

COURT OF APPEAL FOR ONTARIO

BETWEEN:

THE ATTORNEY GENERAL OF ONTARIO

Appellant
(Intervener)

-AND-

THE REGIONAL MUNICIPALITY OF WATERLOO

Appellant
(Applicant)

-AND-

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

Respondent
(Respondents/Cross-Applicants)

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

NOTICE OF CONSTITUTIONAL QUESTION

The Appellant Attorney General of Ontario intends to defend 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* and the amendments to that by-law, against claims that they infringe ss. 7 and 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 (“*Charter*”), and that any infringement is unjustified under s. 1.

The question is to be argued at the hearing of this appeal, at the Court of Appeal for Ontario, 130 Queen Street West, Toronto, M5H 2N5, Ontario, on a date and time to be set by the Court.

The material facts giving rise to the constitutional question are set out in the Notice of Appeal of the Attorney General of Ontario dated June 22, 2026, attached as Appendix “A”.

The legal basis for the constitutional question is set out in the Notice of Appeal of the Attorney General of Ontario dated June 22, 2026, attached as Appendix “A”.

Dated at Toronto, this 7th day of August, 2026.

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

Counsel for the Appellant/Intervener,
The Attorney General of Ontario

TO:

THE ATTORNEY GENERAL OF CANADA

(as required by section 109 of the *Courts of Justice Act*)
Ontario Regional Office
Department of Justice Canada
120 Adelaide Street West, Suite 400
Toronto, ON M5H 1T1
Email: NCQ-AQC.Toronto@justice.gc.ca

AND TO:**Paliare Roland Rosenberg Rothstein LLP**

155 Wellington Street West, 35th Floor

Toronto ON M5V 3H1

Tel: 416.646.4300

Gordon Capern (LSO # 32169H)

Tel: 416.646.4311

Email: gordon.capern@paliareroland.com**Andrew Lokan (LSO # 31629Q)**

Tel: 416.646.4324

Email: andrew.lokan@paliareroland.com**Kartiga Thavaraj (LSO # 75291D)**

Tel: 416.646.6317

Email: kartiga.thavaraj@paliareroland.com**Greta Hoaken (LSO # 87903I)**

Tel: 416.646.6357

Email: greta.hoaken@paliareroland.com

Counsel for the Appellant/Applicant,
The Regional Municipality of Waterloo

AND TO:**Waterloo Region Community Legal Services**

450 Frederick Street, Unit 101

Kitchener, ON N2H 2P5

Ashley Schuitema (LSO # 68257G)

Tel: 519.743.0254 ext. 17

Email: ashley.schuitema@wrcls.clcj.ca**Joanna Mullen (LSO # 64535V)**

Tel: 519.743.0254 ext. 15

Email: joanna.mullen@wrcls.clcj.ca**Shannon K. Down (LSO # 43894D)**Email: shannonkdown@gmail.com

Counsel for the Respondents,
Named Respondents and Persons Unknown

AND TO:**Perez Procope Leinveer LLP**

55 University Avenue, Suite 1100
Toronto, ON M5J 2H7

Mercedes Perez (LSO # 48381L)

Tel: 416.320.1914

Email: mperez@pbplawyers.com

Swadron Associates

115 Berkeley Street
Toronto, ON M5A 2W8

Jen Danch (LSO # 74520I)

Tel: 416.362.1234

Email: jdanch@swadron.com

Karen A. Steward (LSO # 58758O)

Barrister & Solicitor

Tel: 416.270.0929

Email: karenannesteward@yahoo.ca

Amicus Curiae

Appendix A

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

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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.

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

Counsel for the Appellant/Intervener,
The Attorney General of Ontario

TO: Paliare Roland Rosenberg Rothstein LLP

155 Wellington Street West, 35th Floor
Toronto ON M5V 3H1
Tel: 416.646.4300

Gordon Capern (LSO # 32169H)

Tel: 416.646.4311
Email: gordon.capern@paliareroland.com

Andrew Lokan (LSO # 31629Q)

Tel: 416.646.4324
Email: andrew.lokan@paliareroland.com

Kartiga Thavaraj (LSO # 75291D)

Tel: 416.646.6317

Email: kartiga.thavaraj@paliareroland.com

Greta Hoaken (LSO # 87903I)

Tel: 416.646.6357

Email: greta.hoaken@paliareroland.com

Counsel for the Appellant/Applicant,
The Regional Municipality of Waterloo

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

Ashley Schuitema (LSO # 68257G)

Tel: 519.743.0254 ext. 17

Email: ashley.schuitema@wrcls.clcj.ca

Joanna Mullen (LSO # 64535V)

Tel: 519.743.0254 ext. 15

Email: joanna.mullen@wrcls.clcj.ca

Shannon K. Down (LSO # 43894D)

Email: shannonkdown@gmail.com

Counsel for the Respondents,
Named Respondents and Persons Unknown

AND TO: Perez Procope Leinveer LLP
55 University Avenue, Suite 1100,
Toronto, ON M5J 2H7

Mercedes Perez (LSO # 48381L)

Tel: 416.320.1914

Email: mperez@pbplawyers.com

Swadron Associates

115 Berkeley Street

Toronto, ON M5A 2W8

Jen Danch (LSO # 74520I)

Tel: 416.362.1234

Email: jdanch@swadron.com

Karen A. Steward (LSO # 587580)

Barrister & Solicitor

Tel: 416.270.0929

Email: karenannesteward@yahoo.ca

Amicus Curiae

THE ATTORNEY GENERAL OF ONTARIO and - and - NAMED RESPONDENTS AND PERSONS UNKNOWN
THE REGIONAL MUNICIPALITY OF
WATERLOO

Appellants

Respondents

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	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 Counsel for the Appellant, The Attorney General of Ontario

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THE ATTORNEY GENERAL OF ONTARIO

Civil Law Division / Constitutional Law Branch
McMurtry-Scott Building,
720 Bay Street, 4th Floor
Toronto, ON M7A 2S9
Fax: (416) 326-4015

S. Zachary Green (LSUC # 48066K)

Tel.: 416 992.2327

Email: zachary.green@ontario.ca

Andrea Bolieiro (LSO # 60034I)

Tel: 437 551.6263

Email: andrea.bolieiro@ontario.ca

Sara Badawi (LSO # 87480W)

Tel: 647 825.2156

Email: sara.badawi@ontario.ca

Of Counsel for the Appellant, The Attorney General of Ontario