter, shelters generally are often age and gender specific and have staff available to safeguard against such occurrences.

83. People experiencing homelessness have a higher incidence of mental health issues than the general population. The Canadian Mental Health Association estimates that 25 to 50 per cent of people experiencing homelessness live with a mental health condition.⁶⁹

84. The Homeless Hub states:

People with poor mental health are more susceptible to the three main factors that can lead to homelessness: poverty, disaffiliation, and personal vulnerability. Because they often lack the capacity to sustain employment, they have little income. Delusional thinking may lead them to withdraw from friends, family, and other people. This loss of support leaves them fewer resources to cope with times of trouble. Mental illness can also impair a person's ability to be resilient and resourceful; it can cloud thinking and impair judgment. For all these reasons, people with mental illness are at greater risk of experiencing homelessness.

85. Homelessness, in turn, amplifies poor mental health. The stress of experiencing homelessness may exacerbate previous mental illness and encourage anxiety, fear, depression, sleeplessness, and substance use.^{67, 69}

86. I have witnessed problems resulting from this vulnerability. People with mental health issues are often exploited. I have had patients with severe mental health issues who have much of their prescribed opioids taken from them. Patients with poor mental health are more likely to be sexually exploited and victims of violence and theft.

87. The location of encampments can also be problematic. People are attracted to areas that are not safe to be, both for people living in the encampments and the surrounding community, because of the presence of diverted drugs. When there was significant drug diversion occurring in the community, encampments formed near a pharmacy in which I was informed by various patients I saw at LHSC that much diversion

of prescribed opioids took place. This is an area with no greenspace with multiple adjoining parking lot behind local businesses. I had patients who had been housed who left their homes and apartments to live in the encampment. They advised me that they had moved to the encampment because diverted prescribed opioids were cheaper and more plentiful at this location than farther from this source of diversion.^{82, 83}

88. Homelessness, addiction and mental health are very complex and often interconnected.^{68,69} A number of my patients came from middle class and affluent families locally or in other regions Ontario. Some were not able to live at home with their families. Some had relatives who wanted them to come home. Some chose encampments instead of shelters even when they were available. Some were not allowed to return to any shelter, often because of a violent history.

89. Frequently patients expressed being attracted to the encampments because of the lack of restrictions on drug use and absence of rules.

90. Often, they expressed that they had not understood, appreciated, or considered the health risks of living in an encampment.

91. I observed deterioration in physical and mental health in people who moved into encampments. For many people this led to bad health outcomes and even death.

92. Most patients reported an increase in drug use in encampments They were also less likely to practice safe techniques when using paraphernalia or attend the supervised injection site. The amount of drug use increased. Patients reported progressing from prescription opioids to illicit fentanyl. Patients, even those whose drugs of choice were

opioids, reported a high use of stimulants, particularly Methamphetamine to stay awake to protect themselves from assault or theft. This led to a further deterioration in their mental and physical health and increased risky behaviour, including risky sexual behaviour. This also put them at increased risk of rhabdomyolysis and kidney failure.

93. Hospitalized patients who expressed interest in recovery advised me that recovery was essentially impossible within an encampment. Drugs are accessible, available and cheap.^{82,83,84} Regular exposure to drug use is a trigger making recovery not feasible. I have also heard from people who were not living in encampments that exposure to public drug use has been a trigger that contributed to a relapse. Studies on tobacco have shown that when smoking is normalized and allowed in public places it increases the risk that youth will smoke. This contributed to banning cigarette smoking in and around playgrounds.¹⁰ Based on my experience, I believe that normalization likely has a similar impact on drug use. While it is important to end stigma of addiction, public drug use will have negative consequences to people in encampments and the community.^{72,77,78,79,80,81}

94. Dr. Hwang mentions harms of encampment sweeps and forced evictions. People living in encampments need to be treated with dignity and respect.

95. The study “Harms of encampment abatements on the health of unhoused people”, can be found in exhibit “J” in Dr. Hwang’s affidavit. This study primarily addresses encampments in Santa Clara California. This study identified health and social risks when people were forcibly removed from encampments when there were “no reasonable alternative places to stay.” Forcible removal generally included property seizures.

96. The authors did not compare to health of people staying in shelters or provided with shelter. Of note, the climate of Santa Clara California is significantly different from Waterloo Region. American health care is significantly different from Canadian Health Care.

97. The study stated that “There is an urgent need for long term housing for unhoused people.” Encampments were not seen as the goal or end point.

98. In his Affidavit, Dr. Gupta acknowledges many of health risks of people experiencing homelessness

99. He also referenced an important literature review: “Unsheltered Homelessness and Health: A Literature Review,” American Journal of Preventative Medicine Focus, 2(1) (2023): 100043.85

100. However, he his changing of the definition used to in the review to define unsheltered homeless is significant.

101. Dr. Gupta quoted the review as stating: “Unsheltered individuals (those who “sleep rough” without a tent) are more likely to report recent victimization, when compared to people staying in emergency shelters”.

102. In fact, in the article. the definition used for unsheltered individuals included those living in encampments and not just those who “sleep rough” without a tent. The article stated: “Unsheltered homelessness has been referred to as street homelessness,¹² absolutely homeless,¹³ rooflessness, sleeping rough,¹⁴ or long grassing,¹⁵ and in turn,

individuals have been referred to as rough sleepers, street/pavement dwellers, and encampment residents.”⁸⁵

103. Their conclusion: “Unsheltered populations” (including people living in encampments) “experience high rates of chronic disease, serious mental illness, and substance abuse than sheltered populations. Unsheltered homelessness is strongly associated with chronic homelessness that exacerbates serious mental illness and substance use, which are often co-occurring. The rates of premature mortality are high relative to sheltered populations, and older adults are particularly vulnerable owing to accelerated aging while on the street”⁸⁵

104. Dr. Gupta also quoted another important paper: Adeline M. Nyamathi, and Lillian Gelberg, "Sheltered Versus Nonsheltered Homeless Women," *Journal of General Internal Medicine* 15, no. 8 (2000): 565-572.⁸⁶

105. Dr. Gupta, in his affidavit stated as follows: “Unsheltered women (those who “sleep rough”) are particularly at risk for negative health outcomes, including interpersonal violence. Compared with women who stay in emergency shelters, unsheltered women have three times greater odds of reporting fair or poor physical health, 12 times greater odds of poor mental health, and higher rates of non-injection drug and alcohol use, as well as an increased risk of recent sexual assault. Despite this, they are less likely to have recently utilized health services than women who stay in emergency shelters.”

106. The article described sheltered homeless women as “homeless women who reside in emergency or sober living shelters”

107. They were compared to “those who live in alternative, unsheltered places, such as the streets”.

108. Importantly, living in the street included any “outdoor locations in Los Angeles.” I could not find the terms living rough or encampments in the article. However, encampments would be included in the definition of any outdoor location, and they do not meet the definition of a shelter.

109. Additionally, the authors found that “While homeless populations are known to have relatively high rates of serious mental illness, the fact that virtually all of the unsheltered homeless women were at risk for poor mental health is still remarkable. Even among substance users, unsheltered homeless women still had 11 times greater odds of poor mental health than sheltered homeless women, controlling for covariates. Thus, it would appear that the streets are becoming a congregating place for persons with poor mental health. Women living on the streets also had higher rates of noninjection drug and alcohol use.”⁸⁶

110. Those unsheltered also had more STDs: “Nonetheless, even among substance-using women and women with poor mental health, those living on the street still had over one-and-a-half times the odds of having a recent STD as those living in shelters. This finding may reflect a greater need to engage in survival sex or sex for drugs, or it may just be a consequence of having more sexual partners.”⁸⁶

111. Shelters protected women from violence “Even after restricting analyses to substance-using women and those at risk for poor mental health and controlling for sociodemographic disparities between women living in sheltered and unsheltered

environments, street residence was a strong independent predictor of robbery and physical assault.”⁸⁶

112. Women in shelters were more likely to access medical and dental care. “The good news from this study is that the vast majority of sheltered homeless women were able to obtain at least some needed medical care and receipt of preventive care was common. In fact, about two thirds of the sheltered homeless reported that they had received Pap and TB testing in the past year, and almost half said they had been tested for HIV in the past 6 months. Even among the unsheltered group, one third to one half reported these preventive care measures. Seeing a dentist in the past year was reported less frequently, especially by unsheltered women, as was lifetime treatment for drug abuse (among women whose histories suggested a need for this service)”.⁸⁶ By contrast, they noted:

“While homeless women can obtain medical care in outpatient departments, community clinics, and some clinics associated with homeless shelters, those who reside primarily on the streets do not have access to the drop-in services offered to some shelter residents by visiting health care providers or to the case management many shelters provide. Further, they are not eligible to participate in the substance abuse counseling and treatment programs that shelters may provide for their own residents.”⁸⁶

113. Dr. Gupta stated: “Basic hygiene and toileting services: Providing access to hygiene and sanitation within encampments helps reduce health risks associated with unsheltered living, such as diarrheal illnesses.”

114. This trivializes of communicable diseases experienced by people living in encampments and public health risks to the community.

115. He references, “Elizabeth Ohlsen and Kristen Angel, “Shigellosis Outbreak Among Persons Experiencing Homelessness – San Diego County, California,” October-December 2021, *Epidemiology and Infection*, 152, e61, 1-787.

116. The authors reported; “Outbreaks of *S. sonnei* or *Shigella flexneri* among PEH have been reported since 2014 on the West Coast of North America, including outbreaks in Vancouver, British Columbia ^[5, 6]; Portland, Oregon ^[7]; Long Beach, California ^[8]; San Francisco, California ^[9]; and Seattle, Washington.^[10] All were thought to be partially associated with limited access to clean water and sanitation”.⁸⁷ They further noted:

“Ample opportunities for transmission were likely presented within encampments and other places in which access to clean water and restrooms was limited.”⁸⁷

“protective effects against SARS-CoV-2 transmission among PEH, they might inadvertently have led to other health risks. This includes diversion from shelters to encampments with limited sanitation facilities, increased food insecurity, increased exposure to interpersonal violence, and increased exposure to inclement weather”.⁸⁷

117. Additionally, the vigilance required to decrease the spread of infection was far from “basic”:

“SDC, in partnership with San Diego City, deployed or relocated 99 portable handwashing stations to areas with the highest concentration of detected cases in PEH, beginning in mid-October. Public restrooms in parks and other public areas were cleaned and stocked more regularly with soap and toilet paper. Portable restrooms were also placed near encampments and other areas frequented by PEH. Sidewalk sanitisation in downtown San Diego City and other affected areas was increased from twice weekly to daily. Outreach teams distributed approximately 1,000 hygiene kits (including hand sanitiser, bottled water, and hand wipes) weekly along with additional information on preventing *Shigella* transmission and shelter resources. Messaging was provided to area shelters to educate clients on the importance of handwashing and disease prevention. Temporary private lodging in hotels was provided by SDC for PEH as needed during infectious periods to prevent transmission in congregate settings such as

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

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

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

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

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

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

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

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

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

C. Final Comments

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

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

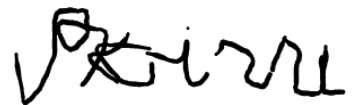
127. I make this affidavit for the purpose of introducing my opinion as evidence in this application and for no other or improper purpose.

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



Commissioner for Taking Affidavits
(or as may be)

Greta Hoaken (LSO # 87903I)



Sharon Koivu

TAB 18

**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 DR. STEPHEN HWANG

I, **DR. STEPHEN HWANG**, of the City of Toronto, in the Province of Ontario, SOLEMNLY AFFIRM as follows:

1. The facts and opinions contained in this affidavit are based on my own research and experiences as well as other reliable research in this area, where noted.

Background and nature of work

2. I have been a practicing medical doctor for 33 years. I received my medical degree from John Hopkins University School of Medicine in Baltimore, Maryland in 1988 and a master of public health degree from the Harvard School of Public Health in 1996.

3. My expertise is on the health impacts of being homeless and interventions to improve the health of people experiencing homelessness. I refer to homeless persons as those who live in emergency shelters, transitional shelters, or places not intended for human habitation, such as parks, abandoned buildings, and bus or train stations.

homeless or vulnerably housed participants from Vancouver, Toronto, and Ottawa reported being diagnosed with a mental health problem. Over 85% reported having at least one health condition. The study is attached as **Exhibit “I”** to my affidavit.

8. Physical and mental health problems worsen over the period that a person is homeless. The deterioration in health is related to several factors, including a lack of stable housing, a volatile social environment, and barriers to accessing appropriate healthcare. Many homeless persons do not have a health card, do not know where to access services, cannot attend regular appointments, and/or lack continuity of care because they do not have a permanent address or phone access. Prescription medications are difficult to obtain without proper access to a doctor or insurance. Many homeless persons also report experiencing discrimination when accessing healthcare.

The dangers of prohibiting shelter for people living outdoors

9. Homeless people who are prohibited from erecting even rudimentary shelter from the elements — such as tents, tarps, or cardboard barriers — will suffer clear and direct adverse impacts on their health:

- A lack of protection from wind and rain increases the wind chill effect, greatly increasing the risk of hypothermia. Homeless persons are at a particularly high risk of death from hypothermia because their clothing gets wet and they cannot dry it. The temperature does not have to be freezing for hypothermia to occur. Many deaths occur when the air temperature is above freezing.

- Prolonged exposure to wet and cold conditions can lead to serious skin and foot diseases as well as respiratory diseases. A lack of protection from wet and cold conditions heightens the likelihood of these diseases and magnifies their severity. These diseases are debilitating.
- The lack of protection from the sun greatly increases homeless people's risk of severe sunburn and heatstroke during the summer months. There is little relief from the heat and sun without adequate shelter.
- Lack of shelter also increases the severity of the disturbed and fragmented sleep experienced by the homeless. The weather, light, and noise is more disruptive without any barrier — leading to many serious health conditions.

10. There is no question that the lack of shelter for people living outside causes severe adverse effects on their health.

The adverse effects of forced encampment evictions

11. Homeless people forced to leave their encampments suffer adverse impacts on their health. In a study published in 2022, encampment sweeps or evictions were found to be a harmful factor contributing to the declining health of homeless people. This study is attached as **Exhibit “J”** to my affidavit. Forced evictions tend to disperse people to more remote public spaces which are less publicly visible and/or accessible. Being constantly forced into increasingly remote locations makes it difficult to get to pharmacies, attend medical appointments and outpatient clinics, access food programs, counseling services, methadone clinics and addictions treatment. Frequent displacement leads to significantly enhanced vulnerabilities and health risks for those displaced,

particularly for women, people with disabilities and mental health conditions and people using substances.

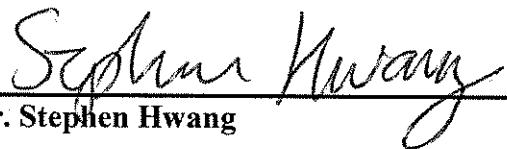
12. Forced eviction and the subsequent displacement deprive homeless people of survival supplies required to survive unhoused. Homeless people may lose medical supplies like wound care supplies or safe drug consumption supplies as a result of displacement. The displacement may also mean that they lose food, clothing and blankets which are essential items needed to survive outdoors. This deprivation of survival supplies results in adverse effects on their ability to look after their own health.

13. Forced evictions increases the likelihood for negative encounters between unhoused people and authorities such as law enforcement. These negative interactions cause emotional stress and distrust which exacerbates homeless people's social exclusion and increases their reluctance to seek health and social supports.

14. I affirm this affidavit to provide evidence on this application and for no other purpose.

SWORN remotely by Stephen Hwang at the City of Toronto, in the Province of Ontario, before me at the County of Wellington in the Province of Ontario on May 6, 2025 in accordance with O. Reg. 431/20.


 Joanna Mullen, A Commissioner
 of Oaths (LSO#: 64535V)


 Dr. Stephen Hwang

TAB 19

THIS IS **EXHIBIT “J”** REFERRED TO
IN THE AFFIDAVIT OF DR. STEPHEN HWANG
SWORN REMOTELY AT THE
CITY OF TORONTO BEFORE ME AT THE COUNTY OF WELLINGTON
DURING A ZOOM VIDEOCONFERENCE
IN ACCORDANCE WITH O.REG. 431/20,
ADMINISTERING OATH OR DECLARATION REMOTELY
THIS 6TH DAY OF MAY, 2025



JOANNA MULLEN
A Commissioner, etc.,
Province of Ontario,
While a Barrister and Solicitor.
LSO # 64535V



Harms of encampment abatements on the health of unhoused people

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A B S T R A C T

Introduction: Abatements, or “sweeps,” are key instruments used by local governments to address increasing numbers of homeless encampments, but they are controversial, underdocumented, and understudied. To examine how social policies, such as abatements, impact the health of people who are unhoused, we interviewed unhoused people on their recent experiences with local abatement practices.

Materials and methods: Between 2018 and 2020, we used community-based participatory research approaches and the docent method to conduct participant-guided, in-depth, semi-structured interviews with unhoused people in Santa Clara County (n = 29). We used grounded theory approaches to analyze interview data.

Results: Abatements harmed unhoused people's health through four key mechanisms. First, forced relocation and property seizures stripped people of health resources and necessities (e.g., personal belongings, social support) required to survive unhoused. Second, abatements drove unhoused people into hazardous, isolated, less visible spaces, which increased health risks while reducing access to health outreach workers and support systems. Third, abatements were the grounds for frequent negative encounters between unhoused people and authorities such as law enforcement - interactions that produced anger, stress, and distrust. Finally, distrust of authorities and law enforcement led to people's reluctance to seek or accept formal forms of support and protection. The necessity of self-policing in encampments created cycles of interpersonal violence that resulted in suffering, injury, and premature death.

Discussion: Sweeps undermined or directly harmed unhoused people's health, leading to serious health consequences. Common abatement practices are social policies that may be causal factors in the declining health of unhoused people. Improved documentation, reporting, and tracking of abatement practices are needed.

1. Introduction

For the thousands of people in Santa Clara County (SCC) who have no option but to live outdoors due to the lack of shelters and affordable homes, there are few places one can exist uncontested. Laws and systems labeling unhoused people as vagrants, transients, trespassers, and suspicious persons make their presence a perpetual struggle, even a crime, in most spaces. A key battleground in this struggle is the encampment. Encampments are the tents, wooden pallets, tarps, cars, vans, or other materials set up by unhoused people in order to survive without shelter (Cohen et al., 2019). People who are unhoused, housed residents in the community, business interests, and various local government agencies, including public health, criminal justice, and law enforcement, are stakeholders in the social struggle over the existence of encampments and the right to live outdoors when there is nowhere else to live.

A central apparatus in this struggle is *the sweep*. The definition of a sweep (i.e., encampment sweep, abatement, “move-along” order) is

varied, but in general, the term refers to authorities removing one or more persons from a location in adherence to ordinances that ban staying on a wide range of public or private spaces. If an individual refuses or cannot move, they are subject to citation and potential arrest, and their belongings can be confiscated and discarded. Abatements, and the controversies surrounding them, have a long history in the United States (Baker, 1990; Simon, 1991). The magnitude of abatements has escalated in many cities since the 1990s due to substantial increases in anti-homeless ordinances and technologies facilitating the reporting of neighbor complaints (Craven et al., 2021; Herring, 2019; Herring et al., 2020; Rankin, 2019; Wilking et al., 2018), despite ongoing legal concerns surrounding the constitutionality of sweeps. One example of a constitutional concern is a Ninth Circuit decision banning local governments from citing and arresting people sleeping on public property in the absence of adequate shelter space (Martin v. City of Boise, 2019). The court's underlying conclusion was that the abatement of unhoused people is cruel and unusual punishment when there is no reasonable alternative place to stay.

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¹ Community Partner and President of the Santa Clara County Homeless Union

Beyond legality, there are debates surrounding the efficacy, cost, and consequences of abatements. Academic studies examining the effects of abatements are limited, but research emerging around the United States, including from government reports and advocacy organizations, consistently show that abatements are costly to city budgets and ineffective at reducing homelessness. In 2019, the City of San Jose spent \$8,557,000 on encampment responses, 57% of which was used for encampment abatements, versus 17% for encampment prevention, and 10% for homeless outreach (Dunton et al., 2020). Due to the lack of effective coordinated documentation and reporting systems, most cities and counties are unable to assess the effectiveness of abatements. However, available detailed reports and audits have shown that abatements result in the dispersal and destabilization of unhoused people, rather than long-term removal from public spaces (e.g. Office of the City Auditor San Diego, 2020; Office of the City Auditor of San Jose, 2018). Arrest records in Chico, California showed that following the passage of anti-homeless “sit-lie” prohibition policies, there were substantial increases in arrests and relocation of unhoused people, at almost twice the cost of official estimates. Locations of arrests occurred incrementally further from the downtown area over time, suggesting that abatement practices pushed unhoused people away from city centers (Wilking et al., 2018). In Greensboro, North Carolina, anti-homeless policies resulted in increased contacts between unhoused people and law enforcement. There were also racial disparities, as Black people who were unhoused reported high rates of racial profiling in police contacts (Craven et al., 2021). During abatements, unhoused people are rarely introduced to viable shelter or housing options. In San Francisco, California, the vast majority (91%) of unhoused people remained outdoors following an abatement, and relocation into housing was rare (Herring et al., 2020). In Denver, Colorado, unhoused survey respondents reported that in over 80% of “move-along” encounters with police, they were forced to move without receiving any information about supportive services (Robinson, 2019).

In health research, there is strong epidemiological evidence that being *unsheltered* while unhoused is a major health risk (Anderson et al., 2021; Lee et al., 2016; Levitt et al., 2009) that is associated with premature mortality (Montgomery et al., 2016; Romaszko et al., 2017; Roncarati et al., 2018). However, evidence specifically linking sweeps to health outcomes is limited. In Denver, Colorado, unhoused people's experiences with abatements led to a range of physical and mental health issues, including poorer sleep, isolation, risk of interpersonal violence, and weather-related health hazards (Westbrook & Robinson, 2021). Ethnographic researchers (Bourgois & Schonberg, 2009; Knight, 2015; Lopez, 2020; Stuart, 2016) have chronicled the ways that policing and criminalization of homelessness - frequently interconnected with policing drug use - have resulted in prolonged exclusion and harassment of unhoused individuals. These ethnographies report a range of poor health outcomes ensuing, from languishing health to overt physical violence. Outside of health research, qualitative studies have examined the effects of abatements on quality of life, justice, and safety. Researchers have shown that abatements result in the loss or destruction of people's property, causing excessive cost and stress for those living unsheltered (Darran-Okike et al., 2018). The loss of property and continuous relocation are underlying factors in crime and safety risks, as unhoused people are forced to undergo extreme lengths to regain necessities (Herring et al., 2020; Langegger, 2016). Criminalization of homelessness through abatements creates forms of hidden homelessness, as well as a direct pipeline into the criminal justice system, causing additional harm to the unhoused individual (Rankin, 2019, 2021). All together, these studies show that policies that criminalize homelessness are a structural driver of the pervasive destabilization, suffering, and violence that unhoused people experience, which lead to a range of legal, health, and social consequences.

In this study, we set out to investigate the social environmental mechanisms and dynamics created by abatement policies, which set the stage for unhoused people's exposure to health issues and ability to protect themselves. Drawing on community-based participatory research

(CBPR) principles, we explored this topic in a place-based, participatory manner to center the often invisible lived experiences and personal narratives of people who are unhoused.

2. Materials and methods

This study was approved by the Institutional Review Board at Santa Clara University. The data used for this manuscript are a subset of an ongoing qualitative study investigating how local policies surrounding abatements shape people's health in the San Francisco Bay Area. Here we report on in-depth, semi-structured interviews conducted with people who are unhoused recruited between 2018 and 2020 ($n = 29$). We also report based on observations and notes from several months of ethnographic data collection conducted in encampments in SCC during the study period, during which at least one of the authors met and discussed the study topics with unhoused people and wrote detailed memos, but did not formally enroll participants. To be eligible for the study, participants had to be an adult who was unhoused in SCC for at least six months within the last 5 years of enrollment. All participants had personal experiences with encampment abatements.

2.1. Community-based participatory research and the Docent method

Community-based participatory research is a research approach that acknowledges, challenges, and attempts to dismantle the current and historical harm done by academic privilege in health research. It is a set of interrelated principles (Israel et al., 2013; Minkler & Wallerstein, 2011) that informed the study design of this research. Based on CBPR principles, we involved members of the unhoused community as co-leaders of the study development and implementation. We relied on unhoused people's expertise to make decisions about the study, including what topics/concepts to focus on, and what spaces to visit. Based on CBPR, the academic-community partnerships and relationships are ongoing, as we continue to build and strengthen ties between academics and people in the unhoused community.

We used the *docent method* (Chang, 2017) to focus the data collection and analysis on the role of social and built environments, which is a central concept in CBPR. The docent method is a place-based, participant-guided, walking interview approach rooted in grounded theory (Charmaz, 2014) and CBPR principles. The docent method was designed to challenge or reverse the power dynamics of traditional interviews by 1) privileging the leadership and expertise of study participants, and 2) incorporating the everyday spaces and settings that are consequential to health into the semi-structured interviewing process. In the docent method, participants act as docents - resident experts - who guide the researcher on walking interviews through key conceptual sites. In this study, the three “sites of interest” were 1) the personal space of the unhoused person (e.g., tent, vehicle, shelter bed/space), 2) the community space (e.g., shared or open spaces in or around the encampments and shelters), and, for people in encampments, 3) the routes/pathways to and around the encampments. By visiting these conceptual sites guided by the expertise of each participant, the docent method enabled a systematic, participant-led investigation of the environmental, social, neighborhood, and structural factors that impacted people's health.

2.2. Participant recruitment and data collection

Participants were recruited in three stages. First, in Summer 2018, we recruited people living in encampments and vehicles ($n = 14$) using a convenience sample and snowball sampling approaches. R.J.A., who was formerly unhoused and has longstanding relationships with members of several key encampments, contacted or approached potential participants to inform them about the study. We focused on three semi-durable encampments for recruitment, locally known as the Bassett, Tully, and Roosevelt encampments. Interviews took place on-site at the encampments, in a semi-private location selected by the participant.

Next, we recruited people staying in shelters ($n = 9$), all of whom had prior experience living in encampments and/or vehicles. Participants were recruited at a large shelter facility in San Jose with the support of staff who posted flyers advertising the study, distributed information sheets, and provided interview rooms. Study participants were interviewed in a private room, then each participant guided us around their personal spaces (e.g., cot, room), and around the facility, including shared spaces and outdoor recreation areas.

In March 2019, at the start of the COVID-19 pandemic, we redesigned the study into a virtual format in order to comply with restrictions to in-person research. Participants ($n = 6$) were recruited by two community-based organizations that provide services to people who are unhoused. Eligible participants were given information sheets about the study, and asked to contact the researchers, who then set up virtual interviews on Zoom or by telephone.

All study participants provided informed consent prior to enrollment. Interviews were recorded using a digital audio-recorder. We used a semi-structured interview guide to cover interview topics, focusing on experiences with shelters, encampments, abatements, and health. The interview process took between one to two hours. During the docent method interviews, we took photos of the physical surroundings using a cell phone camera, avoiding identifying photographs of people's faces. At the end of the interview, we gave each participant twenty dollars in cash or gift card, and in-person interview participants received a care package containing food and personal care items.

2.3. Data analysis

All audio files were transcribed verbatim with identifying information removed. All participants were assigned pseudonyms. All transcripts were uploaded into ATLAS.ti for storage, coding, and analysis. The transcribed data were analyzed by three researchers using grounded theory data analysis approaches (Charmaz, 2014). First, we listened to all of the interview audio files as we reviewed transcripts and field notes for each interview. Reviewing the transcribed data, we conducted initial line-by-line inductive coding of a portion of the interviews. We wrote memos on broad theoretical and substantive topics drawn from initial impressions and interpretations, and organized these memos into an initial set of inductive codes. Next, we used this initial set of inductive codes to code all transcripts in ATLAS.ti. The initial set of inductive codes was supplemented by emerging concepts from the transcript coding. We then listened to the original audio files while reviewing and re-coding interview transcripts. Some codes clustered thematically and were analyzed together. We focused on queries for the codes “encampment experiences” and “encampment abatements” for analysis.

3. Results

For context, in SCC, abatements are initiated based on neighbor complaints, but also on grounds of environmental protection and sanitation. Santa Clara County, known as Silicon Valley, is a large, 1300 square mile, geographically diverse region, and a substantial portion of unhoused people stay in fairly remote outdoor spaces, such as in sites near the forested hills, rivers, creeks, abandoned lots, and industrial spaces interspersed throughout the county. Santa Clara County has among the highest proportions of *unhoused-unsheltered* people in the United States (Turner, 2017). The 2019 unhoused point-in-time count estimated that approximately 9700 unhoused people live in SCC, with 82% living unsheltered. The unhoused-unsheltered population increased 45% (5448 in 2017 to 7922 in 2019) since the 2017 point-in-time count (Applied Survey Research, 2019).

An audit of homeless service programs in San Jose showed a sharp increase in abatements following a 2015 lawsuit to keep waterfronts clean (Office of the City Auditor of San Jose, 2018). Abatements involve a constellation of city departments (e.g., housing, transportation, police, fire, parks and recreation, etc.), abatement contractors, and community

organizations. Though the protocols and practices involved vary, in general, unhoused people are required to remove themselves and their property from a location within 72-hour following notification (“getting posted”). Abatement workers are typically accompanied by law enforcement, who have the authority to seize and discard belongings, issue citations, or even arrest people who do not comply with orders to move (Office of the City Auditor of San Jose, 2018).

The study participants were closely split between women (51.7%) and men (48.3%). Almost half of participants self-identified as Latino (48.3%), 31% as White, 17.2% as Black, and 3.4% Asian Pacific Islander. At the time of the interview, 15 (51.7%) participants were living in encampments, 9 (31%) in shelters, 4 (13.8%) in vehicles, and 1 (3.4%) recently in supportive housing. Most participants were older than 50 (27.6% age 50–59, 31% age 60+), 9 (31%) were in their forties, 2 (6.9%) in their thirties, and 1 (3.4%) was in their twenties.

