

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

THE REGIONAL MUNICIPALITY OF WATERLOO

Appellant
(Applicant/Cross Respondent)

and

THE ATTORNEY GENERAL FOR ONTARIO

Appellant
(Intervener)

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

Respondents
(Respondents/Cross-Applicants)

-AND-

ABORIGINAL LEGAL SERVICES

Proposed Intervener

**FACTUM OF THE PROPOSED INTERVENOR
ABORIGINAL LEGAL SERVICES**

October 21, 2026

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PART I – OVERVIEW

1. Aboriginal Legal Services (“ALS”) seeks leave to intervene as a friend of the Court. ALS intervened at the lower court proceedings for the herein appeal, the Regional Municipality of Waterloo’s (the “Region”) Application at the Superior Court of Justice.¹ Its submissions helped inform the application judge’s (the “AJ”) analysis of whether the By-law² infringed on the section 15(1) *Charter of Rights and Freedoms* (the “Charter”) rights of the Indigenous residents of the encampment at 100 Victoria Street North (the “Encampment”).³ The appeal before this Court now places that analysis squarely at issue.

2. ALS’s proposed intervention is narrow, though it will make useful and distinct contributions to the appeal. It will address the challenges made by the Region and the Attorney General of Ontario (“Ontario”) (collectively, the “Appellants”) to the AJ’s factual findings as they relate to his s. 15(1) analysis.⁴ It will also provide submissions on the Appellants’ challenges to the AJ’s application of the Supreme Court’s updated guidance on s. 15(1) and intersectionality from *Quebec (Attorney General) v Kanyinda*.⁵

3. Although it is only necessary for one criteria to be met by an intervenor, ALS satisfies each criteria: (1) It is a well-recognized Indigenous legal organization with special expertise; (2) it has a real, substantial, and identifiable interest in the appeal; and (3) it brings a distinct Indigenous perspective that no other party can supply.⁶ Its intervention is particularly necessary as the

¹ *Unknown The Regional Municipality of Waterloo v. Named Respondents and Persons Unknown*, [2026 ONSC 2971](#) [“Decision”], ¶43.

² By-law Number 25-021, original and as amended, Respondents’ Compendium Volume 1 (“RComVol.1”), pp.20-35, 32-40.

³ *Decision*, ¶¶233–237.

⁴ Affidavit of Paul-Emile McNab, affirmed October 20, 2026, ¶22 [“McNab Affidavit”].

⁵ McNab Affidavit, ¶ 22; *Quebec (Attorney General) v. Kanyinda*, 2026 SCC 7 [“Kanyinda”].

⁶ *Ontario (Attorney General) v. Dieleman et al.* (1993), [1993 CanLII 5478](#) (ONSC), followed in *Bedford v. Canada (Attorney General)*, [2009 ONCA 669](#), ¶2 [“Bedford”].

Appellants directly challenge findings made by the AJ that arose from submissions made by ALS at the Court below.⁷

PART II: FACTS

A. The Proposed Intervenor: Aboriginal Legal Services

4. ALS is a community-governed, non-profit Indigenous legal services organization established in 1990. It assists Indigenous people in handling justice-related issues affecting them. Its programs include Gladue services, the Courtworkers program, Indigenous justice programming, victim-rights services, and free legal representation for low-income Indigenous people, including in housing, social-assistance, and human-rights matters.⁸

5. ALS serves urban and rural Indigenous communities across Ontario. Its Gladue Program has operated in Waterloo-Wellington since 2008, and its offices in Guelph and Brantford serve Indigenous people in Waterloo and the surrounding region. Through these programs, ALS is made aware of systemic problems facing Indigenous people.⁹

6. ALS has extensive intervener experience. The Supreme Court of Canada has granted ALS leave to intervene in 29 cases. ALS has advanced substantive s. 15(1) submissions in, among other cases, *R v Sharma*, 2022 SCC 39; *Ewert v Canada*, 2018 SCC 30; *R v Kokopenace*, 2015 SCC 28; and *Canadian Human Rights Commission v Attorney General of Canada*, 2018 SCC 31.¹⁰

⁷ McNab Affidavit, ¶20; McNab Affidavit, Exhibit “C”: Factum of the Appellant, the Regional Municipality of Waterloo, dated August 7, 2026, ¶12, ¶¶83-86 [*“Region Factum”*]; McNab Affidavit, Exhibit “D”: Factum of the Appellant, Attorney General of Ontario, dated August 7, 2026, ¶¶96–102 and footnote 164 [*“Ontario Factum”*].

