

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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Respondents
(Respondents/Cross-Applicants)

FACTUM OF *AMICUS CURIAE*

October 19, 2026

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PART I – OVERVIEW

1. Shelter is a basic fundamental human need which, along with other survival needs like food and water, is a necessary precondition to the full enjoyment of *Charter* rights.¹ All parties agree that available indoor shelter is vastly insufficient to meet the demands of Waterloo Region’s [“Region”] homeless population, such that a majority will have no choice but to shelter outdoors even in winter. For homeless individuals struggling with mental health and substance use disorders, the battle to access and maintain indoor shelter is particularly dire. They face significant risks to their physical and mental well-being, including dying alone on the streets, when indoor shelter is inaccessible or unavailable.

2. Justice Gibson [“AJ”] correctly applied a systemic lens to his *Charter* analysis, capturing the practical reality that all “Persons Unknown”, including the most vulnerable who lack capacity to participate in this litigation, may have no choice but to reside at the encampment located at 100 Victoria Street [“Encampment”] when they cannot access indoor shelter. A systemic lens also captured the legal reality that once the Region cleared the Encampment, a total ban on erecting outdoor survival shelter would blanket all Region-owned property.

3. The AJ, like Justice Valente before him in *Persons Unknown 2023*², rejected the By-Law’s³ self-serving fiction that it is only the *Charter* rights of homeless individuals who happened to be at the Encampment on a particular day, arbitrarily chosen by the Region, that should concern

¹ *Victoria (City) v Adams*, [2009 BCCA 563](#), ¶4,75 [“*Adams BCCA*”]; *The Corporation of the City of Kingston v Doe*, [2023 ONSC 6662](#), ¶93 [“*Kingston*”]

² *The Regional Municipality of Waterloo v Persons Unknown and to be Ascertained*, [2023 ONSC 670](#) [“*Persons Unknown 2023*”]

³ By-law 25-021, original and as amended, Respondents’ Compendium, Vol. 1 [“RComVol1”], pp. 20-25, 32-40

the court. This approach ignores the readily foreseeable reach of the By-Law. The AJ weighed the voluminous evidence, correctly interpreted and applied the *Charter* to his factual findings, and issued balanced remedies designed to vindicate and protect the rights of the Region’s most vulnerable citizens while offering a means for the Region to acquire the property. *Amicus* agrees with the Respondents that this appeal should be dismissed.

PART II – FACTS

4. *Amicus* adopts the facts set out in the Respondents’ factum.⁴

PART III: ISSUES, LAW AND ARGUMENT

Standard of Review

5. Errors of law are reviewed for correctness while factual findings, inferences of fact and causation are reviewed for palpable and overriding error.⁵ Palpable and overriding error must be “obvious” and “plainly seen”⁶ – it is insufficient “to pull at leaves and branches and leave the tree standing. The entire tree must fall.”⁷ If there was “some evidence”⁸ supporting the AJ’s factual conclusions, there is no palpable and overriding error.

6. In civil cases, questions of mixed fact and law lie along a spectrum; they are subject to palpable and overriding error unless a legal error is readily extricable, in which case the standard

⁴ Respondents Factum, ¶10-53

⁵ *Benhaim v St.-Germain*, [2016 SCC 48](#) ¶36-37 [“*Benhaim*”] per Wagner J; *Housen v Nikolaisen*, [2002 SCC 33](#), ¶3-25, per Iacobucci and Major JJ [“*Housen*”]; *Canada (Attorney General) v Bedford*, [2013 SCC 72](#), ¶48-55 [“*Bedford*”]

⁶ *Housen*, ¶5

⁷ *Benhaim*, ¶38

⁸ *Housen*, ¶1

is correctness.⁹ Whether this civil standard, or the constitutional administrative law standard,¹⁰ applies to *Charter* cases remains unclear.¹¹

7. Factual errors asserted by the Appellants relate to the AJ’s weighing of the evidence, a fact-finding exercise at first instance that attracts high deference. The AJ’s reasons do not otherwise reveal any legal errors.