We report on our grounded theory analysis of participants’ experiences with encampments and abatements, focusing on the social environmental mechanisms through which abatements affected their health.

3.1. Forced removal and property seizure destabilized people, and dispossessed them from resources (belongings, social support) needed to survive unhoused

At a basic level, abatements harmed the physical and emotional health of unhoused people by dispossessing them of the belongings they need to survive outdoors - belongings that were often painstakingly procured. Participants reported that during sweeps, their personal belongings of all kinds were taken and discarded by authorities (Image 1). Belongings that were necessities for survival (e.g., medications, tents, blankets, essential records/documents) were routinely seized. Nina, a Latina woman in her fifties and a San Jose native, had been living intermittently in her encampment located in a forested area near Coyote Creek for eleven years. She stayed in a tent, situated under a tarp strung between tree branches. During her interview, she thought back on the destabilizing effects of the prior year when her area was swept every few weeks. She became hypervigilant and unable to let her guard down, because sometimes, her camp would be given a 72-hour notification of an impending sweep, and other times, abatement contractors came without warning. If Nina could not carry her belongings away, everything she needed to survive would be gone, decimating her ability to stay healthy:

Every two weeks ... They would come, and they would sweep. Sometimes they would put up [72-hour] notices, sometimes they wouldn't. A few times, they came and wiped out everything of everybody's. Clothes, food ... It didn't matter what it was. If you had it there, they took everything. Tents. Then you were left with no clothes, no food, nowhere to stay, no blankets or anything. What they're doing is, they're keeping us down. Because then you gotta work harder. You're not able to go to work and make money.

Another participant, Sammy, exemplified the dehumanization and psychological stress of abatement property seizures, and used the term “inhumane” to describe them. Sammy is a White woman in her thirties, and a U.S. Military Veteran, who we met while she was staying at a shelter. During her service and following discharge, Sammy experienced a series of violent traumas and became addicted to opioids. She was a young mother, but tragically lost her youngest son when he was an infant. Sammy, a poised and articulate soldier, choked back tears as she recounted the first major sweep she endured, during which the only remaining photograph she had of her son was discarded. Her account of personal, irreplaceable possessions being seized and tossed away was common among participants. Sammy thought she had an arrangement with the abatement authorities - if she kept the area tidy, they would not sweep the encampment. One day, she discovered the deal was off:

Our first real experience with being swept, we had a guy come up and check our camp out. He goes, “If you clean it up and it looks good, you



Image 1. July 2019. The final day of the abatements at Bassett encampment, after most residents, including Maria, had vacated. Pictured is a tent being discarded as abatement workers cleared the site.

can stay.” And I said, “Okay! I’ll have it cleaned.” We got it spotless. There was not a piece of paper anywhere in the half block radius of my spot. We made it habitable. Well, they took everything. They took the last picture I had of my son. One of their workers ripped it up, in front of me. It’s just inhumane.

Beyond causing material losses, psychological distress, and emotional trauma, encampment sweeps disrupted social connections. Encampments are frequently depicted as nuisances or dangerous spaces, but participants were clear that, in the absence of alternatives, their encampment site was the safest place available to them. We recorded numerous examples of unhoused individuals bonding at their sites, watching out for one another’s property, gathering for meals, and checking in on each other regularly. Even strangers, tacitly understanding their common circumstances, went out of their way to help one another. For example,

Ted is a White man in his late thirties, a U.S. Military Veteran, and the informal leader of his tight-knit encampment. Abatements break up communities, which, Ted explained, were cautiously constructed over time. In his encampment, people supported one another, a dynamic that was hard to come by:

We enclose this area to people that we know, or that we can trust. Because you start getting a camp full of people you don’t know, then you don’t know what’s going on with your stuff while you’re gone. People start stealing your things. So we try to keep it a community here. We’ve got a group of people around us that we’ve known for a while, so we consider it more of a community. We help each other out with food. Some of these people who get food stamps pitch in for food during dinner and we all throw in something to cook, so that helps out with the people who don’t get stamps.

These participants described how common abatement practices resulted in the increased destabilization of unhoused people through the seizure of health necessities and irreplaceable personal belongings, and displacement of community support needed to survive outdoors.

3.2. Abatements pushed unhoused people into hazardous, isolated, often remote areas that were less accessible to health outreach workers

To avoid being swept or forced to move along, unhoused people need to be invisible in plain sight. In response to the threat of abatement orders, unhoused people in SCC have adapted by moving to more isolated, secluded areas that are less likely to be seen and swept. Largely through personal experiences and word of mouth, they have deciphered some of the myriad of abatement patterns and practices, and learned what areas are safer from frequent sweeps. Oftentimes, places that are safer from abatement are those that are difficult to access and less visible to the public. In SCC, these are hazardous spaces, such as the land along train tracks, along or under freeways, behind industrial buildings, on construction sites or empty lots, and deep in forested creeks and hills. That is, sweeping practices effectively push unhoused people into acutely risky places that are isolated, remote, and largely out of reach from public health services and homeless service providers.

For example, Maria, a Latina woman in her fifties, is one of the original members of the Bassett encampment whom we interviewed on several occasions. She settled on the spot alongside the train tracks upon figuring out that three local jurisdictions, who did not coordinate their efforts, owned different parts of the property - the City of San Jose, Union Pacific Railroad, and CalTrans. An abatement by one jurisdiction simply meant that encampment residents could relocate across the street to another jurisdiction's property. As she guided us along the stretch of land occupied by tents, the health risks were apparent. There were no sources of water or bathrooms nearby. Tents, which were often on dirt and gravel, flooded in the rain. Staying alongside the train tracks exposed residents to smog and pollution, including noise pollution, as screeching freight trains passed through every hour, every day, around the clock.

The location put the encampment residents at risk of mortal injury. Maria recounted several incidents of people being injured or killed by trains. Media reports have shown that in California, the number of unhoused people dying from collisions with trains is increasing (Swan, 2019). Yet amid these risks, Maria lived twenty unprotected feet from a moving freight train line because it was a good place to avoid abatements (Image 2). She put herself at risk to reduce the impact of sweeps:

Interviewer: How did you decide on this particular site, out of all of the places in San Jose, to set up?

Maria: Because they can't come over here and give us a paper and tell us to move. They can't. They can't sweep up. This belongs to the train company. So if the train company comes and tells us, "Out!", because it's dirty or whatever, then we have to leave. But we've been here going on five months. All the other camps they had to leave [because it was] too messy, and it wasn't a proper place to be.

The Bassett encampment was fairly conspicuous, visible to residents in an adjacent apartment complex and office building. For most unhoused people, reducing visibility was an essential adaptation to abatements. For example, Martha, a White woman in her fifties, lived in a van with her spouse. The couple was unhoused and unsheltered in encampments for years, but five years ago purchased the van. They equipped it with a narrow twin mattress, mini-fridge, storage, and a hotplate. They usually stayed in the parking lot of a mall, where Martha got informal "permission" from the store manager to park occasionally. In her van, Martha could stay hidden from public judgment, and drive away if detected. She informed us that people staying in visible encampments did not fare well:

They sweep them all the time. There's a small encampment over there at that park over there, Columbus Park. There's one in the middle of the field, and then there's another one across the way in the trees over there. You can see them from the street, that's why they're not going to last that long ... That's just the way it is. [Abatement authorities] say, "I don't care where you go, but you can't stay here."



Image 2. June 2018. Peering out of Maria's tent at Bassett encampment. A man sleeps under a blanket on the reclining couch as a freight train screeches by. Maria stayed in this community with several dozen other individuals because the site was swept less frequently.

The risk of visibility forced unhoused people into living long term in environments that were unsustainable and inadequate for maintaining health (Image 3). Nina, introduced above, lived near the creek, in a spot sheltered by tarps tied to tree branches. Residents staying by the creek explained that the location had no access to electricity or clean water for cooking, cleaning, or bathing. The cellular phone signal was spotty. Without electricity, it was pitch black most nights. We saw several camps burned to the ground from campfires, and other sites were washed away by the creek during seasonal floods (Image 4). Amid these hazards, fifty or more people lived in small camps on a half-mile footpath along the creek. The invisibility and inaccessibility of the location - which could only be accessed by hiking along a dirt path, crossing car gates and wire fences - exposed Nina to health and safety risks, but it appealed to her because it was safer from abatements. When looking for a place to set up in the forest, she said, “You look for the flattest spot. The almost hidden, but not hidden. And you look for who you’re living next to you, because that truly matters ... You want to try to get a spot where it’s not that accessible.”

When unhoused people become invisible to escape abatements, they are also invisible to health outreach workers and other “outside” support systems, cutting off a lifeline. For example, in SCC, public health workers, such as the Backpack Homeless Healthcare Program (“backpack medicine” teams) - a street medicine program run through the county hospital - play an essential role in homeless outreach. Teams of health care providers travel to encampments and provide on-site emergency and basic health care services, as well as providing referrals. Several participants knew the backpack medicine providers by name and eagerly anticipated their visits. However, because unhoused people’s risk assessment favored remaining hidden, medical teams encountered persistent issues locating patients in encampments. In one example, Ted, introduced above, told us he suffered from injuries related to his time in the military. The backpack medicine team visited his encampment every few months, but Ted had not seen them in a year because he had to move to a more secluded location (Image 5):

There is a really great group of doctors who come through here on foot. I think they come through maybe every few months ... I haven’t seen them in a little while and it seems like every time they do, they’ve asked about me, but I haven’t actually talked to them. My sister has talked to them ... I don’t know if they’ve been down here or not. Or if I’ve just missed them because I’m off in the bushes now, further away, or if they just haven’t been here in a while.

In adapting to sweeps, unhoused people relocated to hazardous, riskier, often less visible spaces, an outcome that had detrimental impacts on health. Moreover, this was at odds with public health efforts to locate people, provide on-site services, and maintain consistent contact, further magnifying the harm of social exclusion on unhoused people’s health.

3.3. Abatements increased hostility and distrust between unhoused people and authorities, especially law enforcement

Orders to move were commonly carried out by or alongside law enforcement, resulting in frequent tense, hostile interactions between unhoused people and police. Several participants mentioned their efforts to be friendly and stay on the “good side” of police and abatement workers. Some recounted positive interactions, in which specific police officers offered support. However, such interactions were rare. Most commonly, participants reported that police officers used their authority to harass, disrupt, and, notably, to send the message that unhoused people were unwelcome. Ted, introduced above, was convinced that the purpose of the sweeps was not to clean up encampment sites or promote sanitation, but to cause suffering to the extent that unhoused people do not, or cannot, return. From his perspective, causing distress to unhoused people was itself the objective. He referred to abatements as a form of “state-sponsored harassment.” He told us about one morning when he returned to his encampment to find his tent and belongings were gone:

Slowly but surely, [abatement workers] have come more frequently, but cleaned up less. They’re just trying to bounce us from place to



Image 3. June 2021. A small section of the Columbus Park encampment, referenced by Martha as a site that will eventually be swept. The large encampment is located on empty, open lots adjacent to San Jose Mineta International Airport, which were razed and abandoned decades ago to create a flight path. The encampment population swelled during the COVID-19 pandemic.



Image 4. July 2018. The remainder of a campsite near the Guadalupe River, a secluded, forested area where Nina preferred to stay hidden from sweeps. Sites at the bank of the river were prone to being swept away by seasonal flooding.



Image 5. August 2018. Ted's former encampment under the freeway overpass, occupied by his younger brother. We reached this site by traversing the unpaved path between the freeways and creek system. We hiked along the creek, crossed an abandoned train rail, and jumped over security gates to access this location. Ted relocated from this section to an even more secluded area in a nearby field.

place hoping that we don't come back Most of the time the cops come down the minute the [abatement workers] are here. Cops let anyone who's still around know that they can no longer grab their stuff. Whatever is left now belongs to [the abatement workers]. People gotta get out of here or they'll be arrested ... Now, they don't clean up any of the garbage. What they do is they just take our personal property if we haven't been able to move it out in time.

Ted's descriptions of the aggravation and grief caused by law enforcement during abatements were echoed by several other participants. Izza is a Latinx transgender woman in her fifties who has been unhoused in SCC for over ten years. When we met her, she and her partner were staying in a collection of tents, cardboard, shopping carts, and tarps alongside a fence surrounding a vacant lot that had been cleared for a construction project. During the daylight hours, the couple

pushed a shopping cart with five-gallon water containers and a small dog to a sidewalk with tree shade near a strip mall parking lot. By moving to the shade, Izza risked being noticed and encountering police, but decided it was worth the momentary reprieve from the heat. She told us that from her perspective, the police were the source of instability and greatest misery:

(Translated from Spanish) Things have been awful. There has been a lot of trouble. Not only with other people, but with the police. They are very cruel. They give me citations for no reason, they tell me to move - all in the same day. Throw me out, and look through my things for no reason. They treat me like I am a criminal. I will tell you, my only crime is not having a place to live or sleep in. Even on rainy days they don't have compassion, they kick me out, too, and we get all wet. We have had to move too many times in the same night.

Steven, a Black man in his fifties, occasionally stayed at the Bassett encampment when he was unable to get a bed at the large homeless shelter. He became unhoused four years prior, when his wife's terminal illness put their family in major medical debt. Staying near the train tracks in a tent, working to recover from financial and emotional grief, Steven grappled with what he viewed as law enforcement's indifference toward people's personal hardships. He viewed sweeps as a form of harassment that worsened an already painful period in his life:

The police, when they [sweep], they come on the premises at 6 o'clock or 7 o'clock in the morning, beating on people's tents, say, "Hey. Come on out here. We've got some goodies for you." And then you find out it's the police. They serve you, put a notification on your tent. That's their strategy. They come in their gear and all that. And there's nothing you can do. [Police,] why are you bothering me? You see what I'm going through. Why are you over here bothering me? Some of these encampments are clean. Some of these encampments are kept well up. The police are aware, but it's harassment.

Maria, introduced above, described her efforts to de-escalate the stressful encounters with abatement authorities at the Bassett encampment, back when the site was swept every three months. She recalled when the police tried to intimidate her into leaving ("running"), but she remained, refusing to be treated like a criminal when she had done nothing wrong in her mind:

Packing our bags, packing our carts, and moving to a different spot, that's tough ... I bribe [abatement authorities]. I make them burritos. I give them a sandwich and water ... But they bring a [police] officer. They don't scare us! Maybe they can help us instead of trying to scare people! The [unhoused] people that get scared, they all run. They see a cop, they run. But why are you guys running? They'll go, "Run, Maria, run." Why am I gonna run? Why should I run? I haven't been in trouble since 1988, and that was just for tickets.

The psychological stress and dehumanization experienced by unhoused people, resulting from abatement practices oriented around law enforcement, fortified participants' skepticism and distrust of authorities.

3.4. Distrust in law enforcement increased self-policing and interpersonal violence in unhoused communities

I want the police officers to apologize for all these years, for degrading my humanity ... I'm just so angry every time I see them. Oh, my God, if I could just ... Maybe they'll disappear, because you made my life pure hell, every time I walk down the street. Every time. Every time.

Alexa, a Black woman in her forties, who is quoted above, expressed her outrage at the treatment she received from the police while living unsheltered on the streets. Partly due to the hostility spurred by abatements, law enforcement was largely viewed by participants as a threat and risk. As a result, participants often refused or were reluctant to

contact or interact with police, even in serious, life-threatening situations. To participants, contact with police placed them at greater risk of harassment and arrest, which outweighed the potential benefit of protection. For example, Miranda is a Latina woman in her fifties who was born and raised in San Jose, and was unhoused for several years, but was living in supportive housing when we met her. She recalled the day, five years prior, when her ex-husband was fatally stabbed in a large encampment north of downtown San Jose, known as the Jungle. Miranda called 911 for an ambulance, angering other residents of the encampment:

Because of everything that is going on, a lot of [unhoused] people take justice into their own hands. Which they shouldn't ... They don't trust the cops at all ... Before my ex passed away, they stabbed him up there in the Jungle. I had to [call] 911. Had to wait for enough officers to go down there. They had 15 officers behind me carrying their guns ... I pointed out the direction where my ex was, because he didn't want to get help. He had been stabbed six times ... Everybody was mad at me because I called the cops. Dude, I didn't call the cops, I called the ambulance! But they assume I sent the whole city of San Jose. Still, I think I did the right thing.

In the absence of police, Miranda described that people "take justice into their own hands" in encampments. Over the course of the interviews, several participants described brutal accounts of violence in the encampments, including sexual violence. Sammy, who is introduced above, informed us in detail that in the prior year, she was kidnapped, and physically and sexually assaulted by a stranger. Not trusting law enforcement, and viewing them as ineffective, she did not inform the police or file a police report. One morning, months after the assault, she saw the attacker on the street. When she told her husband, he was determined to seek retribution and settle matters himself. She pleaded with him that retribution was not worth the risk of being caught by law enforcement:

[In encampments] you have no restrictions, you have no rules, except for the rules of law. Even those have been bent, broken, and moseyed around. Even the law will overlook you sometimes. I didn't report [the attack], but [the police] already knew [about the attacker], and that guy's still out there. I encountered him once riding my bike. I almost crashed my bike as soon as I saw him. I rode back as fast as I could, and [my husband was] like, "what was that about?" I told him, "that was him." My husband was like, "I will chop his head off right now." I said, "you can't do that. There's too many cameras, you can't do that. I'm not condoning the [assault], but you just can't do that." That's just too much to have to put up with, and I don't want that on my conscience, or on his conscience.

As noted in Finding 1, many congregate encampments were self-managed, with residents developing their own cultures and systems for surviving. There were several examples of self-managed encampments that were operated by tight-knit and supportive communities, such as the one Ted described. In most cases however, self-management in encampments involved self-policing, and, at times, forceful and violent enforcement of informal rules. Nina, who is introduced above, told us about the unofficial "leader" of her encampment by the creek, who created and enforced rules. Interpersonal violence between unhoused people frequently erupted as a result:

Everybody has their little ways. Just recently, we've been having a problem with Little Hitler, I call him. He's trying to be a Hitler here. He has a new rule, and I don't live by his rules ... Basically we're all together, and we try to live together. If we can't, then we either tell the person higher up. If [higher ups] don't do anything, then we try to not be vigilantes. But me? I'm tired. I'm going to hit you if I feel threatened. I'm going to hit you. It's not like I want to do it, but I'm going to do it. If I feel like you're going to come and ruin my space or ruin anything for me or mess with mine, I'm going to do it.

Nina resorts to physical violence to protect herself because she cannot rely on others to help her - not the police, or even others in her encampment. In this context of exclusion from forms of support, she described that encampments can become susceptible to influence from organized crime.

[The gangs] had their laws down there. If you weren't wanted there, they would get your stuff, pack you up, and throw you out. You were gone. A lot of killings, a lot of bodies. Lots of, lots of bodies. That is MS-13's territory. What do they do when they do something? There were a lot of murders, a lot of things like that.

With no formal ways to pursue justice, these conditions entangled some unhoused people into cyclical, entrenched forms of violence, with serious health outcomes. For these individuals, encampment sweeps were an upstream, fundamental cause of downstream interpersonal violence, injury, and death.

4. Discussion

Drawing from unhoused people's narratives of their lived experiences in encampments in SCC, we described four interconnected ways abatements harmed their health: 1) forced relocation and property seizures severed people from possessions, resources, and social supports needed to sustain health; 2) abatements were the underlying reason people relocated into more isolated, hazardous, and remote spaces, which amplified health risks while reducing access to support systems such as health outreach workers; 3) abatements were viewed as a form of harassment, a persistent source of distress and tension between unhoused people and authorities; and 4) distrust caused unhoused people to avoid law enforcement and other authorities altogether, increasing self-policing and the risk of interpersonal violence in encampments. In these ways, we argue that unhoused people's health is harmed directly through encampment sweeps, or through the perilous social environmental conditions created by them.

There are several implications of this research and areas of needed future inquiry. First, in light of the health harms of abatements, we hypothesize that abatement practices may be a key structural factor explaining the soaring numbers of people who are dying while unhoused in SCC. The number of unhoused people dying annually in SCC has increased from 60 deaths per year in 2011, to 203 deaths in 2020 - rising almost every year (Jordan & Wells, 2017), a stark indication of worsening health in this population. Abatement rates are not routinely reported, but an audit of San Jose homeless services showed that in an overlapping time frame, there was a sharp increase in abatements taking place - one estimate indicating a leap from 49 sites in 2013 to 564 sites in 2018 (Office of the City Auditor San Jose, 2018). Overlapping increases do not necessarily indicate a relationship, but given our findings on the health harms of abatements, further research is warranted investigating the scope, dimensions, and directionality of the relationship between abatement practices and health outcomes such as mortality.

Given the growing body of research showing the consequences of abatements on human health, findings like these call into question the practical effectiveness and acceptability of common abatement practices. Abatements have been shown to have destabilizing effects, major health consequences, and cause psychological suffering to unhoused people. They create logistical burdens to public health outreach efforts. Abatements also counter public health logic and street medicine practice recommendations for unhoused people, which call for increasing stability, developing trust, and maintaining ongoing contact with outreach workers and health systems (Stefanowicz et al., 2021; Withers, 2011). In some regions, moratoriums and restrictions on abatements have been enacted given the potential health harms. In California, some counties (e.g., Alameda County) placed limitations on encampment abatement practices, restricting abatements when there are no shelter beds available (per the 2018 decision by the 9th U.S. Circuit Court of Appeals cited

above). In response to COVID-19, several counties in California, including SCC, initially enacted moratoriums on encampment abatements to reduce capacity in the shelter system and allow unhoused people to practice social distancing outside. However, since March 2021, abatements have resumed.

One theme that is apparent through the interviews is that society's heavy reliance on law enforcement in the management of encampments has long term, serious ramifications on people's health. As an alternative to current practices, researchers and advocacy organizations have supported restructuring abatements in favor of models that are less police-oriented and more driven by public health. These can involve specialized police units that exclusively focus on homelessness (e.g., Wichita, Kansas), that respond alongside providers or social workers (e.g., Philadelphia, Pennsylvania; Eugene and Portland, Oregon), and models where service providers or social workers respond to calls without automatic police involvement (e.g., San Francisco, California; New York, New York) (Batko et al., 2020; Townley & Leickly, 2021). In 2020, the San Jose Police Department began a small new pilot program, Mobile Crisis Assessment Team (MCAT), partnering police officers with behavioral health teams to provide a police presence in encampments geared toward de-escalating conflict, crisis management, and harm reduction, instead of only enforcement. These alternative models to police-focused abatements are promising strategies in reducing the health harms of abatements if they are appropriately scaled.

There is also an urgent need for improved documentation, reporting, and tracking of abatement practices, such as types of outreach efforts provided, prevention efforts, demographics of unhoused people who are posted and swept, and abatement-related incidents. In most counties, there is no integrated system for documenting abatements, and sweeps are conducted by a network of organizations - public, private, non-profit. There is no systematic, coordinated way to track, analyze, or report the effectiveness of abatements, nor to assess accountability during abatements. Such data and coordinated tracking systems are needed in local governments to understand the impact of sweeps on unhoused people and the broader community.

Fundamentally, the vast majority of people who are unhoused are living in encampments because there is no alternative when the cost of living is substantially higher than wages. A home is a necessity for basic health and safety. There is an urgent need for long term housing for unhoused people, an issue that requires stronger housing policies beyond the local level, needing to be addressed at the state and federal levels. At the local level in SCC, there is a commendable focus on prioritizing permanent supportive housing, but given the severity of the current housing crisis, there is also an immediate need for wide ranging solutions to unhoused people's health needs. Recognizing the persistent harms that stem from living on the streets for thousands of people, alternative interventions include moving people into hotels, expanding capacity in the shelter systems, providing basic health services in encampments (e.g., food, water, bathrooms, hygiene, medical services), creating safe parking locations with supportive services, funding substance use treatment outreach, and bolstering street medicine outreach. Policy efforts should also focus on interventions that prevent low income individuals from losing housing, such as investments in affordable housing and stronger eviction protections for renters.

There are limitations to this study that require future research. One limitation is that we focused on the health effects of abatements in encampment settings and did not examine how abatements shape people's medical care in health care settings. People of different genders, races, ethnicities, sexualities, and documentation statuses have wide-ranging experiences with encampment dynamics, law enforcement, and abatement authorities that we were not able to analyze fully for this manuscript. In the interviews with unhoused participants, we did not differentiate between abatement practices of different magnitudes (e.g., large-scale abatement of congregant, durable encampments; routine move-along orders of individuals).

The health harms of encampment abatements are preventable. It is common in health research to focus on individual-level factors, such as age or health comorbidities, including substance use or mental health. Another frequent area of focus is social determinants of health, which can include built environments or social networks. This analysis contributes to a growing body of evidence that demonstrates how structural determinants - such as *social policies* created to manage homelessness - ultimately undermine their health. As the numbers of unhoused people's deaths continue to soar every year, there is an urgent need to reimagine social policies with the goal of reducing preventable suffering and untimely deaths of unhoused people.

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TAB 20

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 **Dr. Stephen Hwang** on his affidavit dated May 6, 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 Counsel

1 your own research. And so I take it you don't have
2 your own direct research on adverse effects of forced
3 encampment evictions.

4 A. I would clarify that I am an expert in
5 area of homelessness and health and I am very familiar
6 with the literature in this area. My expertise is
7 based not only on the research that I have done
8 personally but the research that has been done by
9 others in the field.

10 51. Q. And I understand. I am just asking you
11 to clarify, you, personally, have not done or
12 participated in any research on the adverse effects of
13 forced encampment evictions?

14 A. That is correct.

15 52. Q. Okay. So you're relying on the
16 literature for that?

17 A. Yes.

18 53. Q. And the only literature that you
19 reference is the article at Exhibit J?

20 A. That article was selected because it is
21 the best and most representative article. There are
22 other articles on this topic which I did not choose to
23 cite in the affidavit.

24 54. Q. I see. And I take it you read Exhibit
25 J carefully before relying on it?

1 rarely introduced to viable shelter or
2 housing options. In San Francisco,
3 California, the vast majority, 91 percent of
4 unhoused people remained outdoors following
5 an abatement and relocation into housing was
6 rare. In Denver, Colorado, unhoused survey
7 respondents reported that in over 80 percent
8 of move-along encounters with police, they
9 were forced to move without receiving any
10 information about supportive services ..."

11 So that's the context of this article and
12 its conclusions. Is that fair?

13 A. That's the context of the state of
14 affairs prior to the publication of the article, yes.

15 64. Q. Right. And so when this article talks
16 about adverse health effects, it's talking about this
17 context of not being introduced to viable shelter or
18 housing options and not being receiving any
19 information about supportive services. Is that fair?

20 A. Yes.

21 65. Q. Now, you may not have been told this or
22 understand this, and it remains subject to some
23 dispute on the evidence. But the region's evidence
24 here is that there is something called "individual
25 housing plans." Are you aware of that term,

1 IHPs or individual housing plans for each and every
2 one of those residents.

3 And part of the IHPs is to keep them
4 connected with supportive services and to find
5 appropriate alternative arrangements. Were you aware
6 of any of that?

7 MS. DOWN: Sorry, can I just clarify. I
8 think you are misstating the actual -- the
9 bylaw, because it doesn't say that "every
10 resident." It just says, "the people, the
11 existing residents."

12 MR. LOKAN: The existing ---

13 MS. DOWN: (Indiscernible).

14 MR. LOKAN: The existing residents as of the
15 date the bylaw was passed. The evidence is
16 that IHPs or individual housing plans are to
17 be developed with each and every one of
18 those.

19
20 BY MR. LOKAN:

21 69. Q. Was that something you were aware of,
22 Dr. Hwang?

23 A. No, I would just clarify that I am not
24 an expert in the nature or the adequacy of the efforts
25 that are being made on the ground.

1 Versus this situation which is six or seven
2 months individual housing plans. And plenty of
3 consultation with the existing residents to provide
4 alternative housing. It's chalk and cheese, isn't it?

5 A. I think you're asking me to opine on
6 this adequacy of services which I have not reviewed.

7 74. Q. No, I am not ---

8 A. I don't think that's appropriate.

9 75. Q. I'm not actually, I am just asking you
10 to assume that what I say is correct. You couldn't
11 carry over -- because it's elsewhere in the evidence
12 and, you know, you're here to provide opinion evidence
13 on assumed facts.

14 And whether you treat is as a hypothetical
15 or, you know, whether I establish that before the
16 court through other means, for now, assume that what I
17 say is accurate. If it's accurate, you can't
18 necessarily extrapolate from this study, can you?

19 A. I would say that the studies -- this
20 study and other studies have examined the impact of
21 forced or involuntary removal of people from
22 encampment sites and to the -- and that -- those
23 findings are generalizable. The -- I think that the
24 -- what you are asking me to opine on is that one can
25 certainly reduce the harms or reduce the number of

1 people that actually are forcibly removed through a
2 period of engagement and offering of options.

3 So certainly, the offering of options would,
4 presumably -- and I have experience with this, like in
5 terms with working with the City of Toronto on this --
6 that engagement with individuals in encampments will
7 be successful in some cases and they will agree to
8 move to -- into other options. But in general, not
9 all will.

10 76. Q. Okay. Certainly, for those that do,
11 there is the avoidance of harm if they agree to leave
12 and for those who want to hold out, at the very least
13 there is a long period of engagement. And they know
14 the option is open to them. And so that might be a
15 harm reduction. Is that fair?

16 A. Yes, I think that is a fair statement.

17 77. Q. Okay. And just another point on Page
18 2. If we can drop down to the following paragraph,
19 there is a sentence that says -- I am trying find it
20 on the page. It says:

21 "... Researchers have shown that abatements
22 result in the loss or destruction of
23 people's property ..."

24 Here we go. We'll see if we can just
25 highlight that for you.

1 A. Yes, I see that.

2 78. Q. Okay. So when we're talking about a
3 particular kind of sweep or abatements in which people
4 lose or have property destroyed, that costs -- that
5 causes cost and stress for those living unsheltered.
6 Do you see that?