⁸ McNab Affidavit, ¶¶6-9.

⁹ McNab Affidavit, ¶8.

¹⁰ McNab Affidavit, ¶11-13.

B. ALS's Participation at the Superior Court of Justice

7. The Superior Court granted ALS leave to intervene at the Application stage of these proceedings. ALS confined its submissions to s. 15(1) and the Supreme Court's guidance in *Kanyinda* to apply an intersectional lens to s.15(1) analyses. ALS submitted that, when applying this intersection lens to the By-law, it would show that the By-law would disproportionately impact Indigenous Encampment residents and exacerbate the ongoing harms and disadvantages already experienced by the homeless Indigenous peoples.¹¹

8. ALS's submissions informed the AJ on an Indigenous-specific s. 15(1) analysis for the By-law. ALS submitted that the Indigenous residents of the Encampment could establish discrimination as a subgroup of the broader unhoused population,¹² that the adverse effects of the By-law arose "in the nexus between homeless[ness] and race,"¹³ and that, although the By-law was facially neutral, its effects would disproportionately burden Indigenous residents by forcing their eviction into a shelter system that did not contain culturally safe housing options, exposing them to additional barriers in the shelter system connected to their Indigenous identities.¹⁴ ALS's submissions on these points were adopted by the AJ in his reasons.¹⁵

C. The Appellants Engage with s.15(1) and the Basis of Race

9. In their appeals, the Region and Ontario directly challenge the AJ's findings that the By-law breached s. 15(1) on the basis of race. Therefore, the submissions made by ALS at the lower court are directly engaged on appeal.¹⁶

¹¹ *Decision*, ¶43; McNab Affidavit, Exhibit "B": Factum of the Intervener Aboriginal Legal Services in the Application below, dated April 9, 2026 [*ALS SCJ Factum*], ¶1, ¶¶6–7, ¶¶23–58.

¹² *ALS SCJ Factum*, ¶¶24–31.

¹³ *Ibid.*, ¶¶41–44.

¹⁴ *Ibid.*, ¶¶53–58.

¹⁵ *Decision*, ¶236.

¹⁶ Ontario Factum, ¶¶96–102; Region Factum, ¶¶83–86.

10. In relation to ALS's submissions at the lower court, the Appellant Ontario submits that the AJ erred in finding that there was evidence that the By-law created or contributed to a disproportionate impact on Indigenous people, specifically challenging the findings concerning culturally safe housing and Indigenous-specific shelter barriers.¹⁷

11. Ontario submits on appeal that the AJ's finding concerning shelter eligibility rules was based on ALS's submissions and lay evidence that, in Ontario's submission, did not satisfy the requirements for opinion evidence.¹⁸ The appeal therefore directly engages with the contribution ALS made below, the characterization of the record supporting that contribution, and the Indigenous-specific s. 15(1) findings that resulted.

12. The Region likewise submits that the AJ erred in finding that the By-law infringed s. 15(1) on the basis of race. The Region argues that the AJ improperly treated the overrepresentation of Indigenous people in the homeless population as a distinction caused by the By-law, and that there was no evidence the By-law itself created adverse effects unique to Indigenous residents of the Encampment.¹⁹ The Region further argues that the disadvantages faced by Indigenous residents were not caused by the By-law, but by broader circumstances or pre-existing circumstances.²⁰

13. These submissions by both Appellants directly engage the issues on which ALS seeks leave to intervene. ALS's proposed intervention will assist the Court on the narrow question of whether the application judge erred in concluding that the By-law had adverse effects on Indigenous

¹⁷ Ontario Factum, ¶¶100–102.

¹⁸ Ontario Factum, ¶101 and footnote 164; *Decision*, ¶236.

¹⁹ Region Factum, ¶85.

²⁰ Region Factum, ¶72.

residents contrary to s. 15(1) of the *Charter*, including in light of *Kanyinda* and the distinct intersectional equality analysis applicable to Indigenous peoples experiencing homelessness.