Section 7

Stare Decisis

8. *Amicus* adopts the Respondents’ submissions respecting horizontal *stare decisis*.¹²

The AJ Correctly Framed the *Charter* Analysis

9. The content of s.7 is not frozen and is subject to incremental development, including whether economic rights fundamental to human life or survival are protected.¹³ However, the AJ was correct that “this case is not about property rights” nor about positive *Charter* claims.¹⁴ He

⁹ [Housen](#), ¶26-37

¹⁰ *Societe des Casinos du Quebec Inc. v Association des Cadres de la Societe des Casinos du Quebec*, [2024 SCC 13](#), ¶45, 93-97

¹¹ *Fair Voting B.C. v Canada (Attorney General)*, [2005 ONCA 581](#), ¶82-85 (leave to appeal to SCC dismissed [2026 CanLII 29503](#)); *Amalgamated Transit Union, Local 113 v Ontario*, [2024 ONCA 407](#), ¶31-33, 191-194; *Ontario (Attorney General) v Working Families Coalition (Canada) Inc.*, [2025 SCC 5](#), ¶12, 108-109; *British Columbia Teachers’ Federation v British Columbia*, [2015 BCCA 184](#), ¶325-328 *per* Donald J (dissenting) (SCC allowed appeal for the reasons of Donald J, [2016 SCC 49](#)); A. Sanguiano & M. Friedman, “What is the Standard of Review for (Mixed) Constitutional Questions?”, [UBC Law Review](#), 56:3 2026

¹² Respondents Factum ¶75-78

¹³ *Irwin Toy Ltd. v Quebec (Attorney General)*, [1989 CanLII 87 \(SCC\)](#), pp1003-1004, *per* Dickson CJ; *Blencoe v British Columbia (Human Rights Commission)*, [2000 SCC 44](#), ¶188 *per* Lebel J; *Gosselin v Québec (Attorney General)*, [2002 SCC 84](#), ¶82, *per* McLachlin CJ; [Bedford](#), ¶96

¹⁴ *The Regional Municipality of Waterloo v Named Respondents and Persons Unknown*, [2026 ONSC 2971](#), ¶137 [“Decision”]

correctly observed that distinguishing between positive and negative rights creates a “false dichotomy” because most *Charter* rights have both positive and negative features.¹⁵ Positive state action is often required to remedy s.7 violations, including through legislative action or the expenditure of public funds, but this reality does not mean courts are “adjudicating positive rights.”¹⁶

10. The central question in the AJ’s s.7 analysis was whether the By-Law deprived the claimants of their rights to life, liberty, or security of the person and, if so, whether the effect on them was grossly disproportionate to the By-Law’s purpose.

11. This is not a claim for the appropriation of public property. Rather, vulnerable homeless individuals are challenging State action that interferes with their efforts to pursue adequate survival shelter, significantly increasing the grave risks they already face from a rough outdoor existence. The framing of a claim depends on the nature of that claim, rather than the *Charter* remedy ultimately granted, and it is the government scheme that must be *Charter* compliant.¹⁷

12. The caselaw relied on by the AG is distinguishable.¹⁸ *Deskin* addressed whether s.7 confers a right to a certain level of funding for health or social benefits already available either publicly or for purchase.¹⁹ The court specifically differentiated the facts from homeless encampment cases involving a State prohibition.²⁰ *Masse* concerned government inaction respecting reduced social

¹⁵ *Decision*, ¶138; *La Rose v Canada*, [2023 FCA 241](#), ¶101-104 [“*La Rose*”]

¹⁶ *Adams BCCA*, ¶96; *La Rose* ¶101-104; *New Brunswick (Minister of Health and Community Services) v G(J)*, [1999 CanLII 653](#) [“*G(J)*”]; *Canada (Attorney General) v PHS Community Services Society*, [2011 SCC 44](#), [“*PHS*”]