7 A. Yes.

8 79. Q. And that again is part of the context
9 of this study. But that's not necessarily the case
10 that we're talking about a six or seven-month efforts
11 to re-house people in other arrangements, is it?

12 A. I would say that for people who accept
13 efforts to move them into either shelter or housing
14 prior to the elimination of the encampment, then that
15 would allow for them to preserve their belongings.

16 But for anyone who is required to move or
17 forced to move without a destination, that will likely
18 result in the loss of belongings and the attendant
19 adverse effects.

20 80. Q. Well, it may or may not. I mean,
21 belongings could be checked for safekeeping, for
22 example. So there would be mechanisms to, again,
23 mitigate that harm, wouldn't there?

24 A. It is correct that a municipality could
25 employ methods that would reduce this harm.

TAB 21

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 SAHIL GUPTA

I, Doctor Sahil Gupta, of the City of Toronto, in the Province of Ontario, AFFIRM AND SAY:

1. The facts and opinions contained in this affidavit are based on my own clinical practice as well as reliable research in this area, where noted.

Mandate

2. Waterloo Region Community Legal Services has commissioned me to prepare an expert report in the litigation of *The Regional Municipality of Waterloo and Persons Unknown and to be Ascertained*.
3. I have been asked to provide my opinion on the following topics:
 - a. The health risks associated with living unsheltered;
 - b. Barriers patients face in accessing emergency shelter;
 - c. The health benefits to having some form of shelter;

homelessness. I treat structurally vulnerable patients living with substance use disorder, and develop programs and policies to provide medical care to this unique population. I have been providing health care to the unhoused and/or precariously housed for my entire practice. Additionally, my primary academic focus in emergency medicine has been around improving health equity for patients facing structural barriers from factors such as poverty and homelessness.

8. I am a member of the Canadian Association of Emergency Physicians (CAEP), which aims to keep Canadian emergency physicians informed of developments in the clinical practice and addresses political and societal changes, which affect the delivery of emergency health care.¹ I lead the CAEP Health Equity Committee, which aims to build a community of practice with individuals across Canada who are doing similar work. The themes I comment on in this affidavit relating to displacement and to unhoused people accessing emergency departments are emerging in large, medium, and small cities across the country.² Although I have not visited the encampment in Kitchener or attended the emergency department in Kitchener or Cambridge, I am confident that the impacts I observe daily are comparable.

Health Risks Associated with Unsheltered Living

9. In my professional experience, individuals experiencing homelessness present to the emergency department typically during a crisis or a period of significant destabilization. People experiencing homelessness are more likely to use the emergency departments as their first and

¹ Canadian Association of Emergency Room Physicians, “Who we are,” accessed August 14, 2025, <https://caep.ca/who-we-are/>

² Carolyn Snider, Sahil Gupta, and Catherine Varner, “Homelessness on the emergency medicine frontline: Canada’s growing crisis” *Canadian Journal of Emergency Medicine* 26, 772-774 (2024).

usually for repeat care. Common medical and psychological conditions associated with living unsheltered or rough include:

- a. Physical health issues, such as soft tissue infections, cellulitis, wounds, abscesses, and other skin conditions. Also respiratory infections including pneumonia, and injuries resulting from assaults or sexual assaults.³
- b. Cold-related injuries, including hypothermia, trench foot, frostbite, and subsequent infections, I have personally treated people who have died from hypothermia;
- c. Heat-related illnesses, including dehydration, severe sunburn and complications from inadequate access to nutrition;
- d. High risk of overdose and death, which is significantly elevated among those living unsheltered. I have personally treated people who have died from overdose while living unsheltered;
- e. Mental health crises and situational distress, including:
 - i. Exacerbation of mental health symptoms such as panic, anxiety, emotional distress, and general dysregulation;
 - ii. Severe sleep deprivation, leading to dysregulation of both body and mind;
 - iii. Increased substance use to remain awake, to dull the pain of physical ailments, or to cope with prolonged exposure to the elements; and,

³ Stephen Hwang, “Homelessness and Health”, *Canadian Medical Association Journal*, 164(2) (2001): 229-233.

- iv. Unsheltered individuals (those who “sleep rough” without a tent) are more likely to report recent victimization, when compared to people staying in emergency shelters.⁴

10. People experiencing homelessness are more likely to rely on acute care than preventive care, increasing morbidity and mortality from chronic health conditions.

11. Unsheltered women (those who “sleep rough”) are particularly at risk for negative health outcomes, including interpersonal violence. Compared with women who stay in emergency shelters, unsheltered women have three times greater odds of reporting fair or poor physical health, 12 times greater odds of poor mental health, and higher rates of non-injection drug and alcohol use, as well as an increased risk of recent sexual assault. Despite this, they are less likely to have recently utilized health services than women who stay in emergency shelters.⁵ Women experiencing homelessness face higher risk of sexual and physical assault than men experiencing homelessness.⁶

12. People experiencing homelessness (sheltered and unsheltered) are also more likely to use substances and experience substance-related harms, including fatal overdose, which accounts for up to 24% of all-cause mortality in people who are homeless in some studies.⁷ Patients experiencing homelessness admitted for substance-related conditions often have longer

⁴ Jessica Richards and Randall Kuhn, “Unsheltered Homelessness and Health: A Literature Review,” *American Journal of Preventative Medicine Focus*, 2(1) (2023): 100043.

⁵ Adeline M. Nyamathi, and Lillian Gelberg, "Sheltered Versus Nonsheltered Homeless Women," *Journal of General Internal Medicine* 15, no. 8 (2000): 565-572.

⁶ Suzanne L. Wenzel, Paul Koegel, and Lillian Gelberg, "Antecedents of Physical and Sexual Victimization Among Homeless Women: A Comparison to Homeless Men," *American Journal of Community Psychology* 28, no. 3 (2000): 367-390.

⁷ Danielle R. Fine et al., "Drug Overdose Mortality Among People Experiencing Homelessness, 2003 to 2018," *JAMA Network Open* 5, no. 1 (2022): e2142676-e2142676.

TAB 22

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 **Dr. Sahil Gupta** on his affidavit dated August 15, 2025, taken via Zoom videoconference on consent of the parties on January 7, 2026.

APPEARANCES:

KARTIGA THAVARAJ, Ms. Counsel for the Applicant
GRETA HOAKEN, Ms.

ASHLEY SCHUITEMA, Ms. Counsel for the Respondents
JOANNA MULLEN, Ms.
CHARLOTTE CAHIL, Ms. Student-at-Law

MERCEDES PEREZ, Ms. Amicus Curiae

1 ---

2 A. Yeah, I know, thank you.

3 49. Q. --- linguistic, at least, frontiers in
4 this case. So that's what I mean when I am saying --
5 say, "living indoors" is living in a physical
6 structure that is permanent. Okay?

7 A. Okay.

8 50. Q. Okay. So turning to your affidavit,
9 when you use the word "unsheltered" in your affidavit
10 -- so to continue this discussion -- this includes
11 living in encampments, correct?

12 A. In this particular affidavit, you know,
13 and that is one of the points I actually wanted to
14 bring up a little bit.

15 Is there -- to me, especially after reading
16 Dr. Koivu's thing, I think, you know, there is a
17 spectrum of homelessness that sometimes is under-
18 appreciated in the literature, and in clinical
19 contexts, that we see day-in and day-out, that I just
20 wanted to kind of bring some attention to.

21 So, you know, there's a couple of points,
22 actually, in the affidavit where I may reference
23 "unsheltered" where I am actually mentioning where
24 somebody is actually living without any even -- like,
25 the -- as you mentioned, the term "permanent

1 physically," but may be impermanent physically
2 setting. So whether that be an encampment, a tent,
3 you know, like a -- without any -- like, you know,
4 when I mentioned unsheltered there in a couple of
5 points in the affidavit, I may mean somebody without
6 any sort of, you know, barriers to the environment,
7 community, around them.

8 But, yeah, so I just wanted to actually
9 bring that up, we can discuss that further as needed.
10 But there is a differentiation that I make and comes
11 up in my clinical practice around people that, you
12 know, don't live in permanent physical structures.
13 But that differentiation based on kind of where they
14 live and where they conduct their day-to-day
15 activities.

16 51. Q. Okay, let me just make -- this is all
17 quite important, Dr. Gupta, so we're going to go
18 though it in some detail. Let me just make sure I
19 understood what you just said to provide the jumping-
20 off point for us.

21 So are you saying that at a couple of points
22 in your affidavit, when you use the word
23 "unsheltered," you are including somebody who lives in
24 an encampment versus other places in the affidavit
25 when you use the word "unsheltered," you may not be

1 including someone that lives in an encampment?

2 A. I am just going to reference exactly.
3 There's two points in the affidavit specifically that
4 I wanted to bring attention to.

5 52. Q. Okay. And maybe I can help you as
6 well. I was going to take you first to Paragraph 9 of
7 your ---

8 A. Sure.

9 53. Q. --- affidavit.

10 A. Yeah.

11 54. Q. And maybe this is what you were going
12 to bring up. I was going to ask you -- I was going to
13 put it to you that when you use the word "unsheltered"
14 at Paragraph 9 of your affidavit, that includes people
15 who live in encampments. Would you agree?

16 A. I'm just ---

17 MS. SCHUIITEMA: So maybe you'll let him get
18 there for a second.

19 THE WITNESS: Yeah. If you wouldn't mind
20 actually even if you want to pull up the
21 affidavit and mention, like kind of go
22 through exactly which points?

23 MS. SCHUIITEMA: Sure. Sorry, when I take a
24 sip of my coffee, I get a thumbs up on the
25 -- across the screen. I don't know how to

S. Gupta (Cr.-Ex.) - 17

1 turn that off.

2 MS. THAVARAJ: Like I said, the Zoom world.

3
4 BY MS. THAVARAJ:

5 55. Q. So this is Paragraph 9 of your
6 affidavit, Dr. Gupta. And I am only raising it
7 because you said ---

8
9 --- SCREENSHARE

10
11 A. Yeah.

12 56. Q. --- that you had -- was this one of the
13 paragraphs that you said you sort of want to -- went
14 back and looked at Dr. Koivu's affidavit, you
15 reconsidered that maybe this paragraph -- or is this a
16 paragraph that you would say includes when you used
17 the word "unsheltered" in this paragraph that that
18 includes people living in encampments?

19 A. I'll just take a look. Yes, I would --
20 I specifically wanted to bring up one point after.
21 But, you know, in this particular paragraph, I am just
22 going to re-read it just for -- thank you for going
23 down for me, just one second.

24 Yeah, in -- yeah, in this particular
25 section, I would include people who are living in

1 encampments and people who are not living in
2 encampments.

3 But, you know, one of the points, if I may
4 clarify, is that even within that there are some
5 trends that I comment on here. That are much
6 different for people that reside in a tent-based or,
7 you know, some sort of physical barrier structure than
8 there are -- and again, I kind of go back to that
9 continuum where if somebody has a tent or even non-
10 permanent shelter, they -- the described risks vary
11 based on what level of protection they have from the
12 elements, what level of community they may have around
13 them. And the exposure risk they have to the -- to
14 kind of the different circumstances around them.

15 So I do -- that's kind of what I wanted to
16 kind of just as we go through this more deeply. Is
17 that, yes, these risks often compare permanent to non-
18 permanent shelter.

19 But what's inadequately described especially
20 in a -- for -- you know, as part of my clinical
21 experience seeing these individuals, is the
22 differences that exist across the continuum for people
23 that, you know, are -- don't have any sort of
24 protection. Whether that be in the sense of community
25 and in the sense of -- yeah, any kind of non-permanent

1 shelter barriers compared to people that do.

2 57. Q. Okay. Thank you, sir. I understand
3 all that and we are going to get there. For the
4 moment, I am going to ask you some very specific
5 focused questions. And I am going to ask that you try
6 to answer those questions just so that we can get
7 through the examination as we need to.

8 A. Sure.

9 58. Q. So I just want to confirm, you said
10 that this paragraph you would agree that it includes
11 -- the definition or the comments made in this
12 paragraph and the use of the word "unsheltered"
13 includes both people living in encampments and people
14 not living in encampments. Correct?

15 A. That's correct.

16 59. Q. Thank you. And that's because in the
17 literature -- and you cite one that we will go to
18 shortly -- encampments are often a form of unsheltered
19 living. Correct?

20 A. Yeah, and many -- not all literature
21 but some -- in some of the literature, in some of the
22 literature that I quote, they don't, unfortunately,
23 have the granularity to differentiate unsheltered
24 environments in the studies that they do. Correct.

25 60. Q. Right. And so they don't have the

S. Gupta (Cr.-Ex.) - 61

1 affidavit about medical injuries that can arise for
2 persons living in a tent when they think that the tent
3 can offer them protection.

4 Do you recall that section of the affidavit?

5 A. I do not. I would ---

6 193. Q. Okay.

7 A. We can go over it if appropriate.

8 194. Q. That's fine. Yeah, I am happy to just
9 ask you those questions then.

10 Let's start. Do you agree that there are
11 medical issues associated with living outdoors that
12 can still arise when someone lives inside a tent?

13 A. Yes.

14 195. Q. Okay. Frost bite, hypothermia ...?

15 A. Yeah, and again, I'll just kind of
16 mention that often here what I am doing is in
17 comparing against somebody who does not have access to
18 physical, permanent, structured shelter because of
19 lack of access, lack of other things especially kind
20 of the protection from the elements bit. Like Section
21 A kind of which is I think which you are referencing
22 right now.

23 I am not denying that, you know, living in a
24 permanent, physical structure provides more elements
25 and more safety than living in an encampment. What I

1 am comparing against is the (indiscernible) spectrum
2 of homelessness where so many patients that I see
3 don't -- cannot access shelter because they're full or
4 it doesn't meet their needs or other elements like
5 that.

6 196. Q. Okay, so I agree with you. So I think
7 we're both focused on the same things. So let me just
8 confirm, you are saying that Paragraph 16 of your
9 affidavit, you're focused on assessing the impacts to
10 somebody living outdoors in a tent versus living
11 outdoors, not in a tent?

12 A. Correct.

13 197. Q. Okay, and that is the universe within
14 which I am asking my questions currently, okay?

15 A. Okay.

16 198. Q. Okay, so do you agree that the medical
17 issues that I described, frost bite, hypothermia,
18 trench foot, those can all still occur when someone is
19 in a tent?

20 A. Yes, it's relative risk reduction. So
21 what I mean by that is that there's less -- less risks
22 of that, you know, like again, I don't have a
23 quantification.

24 But in my clinical experience, somebody
25 let's say who is, you know, sleeping on, you know, a

TAB 23

**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 KAITLIN SCHWAN

(AFFIRMED AUGUST 15, 2025)

I, Kaitlin Schwan, of the City of Los Angeles, California, MAKE OATH AND SAY AS FOLLOWS:

1. The facts and opinions contained in this affidavit are based on my own research and experiences as well as other reliable research in this area, where noted.
2. I am the former National Director of the Women's National Housing and Homelessness Network and a Senior Researcher at the Canadian Observatory on Homelessness. I am an Associate Professor of Family Medicine at the University of Southern California's School of Family Medicine. I am appointed Assistant Professor, Status Only, at the University of Toronto's Faculty of Social Work. I am the former Senior Researcher for the UN Special

32. The culmination of all of these factors means that some women and gender-diverse persons experiencing homelessness may elect to – or be forced to – reside outdoors or in encampments given: (1) threats to physical, emotional, and psychological safety within homeless shelters (particularly co-ed congregate shelters); (2) previous experiences of trauma and violence in homeless shelters; (3) increased risk of exposure to COVID-19 within shelters; (4) the inaccessibility of many homeless shelters for persons with disabilities; and (5) the overall lack of women-specific homeless shelters, and shelters for people outside the gender binary. For many marginalized women and gender-diverse persons, the confluence of these factors makes residing in an encampment a rational or necessary choice amongst a number of minimal (or non-existent) options.²⁹

PHYSICAL SAFETY IN ENCAMPMENTS

33. In my research on homelessness among many women and gender-diverse people, I have had the opportunity to visit numerous encampments across Ontario over the last several years and meet with women residing in them. While the women I've met with have reported safety concerns related to residing outdoors and in encampments (e.g., vulnerability to physical violence), overwhelmingly women state that residing in an encampment is a *safer* option than the other options available to them (e.g., accessing a shelter, returning to an abusive relationship, etc.). I have not visited the Kitchener encampment, but it has been my observations that the conditions of encampments and the experiences within them are often quite similar community to community.

²⁹ For first-person accounts of these constrained choices, see <https://www.thestar.com/news/gta/2020/12/07/were-the-vulnerable-ones-why-women-living-in-torontos-public-parks-during-covid-19-choose-outdoor-tents-over-indoor-shelters.html>

34. Furthermore, my conversations with women residing in encampments indicated that the violence they face is often not from others within the encampment, but from housed persons (mostly men) outside of the encampment. This was reported by women themselves, and from City staff and outreach workers. This suggests that while encampments are often portrayed as dangerous places, particularly for women, this danger is embedded within broader societal patterns of violence against women amongst the housed public.

35. My engagements with women residing in encampments across Ontario suggest that encampments can buffer women from exposure to violence, harassment, or abuse that they might otherwise experience when residing outdoors alone, or within situations of hidden homelessness. For example, I have met numerous women encampment residents in Toronto who described how their relationships with other people living in encampments was a protective factor because they could ‘look out for each other,’ warn each other of dangerous or exploitive men, watch over each other’s tents and possessions, and remain with partners or pets (e.g., dogs) who provided physical safety.

36. Nonetheless, feeling *safer* is not the same as feeling *safe* within an encampment, and some women expressed concern for their safety and security. In response, some women had developed innovative means to protect themselves. For example, as a security measure, one encampment resident I met in Toronto had extended a measuring tape around her tent. The measuring tape created a distinctive sound when it was walked over, alerting her that someone was nearby and she needed to be alert for intruders. Encampments enabled the

adoption of such security systems for some women, who often used all available means to keep themselves safe.

37. My engagements with women residing in encampments indicated that encampment evictions often eroded the security systems, safety measures, and mutual aid systems women had adopted for themselves within encampments. These were not easily re-established.

HOMELESSNESS AS A PERSONAL CHARACTERISTIC LINKED TO DISCRIMINATION, STEREOTYPE, STIGMATIZATION, CRIMINALIZATION AND SOCIAL EXCLUSION

38. Based on my experience working with people experiencing homelessness and from research done by myself and others in this field, it is my opinion that homeless persons are subject to distinctive historical disadvantage, pervasive stereotyping, stigma, criminalization, and systemic discrimination on the basis of the personal characteristic of homelessness. The experience of homelessness becomes deeply embedded in personal identity such that it is difficult to change. Many people experiencing homelessness have less political influence than other groups and face major obstacles to voting. Politicians rarely describe people experiencing homelessness as constituents whom they represent but rather refer to them as social problems to be addressed in the interests of other constituents.

39. As documented by the UN Special Rapporteur on Adequate Housing in her 2015 Report to the UN Human Rights Council, the experience of homelessness goes beyond the deprivation of physical shelter. The Special Rapporteur explains that “being deprived of a home gives rise to a social identity through which “the homeless” is constituted as a social

TAB 24

THIS IS **EXHIBIT “B”** REFERRED TO
IN THE AFFIDAVIT OF KAITLIN SCHWAN
AFFIRMED REMOTELY BEFORE ME AT THE
CITY OF LOS ANGELES DURING A ZOOM VIDEOCONFERENCE
IN ACCORDANCE WITH O.REG. 431/20,
ADMINISTERING OATH OR DECLARATION REMOTELY
THIS 15th DAY OF AUGUST, 2025

A handwritten signature in blue ink, appearing to read 'Amy Brubacher', is written over a horizontal line.

AMY JOY BRUBACHER
A Commissioner, etc.,
Province of Ontario,
While a Barrister and Solicitor.
LSO # 74929B

The Pan-Canadian Women's Housing & Homelessness Survey

Kaitlin Schwan • Mary-Elizabeth Vaccaro

Luke Reid • Nadia Ali • Khulud Baig



The Pan-Canadian Women's Housing & Homelessness Survey

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We would like to extend deep gratitude to our community partner organizations across the country who made this work possible, including:

Alpha House (Calgary, Alberta), Blooming House (PEI), Central Alberta Women's Emergency Shelter (Red Deer, Alberta), Downtown Eastside Women's Centre (Vancouver, BC), Elizabeth Fry Society (Mainland Nova Scotia), Elizabeth Fry Toronto (Toronto, ON), Grenfell Ministries (Hamilton, ON), Genesis House (Winkler, Manitoba), Liberty Lane (Fredericton, New Brunswick), My Sisters Place (London, ON), Margaret's Place (Toronto), North End Women's Centre (Winnipeg, Manitoba), Odyssey House (Grand Prairie, Alberta), Old Brewery Mission (Montreal, Quebec), The Victoria Faulkner Women's Centre (Whitehorse, Yukon), West Central Women's Resource Centre (Winnipeg, Manitoba), Willows Place – Mission Services (Hamilton, Ontario), Sistering (Toronto, Ontario), Sophia House (Regina, Saskatchewan), Stella's Circle (St. John, Newfoundland and Labrador), the Yukon Anti-Poverty Coalition (Yukon), YWCA Banff (Banff, Alberta), YWCA Metro Vancouver (Vancouver, British Columbia), YWCA Moncton (Moncton, New Brunswick), and YWCA Niagara Region (Niagara Falls, Ontario). We would also like to thank the Government of Prince Edward Island's Department of Social Development and Housing for their partnership in distributing this survey across PEI.

You helped recruit participants, alleviate barriers to participation, and support survey completion – all in the midst of a global pandemic. The work that is happening in women-serving organizations across Canada is truly remarkable. It is our hope that this report will contribute to increased resources within this sector so that women-serving organizations can continue to play a vital role in preventing and ending homelessness for women and gender diverse people.

We would also like to thank members of the Women's National Housing and Homelessness Network and the This is Not Home Project Team. We worked together to develop an inclusive survey instrument that reflected the research priorities and lived experiences of women, girls, and gender diverse people

impacted by homelessness and housing precarity. We are grateful for your time, insights, brilliance, and passion. The success of this survey also depended on the talent, generosity, and commitment of WNHHN Steering Committee members, allied community members, and peer researchers who helped design the survey and supported recruitment in their communities. We would like to thank Hannah Brais, Hillary Chapple, Theresa Conroy, Erin Dej, Faith Eiboff, Arlene Hache, Charlotte Hrenchuk, Hilary Marks, Alex Nelson, Kerry Nolan, Abe Oudshoorn, Emily Paradis, Melissa Perri, Manisha Rampersad, Charlotte Smith, and Carolyn Whitzman.

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This report was designed by Hub Solutions at the Canadian Observatory on Homelessness (Sarah Anne Charlebois) and Design Goblin.

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INTRODUCTION

In Canada and around the world, many women, girls, and gender diverse people continue to live in insecure or unsafe housing due to inequity and discrimination.¹ In the Canadian context, these groups experience disproportionate levels of core housing need and poverty.² There is a severe lack of affordable and appropriate housing that meets the needs of diverse women and women-led families, exacerbated by systemic issues that keep this group trapped in poverty and struggling to obtain housing assistance.

In the midst of few housing options and overwhelmed emergency shelters, many women and gender diverse people rely on informal networks for housing or engage in dangerous survival strategies to access shelter and meet their basic needs. The need to remain in situations of hidden homelessness not only places this group at risk of exploitation and abuse, but also renders their needs invisible to mainstream supports, systems, and policy development.³ In the wake of the housing and homelessness crisis facing women and gender diverse people across Canada, the *Women's National Housing and Homelessness Network* (WNHHN) conducted an exhaustive scoping literature review on the causes and conditions of homelessness for women, *The State of Women's Housing Need & Homelessness in Canada* (2020).

Building on this scholarship, the WNHHN conducted a pan-Canadian mixed-methods survey to explore the housing challenges facing women, girls, and gender diverse people. Completed by 500 diverse women and gender diverse people living in communities across the country, this research constitutes the largest national gender-specific survey on housing need and homelessness to date. This national portrait offers critical insight into the unique causes, conditions, and consequences of housing precarity and homelessness for women, girls, and gender diverse people. Developed in partnership with lived experts, service providers, human rights experts, and researchers, the survey explored the following key questions:

- ↳ What are the key housing challenges facing women and gender diverse peoples, and how do they navigate these difficulties?
- ↳ How do public systems (e.g., child welfare, criminal justice) contribute to, and correlate with, housing instability and homelessness in the lives of women, girls, and gender diverse people?
- ↳ What housing rights violations are being experienced by women, girls, and gender diverse people? What barriers do these groups face when seeking justice?

¹ A/HR/C/43/43, No. 9, para 4.

² Canada Mortgage and Housing Corporation. (2019). Core Housing Need Data – By the Numbers. CMHC – SCHL. <https://www.cmhc-schl.gc.ca/en/professionals/housing-markets-data-and-research/housing-research/core-housing-need/core-housing-need-data-by-the-numbers>

³ Schreier, K., Versteegh, A., Pern, M., Caplan, R., Baig, K., Ooi, E., Parkinson, J., Brail, H., Elorri, E., & Panhayan Chaleshtan, T. (2020). *The State of Women's Housing Need & Homelessness in Canada: A literature Review*. Hache, A., Nelson, A., Kratochvil, E., & Malenfant, J. (Eds). Toronto, ON: Canadian Observatory on Homelessness Press. <https://womenshomelessness.ca/literature-review/>

- ↳ How does poverty, housing precarity, and violence intersect over the lifecourse for women, girls, and gender diverse people?
- ↳ What policy and practice change is needed to effectively address homelessness and housing need for women, girls, and gender diverse people in Canada?

In analyzing the data, we identified 10 key findings that demonstrate the unique realities of housing need and homelessness amongst women, girls, and gender diverse people in Canada. On the basis of these findings, we offer a number of recommendations to federal, provincial/territorial, and municipal governments. Implementing these recommendations is critical for advancing housing equity, actualizing the right to housing in Canada, and preventing and eliminating housing insecurity and homelessness amongst women, girls, and gender diverse people.

10 Key Findings

1. Women and gender diverse people experience widespread, chronic housing affordability issues linked to low incomes. Despite this, many participants were not accessing the government benefits they would likely qualify for.
2. Women and gender diverse people experience a wide range of housing adequacy and suitability issues, with safety issues being a common concern that undermines housing stability and leads to housing loss.
3. The chronicity and depth of poverty amongst women and gender diverse people was linked to the insufficiency of social assistance and poorly-paid jobs. In order to survive, most participants had to engage in additional strategies to generate income each month. In many cases this contributed to increased vulnerability or debt, with over a third using credit cards, borrowing money, skipping bills, or using money marts.
4. While eviction was a common experience amongst women and gender diverse participants, many were unable to access legal advice and supports that could have helped. The consequences of eviction were severe for many, including housing loss, homelessness, and continued exposure to abuse.
5. Experiencing a breakup was the primary reason that women and gender diverse people lost their most recent housing. This suggests that housing for this group is deeply dependent upon maintaining a personal relationship with a man, partner, or other person.
6. Homelessness begins early in life for a majority of women and gender diverse people, and is often followed by a chronic, chaotic churn of precarious housing and homelessness situations.
7. Women and gender diverse people reported significant barriers to accessing emergency services, with almost a third being unable to access a bed when they needed one.

8. Women and gender diverse people experiencing housing need and homelessness reported high exposure to trauma and violence, with 75% identifying as a survivor of trauma or abuse.
9. Women and gender diverse people, particularly those from equity-seeking groups, reported significant levels of discrimination from landlords and property managers, in many cases leading to housing loss or barriers to accessing housing.
10. 79% of women and gender diverse people experiencing housing need or homelessness report having a disability. This group reports significant inequities and discrimination on the basis of ability, with severe consequences for many.

BACKGROUND

Housing need & homelessness amongst women, girls, and gender diverse people in Canada – A Statistical Portrait

Homelessness amongst women, girls, and gender diverse peoples in Canada remains both understudied and underestimated, despite indications that these groups disproportionately experience both poverty and core housing need.⁴ This is linked to the ways in which commonly used definitions, typologies, and ways of measuring homelessness have failed to account for the hidden ways that women, girls and gender diverse people often experience housing instability and homelessness.⁵ It is well recognized that women are more likely to rely on relational, precarious, and dangerous supports to survive housing instability,⁶ and are less likely to appear in mainstream shelters, drop in spaces, public spaces, or other homeless-specific services.⁷ They are also more likely to negotiate a number of high-risk survival strategies to obtain shelter and avoid the dangers of the streets and co-ed shelter spaces, including by staying in unsafe and exploitative relationships, and exchanging sex for shelter.⁸

Because of the often hidden nature of their homelessness, women and gender diverse people remain systematically undercounted in common enumeration methods used in Canada (e.g., Point-in-Time Counts) which often focus on measuring absolute/street homelessness and homeless shelter usage, both of which tend to be male-dominated.⁹ This gap in enumeration contributes to the invisibility of women, girls, and gender diverse peoples' homelessness.

As a result, governments are left to make funding choices and design policy solutions in the absence of key data and knowledge. Despite this, the available data we do have suggests the scale of women's housing need and homelessness is much larger than what is currently estimated.¹⁰ In the absence of

4 Canada Mortgage and Housing Corporation. (2019). See also Minnes, S. (2016). Fast Facts: 4 things to know about women and homelessness in Canada. Canadian Centre for Policy Alternatives. <https://www.policyalternatives.ca/publications/commentary/fast-facts-4-things-know-about-women-and-homelessness-canada>

5 Savage, M. (2016). Gendering Women's Homelessness. *Irish Journal of Applied Social Studies*, 16(2), 43-64. See also Pleace, N. (2016).

6 Exclusion by Definition: The Under-representation of Women in European Homelessness Statistics." In P. Mayock & J. Bretherton (Eds.), *Women's Homelessness in Europe* (pp. 105-126). London: Palgrave Macmillan.