PART III: ISSUES AND THE LAW

A. The Test for Intervention

14. ALS seeks leave to intervene as a friend of the court pursuant to Rule 13.02 of the *Rules of Civil Procedure*, which provides as follows:

Any person may, with leave of a judge or at the invitation of the presiding judge or associate judge, and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument.²¹

15. Where the intervention is in a *Charter* case, at least one of following three criteria must be met by the intervenor:

- (a) it is a well-recognized group with special expertise and a broadly identifiable membership base;
- (b) it has a real, substantial and identifiable interest in the subject matter of the proceeding; or
- (c) it has an important perspective distinct from the immediate parties.²²

16. Although only one criterion must be met, ALS meets each of them. ALS is a well-recognized Indigenous legal services organization with longstanding expertise in the legal issues raised by this appeal. ALS has demonstrated a real, substantial, and identifiable interest in the subject matter of the proceeding given its longstanding work advancing substantive equality for Indigenous peoples, including in proceedings concerning the discriminatory effects of laws, policies, and state action on Indigenous communities.

²¹ *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 at r. [13.02](#).

²² *Bedford*, ¶2.

17. Finally, ALS presents an important perspective, distinct from the immediate parties. ALS speaks from the position of an Indigenous legal services organization whose mandate includes advancing access to justice for Indigenous peoples and addressing the barriers Indigenous people face in accessing housing, shelter, and other justice-related services.²³

18. Moreover, this Court has recognized the importance of hearing from a broad number of parties and confirmed that the test for intervention should be applied flexibly in the context of *Charter* and other public interest cases,²⁴ such as this appeal.

i. ALS is a Well-Recognized Organization with Special Expertise

19. ALS is a recognized Indigenous legal services organization with more than three decades of experience addressing laws, policies and practices affecting Indigenous communities. Its community governance, direct-service work, and extensive history in appellate interventions give it expertise at the intersection of Indigenous identity, systemic disadvantage, and legal analysis of s. 15(1) of the *Charter*.²⁵

20. That expertise is not abstract. ALS serves low-income Indigenous people in housing and human-rights matters and has provided Gladue services in Waterloo-Wellington since 2008.²⁶ Its institutional perspective will assist the Court in assessing whether an ostensibly neutral municipal response, the By-law, accounts for the lived and systemic realities of Indigenous people experiencing homelessness.

²³ McNab Affidavit, ¶¶6-13.

²⁴ *Fair Change v. Her Majesty the Queen*, [2021 ONSC 2108](#), ¶14; *Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada Ltd. (1990)*, [1990 CanLII 6886 \(ON CA\)](#).

²⁵ McNab Affidavit, ¶¶6-13.

²⁶ McNab Affidavit, ¶8.

ii. *ALS has a Real, Substantial and Identifiable Interest*

21. The Appellants seek to overturn the AJ's finding that the By-law discriminates against Indigenous residents of the Encampment. Protecting Indigenous people from laws and state practices that perpetuate systemic disadvantage lies at the centre of ALS's mandate.²⁷ ALS also has a direct interest in ensuring that the Indigenous-specific findings made by the court below, which were informed in part by ALS's submissions and are being directly challenged, are accurately represented on appeal.

22. The implications extend beyond these litigants. ALS commences proceedings and seeks standing where laws, policies or practices may significantly affect Indigenous communities in Ontario and across Canada. The proper application of s. 15(1) to municipal encampment responses is of immediate importance not only to the Named Respondents of the herein appeal, but also to Indigenous communities ALS serves and others across the country.²⁸

iii. *ALS has a Distinct Perspective*

23. ALS offers a perspective that, to the best of its knowledge, no party seeking to intervene will replicate: that of an Indigenous legal organization whose mandate and daily work are grounded in the experiences of Indigenous people interacting with justice, housing, and social-service systems. The parties to this appeal do not contain specialized knowledge about the discrimination faced by Indigenous peoples and how the legacy of colonialism can affect socioeconomic policy, such as sustainable housing and the homelessness crisis. The Respondents advance the rights of the Encampment residents, and ALS will address the distinct equality implications of Indigeneity within the broader population affected by the By-law.²⁹

²⁷ McNab Affidavit, ¶7.

²⁸ *Ibid.*

²⁹ McNab Affidavit, ¶¶21-22.

B. Proposed Submissions of ALS on Appeal

24. ALS will make focused, distinct, and useful submissions. First, it will submit that the AJ did not err in making the factual findings underlying the s. 15(1) analysis. This relates to the AJ's findings about the evidence on the record and how that evidence was sufficient to show that the s.15(1) test had been met.

25. Second, it will address horizontal *stare decisis* and submit that the AJ did not err in finding that he was not bound by Justice Valente's s. 15(1) findings in *Persons Unknown 2023*.³⁰ ALS will submit that the Supreme Court's guidance in *Kanyinda* that a s. 15(1) analysis should be undertaken through an intersectional lens meets the first *Re Hansard Spruce Mills*³¹ *stare decisis* exception, permitting the AJ to conduct his own s. 15(1) analysis.