7 Bretherton, J. (2017). Reconsidering Gender in Homelessness. *European Journal of Homelessness*, 11(1), 1-21.

8 Baptista, I. (2010). "Women and Homelessness." In E. O'Sullivan, V. Busch-Sperstema, D. Quigley & N. Pleace (Eds.), *Homelessness Research in Europe* (pp. 163-166). Brussels: FEANTSA. See also Maki, X. (2017). Housing, Homelessness, and violence against women: A discussion paper. Women's Shelters Canada. <http://endvaw.ca/wp-content/uploads/2017/09/Housing-Homelessness-and-VAW-Discussion-Paper-Aug-2017.pdf>

9 Bretherton, 2017, p. 1, 21.

10 It should be noted that systemic undercounting of women's homelessness is not unique to the Canadian context. Global trends indicate that women, girls, and gender diverse people are consistently underrepresented in research and statistical portraits of homelessness and housing need. This is in part because many countries fail to include hidden forms of homelessness within their definitions of homelessness and face methodological challenges when seeking to enumerate hidden homelessness (e.g., difficulty capturing its temporary and transitory nature, barriers to enumerating situations of overcrowding) (Bretherton, 2017).

10 Schwab et al., 2020.

more comprehensive data, improving estimations requires that we piece together various types of data in attempts to capture the real scale of women's housing need and homelessness within Canada.

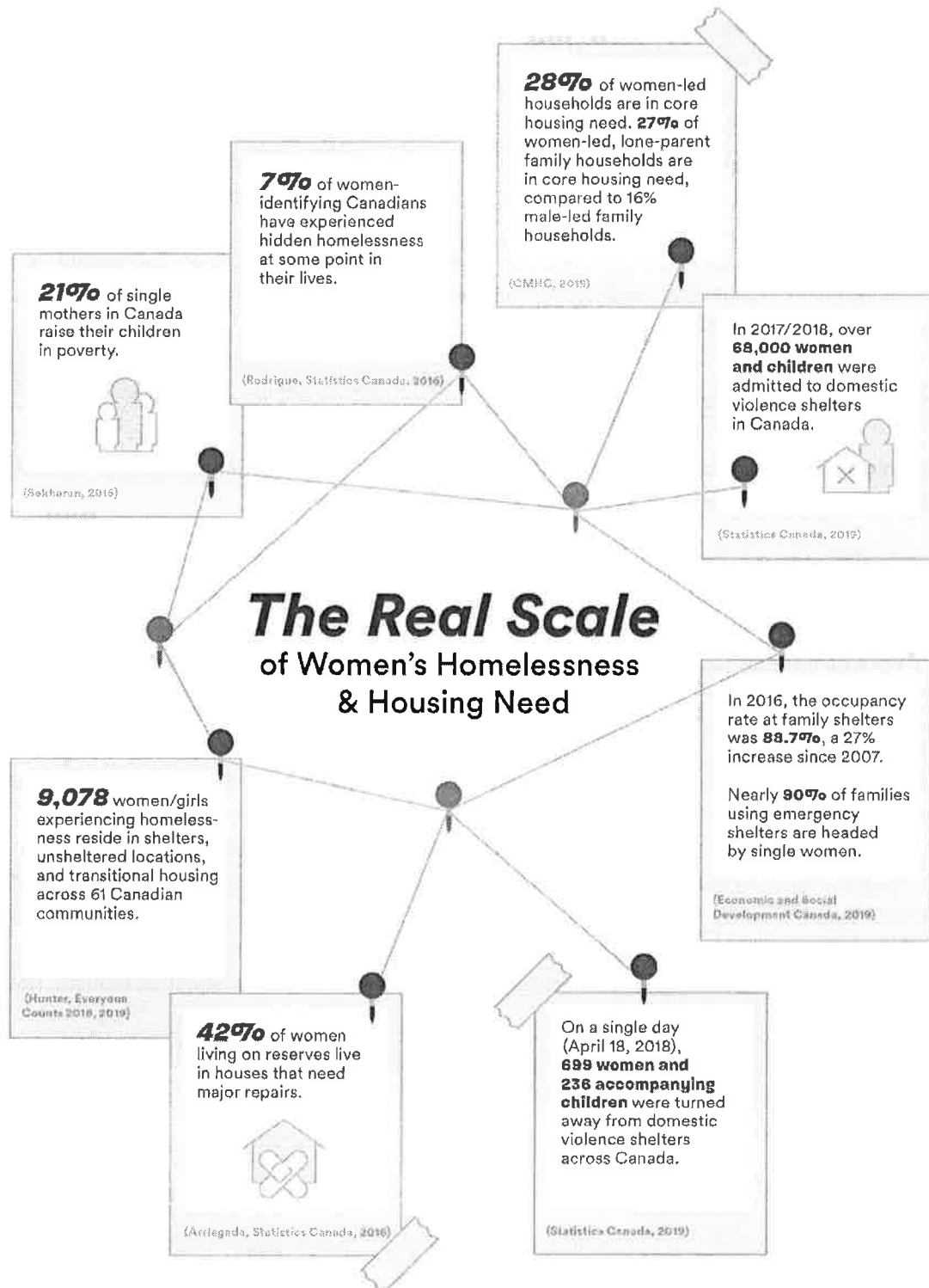


Figure 1. The Real Scale of Women's Housing Need & Homelessness.

As shown in Figure 1,¹¹ efforts to enumerate housing need and homelessness amongst women, girls, and gender diverse people requires triangulating a range of available data, including:

- ↳ Family shelter occupancy rates
- ↳ Women-led families living in poverty
- ↳ Indigenous women's housing need on reserves
- ↳ Rates of abuse and intimate partner violence (IPV)
- ↳ VAW shelter and service usage
- ↳ Women and children turned away from homelessness or VAW shelters due to capacity issues
- ↳ Women and gender diverse peoples experiencing human trafficking

Despite significant data gaps in these data, two data sources are foundational to illuminating the scale of housing instability and homelessness for women, girls, and gender diverse people in Canada: (1) core housing need data, and (2) data on poverty.

CORE HOUSING NEED

Women and gender diverse peoples across Canada experience disproportionate levels of core housing need¹² and housing instability. For example, research indicates:

- ↳ 28% of women-led, lone-parent family households are in core housing need, almost double the rate of male-led, lone-parent households (16%)¹³
- ↳ 57% of renter households in core housing need are female-led families or singles¹⁴
- ↳ More women-led households live in subsidized housing compared to households led by men (44.1% vs. 40.5%)¹⁵

Given the challenges to accessing housing in increasingly tight housing markets, some women and gender diverse people seek out social housing options. Unfortunately, Statistics Canada's recent **Canadian Housing Survey**¹⁶ revealed almost two-thirds of households attempting to access social housing or RGI housing options were on wait list for two years or longer. Some cities report wait lists of 5 years or longer,¹⁷ and in Toronto more than 81,000 households are currently on social housing wait lists.¹⁸ Remaining stuck in core housing need, in poor quality or overcrowded housing, or on long waitlists for subsidized housing options has unique implications for women and their families. Housing

11 Bellamy et al., 2020, p. 6.

12 According to Statistics Canada (2017), "a household is said to be in 'core housing need' if its housing falls below at least one of the adequacy, affordability, or suitability standards and it would have to spend 30% or more of its total before-tax income to pay the median rent of alternative local housing that is acceptable (meets all three housing standards)." (n.p.).

13 Canada Mortgage and Housing Corporation, 2019.

14 Pomeroy, S. (2020, July). Recovery for All: Proposals to Strengthen the National Housing Strategy and End Homelessness. Canadian Alliance to End Homelessness. <https://caeh.ca/wp-content/uploads/Recovery-for-All-Report-July-16-2020.pdf>

15 Canada Mortgage and Housing Corporation, 2019.

16 Statistics Canada. (2019). Results from the new Canadian Housing Survey, 2018. Statistics Canada.

<https://www150.statcan.gc.ca/n1/pub/11-627-x/11-627-x2019079-eng.htm>

17 See <https://ottawacitizen.com/family-and-social-services/housing/subsidized-housing>

18 See <https://www.thestar.com/news/gra/2021/01/19/more-than-81000-households-are-waiting-for-subsidized-housing-in-toronto-the-city-hopes-a-new-waitlist-system-will-help-fill-these-units-faster.html>

need exacerbates cycles of poverty and violence and increases the likelihood of child welfare involvement, as oftentimes neglect is conflated with poverty and housing need.¹⁹

POVERTY

Women experience disproportionate rates of deep poverty in comparison to men,²⁰ and often survive on lower incomes. For example, women in Ontario live on 28% lower median income than men overall.²¹ Women remain overrepresented in minimum-wage and part-time jobs,²² and assume unequal responsibilities for housework and childcare.²³ The feminization of poverty in Canada makes it difficult for many women and women-led families to afford rent and other basic necessities.²⁴ Poverty often traps women and women-led families in cycles of violence, housing precarity, food insecurity, and various types of dangerous or unhealthy living situations.

Unique causes and conditions of homelessness and housing need for women, girls, and gender diverse people

"It may be that the major trigger for homelessness is poverty and exclusion, but it is also clear that women do not experience homelessness in the same way as men. The triggers for women's homelessness are often different and their trajectories while homeless are often different, women's experience of homelessness is *different*. Gender plays a role."²⁵

19 OACAS (Ontario Association of Children's Aid Societies). (2016). One Vision One Voice: Changing the Ontario child welfare system to better serve African Canadians. <http://www.oacas.org/what-we-do/onevisiononevoice/>. See also Frocme, N., Knoke, D., & Blackstock, C. (2004). Pathways to the overrepresentation of Aboriginal children in Canada's child welfare system. *Social Service Review*, 78, 577-600.

20 Fotheringham, S., Walsh, C. A., & Burrowes, A. (2014). 'A place to rest': the role of transitional housing in ending homelessness for women in Calgary, Canada. *Gender, Place & Culture*, 21(7), 834-853. See also McInnes, S. (2016). Fast Facts: 4 things to know about women and homelessness in Canada. Canadian Centre for Policy Alternatives. <https://www.policyalternatives.ca/publications/commentary/fast-facts-4-things-know-about-women-and-homelessness-canada>

21 See https://www.ontario.ca/document/communitiy_housing_renewal-ontarios-action-plan-under-national-housing-strategy/housing-needs-ontario

22 Canadian Women's Foundation. (2018). Fact Sheet: Women and Poverty in Canada. <https://canadianwomen.org/the-facts/womens-poverty/>. See also Movser, M., & Burlock, A. (2018). Time use: total work burden, unpaid work, and leisure. Statistics Canada. <https://www150.statcan.gc.ca/n1/pub/89-503-x/2015001/article/54933-eng.htm>

23 Burt, M. R. (2001). Homeless families, singles, and others: Findings from the 1996 national survey of homeless assistance providers and clients. *Housing Policy Debate*, 12(4), 737-780. See Fotheringham et al., 2014, p. 834-853. See also MacDonald, D., & McInnirt, K. (2015). Family policies for the way we live now.

https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2015/09/05120_Summer2015_Family_policies.pdf

24 Van Berkum, A., & Oudshoorn, A. (2015). Best practice guidelines for ending women's and girls' homelessness. Ottawa: Homelessness Partnering Strategy. <http://londonhomeless.ca/wp-content/uploads/2012/12/Best-Practice-Guideline-for-Ending-Womens-and-Girls-Homelessness.pdf>.

25 Bretherton, 2017, p. 6.

Gender shapes the causes, conditions, and trajectories of homelessness and housing need.²⁶ Research shows that women and girls,²⁷ as well as gender diverse people,²⁸ have unique pathways into homelessness, distinct experiences on the streets, struggle in unique ways as they navigate public systems and seek emergency shelter, and face unique consequences and hardships because of homeless experiences.²⁹ Gender intersects with other social locations (e.g., Indigeneity, race, (dis)ability, immigration status, gender identity) and experiences (e.g., trauma, exposure to violence and conflict) to shape these experiences.³⁰ Despite the uniqueness of each person's experience, both global and domestic studies have identified the following commonalities:

- ↳ Violence from intimate partners or within families is a key pathway into homelessness for women and girls.³¹ Oftentimes this violence begins in childhood.³² For example, research shows that young women experiencing homelessness report higher levels of physical, sexual, and emotional abuse as children compared to young men.³³ Research on young women experiencing homelessness commonly indicates physical abuse (45%) and sexual abuse (35%) as causes of their homelessness.³⁴ Once on the streets, exposure to violence and harassment is a part of everyday life for women, girls, and gender diverse people.³⁵ Such experiences contribute to hidden forms of homelessness and may push women and girls to remain in unhealthy or violent relationships for housing.
- ↳ 'Hidden homelessness' is the most common form of homelessness experienced by women and girls.³⁶ It is well recognized that women are more likely to rely on relational, precarious, and dangerous supports to survive housing instability,³⁷ and are less likely to appear in mainstream shelters, drop in spaces, public spaces, or other homeless-specific services (see Figure 2).³⁸ The invisibility of women and gender diverse people's homelessness should thus be understood as *structurally* created and maintained.

26. Fergusson, E. (2014). Becoming homeless today: homeless, addressing homelessness among women. *Issues in Mental Health Nursing*, 31(7), 451-459.

27. Bretherton, J. (2017). Reconsidering Gender in Homelessness. *European Journal of Homelessness*, 11(1), 1-21.

28. Sakamoto, I., Chin, M., Chao, A., & Ricciardi, J. (2009). A "normative" homeless woman?: Marginalization, emotional injury and social support for transwomen experiencing homelessness. *Gay and Lesbian Issues & Psychology Review*, 5(1), 2-19.

29. Van Berckum, A., & Oudshoorn, A. (2015). Best practice guidelines for ending women's and girls' homelessness. Ottawa: Homelessness Partnering Strategy. <http://londonhomeless.ca/wp-content/uploads/2012/12/Best-Practice-Guideline-for-Ending-Womens-and-Girls-Homelessness.pdf>

30. Crenshaw, K. (1990). Mapping the margins: Intersectionality, identity politics, and violence against women of color. *Stan. L. Rev.*, 43, 1241-1254.

31. Van Berckum & Oudshoorn, 2015.

32. Berman, H., Mulcahy, G. A., Forchuk, C., Edmunds, K. A., Haldenby, A., & Lopez, H. (2008). Uprooted and displaced: a critical narrative study of homeless Aboriginal and new entrant girls in Canada. *Issues in mental health nursing*, 30(7), 418-430.

<https://doi.org/10.1080/01612640802624475>. See also Reid, S., Berman, H., & Forchuk, C. (2005). Living on the streets in Canada: a feminist narrative study of girls and young women. *Issues in comprehensive pediatric nursing*, 28(4), 217-256. See also Wesely, L.A. (2009). "Mom said we had a money maker": Sexualization and Survival Contexts among Homeless Women. *Symbolic Interaction*, 32, 91-105.

33. Gaetz, S., DeJ, E., Richter, T., & Redman, M. (2016). *The State of Homelessness in Canada 2016*. Toronto: The Canadian Observatory on Homelessness Press. <https://www.homelessness.ca/SCOC2016>

34. O'Grady, B. & Gaetz, S. (2014). Homelessness, gender and subjectivity: The case of Toronto street youth. *Journal of Youth Studies*, 7(4), 539-416.

35. Gaetz et al., 2016.

36. Baptista, I. (2010). "Women and Homelessness." In E. O'Sullivan, V. Busch-Geertsema, D. Quilgars & N. Pleace (Eds.), *Homelessness Research in Europe* (pp. 163-186). Brussels: FEANISA. See also Maki, K. (2017). Housing, homelessness, and violence against women: A discussion paper. Women's Shelters Canada. <http://endvaw.ca/wp-content/uploads/2017/09/Housing-Homelessness-and-VAW-Discussion-Paper-Aug-2017.pdf>.

37. Bretherton, J. (2017). Reconsidering Gender in Homelessness. *European Journal of Homelessness*, 11(1), 1-21.

38. Baptista, 2010; Maki, 2017.

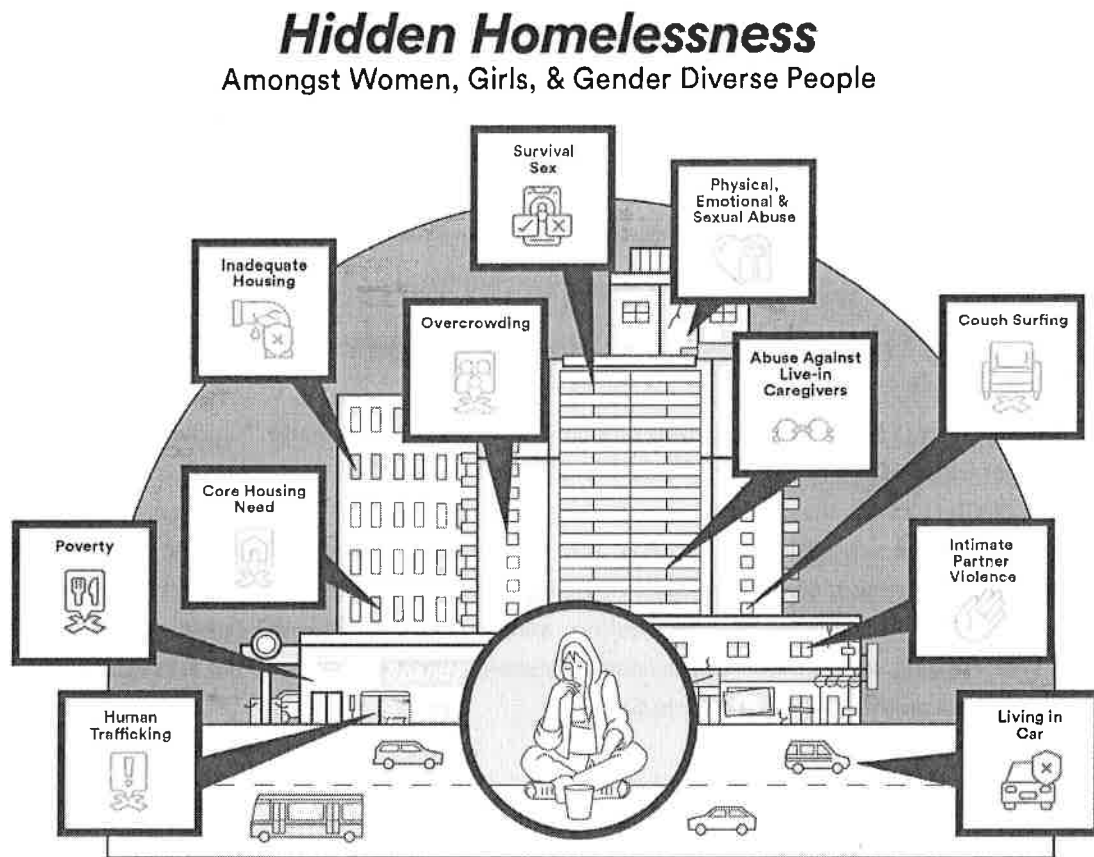


Figure 2. Hidden homelessness amongst women, girls, & gender diverse peoples.

↳ Across Canada, women, girls, and gender diverse people face unique inequities and forms of discrimination on the basis of gender. This contributes to housing need and shapes experiences of homelessness. For example, women are more likely to be in non-permanent employment, receive lower wages and pay higher rates for rental housing on average than their male counterparts.³⁹ Indigenous and racialized women face deeper systemic inequities, with research noting that racialized women in Canada earn only 55.6% of the income earned by non-racialized men.⁴⁰ Pregnancy and child rearing also has a significant impact on employment and income for women, and research also documents that single mothers face discrimination when attempting to access rental housing.⁴¹

39 Callaghan, M., Farha, L., & Porter, B. (2002). *Women and Housing in Canada: Barriers to Equality*. Toronto: Centre for Equality Rights in Accommodation. See also: Canadian Women's Foundation, 2018; Moyser & Purlock, 2018.

40 Black, S., & Galahuzi, G. (2011). *Canada's Colour-Coded Labour Market: The gap for racialized workers*. Canadian Centre for Policy Alternatives. <https://www.policyalternatives.ca/publications/reports/canadas-colour-coded-labour-market>

41 Vecchi, K. (2019). *Surviving abuse and building resilience – A study of Canada's systems of shelters and transition houses serving women and children affected by violence*. Report of the Standing Committee on the Status of Women. <https://www.ourcommons.ca/Content/Committee/421/FEQ/Reports/RP19429173/feworip15/feworip15-e.pdf>

- ↳ Whether or not women have dependent children has a profound impact on their use of services and supports, and dramatically shapes whether they experience housing precarity and how they navigate homelessness.⁴² For example, “most social assistance systems cut entitlements for a mother as soon as her child is apprehended by child welfare, putting her in a position of losing her housing (which is not easily re-established).”⁴³

Inequitable Access to Emergency Shelters, Supports, & Housing for Women, Girls, & Gender Diverse People

Data from **Statistics Canada**,⁴⁴ **Employment and Social Development Canada**,⁴⁵ **parliamentary reports**,⁴⁶ **municipal data and research**,⁴⁷ and independent studies⁴⁸ consistently indicate that emergency shelters across the country are operating at (or over) capacity and there remains a severe lack of gender-specific supportive, transitional, and permanent affordable housing that meets the needs of women, girls, and gender diverse people. Importantly, this is linked to systemic underfunding and inequitable funding in Canada for services, shelters, and housing that is gender-specific and meets the needs of women, girls, and gender diverse people. Research has demonstrated the following key housing inequities on the basis of gender in Canada:

- ↳ Across Canada there are very few women-specific emergency shelter beds, with 68% of all shelter beds being designated as co-ed, or for male-identified people, compared to 13% dedicated specifically to women.⁴⁹ While 38% of all shelter beds are co-ed or open to all genders,⁵⁰ research consistently demonstrates that many women will choose to avoid co-ed shelters due to experiences of violence within those spaces.⁵¹ There are more than double the amount of emergency shelter beds available to men compared to women (4,820 beds for men, compared to 2,092 beds for women across all of Canada).
- ↳ Research reveals disparities in access to emergency shelter beds for women, girls, and gender diverse people, with studies indicating that rural, remote, and Northern communities consistently face a lack of shelter beds for women (within both the VAW and homelessness sectors).⁵² Data similarly indicates that 70% of northern reserves have no emergency shelters for women escaping

42 Fortheringham, S., Walsh, C. A., & Burrows, A. (2014). 'A place to rest': The role of transitional housing in ending homelessness for women in Calgary, Canada. *Gender, Place & Culture*, 21(7), 834-853. See also Van Berkum & Oudshoorn, 2015.

43 Schwan et al., 2020, p. 34.

44 Statistics Canada. (2019). Canadian residential facilities for victims of abuse, 2017/2018. *Statistics Canada Catalogue*. Ottawa. <https://www150.statcan.gc.ca/n1/daily-quotidien/190417/da190417a-eng.htm>

45 Employment and Social Development Canada. (2019). Highlights of the National Shelter Study 2005 to 2016. Ottawa.

<https://www.canada.ca/en/employment-social-development/programs/homeless-ssucess/reports-shelter-2016.html>

46 Vecchia, 2018.

47 For example, City of Toronto. (2018). 'Street Needs Assessment'. City of Toronto.

<https://www.toronto.ca/wp-content/uploads/2018/11/2018-SNA-Results-Report.pdf>.

48 Jodanis, A., & Kneebone, R. (2018). Patterns and intensity of use of Homeless Shelters in Toronto. *Canadian Public Policy*, 44(4), 342-355.

49 Employment and Social Development Canada, 2019.

50 Employment and Social Development Canada, 2019.

51 Bratherton, 2017. See also National Inquiry into Missing and Murdered Indigenous Women and Girls (NIMMWG) (2019).

Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, Vol. 1a. 1b. www.nimwg-facts.ca/final-report/

52 Vecchia, 2019, p. 14.

violence, despite evidence of high rates of gender-based violence in many of these communities.⁵³ Some provinces and territories also report having no women-specific emergency homeless shelters, including Prince Edward Island and the Yukon.⁵⁴

- Violence against women shelters across Canada are chronically underfunded, with 46% of VAW shelters in Canada reporting that the top challenge facing service delivery was a lack of sustainable funding.⁵⁵ A **2019 Statistics Canada report** found that on a national snapshot day across Canada, “669 women, 236 accompanying children, and 6 men were turned away from residential facilities for victims of abuse. The most common reason reported for a woman being turned away was that the facility was full (82%).”⁵⁶
- There is a significant lack of gender-specific housing options across Canada, including supportive housing,⁵⁷ with waiting lists for social and supportive housing often stretching years in many communities. Existing transitional housing often does not offer residents security of tenure and protection under landlord/tenant legislation. There are also very few gender-specific, low-barrier and harm reduction-focused supportive housing programs accessible to women and gender diverse people.⁵⁸

This research suggests that in the absence of access to affordable and safe housing options for women, girls and gender-diverse people across Canada, emergency shelters, transitional housing and violence against women shelters will be increasingly unable to meet the demand for services. In light of this and deepening socio-economic and gender-based inequities that have emerged during the pandemic,⁵⁹ there is an urgent need to advance housing justice and equity for women, girls, and gender diverse people in Canada.

METHODOLOGY

In late 2020 and early 2021, the **WNHHN** conducted a pan-Canadian survey with women and gender diverse people experiencing homelessness or housing need. The survey collected both quantitative and qualitative data, and sought to provide greater insight into the unique causes, consequences, and experiences of housing precarity and homelessness for women, girls, and gender diverse people across the country.

SURVEY DEVELOPMENT

The pan-Canadian survey was developed in a partnership between the WNHHN and the This Is Not Home (TINH) research teams.⁶⁰ The WNHHN research team was led by Dr. Kaitlin Schwan (Co-Chair of WNHHN) and Dr. Emily Paradis (Principal Investigator of TINH). The shared political and epistemological commitments across both research teams allowed for us to prioritize developing a data collection tool that was reflective of the lived expertise of women and gender-diverse people impacted by homelessness, as well as responsive to the research priorities of a range of community partners and sector leaders.

The survey tool was developed through the use of a community-based and participatory research framework that allowed for the engagement of multiple stakeholders at all stages of the research process. Members of the WNHHN and TINH teams worked together in a collaborative and iterative process over several months to develop and revise the survey tool and refine data collection approaches. Survey development included participation from:

- ↳ The TINH Peer Research Associates and lived experts, who played an invaluable role in developing the survey questions and were consulted throughout the life course of this project on data collection and analysis.
- ↳ The Steering Committee and several working groups of the WNHHN, who identified key areas to investigate through the survey. Preliminary survey questions involved working closely with the Research Working Group, the Indigenous Relations Working Group, and lived experts of the WNHHN.

The preliminary draft of the survey was then pilot tested by lived experts at several of the TINH study sites (6 low-barrier drop-ins serving multiply marginalized women and trans, Two-Spirit, and non-binary persons), and by members and lived experts within the WNHHN. Written feedback was gathered and triangulated, and revisions to the survey were made based on the invaluable feedback we received from these various stakeholders.

⁶⁰ The This Is Not Home study is based in 6 low-barrier drop-ins serving multiply marginalized women and trans, Two-Spirit, and non-binary persons across Canada. In order to improve service models and develop appropriate, accessible shelter, support, and housing solutions for multiply marginalized members, this project documents the ways in which low-barrier drop-ins support members' access to safe, stable housing. The project then applies these learnings to the development of models to support members' access to appropriate and adequate shelter, services, and housing. Funded through CMHC, the TINH Project is led by Sistering (Toronto, ON) and Dr. Emily Paradis.

Consensus was developed to explore the following key topics through the survey:

- ↳ Experiences relevant to the 7 components of the right to adequate housing
- ↳ Gender-based discrimination with respect to housing
- ↳ The unique experiences of multi-marginalized groups, including Indigenous, newcomer, and 2SLGBTQ+
- ↳ Women and gender diverse peoples' experiences in public systems and pathways into homelessness
- ↳ Recommendations to governments from women, girls, and, gender diverse people with lived expertise

Once we had revised our preliminary draft based on feedback from lived experts and WNHHN members, another round of review was conducted with housing issue experts, women's rights experts, researchers, and policymakers. Based on their feedback, a final draft was created and circulated to members of the WNHHN and TINH for minor final revisions.

RECRUITMENT

Our recruitment strategy sought to gather a representative sample of women and gender diverse people experiencing homelessness and housing precarity across Canada. We were particularly interested in finding ways to recruit participants who have been systematically excluded by the traditional methodologies used to measure homelessness across Canada. This includes those living in a range of precarious housing and homeless situations across the country, including women and gender diverse people whose homelessness and housing precarity was invisible, those not well connected to public systems, and those who had recently transitioned out of homelessness. Furthermore, our recruitment strategy aimed to amplify the voices of those living in Northern, Eastern, and French-speaking parts of Canada given that they are often under-sampled in national survey data.

Eligibility criteria for the survey included: living in Canada, over the age of 16, identifying as a woman or gender diverse person, and having experienced housing instability or homelessness at some point over the last three years. We developed three distinct recruitment strategies that included recruiting through community-partner organizations, lived experts and peer research associates, and the WNHHN email list-serv.

A. Community Partner Recruitment

We worked in partnership with 27 community partner organizations across the country to recruit participants for the survey. Our community partner organizations included shelters in the homelessness sector and violence against women sector, transitional housing programs, supportive housing programs, services for criminalized women, peer-led harm-reduction services, and organizations in the youth-serving sector.

Community partner organizations played a vital role in recruiting participants by sharing information about the survey with service-users and helping to remove barriers to participation by providing access to technology to complete the survey, assisting with reading the survey to participants, and/or

disseminating honorariums for participants without access to email. Approximately half of the participant sample was drawn from the *This is Not Home* project, which worked in partnership with six low-barrier drop-in programs serving women and gender diverse people experiencing homelessness and housing precarity across Canada. At these sites service-users were supported by Lived Experts/Peer Researchers to complete the survey.

B. Lived Expert Recruitment

We worked with 11 lived experts (women and gender diverse people who have experienced homelessness and housing precarity) to recruit participants for the survey. We worked with Lived Experts through **Keepers of the Circle** to recruit Indigenous women and Two-Spirit people, particularly in Northern regions of Canada. We also worked with youth lived experts to recruit young women and gender diverse people who were living in precarious housing across the country.

Lived experts played a vital role in sharing information about the survey with participants and enabling the participation of women and gender-diverse people living in a range of precarious housing situations, including those who were not well-connected to public systems and supports. Furthermore, this approach allowed for us to recruit participants who had recently transitioned out of homelessness.

C. WNHHN List-Serv Recruitment

The WNHHN has developed an email list-serv of over 500 individuals who wish to stay updated or involved in the Network. The membership is largely comprised of organizational leaders, front-line workers, and women and gender diverse people with lived experience of homelessness and housing precarity.

We sent out recruitment emails to all members of the list-serv inviting anyone who was interested in learning more about the survey to contact the research team. This enabled us to connect women and gender diverse people experiencing homelessness and housing precarity directly with the survey, as well as reach front-line workers who then shared information about the survey with their clients.

DATA COLLECTION

We began data collection on December 19th 2020 and finalized data collection on February 7th 2021. The survey was made available through an online platform survey platform, *Qualtrics*, which was accessible via computers, tablets, and cellphones. Many participants used technology available through community partner organizations to complete the survey, although some participants completed the survey on their own devices.

In some cases, staff or lived experts assisted participants with survey completion by reading questions to enable access to participants for whom literacy and/or technology was a barrier. All community partner organizations were offered support by the WNHHN to administer the survey virtually (via Zoom or telephone) to alleviate barriers to literacy and technology. Participants received a \$20.00 honorarium for participating in the survey.

DATA ANALYSIS

Following data cleaning, data analysis was conducted by the authors of this report using SPSS software. Data analysis techniques included frequencies, cross tabulations, chi square tests, and T tests. Analysis was iterative, with emerging themes in the data identified and further explored through additional analyses. The size and depth of the data collected will enable significant elaboration on the preliminary findings presented in this report.

SURVEY LIMITATIONS

Conducting a large-scale survey on women's homelessness and housing precarity during the COVID-19 pandemic presented unique challenges and limitations. Many community partner organizations were operating at limited capacity due to COVID-19 restrictions, and were faced with unique and increasing demands for service. This presented challenges for on-site recruitment within community partner organizations and limited the amount of time front-line staff could spend supporting participants with accessing the survey.

All of our data was collected virtually because of the restrictions put in place limiting in-person research during COVID-19 by York University's Research Ethics Board. We used an online survey platform to administer the survey and due to the branching logic embedded in our survey tool, we were unable to make hard copies of the survey available. The sole use of an online survey platform presented barriers to recruiting participants who did not have access to a computer, tablet, or smart phone. Although community partner organizations worked to make technology accessible for participants, women and gender diverse people who were not well-connected to public systems and support services likely faced limitations to engaging with our data collection process. This includes women and gender-diverse people living in jail, hospitals, and other institutional settings.

Women and gender-diverse people with limited literacy skills may have faced barriers to participating in our survey. In an effort to alleviate this barrier, we offered each community partner organization support by virtually administering the survey via telephone or Zoom. While our survey was made available in English and French, it was not translated into other languages. Limited translation likely presented barriers to fully engaging newcomer women.

Due to the scale and depth of the data collected, an exhaustive report of findings is not presented here. In particular, it was decided that the findings related to Indigenous women and Two-Spirit Peoples deserve a distinct analytic approach led by Indigenous scholars and community members themselves. In addition, further intersectional analysis is needed to identify the unique challenges that particular groups of women and gender diverse people face when seeking adequate housing.

SURVEY RESULTS

STUDY SAMPLE

A total of 500 women and gender diverse people participated in the survey, spanning almost every province and territory in Canada (see Figure 3).



Figure 3. Participants by province and territory.

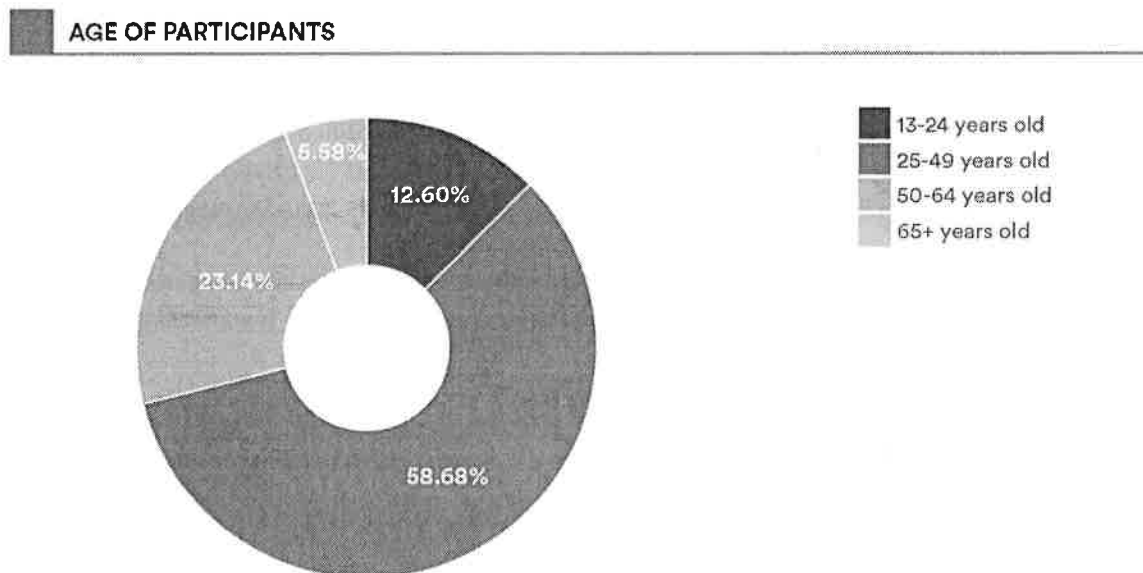


Figure 4. Age of participants.

The sample included a fairly diverse range of ages (see Figure 4). The average age of participants was 41. With respect to gender, a majority of participants identified as cis-gender women (84.8%), with 9.6% using other terms to describe their gender identity. Only 57.6% of participants identified as heterosexual, with the remaining participants endorsing a range of sexual preferences.

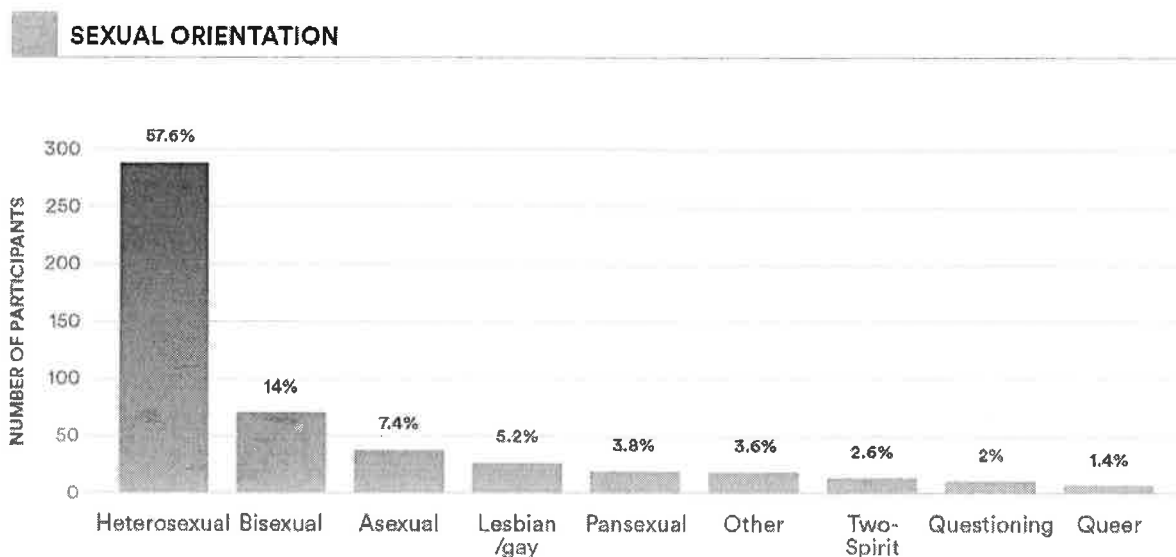


Figure 5. Sexual orientation of study participants.

Across the sample, 84.8% of participants were Canadian citizens, 6.8% were permanent residents, and 8.4% reported precarious immigration status of some form. A quarter of participants also reported speaking more than one language.

With respect to racial identity, 32.7% identified as Indigenous, 21% identified as racialized, and 46.3% identified as white. Amongst Indigenous participants, 67.5% identified as First Nations, 11% identified as Metis, 5.2% identified as Inuit, and 3.2% identifying as having mixed Indigenous heritage.⁶¹

It should be noted that approximately half of the study sample were persons accessing low-barrier drop-ins for women and gender diverse people, which may have skewed the results towards deeper and more complex forms of marginalization.

⁶¹ In addition, 5.3% reported having "other" Indigenous heritage, and 7.1% preferred not to answer.

10 KEY FINDINGS

1.

Women and gender diverse people experience widespread, chronic housing affordability issues linked to low incomes. Despite this, many participants were not accessing the government benefits they would likely qualify for.

Findings reveal severe and chronic housing affordability issues for women and gender diverse people, as well as women-led families. A total of 60.2% participants reported not being able to afford a place, and 46.5% reported not being able to afford a damage deposit, moving expenses, and/or utility hookups. Importantly, 75% of participants reported at least one affordability concern, such as:

- ↳ Affordable and available places are not adequate for my children (15.2%)
- ↳ Affordable places are in bad condition (40.8%)
- ↳ Affordable and available places are not safe for me (32.8%)

PROBLEMS WITH FINDING A PLACE

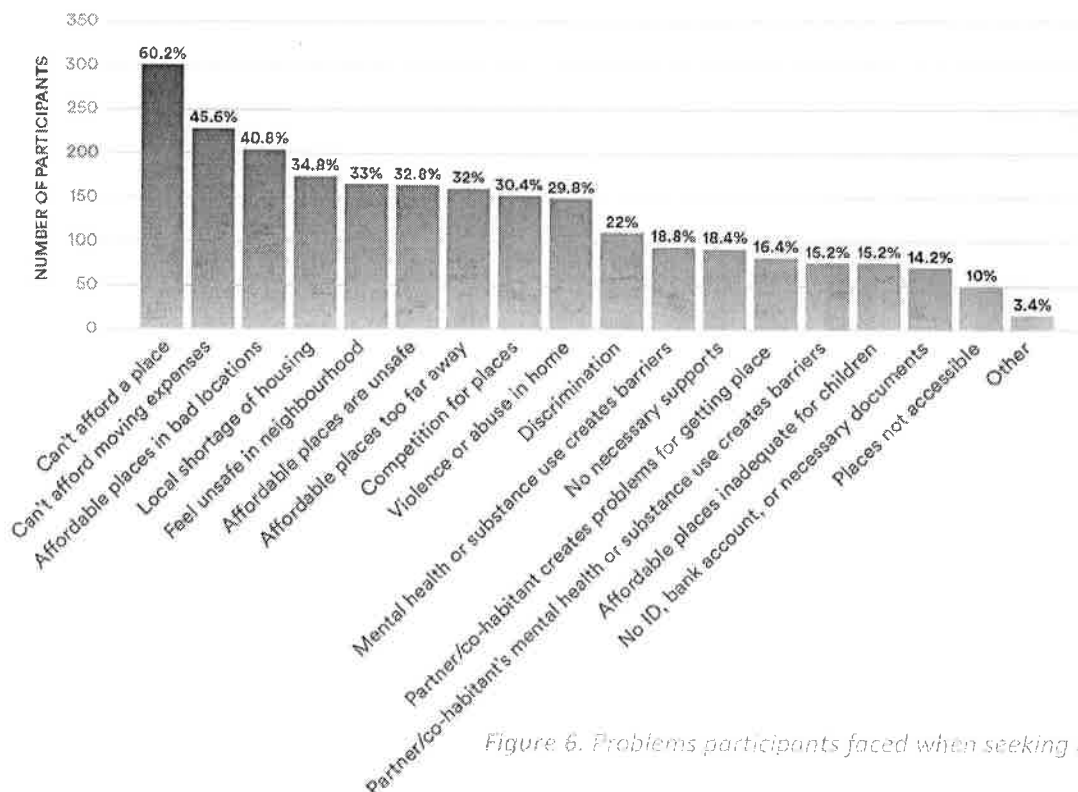


Figure 6. Problems participants faced when seeking housing.

More than a third of participants were also forced to leave their most recent housing because they couldn't afford it anymore (34.8%). Analysis further indicated the following factors were correlated with significantly greater affordability issues:

- ↳ Identifying as Indigenous
- ↳ Child welfare involvement as a child and an adult
- ↳ Multiple experiences of trauma
- ↳ Having a disability, with data indicating that with persons with multiple disabilities had a greater affordability issues

Housing affordability is intrinsically linked to income. Across the sample, only 11% reported being employed full time. A majority of the sample was receiving either social assistance or disability benefits (60.8%). Importantly, however, it appeared that many participants who qualified for such assistance were not receiving it. Among participants over 65, 40% were not receiving seniors benefits. Similarly, many persons with disabilities were not receiving disability benefits (e.g., ODSP). For participants who reported one disability, only 63.4% were receiving a disability benefit. This rate increased to 85.1% for women and gender diverse people who endorsed three or more disabilities.

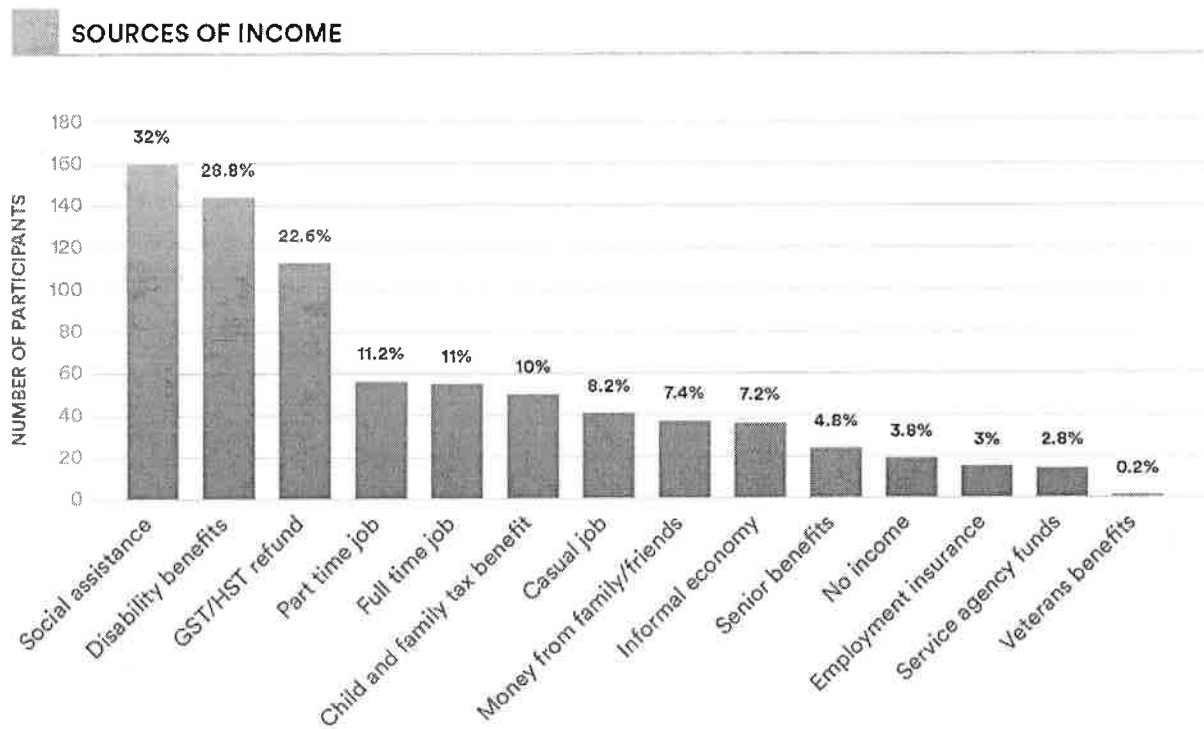


Figure 7. Participants' sources of income.

KEY TAKEAWAYS

The housing crisis in Canada, particularly for women and gender diverse individuals, is a two-fold challenge underpinned by the increased financialization of housing and deepening poverty for those on low-incomes or social assistance. Underpinning affordability issues is the erosion of naturally occurring affordable housing (NOAH) stock, financialized housing markets, long waitlists for social housing, inadequate social assistance rates, and the failure of income to keep up with the soaring cost of housing.⁶² As housing becomes more unaffordable, incomes are failing to lift many women and gender-diverse people out of deep poverty. Women and gender diverse people, who are more likely to work minimum wage and part-time jobs,⁶³ simply cannot keep up. A **2019 study**, for example found that in nearly 800 neighbourhoods of Canada's major cities, renters would need to earn \$22.40/hr for a two-bedroom apartment, and just over \$20/hr for a one-bedroom unit.⁶⁴ These rental costs are at least \$5 an hour more than the highest provincial minimum wage in Canada (\$15 in Alberta).⁶⁵

Policymakers seeking to build better housing outcomes for women and gender diverse people cannot overlook the role income plays in housing affordability. Women have been disproportionately impacted by loss of income during the COVID-19 pandemic, and have faced the sharpest job losses (and slowest employment recovery).⁶⁶ Women often carry additional financial costs related to disproportionate childcare burdens, and suffer significant financial loss in the wake of intimate partner violence or family dissolution.⁶⁷ Inadequate social assistance rates, and a multiplicity of barriers to accessing social assistance, are further policy failures that continue to keep many women and gender diverse people living in deep poverty.⁶⁸ While the housing crisis continues to hurt many low-income persons across Canada, our survey's findings imply that women and gender diverse people may be hit hardest *and* have fewer savings and resources to weather the storm.

⁶² August, I.A. (2020). The financialization of Canadian multi-family rental housing: From trailer to tower. *Journal of Urban Affairs*, 42(7), 975-997. See also Pomeroy, S. (2020, July). *Recovery for All: Proposals to Strengthen the National Housing Strategy and End Homelessness*. Canadian Alliance to End Homelessness. <https://caeh.ca/wp-content/uploads/Recovery-for-All-Report-July-16-2020.pdf>. See also Schwan et al., 2020.

⁶³ Moyser, M. & Burlock, A. (2018). Time use: total work burden, unpaid work, and leisure. Statistics Canada. <https://www150.statcan.gc.ca/n1/pub/89-503-x/2015001/article/544923-eng.htm>

⁶⁴ MacDonald, D. (2019). Unaccommodated: Rental Housing Wage in Canada. Ottawa, ON: Canadian Centre for Policy Alternatives. <https://www.policyalternatives.ca/unaccommodating>

⁶⁵ Ibid.

⁶⁶ Gekko, D., & Lu, Y. (2021). Gender differences in employment one year into the COVID-19 pandemic: an analysis by industrial sector and firm size. Statistics Canada. <https://www150.statcan.gc.ca/n1/pub/36-28-000/2021005/article/00005-eng.htm>

⁶⁷ Schwan et al., 2020.

⁶⁸ Schwan et al., 2020.

2.

Women and gender diverse people experience a wide range of housing adequacy and suitability issues, with safety issues being a common concern that undermines housing stability and leads to housing loss.

Over 70% of women and gender diverse people reported at least one problem with the condition of their current or most recent housing, and almost a third reported three or more problems. Issues included pests (25%), the unit being too small (20.6%), and the unit being too hot or cold (19.8%). These adequacy issues were in addition to the health and safety issues identified by participants, with 52.2% reporting at least one issue and almost a third reporting more than three health and safety issues (27%). As shown below, 27.8% percent of participants were forced to leave their most recent housing due to issues with the housing condition.

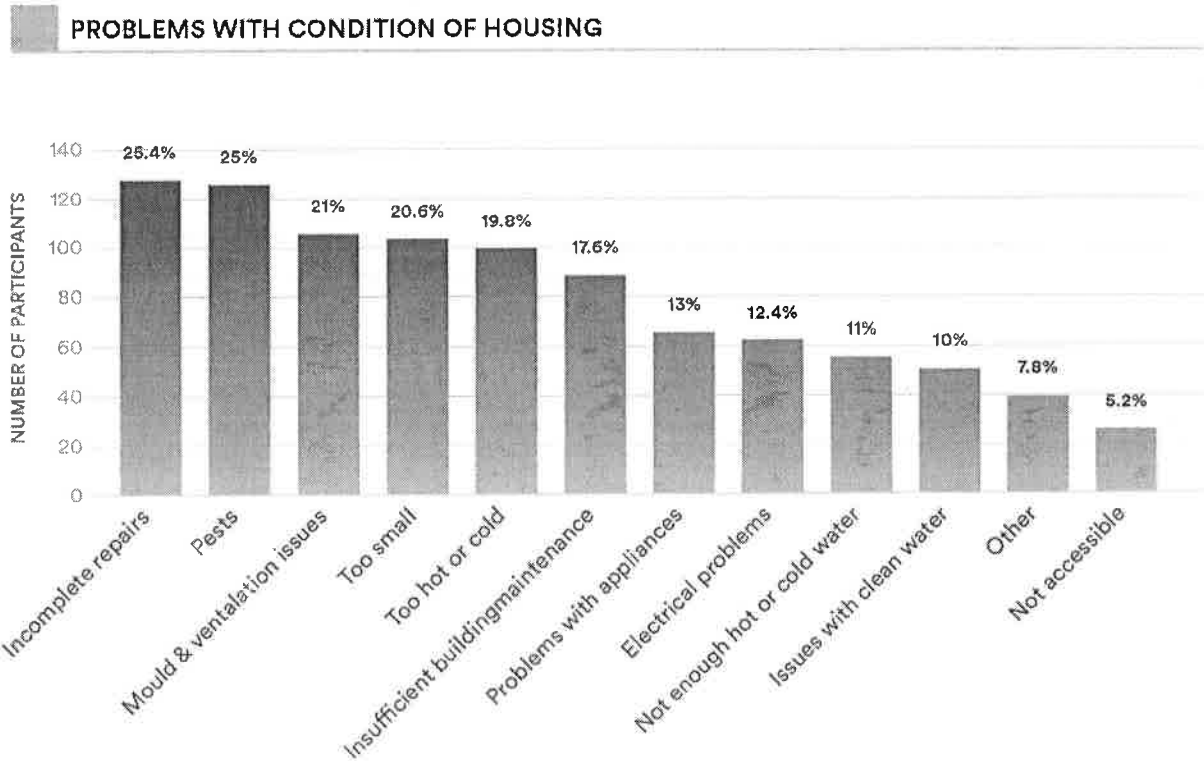


Figure 8. Problems with the condition of housing.

Safety issues were particularly significant for participants, with almost half (45.8%) of women and gender diverse people reporting at least one type of safety concern within their housing. Amongst the safety issues reported, a number of participants discussed violence, abuse, or harassment from landlords. One participant reports:

"I had to leave the premises with 2 months in advance fully paid rent. My landlady ... had thrown my belongings around my room, removed my bed (which she had supplied) and made it necessary for me to sleep on a bare cement floor in a cold basement for the night. She also had removed the lightbulbs from *my* area."

HEALTH & SAFETY ISSUES EXPERIENCED IN HOUSING

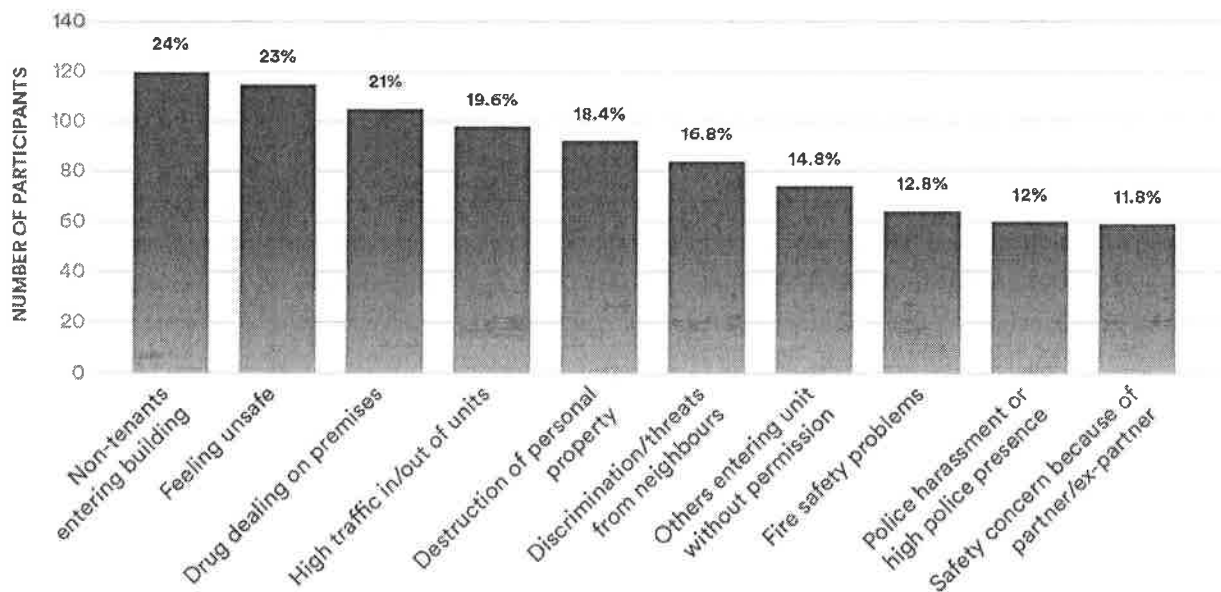


Figure 9. Health and safety issues experienced in housing.

Importantly, a third of participants (33.3%) reported that the COVID-19 pandemic had made their housing situation worse, with data indicating:

- ↳ 11% were stuck in an unsafe situation
- ↳ 11% were forced to live somewhere that was not good/healthy for them
- ↳ 8% became homeless
- ↳ 7% were forced to leave where they were living

KEY TAKEAWAYS

Adequate housing is foundational to health and safety for women and gender diverse people. While much discourse in housing policy is focused on supply, with advocates demanding that more affordable housing be built, our survey results suggest that the maintenance and repair of existing low-income rental units is critical to preventing homelessness and keeping people well. Our survey found that many

women and gender diverse people endure severe health and safety hazards just to stay housed, but almost a third were forced to leave when those housing conditions became unbearable. Once de-housed, these families and individuals must navigate over-heated rental housing markets with little income or savings. Maintaining and repairing these low-income units, and preventing the loss of housing for these families, should be a priority across Canada.

This survey's findings also vividly illustrate housing as a social determinant of health,⁶⁹ illustrating why the housing crisis must be understood as a public health and safety crisis for women, girls, and gender diverse people. Housing conditions such as mould, ventilation problems, pests, and drinking water issues – combined with safety concerns such as emotional and physical violence – undermine health, mental health, and wellbeing, and create barriers to attending school, raising children, or remaining employed. Research shows that a lack of safe, affordable, and secure housing leads to additional burdens on public health⁷⁰ and safety⁷¹ systems as well, as these systems try to mitigate issues created and maintained by housing insecurity and gender-based violence.

Many survey responses also allude to safety concerns linked to their building, their neighbourhood, or their housing location. These findings highlight the importance of ensuring that underserved communities are better resourced with services, supports, and transportation infrastructure to improve safety and inclusion for women and gender diverse people. Progressive inclusionary zoning policies⁷² that have the capacity to rapidly expand affordable and supportive housing within mixed-income and well-resourced communities should be explored, with a specific mandate to increase access to such housing for low-income women and gender diverse people.

69 Rolfe, S., Garnham, L., Godwin, J., Anderson, J., Seaman, P., & Donaldson, C. (2020). Housing as a social determinant of health and wellbeing: developing an empirically-informed realist theoretical framework. *BMC Public Health*, 20(1), 1-19.

70 Hwang, S. W. (2001). Homelessness and health. *Cmaj*, 164(2), 229-233.

71 Novak, S., Heinzer, J., Paradis, E., & Kellen, A. (2011). *Justice and Injustice: Homelessness, crime, victimization, and the criminal justice system*. Toronto, ON: Centre for Urban and Community Studies. <https://www.homelesshub.ca/resource/justice-and-injustice-homelessness-crime-victimization-and-criminal-justice-system>

72 ACCESS Institute Canada. (2010). *A Guide to Developing an Inclusionary Housing Program*. Ottawa, ON: ACCESS. https://www.accessinstitute.ca/wp-content/uploads/2010/06/inclusionaryhousing_guide.pdf

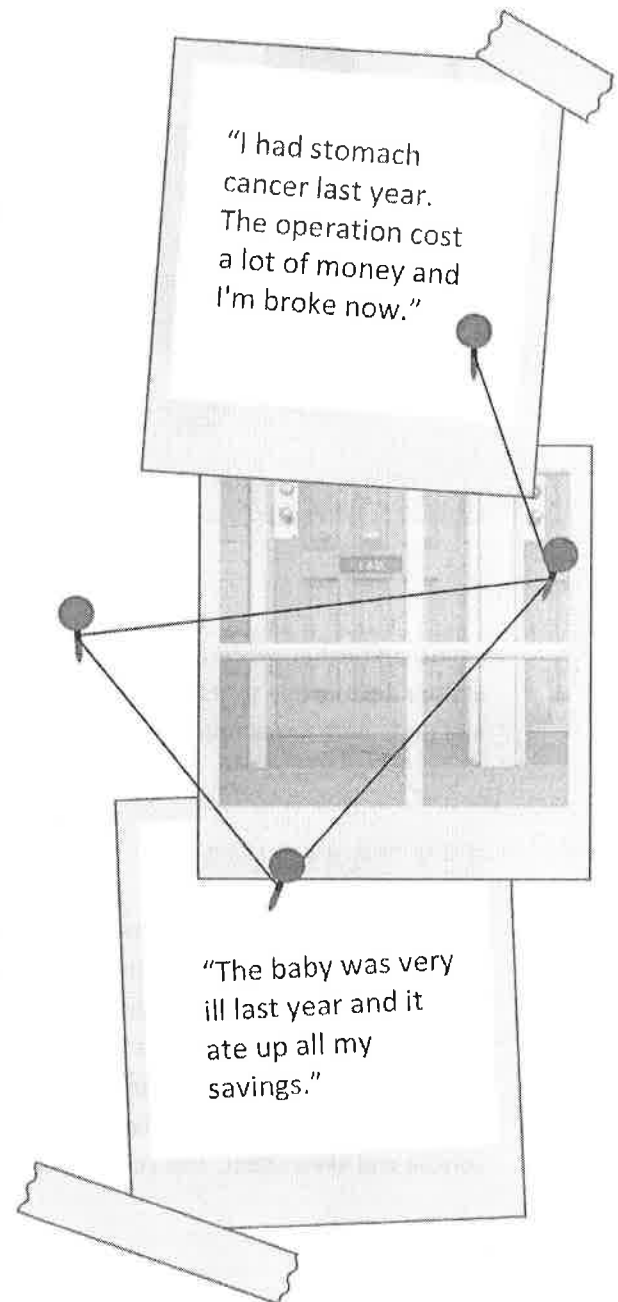
3.