26. Finally, ALS will submit that the AJ did not err in finding that the By-law discriminated on the basis of race.³² ALS will submit that the AJ did not err in making that finding, as the intersecting identities and circumstances of the Indigenous homeless population creates the distinction.³³ ALS will provide guidance to the Court regarding the proper application of *Kanyinda* at step one of the s. 15(1) analysis, and will again address the sufficient evidence on the record to meet step two of the s.15(1) analysis.

PART IV - ORDER SOUGHT

27. ALS respectfully requests an order granting it leave to intervene on the following terms:

³⁰ *Decision*, ¶103.

³¹ [1954 CanLII 253 \(BC SC\)](#), [1954] 4 D.L.R. 590 (B.C.S.C.)

³² Ontario Factum, ¶¶96–102; Region's factum, ¶¶83-86.

³³ *Decision*, ¶¶[212–215](#), [233–237](#).

- a. As a friend of the court, pursuant to Rules 13.02 and 13.03(2) of the Rules of Civil Procedure;
- b. That ALS may file a factum not exceeding 10 pages;
- c. That ALS may make oral submissions not exceeding 15 minutes, or such other time as the panel may direct at the hearing of the appeal;
- d. That ALS will not seek costs and will not be liable for costs to any other party on this appeal; and
- e. Such further and other relief as counsel may advise and this Honourable Court may permit.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of October, 2026

A handwritten signature in black ink, appearing to read 'Asha James', written over a horizontal line.

Asha James

Counsel for the Proposed Intervener,
Aboriginal Legal Services

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

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

THE REGIONAL MUNICIPALITY OF WATERLOO

Appellant
(Applicant/Cross Respondent)

and

THE ATTORNEY GENERAL FOR ONTARIO

Appellant
(Intervener)

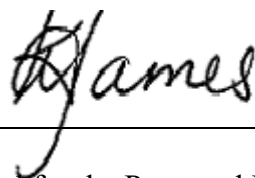
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JEFFERY, MICHAEL JEFFERY, AND PERSONS UNKNOWN

Respondents
(Respondents/Cross-Applicants)

CERTIFICATE

1. I am satisfied that every authority cited in the factum is authentic, and every quotation from an authority that appears in the factum accurately reproduces the text of the authority.
2. An order under subrule 61.09(2) is not required.
3. The proposed intervener estimates that, if given intervener status, they will require ¼ hour for oral argument.
4. The factum complies with subrules 61.11(3) and 61.12(5.1).
5. The number of words contained in Parts I to IV of the factum is 2253.

October 21, 2026



Counsel for the Proposed Intervener,
Aboriginal Legal Services

Schedule A – List of Authorities

1. *Bedford v Canada (Attorney General)*, [2009 ONCA 669](#)
2. *Fair Change v Her Majesty the Queen*, [2021 ONSC 2108](#)
3. *Halpern v Toronto (City) Clerk*, [2000 CanLII 29029 \(Ont Sup Ct\)](#)
4. *Re Hansard Spruce Mills*, [1954 CanLII 253 \(BC SC\)](#), [1954] 4 D.L.R. 590 (B.C.S.C.).
5. *The Regional Municipality of Waterloo v Named Respondents and Persons Unknown*, [2026 ONSC 2971](#)
6. *Quebec (Attorney General) v Kanyinda*, [2025 SCC 30](#)

Schedule B – List of Statutes

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), [1982, c 11](#)

Equality before and under law and equal protection and benefit of law

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.

Rules of Civil Procedure, [RRO 1990, Reg 194](#)

Leave to Intervene as Friend of the Court

13.02 Any person may, with leave of a judge or at the invitation of the presiding judge or associate judge, and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument.

Leave to Intervene in Divisional Court or Court of Appeal

13.03 (1) Leave to intervene in the Divisional Court as an added party or as a friend of the court may be granted by a panel of the court, the Chief Justice or Associate Chief Justice of the Superior Court of Justice or a judge designated by either of them.

(2) Leave to intervene as an added party or as a friend of the court in the Court of Appeal may be granted by a panel of the court, the Chief Justice or Associate Chief Justice of Ontario or a judge designated by either of them.

REGIONAL MUNICIPALITY OF WATERLOO
Applicant
(Appellant)

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

-and- ABORIGINAL LEGAL SERVICES
Proposed Intervenor

Court File No.: COA-26-CV-0836; COA-26-CV-0897

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