The chronicity and depth of poverty amongst women and gender diverse people was linked to the insufficiency of social assistance and poorly-paid jobs. In order to survive, most participants had to engage in additional strategies to generate income each month. In many cases this contributed to increased vulnerability or debt, with over a third using credit cards, borrowing money, skipping bills, or using money marts.

Across Canada many women and gender diverse people find themselves in deep poverty, with survey data illustrating the lengths individuals go to make ends meet. Data indicated that in their current or most recent place, women and gender diverse people had an average of \$596.66 left over after paying for their housing. This amount would need to cover a range of necessities, including: food, transportation, medical necessities, necessities for children (e.g., diapers, schoolbooks), clothing, cell phone and internet access, and hygiene products, among other costs. Unsurprisingly, 61% of participants said they did not have enough money for necessities after paying for their housing, with another 22.7% reporting it depended month-to-month as to whether this amount was enough. Many reported have \$0 after paying for housing, and only 14.2% reported having enough money to cover their basic necessities after paying for housing.

Access to social assistance or social benefits (e.g., disability support programs) had a significant impact on housing stability for participants. More than 1 in 10 (12.6%) participants were forced to leave their most recent housing due to losing some form of government subsidy.

Given the depth of poverty many participants face, a majority reported engaging in a range of income-generating strategies in addition to employment or social assistance. On average, participants engaged in 2 additional subsistence strategies each month, and over a third of participants (33.6%) engaged in 3 or more additional subsistence strategies. Almost a third of participants relied on food banks (30.2%) and almost 1 in 10 engaged in sex work (8.4%).



Importantly, analysis indicated that many participants engaged in income-generating activities that increased their debt load. A total of 36.4% of participants used credit cards, borrowed money, skipped bills, or went to a money mart each month to afford basic necessities. Qualitative findings of the survey suggested such debts were further increased due to unexpected expenses, such as medical issues.

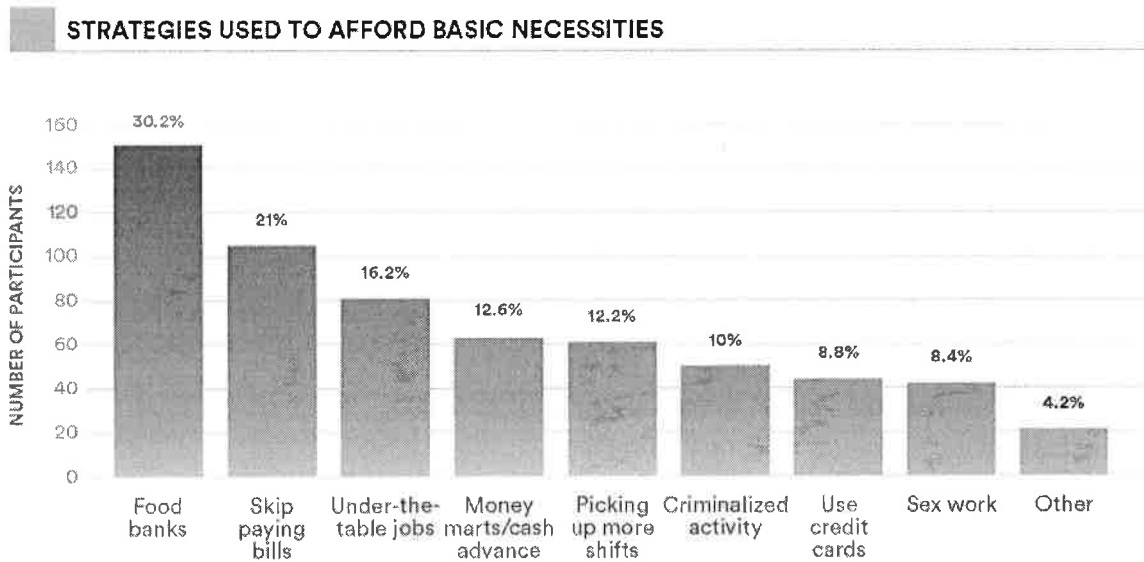


Figure 10. Strategies participants used to afford basic necessities.

COVID-19 further exacerbated poverty for some participants, with 33.6% reporting they saw a decrease in their income due to the pandemic. Analysis indicated that 14% of participants lost their jobs and 12% had their work hours reduced.

KEY TAKEAWAYS

Government-provided social assistance rates, despite being consistently linked to deep and chronic poverty, continue to be egregiously low and insufficient.⁷³ Links between social assistance, housing unaffordability, and chronic poverty demonstrate that housing solutions for women and gender diverse people are incomplete without transformative social assistance policies across Canada. The lack of political will to meaningfully address disparities in social assistance⁷⁴ has meant that many women and gender diverse people are forced into situations that compromise their health and safety as they try to survive and keep afloat. This survey's findings illustrate the gruesome reality in Canada: access to

⁷³ Canada Without Poverty. (October 2, 2019). Cuts to social assistance are detrimental to our social fabric. Ottawa, ON: Canada Without Poverty. <https://cwp-csp.ca/2019/10/cuts-to-social-assistance-are-detrimental-to-our-social-fabric/>

⁷⁴ Canada Without Poverty. 2019.

income plays a powerful role in creating or mitigating vulnerability to physical, mental, and financial abuse for women and gender diverse people.

Our findings also illustrate the important link between income, housing affordability, and food insecurity. Food bank usage was the most common subsistence strategy among participants, with housing costs directly impacting the kinds of food families were able to afford or rely on.⁷⁵ The prevalence of dependence on exploitative money lending services, criminalized activities, and under-the-table jobs also demonstrate that many women and gender diverse people risk exploitation just to afford basic necessities and remain housed. These findings reinforce the critical importance of a rights-based approach to housing, which is grounded in ensuring dignity for all. Importantly, these findings reveal that gaps created by housing insecurity are often filled by other systems and structures that largely fail to address root causes, deteriorate day-to-day circumstances, and increase vulnerability for women and gender diverse people.

⁷⁵ Loopstra, B., & Tarasuk, V. (2012). The relationship between food banks and household food insecurity among low-income Toronto families. *Canadian Public Policy*, 38(4), 497-514.

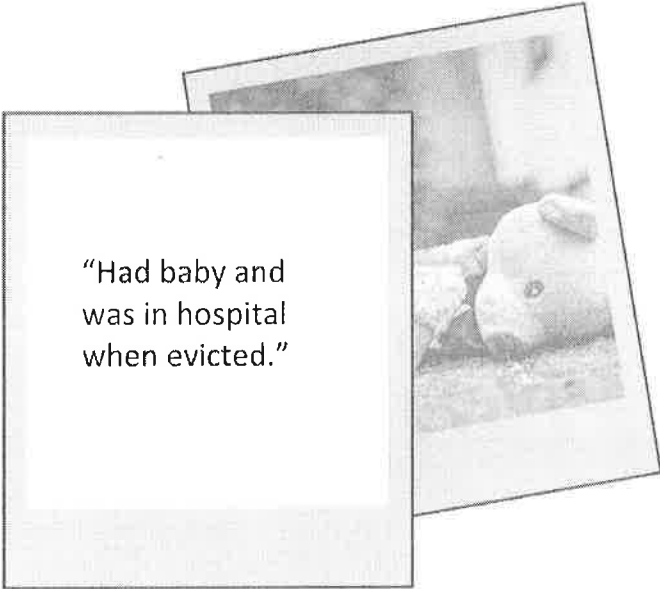
4.

While eviction was a common experience amongst women and gender diverse participants, many were unable to access legal advice and supports that could have helped. The consequences of eviction were severe for many, including housing loss, homelessness, and continued exposure to abuse.

Experiences of eviction were common amongst participants, with 37.2% reporting have experienced an eviction. Analysis indicated significant correlations between evictions and a person's identity or previous experiences. Importantly, for example, there was a significant statistical relationship between histories of child welfare involvement and being evicted. Those who reported child welfare involvement as an adult, as well as those who had child welfare involvement during both childhood and adulthood, reported significantly more evictions than those with no histories of child welfare involvement. This suggests that involvement with the child welfare system makes it more likely that a person will experience an eviction.

Additional analysis indicated that the following factors were also correlated with experiencing an eviction:

- ↳ Identifying as Indigenous
- ↳ Identifying as LGBTQ2S+
- ↳ Receiving any form of government benefit
- ↳ Having a disability, with data indicating that with persons with multiple disabilities had a greater likelihood of experiencing eviction
- ↳ Having multiple experiences of trauma



"Had baby and was in hospital when evicted."

It is well documented that access to legal information, advice, and representation can prevent eviction and mediate negative housing outcomes. Importantly, almost a third of women and gender diverse people (27.9%) reported needing legal help to address their housing situation but were unable to get it.⁷⁶ When asked what happened when they were unable to access legal supports, many participants reported losing their housing or being stuck in unsafe or violent situations.

What happened when you couldn't access legal supports?

- "I lost my place because I didn't have a lawyer to help me with my eviction situation so I didn't know what to do"
- "I went to see a lawyer for help when my son was 18 months old. And she told me that I was a terrible mother for doing that, and that I was trying to poison my son against his father. I had no one to babysit and no help and could not control the appointment time. I left feeling humiliated and dejected and shamed and was not able to escape for another ten years after that."
- "I just stayed thru abuse"
- "I attempted to dispute my housing Eviction, but was denied by RTO a meeting because of a technical mistake on the deadline made by the system. Was refused a dispute.no such system helped me. I was evicted Dec 30 2019 with no notice. was given 10 minutes to leave with nowhere to go. 3 children. I reached out to an advocate which places me where I am now."
- "I had a place to stay then had surgery, I was in the hospital for a while and because of that odsp cut me off for any funds saying I wasn't staying at my place of residence meanwhile I was in the hospital for 2 months, on life support for 1 week of in the ICU then the rest was recovery time in hospital."

Importantly, young women and gender diverse people (age 13 to 24) reported significant challenges to accessing legal supports – more than any other age group. Across the sample, 52.2% of this group reported not being able to access legal advice or help when they needed it.

In participants' descriptions of evictions, it was also evident that policies and practices within public systems (e.g., child welfare, social assistance, housing, healthcare) created pathways into housing loss

⁷⁶ 16% reported never needing legal advice or help.

and homelessness for some women and gender diverse people. Several participants shared the following stories:

- ↳ “Parents refused to let me live in their place without a mental health assessment, hospital refused to completed mental health assessment because I had no address.”
- ↳ “You have to have your children “living with you” in order to obtain social housing. But FCS says you have to have adequate housing in order to get your kids back.”
- ↳ “Had children apprehended so I couldn't afford the house I was currently in”
- ↳ “Got kicked out of hospital without a social worker looking for a shelter for me.

KEY TAKEAWAYS

Evictions remain a key cause of homelessness for gender and diverse people, despite substantive evidence on the efficacy and cost-benefits of eviction prevention programs and policies.⁷⁷ Our survey findings point to three intersecting issues with respect to eviction:

1. A critical lack of supports and services to prevent housing loss due to eviction, in addition to gender-based barriers to accessing existing legal services.
2. Public system policies creating “eviction pipelines” for women and gender diverse people, as well as their children.
3. Higher rates of eviction amongst groups experiencing marginalization (e.g., LGBTQ2S+ persons) and those with public system involvement (e.g., social assistance recipients, child welfare involvement).

Evictions result in severe consequences for many women and gender diverse people, including for those who are separated from their children due to housing loss and/or loss of social assistance. Our findings align with research demonstrating that:

“Most social assistance systems cut entitlements for a mother as soon as her child is apprehended by child welfare, putting her in a position of losing her housing (which is not easily re-established). This dramatically affects her ability to have her children returned to her care. Similarly, housing providers often consider a woman immediately over-housed if she loses custody of her children or will not consider the mother’s family size for housing entitlement if her children are not currently in her care.”⁷⁸

77 Canadian Mortgage and Housing Corporation, (2019). Cost effectiveness of eviction prevention programs, Socio-economic Series, 05-02, <https://www03.cmhlc-schl.gc.ca/catalog/product/detail>
 78 Schwan et al., 2020, p. 34

Such experiences constitute egregious public system failures. These failures must be understood as foundational to gendered experiences of homelessness and intergenerational homelessness, given evidence that children who experience child welfare involvement are at significantly greater risk of experiencing homelessness,⁷⁹ and that losing custody of one's child is a trauma that precipitates homelessness for some women.⁸⁰ Importantly, our findings suggest that women and gender diverse people often lack the tools, resources, and opportunities to contest the twinned experience of eviction and child apprehension.

Eviction prevention programs and policies must employ a strong gender and equity lens in order to address the unique ways that women and gender diverse people experience evictions. However, this remains an understudied pillar of homelessness prevention in Canada.⁸¹ There has been limited gender-segregated analysis of evictions regionally and nationally, despite a recent increase in equity-focused analyses.⁸² These gaps in knowledge have serious implications, including in the wake of COVID-19. For example, emerging US data indicates that women will represent the majority of Americans evicted during the COVID-19 pandemic,⁸³ with single Black mothers facing higher rates than other groups.⁸⁴ Further research in this area is needed in Canada, in addition to improved access to justice mechanisms for women and gender diverse people whose experiences of eviction constitute human rights violations under the **National Housing Strategy Act** and international human rights law.

⁷⁹ Gaetz et al., 2016.

⁸⁰ Van Berkum & Oudshoorn, 2015, p.10.

⁸¹ Gaetz et al., 2020.

⁸² See, for example, Leon, S., & Ivanuk, J. (2020). *Forced Out: Evictions, Race, and Poverty in Toronto*. Toronto, ON: Wellesley Institute. <https://www.wellesleyinstitute.com/publications/forced-out-evictions-race-and-poverty-in-toronto/>

⁸³ See, for example, Center, E. A., Vance, D., Long, M. Y., Walker-Weh, E., Pottenger, E.L., Gonzalez, G., & Feare, D. E. (2021). *COVID-19, Health Inequity, and the Spread of COVID-19: Trauma, Public Health, and Pandemic Mitigation Strategy*. *Journal of Urban Health*, 98(1), 1-12.

⁸⁴ See, for example, Dukerman, E. (24 July 2020). "The Eviction Crisis is already Here and It's Crushing Black Moms." *Vice News*. http://www.vice.com/en_us/article/71/news/the-eviction-crisis-is-already-here-and-its-crushing-black-moms.

5.

Experiencing a breakup was the primary reason that women and gender diverse people lost their most recent housing. This suggests that housing for this group is deeply dependent upon maintaining a personal relationship with a man, partner, or other person.

The top reason women and gender diverse people lost their most recent housing was because of a breakup, with 47% reporting this experience. This reason outpaced all affordability issues, concerns about safety, experiences of violence, loss of income or subsidies, or poor housing conditions. This finding suggests that women and gender diverse people's security of tenure is often under the control of a romantic or sexual partner (most frequently a man), and that in order to remain housed many women and gender diverse people have to remain in a romantic and/or sexual relationship of some kind. Under human rights standards, women and gender diverse people's security of tenure should not depend upon their relationship status, as explained by the UN Special Rapporteur on the Right to Adequate Housing: "The independent right of women to security of tenure, irrespective of their family or relationship status, should be recognized in national housing laws, policies and programmes."⁸⁵

REASON PARTICIPANTS WERE FORCED TO MOVE OUT

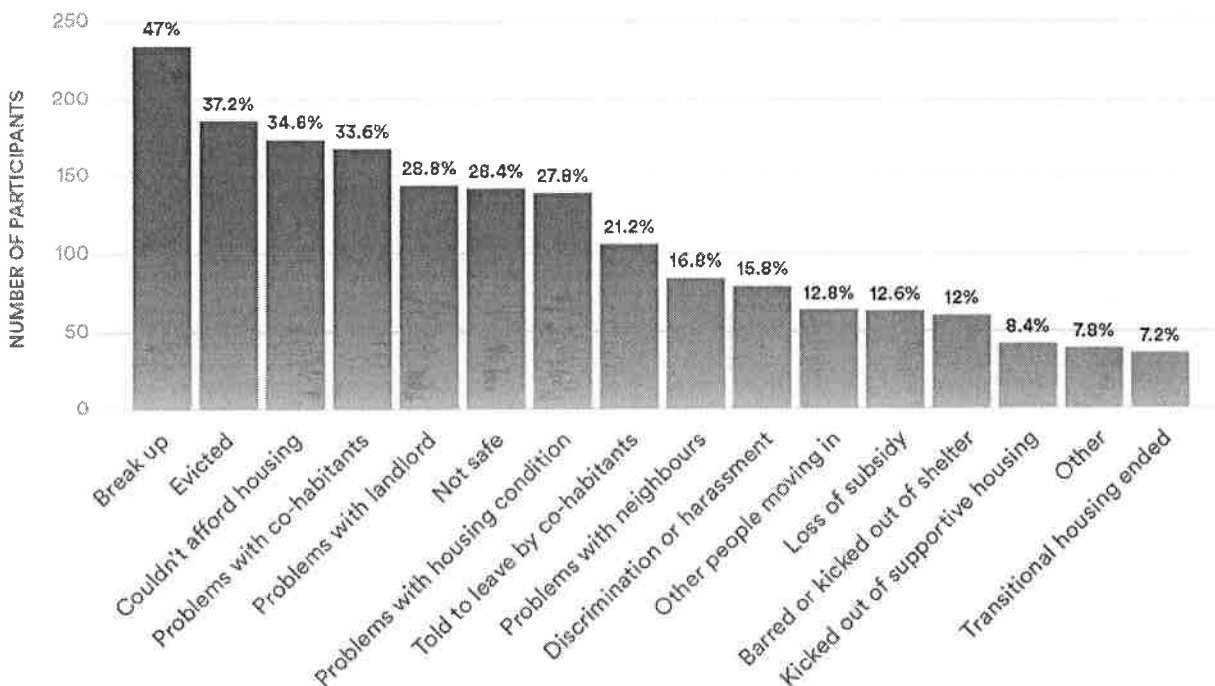


Figure 11. Reasons participants were forced to move out of their most recent housing.

Interestingly, security of tenure issues often intersected with public system failures (e.g., in child welfare, healthcare), sometimes creating pathways into homelessness for women. For example, when asked “How did the criminal justice system contribute to your homelessness?”, three participants responded:

↳ “No contact order and the man owned the house, i had to leave only being on a disability income.”

↳ “My aggressor was removed from the home but I lost my housing as a result and became homeless.”

↳ “My husband went to prison and our house was auctioned off as a fine.”

KEY TAKEAWAYS

As identified by the **UN Special Rapporteur on the Right to Adequate Housing**, “the right to own, manage, enjoy and dispose of property is central to a woman’s right to enjoy financial independence, and in many countries will be critical to her ability to earn a livelihood and to provide adequate housing and nutrition for herself and for her family.”⁸⁶ It is evident that in Canada, a woman’s access to housing still depends in large part on her relationship with a man. An array of policies can be held responsible for this dependence, many of them rooted in colonial and patriarchal systems which dislocate particular women and gender diverse people as owners of property and land, fail to equitably compensate them for their labour, deny them access to mortgages, and create barriers to escaping violence or abuse. For example, we have structured our housing system such that women fleeing violence often lose their homes, their property, their savings, their pets, and in some cases custody of their children.⁸⁷

In order to advance the autonomy and self-determination of marginalized women and gender diverse people, it is essential that home ownership is made attainable for those groups who live on low-incomes, have disabilities, or face other barriers to achieving home ownership (e.g., race-based discrimination). Further, it is essential that women and gender diverse people are equitably listed on, and have agency over, rental leases, and that such leases provide them protection in the event of dissolution of relationships. Policy interventions aiming to address this challenge must pay special attention to enabling women’s right to security of tenure. Housing departments across jurisdictions must identify barriers to secure tenure and build more accessible pathways to long-term secure tenure for women and gender diverse people.

⁸⁶ OHCHR, *Guidelines on General Recommendations Adopted by the Committee on the Elimination of Discrimination Against Women*, 1991, 16, <https://www.unhcr.org/refugees/citizenship/citizenship.html>, accessed 10/10/2023.

6.

Homelessness begins early in life for a majority of women and gender diverse people, and is often followed by a chronic, chaotic churn of precarious housing and homelessness situations.

Despite only 13% of participants being young people themselves, a majority of participants reported experiencing homelessness for the first time as a young person (55.7%). Approximately 1 in 5 participants became homeless before the age of 16, meaning they likely could not access supports or services within the homelessness or VAW sectors (unless with a parent or caregiver). Amongst those who became homeless before 16, on average their first experience of homelessness began at age 11.

Equity-seeking groups disproportionately experienced homelessness at a younger age. For example, LGBTQ2S+ persons were more likely to experience homelessness before the age of 16, as were racialized participants. A majority of Indigenous participants (57.3%) reported experiencing homelessness for the first time as a young person (age 24 or younger), with 1 in 4 experiencing homelessness before the age of 16. Similar disparities were reported with respect to gender, with 48.6% of gender diverse people reporting they became homeless before the age of 16 (vs. 19.3% of cisgender women).

AGE AT WHICH PARTICIPANTS FIRST EXPERIENCED HOMELESSNESS

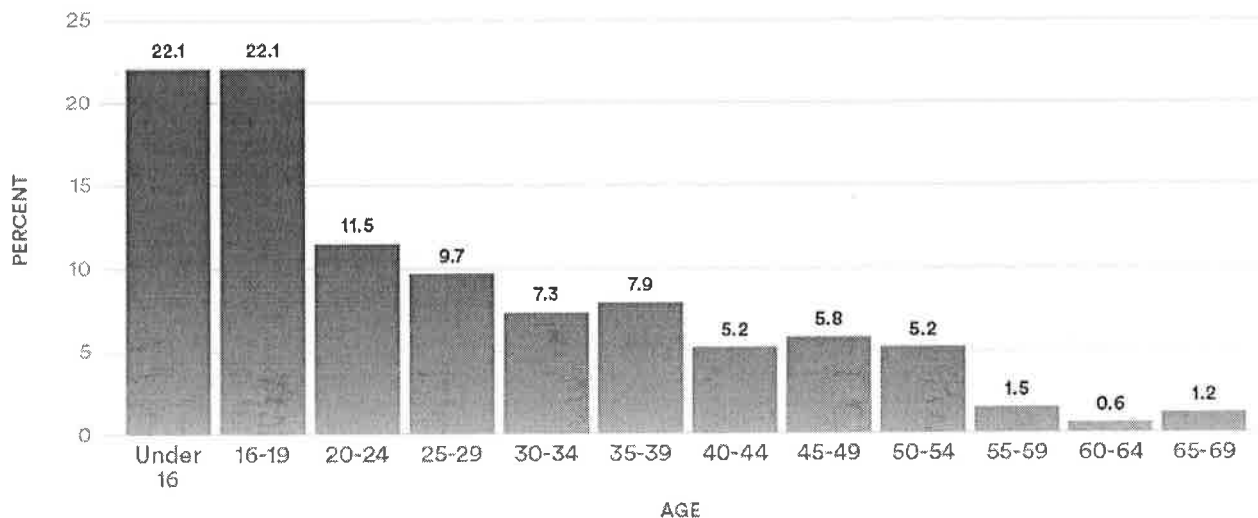


Figure 12. Age at which participants first experienced homelessness.

Once homeless, many women and diverse people reported cycling through a range of precarious housing and homelessness situations (e.g., couchsurfing, survival sex, rough sleeping, hotels/motels, residing in a shelter), with a majority experiencing three or more precarious housing situations in the last year. A majority (42.3%) spent 6 months or more in these situations over the last year.

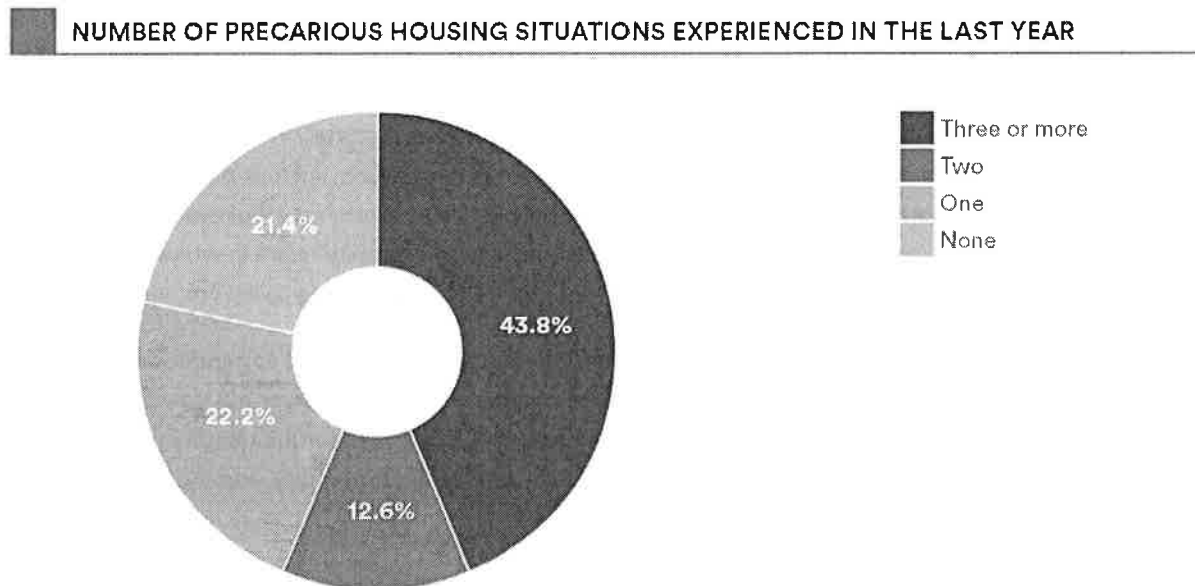


Figure 13. Number of precarious housing situations experienced in the last year.

KEY TAKEAWAYS

Research shows that being exposed to homelessness at a young age puts youth at immense risks of experiencing trauma and violence, impacting their ability to cope and transition out of homelessness.⁸⁸

Our survey findings mirror other national data that has traced chronic adult homelessness to homelessness during youth or childhood,⁸⁹ demonstrating the importance of early intervention.

Importantly, however, these early experiences are “often intertwined with the experiences of the child’s primary caregiver – in many cases, a child’s mother. Housing instability in a child’s life usually occur in the context of their mother’s experiences of eviction, intimate partner violence, sexual assault, poverty, or homelessness.”⁹⁰ This suggests that if we want to interrupt the pathway from child homelessness to

⁸⁸ Gault, S., O’Grady, B., Kidd, S., & Schwan, K. (2016). *Without a Home: The National Youth Homelessness Survey*. Toronto: Canadian Observatory on Homelessness Press. <http://homelesshub.ca/youth-without-a-home>

⁸⁹ See Employment and Social Development Canada. (2019b). *Everyone Counts 2018: Highlights – Preliminary Results from the Second National Coordinated Point-in-Time Count of Homelessness in Canadian Communities*. Ottawa, ON: ESDC.

<https://www.canada.ca/en/employment-social-development/programs/homelessness/reports/highlights-2018-point-in-time-count.html>

⁹⁰ Schwan et al., 2020, p. 31.

adult homelessness for women and gender diverse people, we must address the unique needs of mothers in severe poverty and core housing need.⁹¹

In addition, the prevalence of early experiences of homelessness amongst women and gender diverse people underscores the importance of youth homelessness prevention. Interventions must be trauma-informed, gender-sensitive, culturally appropriate, and well-resourced, with a particular focus on youth under 16, who are especially underserved by the homelessness and VAW sectors.⁹² Given that some girls and gender diverse children experience homelessness with their families, programs and services should prioritize avenues for keeping families together (when safe and appropriate). This should include reviewing and rescinding policies that exacerbate child-parent separation, such as mandatory reporting to child welfare within some VAW or homelessness services. Such policies may make women with children hesitant to access services for fear of child apprehension⁹³ or may result in women leaving their children with others in order to access supports,⁹⁴ in some cases contributing to severe, long-term harm.

Policies aiming to prevent homelessness for Indigenous young women, as well as gender diverse and Two-Spirit persons, must be cognizant of the colonial contexts that make Indigenous youth vulnerable to housing precarity. Indigenous scholars and communities have long called for meaningful investments in programs that focus on relationships to kin and connection to land, community, and Indigenous ways of knowing and being (including Indigenous systems of gender).⁹⁵

For gender diverse youth, research indicates that interventions must focus on gender-affirming supports, access to adequate gender-sensitive healthcare, and housing interventions built around inclusion and safety.⁹⁶ In all cases, early interventions appropriate to the unique situation of youth can build long-term stability and play a role in eradicating chaotic, cyclical, and chronic homelessness for women and gender-diverse people.

⁹¹ Stewart et al., 2020.

⁹² Stewart et al., 2020.

⁹³ Miyataki, K. (2017). Housing, homelessness, and violence against women: A discussion paper. Women's shelters Canada. <http://www.wsc.ca/wp-content/uploads/2017/07/Housing-homelessness-and-VAW-Discussion-Paper-Aug-2017.pdf>. See also: Martin & Walsh, 2019.

⁹⁴ See Caplan, B. (2019). "Invisible" paren: experiences of homelessness and separation from their children in Canada. [doctoral thesis]. University of British Columbia. <https://open.library.ubc.ca/handle/2429/71611>.

⁹⁵ Gordon, S. A. "Toward a Decolonial 'F'." In Gordon, S. A. & Smith, J. (Eds.). (2015). *Indigenous youth homelessness in Canada*. Peter Martin, 126-140.

⁹⁶ Stewart et al., 2020; 101-102. For discussion of the LGBTQ+ community in Canada, see Stewart et al. (2020). *Canadian Journal of Family and Youth Studies* (Canadian Journal of Family and Youth Studies), 4(1), 1-5.

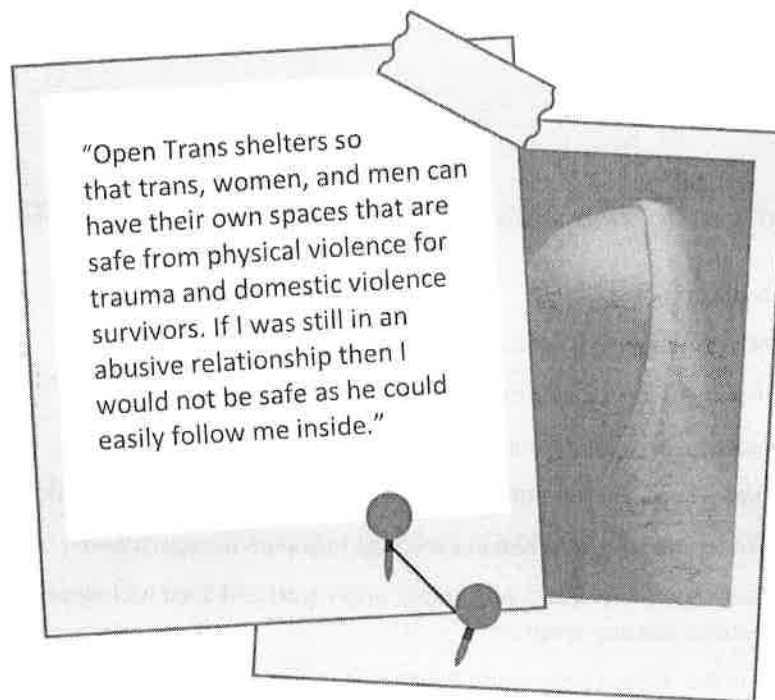
7.

Women and gender diverse people reported significant barriers to accessing emergency services, with almost a third being unable to access a bed when they needed one.

Almost a third (32.6%) of participants were unable to access a shelter bed when they needed one. When participants were asked why they were unable to access a bed, an overwhelming majority listed 'shelter full' as the primary reason. Participants also reported barriers due to discrimination, eligibility criteria, COVID-related restrictions, and difficulty finding emergency shelters or services suitable for their families and pets. The following explanations reflect some of these challenges:

DISCRIMINATION

- ↳ "Because I was male presenting and fleeing abuse with a baby and a dog and you can't bring all of them with you/only one family shelter for women allows pets and I felt that because I present more masculine and don't identify exactly as a woman it would cause issues or i would t be welcome or safe there either"
- ↳ "The people inside bullied me because I was a black girl and wouldn't let me in."



ELIGIBILITY

- ↳ "I was pregnant and I couldn't access certain services because of COVID. I also couldn't get into a shelter because I had been drugged by my ex and they thought I was intoxicated."
- ↳ "The definition of DOMESTIC ABUSE didnt qualify in Manitoba. In newfoundland..stjohns..all domestic abuse is accepted... In manitoba if ur partner isnt physical u dont get shelter. If it isnt ur partner but member of ur household it doesnt qualify even if theyr beating u. So yes ive been denied shelter at womens abuse shelters."
- ↳ "I was deemed a liability because I was suicidal and was "timed out" for 24 hrs"

SUITABILITY

- ↳ "No room for my size of family"
- ↳ "No beds for Families and we have 2 pets a dog and a cat"
- ↳ "Mostly because of staff being insensitive the personal needs. There not being enough beds and shelters available to avoid people that may cause issues."

When asked what they did when they couldn't access a shelter bed, many participants described experiences of rough sleeping, survival sex, returning to situations of abuse, and begging friends or acquaintances to take them in for the night.

What did you do when you were turned away from a shelter?

- ✧ "Sleep on the streets or in cars"
- ✧ "Stayed awake all night, looking for a friend to take me in usually"
- ✧ "I left and spent the night sleeping in the lobby of a nearby hospital"
- ✧ "Slept outside or slept with a man for a place"
- ✧ "I slept outside, and when I did the police arrested me and stole all my personal belongings."
- ✧ "begged a friend to let me stay with him in exchange I cleaned his apartment"
- ✧ "i moved back in with the man I had a no contact order with and lived with anxiety until i was approved for Manitoba housing program"
- ✧ "I cried especially in the Winter time when it was cold outside. I have slept outside some nights and it was so cold that I got frost bite in my feet and this resulted in permanent nerve damage."
- ✧ "Stayed in abusive situation with my dog and my kid"

Importantly, almost 1 in 5 (18.2%) participants reported being service restricted/barred from shelters. This experience was more common for particular groups, including:

- ↳ Participants that had child welfare involvement both as a child and as an adult (26.7% vs. 12.5%)
- ↳ Those who identified as having a mental health challenge (81.7% vs. 58%)

Below are the top 7 problems participants reported at drop-ins and shelters across the homelessness and VAW sectors, suggesting some significant concerns regarding discrimination, exclusion, safety, and gaps in service. Analysis indicated approximately 1 in 5 participants had engaged with both the homelessness and VAW sector in the last year.

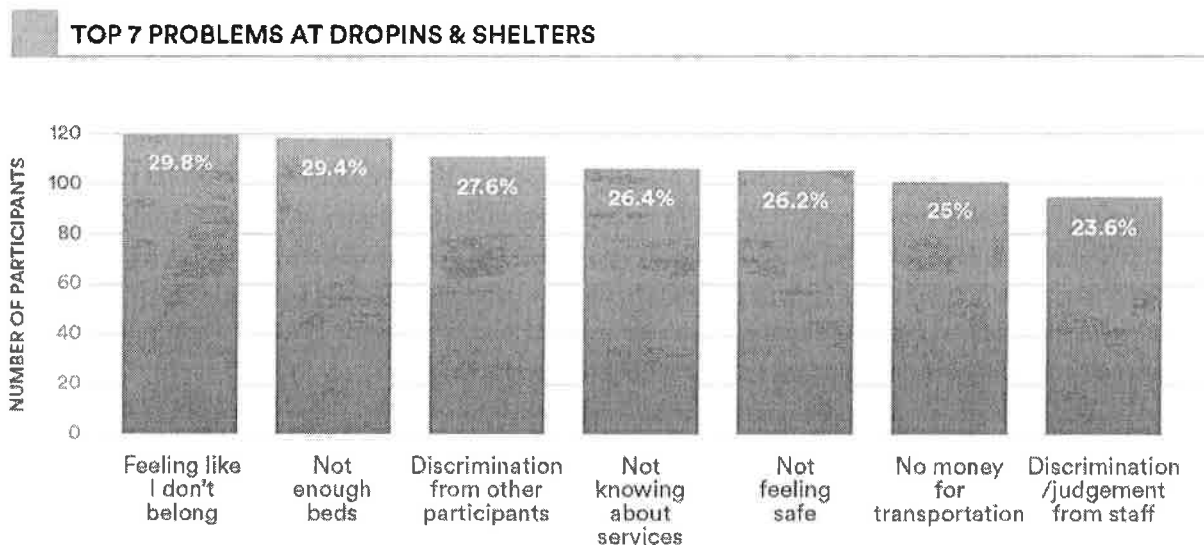


Figure 14. Top 7 problems participants faced in drop-ins and shelters.

KEY TAKEAWAYS

Our survey findings suggest that some women and gender diverse people are harmed by how the homelessness and VAW sectors structure and deliver services. In addition to the severe capacity issues that are well-documented,⁹⁷ personal accounts indicate that shelters can exacerbate the very needs they are meant to address, including through discriminatory policies, duty to report policies, and rigid eligibility and acuity criteria. Shelter policies related to substance use, pets, and adult children – combined with a failure to employ trauma-informed, harm reduction approaches – result in women and gender diverse people being turned away from services. This is particularly evident in the lives of women and gender diverse people who have complex needs or are multiply marginalized. The effects of such exclusion cannot be overstated. In some cases seemingly benign or very minor operational policies

⁹⁷ Statistics Canada, 2019; Employment and Social Development Canada, 2019

within shelters, drop-ins, transitional housing, and other emergency services produce horrific results for those seeking or receiving support.

In seeking to redress these issues, particular attention must be paid to how definitions of violence shape access to services and shelters. How violence against women or domestic violence is defined varies jurisdictionally, leading to inconsistent shelter policies regarding who qualifies for services.⁹⁸ VAW shelters, which in many jurisdictions serve only women fleeing intimate-partner violence (IPV), create gaps in service for women who are experiencing violence due to being homeless or street-involved, or experiencing violence from other family members. This creates silos between women and gender diverse people who experience violence in different circumstances. Given this, it is not surprising that some women report feeling there is a “hierarchy of deservingness” that shapes who gets access to services, and that women experiencing particular forms of violent victimization are prioritized over others.

Experiences of gender-based discrimination and race-based discrimination at shelters further disenfranchise women and gender diverse people from spaces that are meant to protect them and their families. Being turned away from shelters can mean women and gender-diverse people are forced to utilize alternative strategies such as survival sex, going back to their abuser, or navigating systems like healthcare or criminal justice to seek immediate shelter. Policy interventions and solution-building must take a critical look at the role shelters play in maintaining and perpetuating violent experiences for women and gender diverse people as they seek safety and stability.

⁹⁸ Canadian Network of Women's Shelters and Transition Houses. (2013). The Case for a National Action Plan on Violence Against Women. <https://cnwsh.ca/wp-content/uploads/2015/10/11-The-Case-for-a-National-Action-Plan-on-VAW.pdf>

8.

Women and gender diverse people experiencing housing need and homelessness reported high exposure to trauma and violence, with 75% identifying as a survivor of trauma or abuse.

Experiences of trauma and violence were reported both prior to and during experiences of homelessness by participants. Remarkably, over 75% of women and gender diverse persons reported being a survivor of abuse or trauma. Over 1 in 10 reported being involved in human trafficking, and over a quarter of the group (27.8%) had child welfare involvement as a child or youth.

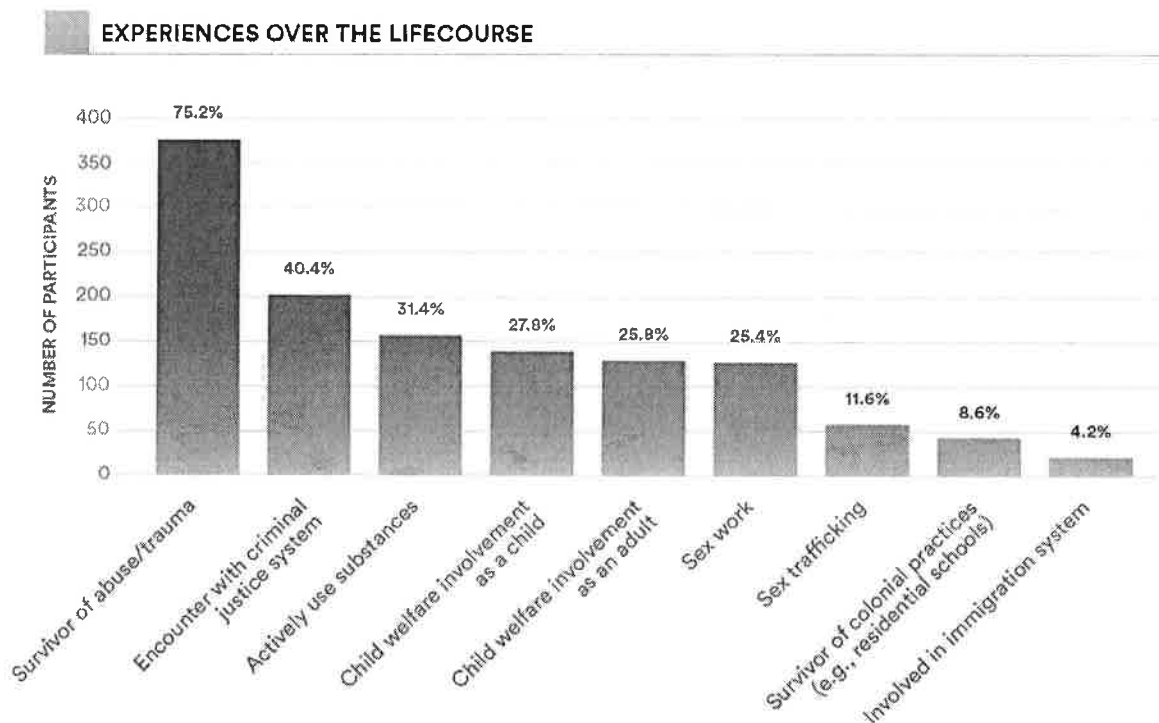


Figure 15. Experiences over the lifecourse (e.g., trauma, trafficking, CAS involvement).

Participants also reported significant levels of violence, control, harassment, or discrimination perpetrated by the people they live with, with almost half of the sample reporting some form of violence in their current or most recent home (45.6%). Importantly, 28.4% of participants were forced to move out from their most recent housing because it was not safe for themselves or their children. Particular forms of violence at home were higher for some groups; for example, gender diverse people reported higher rates of arguments and fights (37.5% vs. 31.3%) and physical conflict, threats, or assault (29.2% vs. 21.3%).

Histories of gender-based violence were reported by participants accessing services in the homelessness sector and the VAW sector, suggesting these experiences are pervasive for those who engage with either system.

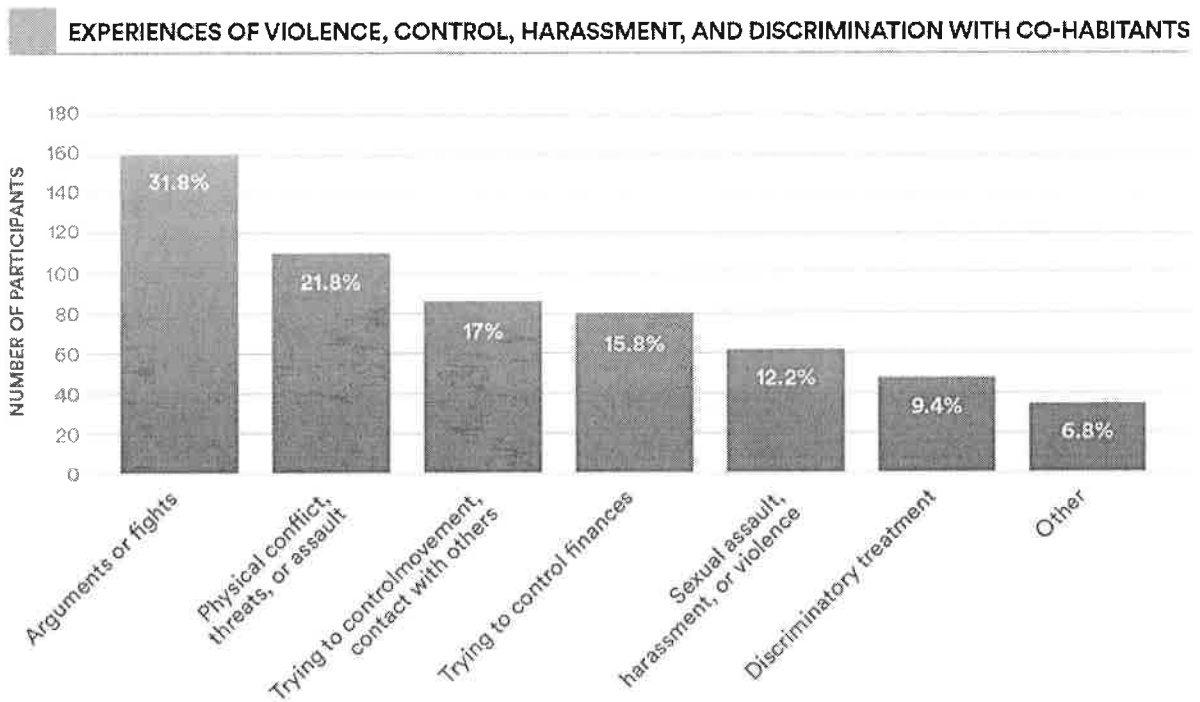


Figure 16. Participants' experiences of violence, control, harassment, and discrimination with co-habitants.

KEY TAKEAWAYS

Issues of housing and safety are indivisible in the lives of women and gender diverse peoples. The lack of safe, affordable, and adequate housing across Canada contributes to this risk of violence, and experiences of violence can cause or perpetuate housing instability.⁹⁹ In many cases the violence that women and gender diverse people experience on the street is preceded by violence in their homes. Available national data indicates this violence has been increasing for years, with a **Statistics Canada report** on police-reported violence between 2007 and 2017 indicating that “regardless of the type of offence, girls and young women were most commonly victimized on private property and, of those who were, nearly two-thirds were victimized in their own home”.¹⁰⁰ Such data demonstrates that housing the lack of available, affordable housing for women (and their children) can trap women in housing in which they are being abused or assaulted and make it profoundly difficult for women who are homeless to transition off the streets.

⁹⁹ Schabas et al., 2020; Van Balkom & Oudshoorn, 2015.

¹⁰⁰ Conroy, S. (2018). Police-reported violence against girls and young women in Canada, 2007–2017. The Canadian Centre for Public Statistics. <https://www150.statcan.gc.ca/n1/pub/85-003-x/2019012/article/154913-eng.pdf>

Our findings underline the importance of harm reduction and trauma-informed approaches, including within public systems seeking to prevent homelessness. Cross-system supports that assist individuals transitioning from child welfare or criminal justice systems, for example, are critical to bridging gaps that make women and gender-diverse people more vulnerable to violence and trauma.¹⁰¹ Moreover, there is a need to ensure that public systems, homelessness services, or VAW shelters are not transitioning individuals back into situations of abuse. Unfortunately, available data suggests that we may be doing just that. For example, recent *Statistics Canada data* (2019) indicates that few women transition from VAW shelters into safe or affordable housing, with 21% reporting they are returning to a residence where their abuser continues to live.¹⁰²

9.

Women and gender diverse people, particularly those from equity-seeking groups, reported significant levels of discrimination from landlords and property managers, in many cases leading to housing loss or barriers to accessing housing.

Women and gender diverse people described complex, intersectional forms of discrimination in housing across Canada. A key finding was the level of discrimination participants experienced from landlords and property managers. A total of 80% of participants reported experiencing at least one form of discrimination from a landlord or property manager. Most participants reported experiencing multiple forms of discrimination, with almost half of participants reporting experiences of three or more (44.4%). Importantly, 15.8% reported they were forced to move out of their most recent place because of discrimination or harassment.

The rate of discrimination was higher for particular groups, with LGBTQ2S+ women and gender diverse people reporting distinct experiences in this regard. For example, data indicates that LGBTQ2S+ persons:

- ↳ Experience discrimination on the basis of age at 2.3 times the rate of heterosexual populations
- ↳ Experience discrimination on the basis of having a criminal record at 2.6 times the rate of heterosexual populations
- ↳ Experience more than twice the level of discrimination on the basis of appearance compared to heterosexual groups (26.2% vs. 12.2%)
- ↳ Experience discrimination on the basis of sexual orientation at 3.6 times the rate of people who identify as heterosexual

Gender diverse people also describe higher levels of discrimination from landlords in key domains, including on the basis of income (60.4% vs. 42.7%).

Race shaped experiences of discrimination across the sample, with 34.7% of racialized persons and 24.2% of Indigenous persons reporting discrimination on the basis of race, colour, or ethnicity. One participant reported, for example, “As a migrant from Africa, I was discriminated against when renting an apartment and had to leave.” Indigenous persons also reported greater discrimination from landlords on other bases as well, with 52.9% reporting discrimination on the basis of income.

KEY TAKEAWAYS

Discrimination from landlords in the form of harassment or refusal to rent reduces women’s and gender diverse people’s chances of acquiring or keeping long-term adequate housing. This discrimination is often based on gender and other intersecting characteristics, such as family status, race, income, or

age.¹⁰³ The prevalence of gendered forms of discrimination from landlords and property managers should be understood as a major human rights concern, one that has significant implications for Canadian governments given the commitment to non-discrimination in the *Canadian Charter of Rights and Freedoms*, and the *adoption of housing as a human right in federal legislation*.

Effective remedies for discrimination from private landlords and property managers relies on provincial, territorial, and federal human rights legislation.¹⁰⁴ However, these mechanisms in Canada are weak. As identified in a **recent Canadian submission** to the UN Special Rapporteur on the Right to Adequate Housing,

"Rights claimants in the area of housing have little access to representation and assistance, and courts and tribunals have usually resisted the application of substantive equality to systemic housing and homelessness issues ... Surveys have revealed widespread discrimination on prohibited grounds in housing, yet housing cases make up a small fraction of the cases before human rights tribunals across Canada."¹⁰⁵

All Canadian governments, in concert with the Office of the Federal Housing Advocate, can play an important role in preventing discrimination in rental housing through improving avenues for women and gender diverse people to claim their rights. For examples, municipalities should consider establishing low-barrier access to justice mechanisms at the local level (as was outlined in the City of Toronto's HousingTO 2020-2030 Action Plan).

Other important interventions should include programs that focus on assisting vulnerable renters in navigating rental housing markets, obtaining necessary documentation, completing paperwork, and dealing with landlords. Supports like rent banks¹⁰⁶ and flexible funds¹⁰⁷ for people who are unable to afford deposits or show proof of incomes can also help with deterring discrimination based on income.

10.

79% of women and gender diverse people experiencing housing need or homelessness report having a disability. This group reports significant inequities and discrimination on the basis of ability, with severe consequences for many.

Remarkably, 79% of participants reported some form of disability, with almost half of the sample (46.4%) reporting a psychiatric or mental health disability of some kind. A total of 60% reported a physical disability, 38.2% reported a substance use problem, and 22.4% reported some form of cognitive, intellectual, or memory-related disability. On average participants reporting having 3 disabilities, with some participants reporting as many as 11.¹⁰⁸

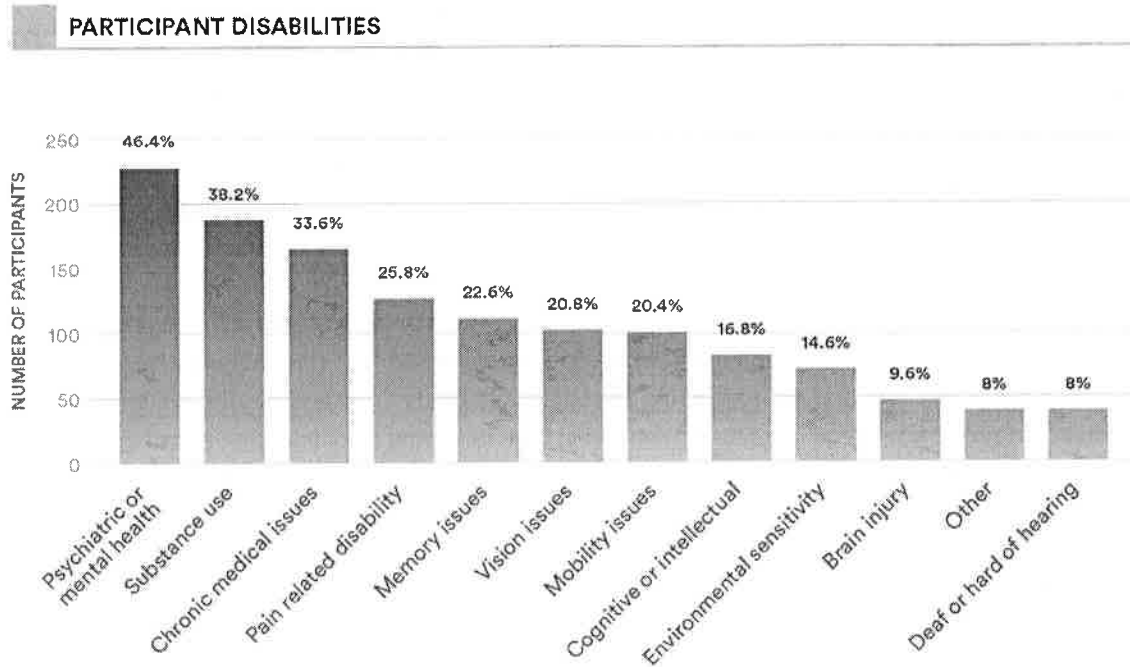


Figure 15. Disabilities reported by participants.

Analysis indicated having a disability was a significant predictor of negative housing outcomes. These included having difficulties accessing emergency shelter and supports, difficulties finding affordable and accessible housing, experiences of discrimination, and numerous additional inequities.

¹⁰⁸ It should be noted that approximately half of the study sample were pregnant, accessing low-income drop-ins for women and gender diverse people, and may have skewed the results towards deeper and more complex forms of marginalisation. Nevertheless, similar rates of disability were reported among participants who did not attend from the South wing area.

Problems Accessing Shelters

Shockingly, people with disabilities reported being unable to access shelter beds when they needed them at roughly twice the rate of those without disabilities (65.1% for people with physical disabilities vs. 34.9% for those without; 43.1% for those with mental health disabilities vs. 18% for those without). This suggests profound accessibility issues persist in the homelessness and VAW sectors. Evidence of this surfaced in other parts of the data. For instance:

- ↳ Persons with physical disabilities reported shelters and drop-ins were not accessible to them by public transportation at almost twice the rate of those without physical disabilities (11.6% vs. 6%)
- ↳ Shelters and drop-ins are inaccessible to people with physical disabilities at more than three times the rate of those without physical disabilities (10.7% vs. 3%)
- ↳ Individuals with substance use problems also experienced significant barriers when trying to access shelters. There was a significant association between reporting a substance use problem and having been barred from shelters. Those that used substances reported being barred from shelters at a rate 3 times that of those who did not (30.9% vs. 10.4%)

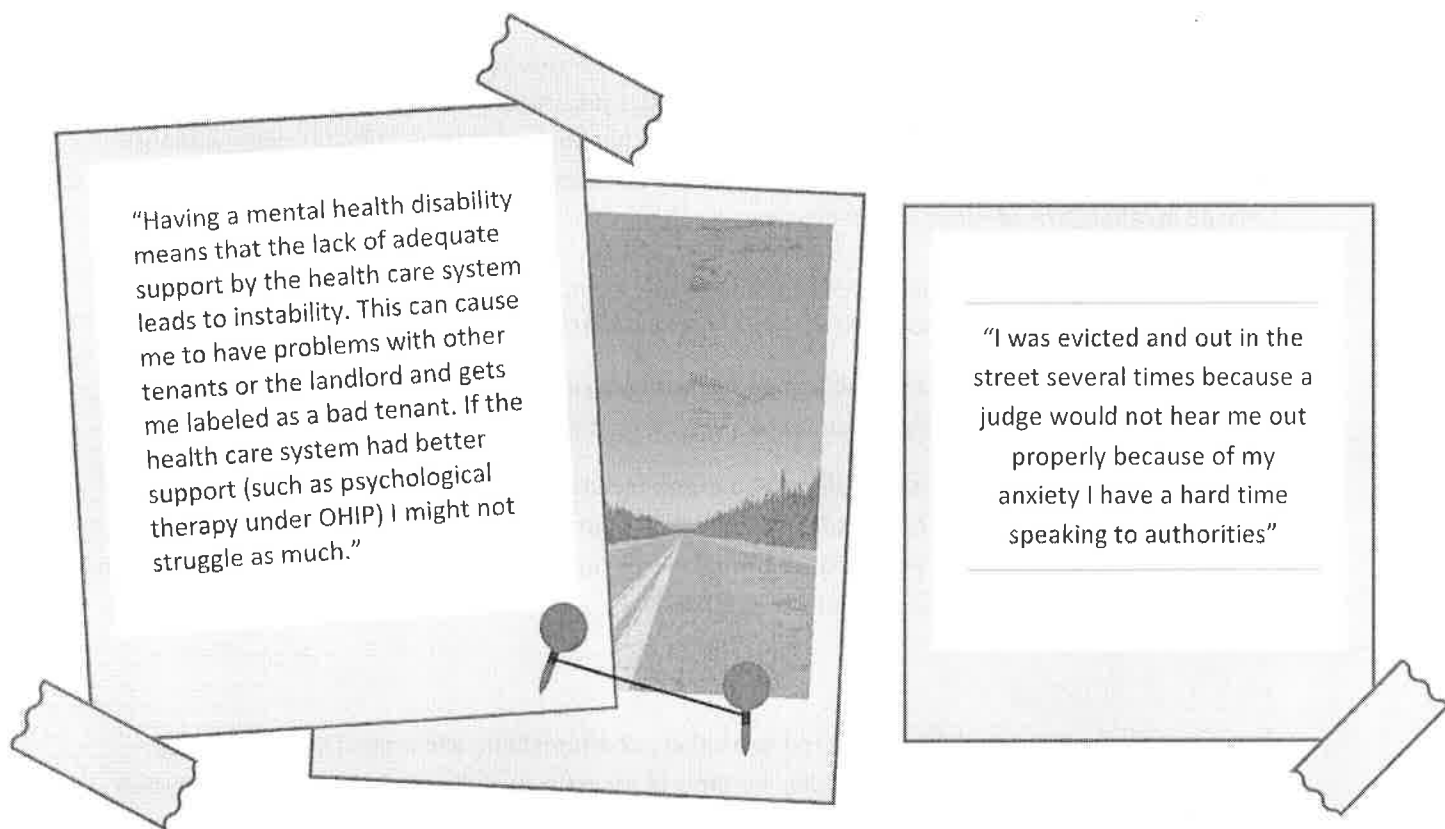
Barriers to Housing

Unsurprisingly, having a disability was linked to a variety of affordability and accessibility challenges when it came to finding appropriate housing. In terms of accessibility, 16% of participants with physical disabilities reported that they had problems finding a place because of accessibility issues; a rate that was 16 times greater than those without physical disabilities (16.0% vs. 1.0%). They also more frequently reported that they did not have the supports or services necessary to get or keep a place (22.3% vs. 12.5%) and that the places they could afford were in bad condition (49.0% vs. 12.5%). Broadly speaking, these findings are in line with long-standing complaints in various provincial jurisdictions. For instance, the Ontario Human Rights Commission has highlighted inaccessible buildings as a persistent barrier for persons with disabilities when it comes to accessing appropriate housing – a barrier which they attribute, in part, to rigid adherence to inadequate *Building Code* accessibility standards.¹⁰⁹

In addition to accessibility concerns, persons with disabilities also reported significantly greater difficulties finding a place because of affordability issues. This trend was present among participants with mental health disabilities (73.0% vs. 40.3%), substance use problems (77.0% vs. 49.8%), cognitive/intellectual disabilities (77.7% vs. 55.2%), and physical disabilities (65.0% vs. 53.0%). These findings align with past research by Statistics Canada which stated that persons with disabilities are more likely to encounter affordability problems when they look for housing.¹¹⁰

¹⁰⁹ See OHRC, (2018), *Human Rights and Rental Housing in Ontario: Background Paper*. Ottawa, ON: OHRC. https://www.ohrc.on.ca/sites/default/files/attachments/human_rights_and_housing_in_ontario23A_background_paper.pdf. See also OHRC, (2020), OHRC statement for National Housing Day November 22: Accessible housing makes social economic sense. Ottawa, ON: OHRC. https://www.ohrc.on.ca/en/news_events/ohrc-statement-national-housing-day-november-22-accessible-housing-makes-social-economic-sense

¹¹⁰ See: W., Guen J., Engstland J., & Figueroa, A. (2008). *The dynamics of housing affordability: Perspectives on labour and income*. 22-31, 37-45.



Increased Risk of Evictions

The odds of being evicted were more than three times greater if participants had a mental health disability (OR = 3.16) (47.0% vs. 21.9%) or reported a substance use problem (OR = 3.070) (53.4% vs. 27.2%). All told, these results suggest that for many persons with disabilities, even if they are able to obtain housing, there is still a substantially increased risk that it will be taken away from them.

KEY TAKEAWAYS

Women and gender-diverse people living with disabilities are made exceedingly vulnerable by structures and systems that consistently fail to meet their needs. Not only are histories of disabilities linked to negative housing outcomes, but exposure to gender-based violence (exacerbated by housing precarity) puts women and gender diverse people at risk of becoming disabled or further disabled.¹¹¹ Housing precarity and exposure to violence for these groups is invariably tied to income. Studies across Canada have shown that the current rates of financial assistance (disability support programs) for those living

¹¹¹ Alim, S. (2018). Women with Disabilities and Access to Shelters and Transition Houses; A Brief Prepared for the Standing Committee on the Status of Women in Canada (FEWD) for their Study of the System of Shelters and Transition Houses in Canada. Disabled Women's Network (DWN). https://www.dawncanada.net/media/uploads/page_brief/page-163/feewd-canada_brief_to_scswn_on_access_to_shelters_november_16_2018.pdf

with disabilities in Canada are rarely enough to afford recipients with access to adequate housing and a decent quality of life.¹¹² This problem is compounded by the fact that living with a disability often requires individuals to incur significant additional expenses, frequently not covered by social support programs.¹¹³

Across Canada there is also a lack of services to address the needs of women and gender diverse people who are homeless and have disabilities,¹¹⁴ limiting pathways that could help these individuals transition out of housing insecurity. Many emergency shelters and drop-ins across Canada are physically inaccessible, and many lack the critical services and resources to support persons with mental health disabilities or those living with invisible disabilities.¹¹⁵ For example, a **DAWN Canada study** reports that only 75% of homeless shelters have a wheelchair accessible entrance, 66% provide wheelchair accessible rooms and bathrooms, 17% provide sign language, and 5% offer braille reading materials.¹¹⁶

Overall, our survey findings point to a persistent accessibility gap in housing stocks and shelters across Canada, significant affordability problems for many persons with disabilities, and a heightened risk of eviction. Interventions should include improved accessibility standards in the ***National Building Code of Canada*** and provincial/territorial building codes, and implementing more generous financial supports to help persons with disabilities navigate the costs of housing or their disability-related expenses. Policy interventions meant to address housing insecurity experienced by women and gender-diverse people with disabilities must include the full spectrum of visible and invisible disabilities that impact an individual's ability to access long-term and adequate housing. Extensive engagement involving individuals with lived experience of disabilities must inform all interventions. An audit of housing policies across jurisdictions should be undertaken, with a focused, intersectional, and rights-based approach used to identify and assess the real scale of housing issues experienced by women and gender diverse people with disabilities.

¹¹² For a review of these studies, see Schwan et al., 2020.

¹¹³ Dumas, L., Ducharme, M. N., & Pronet, A. (2014). Identification des coûts supplémentaires généraux liés aux déficiences, incapacités et situations de handicap assumées par les personnes handicapées et leur famille. École de travail social, Université du Québec à Montréal.

¹¹⁴ Allin, 2018.

¹¹⁵ Allin, 2018.

¹¹⁶ Allin, 2018.

RECOMMENDATIONS

Government of Canada

1. Develop a national definition of homelessness and housing affordability that genuinely reflects (1) the unique causes, conditions, and experiences of homelessness and housing need for diverse women, girls, and gender diverse people, and (2) the depth of poverty and core housing need experienced by these groups.
 - ↳ Conduct or commission a rights-based, GBA+ audit of current definitions of homelessness used in policy, programming, legislation, and funding allocation.
 - ↳ Advance the development of a rights-based, gender-inclusive national definition of homelessness, drawing on the lived expertise of diverse women, girls, and gender diverse people. The consultation of diverse Indigenous women, girls, and Two-Spirit people in the development of this national definition must be paramount.
 - ↳ Streamline definitions of violence against women to include intimate partner violence, family violence, and other experiences of sexual and physical violence due to homelessness, exploitation, and poverty.
2. Ensure gender-based equity in funding for NHS housing investments, prioritizing targeted investment in deeply affordable housing for women, girls, and gender diverse people who are experiencing the greatest level of need.
 - ↳ Conduct or commission a GBA+ audit of federal investments in the homelessness sector made through Reaching Home, seeking to identify whether and how these investments have concretely reduced homelessness for women and gender diverse people.¹¹⁷
 - ↳ Ensure all federal programs prioritize those in greatest need, including women and gender diverse people with disabilities, and Black and Indigenous women.
 - ↳ Redesign and further invest in the Canada Housing Benefit (CHB) to maximize benefit for women, girls, and gender diverse peoples experiencing the greatest level of housing need. The federal government should consider providing the CHB as a direct entitlement to individuals and families, rather than through cost-sharing agreements with provinces and territories.

¹¹⁷ For example, while the NHS commits a minimum of 25% of investments to housing for women, there are few indicators as to whether and how these targets are being met, including within specific programs (e.g., the Rapid Housing Initiative).¹¹⁷ A process should be established whereby sufficient mechanisms are in place to assess whether substantive gender-based equity is being achieved in funding allocations.

- ↳ Increase investment in the CHB in line with the level of housing need experienced across the country, taking into consideration the unique housing needs of women, girls, and gender diverse people.
 - ↳ Redesign capital programs to substantially increase access to NHS programs for women-led and women-focused organizations, non-profits, and housing providers.
 - ↳ Ensure the affordability metrics employed in all federal housing programs actually reflect the depth of poverty and core housing need that many women, girls, and gender diverse people experience in Canada.
 - ↳ Ensure all federally-funded housing programs established through the National Housing Strategy are conditional upon recipient governments and organizations (including CABs and CEs¹¹⁸) progressively adopting a rights-based, GBA+ approach.
 - ↳ Ensure coordinated access systems funded through the NHS are adapted to the unique needs of women and gender diverse people.
3. Urgently prioritize all available means to realize the right to housing for Indigenous women, girls, and Two-Spirit people.
- ↳ Immediately adopt an Urban Indigenous Housing Strategy, developed by and for Indigenous persons, that meets the unique needs of urban Indigenous women, girls, and Two-Spirit people.¹¹⁹
 - ↳ Allocate maximum available resources to immediately end homelessness and progressively realize the right to housing for Indigenous women, girls, and Two-Spirit people.
 - ↳ Ensure the **UN Declaration of the Rights of Indigenous People** and the Calls to Justice outlined in **Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls** guide all decision-making in the area of housing for Indigenous women, girls, and Two-Spirit people.
 - ↳ Ensure meaningful participation of Indigenous women, girls, and Two-Spirit people in all decision-making processes that affect them with respect to housing, including through the principles of free, prior, and informed consent.
4. Expand and substantially increase investments in eviction prevention for women, girls, and gender diverse people, including through the establishment of a **Federal Residential Tenant**

¹¹⁸ Community Advisory Boards (CABs) and Community Centres (CCs) are both community-based organizations responsible for addressing homelessness in their own right and as part of the National Housing Strategy set up by the Government of Canada. See <https://cna-ach.ca/en/governance-and-structure/cab-and-cc/>

¹¹⁹ OIC (2018, January). Response to the 10th United Nations World Housing Strategy. <https://www.oic.ca/en/10th-un-world-housing-strategy> (PDF)

Support Benefit that meaningfully prevents eviction, rental arrears, and pathways into homelessness for women and gender diverse people.

- Invest in evidence- and rights-based eviction prevention policies and programs that respond to the unique circumstances of women, girls, and gender diverse people. International examples of 'zero eviction into homelessness' policies and programs should be particularly explored, including those that help prevent child apprehension.
 - Develop and expand low-income rent subsidy programs for women, girls, and gender diverse people experiencing housing instability and other difficulties (e.g., violence), ensuring that these programs reach those most in need.
- Adopt policy measures to assist home ownership and primary lease holding among low-income and marginalized women and gender diverse people.
 - Identify and invest in innovative home-ownership models that have shown promise for advancing home ownership among women and gender diverse people living on low-incomes.
 - Conduct or commission an inquiry into systemic and discriminatory barriers to home ownership for low-income women and gender diverse people, particularly for those who are Black, Indigenous, people of colour, persons with disabilities, and persons experiencing violence.
- 6. Actively prevent the financialization of housing, including through the regulation of financial actors and Real Estate Investment Trusts, with a particular attention to curbing the effects of financialization on women and gender diverse people.

Provincial & Territorial Governments

1. Adopt the right to housing in provincial/territorial legislation and policy. Such legislation and policy should seek to ensure that the right to housing is (1) mainstreamed within public systems that contribute to housing insecurity and homelessness for women, girls, and gender diverse people, and (2) embedded in policies, practices, operations, and decision-making within the housing, homelessness, and VAW sectors.
2. Raise social assistance, disability benefits, and minimum wage to livable rates, ensuring equitable access to social benefits for diverse women and gender diverse people.
 - ↳ Conduct a rights-based, gender equity analysis of income support programs to identify barriers to access and to streamline the provision of supports.
3. Adopt policies and practices to improve collaboration between the VAW sector, the homelessness sector, and the housing sector.
 - ↳ Conduct or commission an inquiry on systemic violations of the right to housing at the intersection of the housing, VAW, and homelessness sectors, seeking to identify how particular gaps between the sectors may deepen homelessness or marginalization for some women, girls, and gender diverse people.
 - ↳ Invest in the development of a GBA+, rights-based framework for coordinating service delivery across the housing, VAW, and homelessness sectors, recognizing that women often move between services in both sectors and deserve to have their right to housing upheld within and between each.
4. Work across departments, ministries, and sectors to ensure housing stability and ongoing supports and services for women and gender diverse people who are transitioning from mental health care, child protection services, and corrections.
 - ↳ Work with lived experts to determine how best to harmonize data and assessment tools to ensure women and gender diverse people leaving public systems do not transition into homelessness.
5. Invest in provincial/territorial knowledge development and data management specific to homelessness amongst women and gender diverse people, with the goal of advancing an

integrated systems approach to preventing homelessness, violence, and negative interactions with public systems.

↳ Work with lived experts to determine how best to collect real-time, person-specific data on housing precarity and system navigation amongst women, girls, and gender diverse people.

6. Integrate improved accessibility standards, based on **Universal Design Principles**, into provincial/territorial building codes and ensure that these requirements apply to *all* residential and shelter spaces.
7. Create provincial/territorial housing and shelter standards that meet the diverse needs of women and gender diverse people experiencing homelessness or housing precarity, developed in partnership with lived experts and Indigenous communities.
8. Make long-term investments in women-led and women-focused organizations, non-profits, and housing providers serving women and gender diverse people experiencing housing need. Investments should rapidly advance these organizations' ability to develop supportive and affordable housing for women and gender diverse people impacted by homelessness, substance use, disabilities, and child welfare involvement.
 - ↳ Investments should prioritize Indigenous organizations, non-profits, and housing providers who serve Indigenous women, girls, and Two-Spirit people.
9. Ensure landlord/tenant legislation does not have a direct or indirect discriminatory effect on women, girls, and gender diverse people, including for those who are residing in transitional housing or social housing. In so doing, particular consideration should be given to the intersection between landlord/tenant legislation and other policy areas that affect the right to housing for these groups (e.g., child welfare).

Municipal Governments

1. Adopt coordinated strategies for preventing and ending homelessness for women and gender diverse people, grounded in data that reflects the unique ways in which these groups experience homelessness.
 - ↳ Work with lived experts, Indigenous communities, and services providers to adapt coordinated access systems and by-name lists that reflect the unique realities of housing precarity and homelessness for women and gender diverse people.
2. Use vacant or underused city-owned land, infrastructure, and buildings to create rapid affordable housing initiatives for women and gender diverse people who are experiencing the greatest level of need.
 - ↳ Such initiatives should prioritize Rent-Geared-to-Income housing, supportive housing, and housing by and for Indigenous women, girls, and Two-Spirit people.
3. Conduct an intersectional policy audit of existing homelessness services and shelters to identify gaps in safety and service-delivery impacting gender diverse people who are homeless.
 - ↳ Work with lived experts to develop recommendations on how best to make services and shelter spaces more accessible and secure for gender diverse people.
4. Invest in municipal eviction prevention programs, such as the *Eviction Prevention in the Community* program in Toronto (ON).
 - ↳ Implement rent banks as a low-barrier measure to provide rental supports for women and gender diverse people at risk of homelessness.
 - ↳ Improve access to legal information, advice, and representation for low-income women, girls, and gender diverse people facing housing precarity or housing rights violations.
5. Implement a landlord registry to regulate the quality and conditions of rental units being made available and implement rental replacement bylaws to adequately house individuals impacted by renovictions and demovictions.

6. Employ rigorous standards to define affordable housing within the specific context of the municipality, based on the real cost of housing locally and other cost of living measures (e.g., food, cost of transportation).
 - ↳ Such standards should reflect the disproportionate financial and care burden borne by women and gender diverse people who are parents or caregivers.

TAB 25

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 **Dr. Kaitlin Schwan** on her affidavit dated August 15, 2025, taken via Zoom videoconference on consent of the parties on January 9, 2026.

APPEARANCES:

GORDON CAPERN, Mr.	Counsel for the Applicant
GRETA HOAKEN, Ms.	
JOANNA MULLEN, Ms.	Counsel for the Respondents
SHANNON DOWN, Ms.	
CHARLOTTE CAHILL, Ms.	Student-at-Law
KAREN STEWARD, Ms.	Amicus Curiae

K. Schwan (Cr.-Ex.) - 4

1 I hope is a beautiful sunny day in southern
2 California. First of all, thank you for your
3 affidavit and the expert report that you've delivered
4 in this proceeding which I've read carefully.

5 I have a few questions for you about that
6 affidavit. And I'd like to begin if I can with
7 Exhibit C to your affidavit which I think is -- you
8 refer to as the "Project Willow Report." You're
9 familiar with that?

10 A. I am.

11 4. Q. I don't think I need to put it up on
12 screen for the purposes of these questions but if you
13 would like to see it, please just yell and we'll make
14 sure it gets on screen for you immediately through the
15 magic of Ms. Hoaken.

16 So a few questions for you about that. I am
17 correct, Dr. Schwan, that you are not one of the
18 authors of that report, is that correct?

19 A. That's correct, I am not one of the
20 authors.

21 5. Q. Thank you and it's correct that you did
22 not participate in its preparation, is that correct?

23 A. That is correct.

24 6. Q. And I have it from Paragraph 33 of your
25 affidavit that, at least up to the date that you swore

K. Schwan (Cr.-Ex.) - 5

1 your affidavit, you had not visited the encampment
2 that's in issue in this case, is that correct?

3 A. That's correct, yes. My affidavit
4 speaks to broader patterns of experiences within
5 encampments across Ontario, across Canada and in North
6 America more broadly. But doesn't speak to this
7 specific encampment.

8 7. Q. Right, that's what I had understood
9 from your affidavit but thank you for confirming that.
10 And I am correct that that remains the case up today?
11 In other words, you have not visited this particular
12 encampment up until today as I am cross-examining you,
13 is that correct?

14 A. That's correct.

15 8. Q. Thank you. And it's correct,
16 therefore, I think that it's fair to say that you have
17 no first-hand knowledge of the current demographics of
18 that encampment?

19 A. I don't have first-hand knowledge of
20 those demographics. I have done research and engaged
21 with encampments across North America and have seen
22 consistent patterns around demographics.

23 9. Q. Right, I think what I am just going to
24 ask you to do, Dr. Schwan, if that's okay, is if we
25 can stick to the questions that I've -- like I read

1 residents. But not to this particular encampment.

2 13. Q. Thank you and I take it as well that
3 you have no first-hand knowledge of how many violent
4 incidents have occurred at the encampment at 100
5 Victoria in the Region of Waterloo, is that fair?

6 A. That is fair.

7 14. Q. All right. It's fair to say that you
8 have not undertaken any quantitative work comparing
9 rates of violence in specific Waterloo shelters versus
10 the encampment at 100 Victoria. Is that fair to say?

11 A. Yes, it is.

12 15. Q. Thank you. And you haven't taken --
13 conducted any research which is specific to shelter
14 availability in the Waterloo Region, is that fair to
15 say?

16 A. Yes.

17 16. Q. I'd like to take you to the, if I can
18 call it the "Tape Measure Example" that you gave in
19 your affidavit. Are you familiar with what I am
20 talking about there?

21 A. I am.

22 17. Q. Thank you. And that's, just for the
23 record, that's where you've pointed out that -- I
24 think the example you gave was a woman who was living
25 in a tent who took the opportunity to place a tape

1 available to them.

2 21. Q. And I understand that. And I assume
3 that when we say that includes any women that are
4 living in an encampment, correct?

5 A. Correct.

6 22. Q. And also any gender-diverse people that
7 are living in an encampment?

8 A. Correct.

9 23. Q. Thank you. And you would agree with me
10 that being able to control access to one's space is an
11 important element of safety, generally. Is that fair
12 to say?

13 A. Yes. I would agree with that.

14 24. Q. Thank you. And would you agree with me
15 that having a door that can be locked might be one way
16 to improve safety?

17 A. Yes, I would agree with that.

18 25. Q. And that a locked door, for example,
19 would mitigate the risk of an unwelcome entry into
20 your space. Is that a fair observation?

21 A. Yes, in general for folks experiencing
22 homelessness when gender-diverse people in particular
23 who are experiencing intimate partner violence, in
24 some cases, that's occurring behind closed doors or
25 exploitation is occurring behind closed doors.

K. Schwan (Cr.-Ex.) - 10

1 But it remains the case that being able to
2 close a door is critical to safety for all people.

3 26. Q. Okay. And thank you, that's helpful.
4 And then just to go to a second thing that people
5 living in encampments need to deal with is going to
6 the washroom, for example. That having one's own
7 washroom could also be part of an improved safety
8 environment for a person living at an encampment. Is
9 that fair?

10 A. Yes, access to water and sanitation and
11 hygiene facilities are critical to the right to
12 adequate housing and safety.

13 27. Q. And having access to one's own washroom
14 would be part of that, in your view, is that fair?

15 A. Yes, that's fair.

16 28. Q. Good. And a part -- if I can just do a
17 comparison, that then avoids -- in the case of an
18 encampment resident, if they had their own washroom,
19 that would avoid the need for them to leave their
20 enclosure to go to the washroom. Is that a fair
21 observation?

22 A. Correct, yeah.

23 29. Q. Thank you. I want to ask you just a
24 few questions about your observations about
25 encampments generally. One of the benefits I think --

1 A. That's correct.

2 32. Q. And one of the other things I think
3 that you say -- again, correct me if my paraphrasing
4 is unfair or inappropriate -- but one of the other
5 things I think you say is that encampments generally
6 are not subject to the imposition of conditions that
7 might apply -- entry conditions that might apply at
8 shelters. Is that a fair observation?

9 A. Yes. That's correct.

10 33. Q. Thank you. And that means -- and the
11 extension of that is, I take it that people who show
12 up at an encampment can, provided there is space,
13 pitch a tent or otherwise take shelter there?

14 A. Correct.

15 34. Q. And that includes, for example, couples
16 who might show up at an encampment, correct?

17 A. Yes.

18 35. Q. And that includes couples who may
19 indeed be in an intimate relationship with one
20 another, is that fair?

21 A. Yes. Correct.

22 36. Q. And among that group, you'll agree with
23 me that that group would include couples where there
24 has been intimate partner violence. Is that fair?

25 A. Yes, it could.

1 37. Q. And for the person who has been subject
2 to intimate partner violence, an aspect of escaping
3 that violence is a physical separation from their
4 partner, do you agree with that?

5 A. Yes.

6 38. Q. And so being able to access housing
7 where their partner can be excluded, can be an
8 important component of getting away from that
9 violence. Is that fair?

10 A. Correct, yes.

11 39. Q. And if I can call it this, a women's-
12 only shelter might assist in providing that
13 separation?

14 A. Yes, in some cases, yes.

15 40. Q. Thank you. And so sometimes, you'll
16 agree with me that it is a good thing for couples --
17 you know, we'll focus on couples where there has been
18 a history of intimate partner violence. It could be a
19 good thing for those couples to be separated in
20 shelters where -- in those circumstances, you'll agree
21 with that?

22 A. I would agree with it generally. I
23 would say that my experience in the research is such
24 that women and gender-diverse people experiencing
25 intimate partner violence have to choose amongst a

1 homelessness.

2 43. Q. Yeah, understood. Thank you very much.
3 And is it fair to say that in a shelter that --
4 particularly in a women's-only shelter, that staff
5 might be trained to watch out for abusive and coercive
6 patterns of behaviour and to intervene where
7 necessary. Is that fair?

8 A. I would say my experience is that many
9 shelters have training in those areas, not all of them
10 -- and not all staff may be trained -- in order to
11 identify signs of abuse or to intervene.

12 But in general, I would say that is true.

13 44. Q. Okay. Thank you. And you'll agree
14 with me that -- and I wasn't suggesting that all
15 shelters, but certainly some of the shelters that that
16 would be an issue in which staff would retain -- would
17 receive training, right?

18 A. Correct.

19 45. Q. And you'll agree with me, I take it,
20 that the flipside is that -- of that is typically
21 people who are residents of encampments do not receive
22 that type of training, is that fair?

23 A. Correct.

24 46. Q. Okay, thank you. I don't have any more
25 questions, Dr. Schwan. And I wanted to say thank you

TAB 26

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 AARON MOSS

I, **Aaron Moss**, of the City of Cambridge, in the Regional Municipality of Waterloo,

AFFIRM AND SAY:

1. I am the Director of Facilities and Fleet at the Region of Waterloo (the “**Region**”).
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. *My Role at the Region*

3. I have been the Director of Facilities and Fleet at the Region since May 2024.
4. Prior to working at the Region, I was the Manager of Fleet Services at the City of Brampton for seven years. I also previously worked for Waste Management Canada as Senior District Fleet Manager, a role I held for six years. In that role I managed multiple

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

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

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

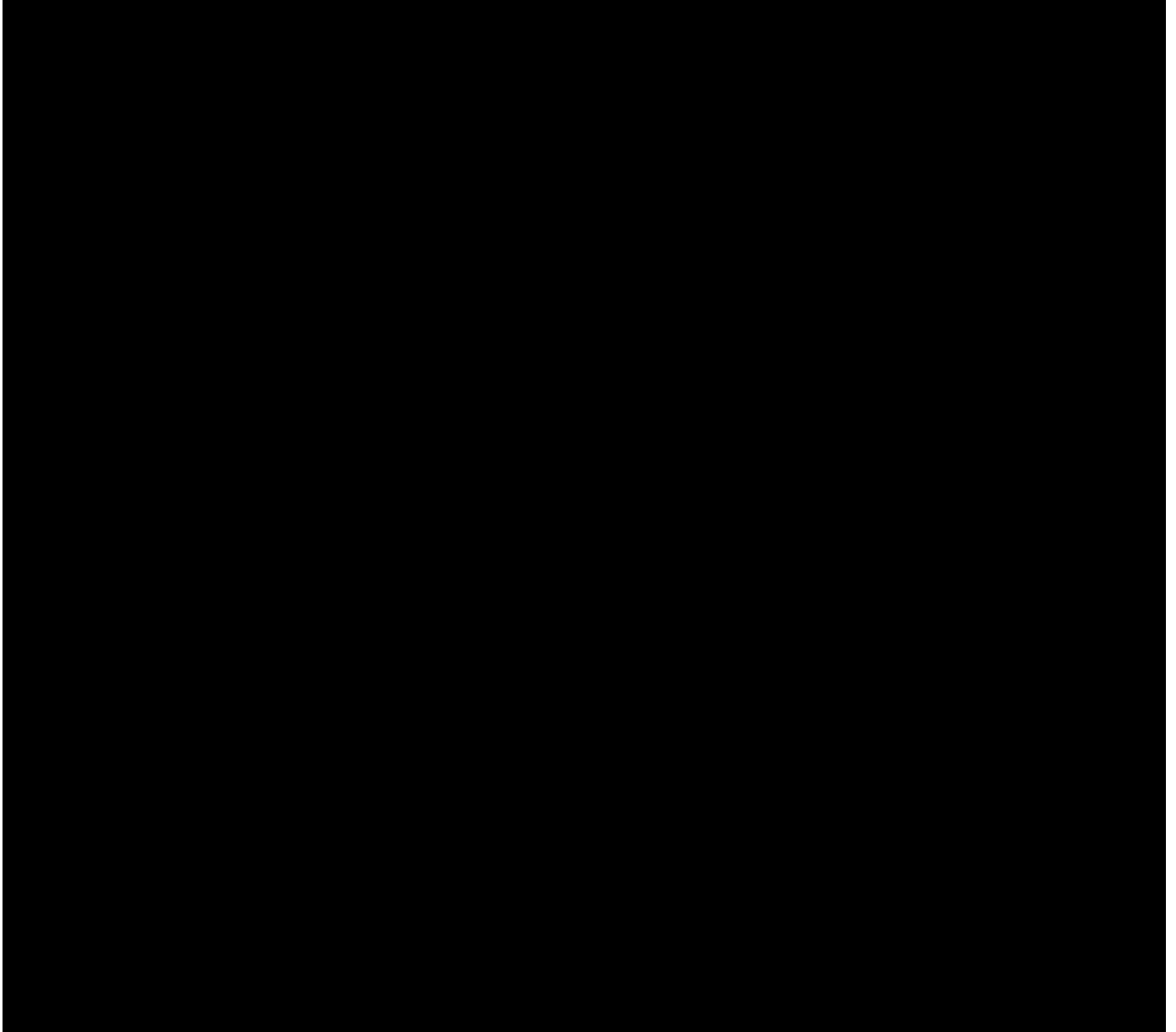
29. I am informed by Mr. Pettipiere and believe that, as a result of the escalating violence at the Encampment which I have described above, the USW team is no longer onsite at 100 Vic every day. Instead, as of December 17, 2025 USWs only attend the Property on Wednesdays.

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

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

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

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



F. Updated numbers at the Encampment

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

TAB 27

Cross Examination of Aaron Moss – February 13, 2026		
Question	UT/UA	Answer
1. Confirm it was the Region that contacted Sanguen regarding the security threat at the Encampment	UT	An employee of the Region contacted Sanguen in December 2025 to make the organization aware of reports of weapons at the Encampment. The Region took this step to ensure that its partner organization was aware of the potential for increased risk of violence, so that the partner organization could determine what steps to take in response.
2. Ask Ryan Pettipiere/Peter Sweeney to provide any information they have on the whereabouts of the 40 Existing Residents who have left the Encampment and the twenty something individuals the Region has assisted in finding alternate arrangement	UT	• 0 Existing Residents are currently residing on the site • 29 Existing Residents were supported offsite to alternate accommodations. ○ 6 of these individuals have been supported to permanent housing ○ 23 of these individuals have been supported offsite to alternate accommodations (with the majority of these 23 placed in motels) • 11 core individuals have left the site (whereabouts unknown, incarceration) • Between April 2025 and March 2026, 22 non-core individuals have been supported offsite to alternate accommodations ○ 3 of these individuals have been supported into permanent housing <i>Data note: Alternate accommodations include emergency shelter, transitional housing, shelter overflow in motels, supportive housing</i>

**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 I
	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