¹⁷ *Mathur v Ontario*, [2024 ONCA 762](#), ¶5,32,36-41

¹⁸ AG Factum, ¶50-53,59

¹⁹ *Deskin v Ontario*, [2023 ONSC 5584](#), ¶92-93[“*Deskin*”]

²⁰ *Deskin*, ¶92-93

assistance levels.²¹ *EFTO* considered a government change in sex curriculum for elementary schools, finding no evidence of harm and contrasted this with legislation that increases the “risk of disease, violence and death”.²² In *Barbra Schlifer*, the court determined that the absence of measures to reduce risk of harm from repeal of the long-gun registry did not engage s.7, whereas positive State actions or prohibitions that block a claimant from pursuing risk reducing measures may do so.²³

13. In *Flora*, no s.7 deprivation was caused by legislation that did not prohibit anyone from seeking medical treatment and that did not limit the types of available medical services.²⁴ *Lalonde* centered on the operation of s.16(3) of the *Charter*, which is non rights-conferring.²⁵ *Tanudjaja* was not a *Charter* ruling; it was an appeal from a decision striking a *Charter* application on the basis of justiciability concerns.²⁶ In *Tanudjaja*, no specific legislation was challenged.²⁷

14. In his s.7 analysis, the AJ correctly applied a generous, purposive, and contextual approach.²⁸ Contextual analysis is crucial in cases like this one where laws challenged under s.7 disproportionately impact marginalized individuals.²⁹ This requires that the scope and content of

²¹ *Masse v Ontario (Minister of Community and Social Services)*, [1996 CanLII 12491 \(ON Div Ct\)](#), ¶2,72

²² *EFTO et al. v Her Majesty the Queen*, [2019 ONSC 1308](#), ¶140-145

²³ *Barbra Schlifer v Canada (Attorney General)*, [2014 ONSC 5140](#), ¶21-27

²⁴ *Flora v Ontario Health Insurance Plan*, [2008 ONCA 538](#), ¶101

²⁵ *Lalonde v Ontario*, [2001 CanLII 21164 \(ON CA\)](#), ¶1-2,90-95

²⁶ *Tanudjaja v Canada (Attorney General)*, [2014 ONCA 852](#), ¶1,10-15,19-36 [“*Tanudjaja*”]

²⁷ *Tanudjaja*, ¶37

²⁸ *Decision*, ¶104; *Taylor v Newfoundland and Labrador*, [2026 SCC 5](#), ¶73-83; *Heegsma v Hamilton (City)*, [2026 ONCA 726](#), ¶86 [“*Heegsma*”]

²⁹ *G(J)*, ¶115, per L’Heureux-Dubé

s.7 be interpreted in light of the *Charter*'s equality guarantee so that constitutional interpretation is responsive to the practical realities and needs of all members of society.³⁰

15. People living in encampments are among the most marginalized members of society, often experiencing intersecting forms of discrimination rooted in colonialism, racism, sexism, ableism, and other systems of oppression.³¹ A contextual approach to s.7 ensures that these lived realities inform the assessment of the nature and extent of the By-Law's impact.³²

Social Context in Which the By-Law Operates

16. The AJ found that the Encampment provides essential shelter of last resort for a highly vulnerable population experiencing extreme poverty and significant disability, in circumstances where the Region's shelter system falls drastically short of meeting demand, and where residents rely on the Encampment's stability and surrounding essential services:

- Region shelter capacity can accommodate 15% of the Region's total homeless (approximately 2,371 in October 2024) and 43% of the Region's homeless live outdoors.³³
- the majority of the Region's homeless are "chronically homeless", meaning they experience prolonged or repeated periods of homelessness. This was consistent with the experiences of the Named Respondents who move in and out of homelessness as they gain and lose shelter.³⁴
- people with mental health and substance use disabilities are significantly overrepresented in the Region's homeless population: in one study, 72% reported substance abuse, 70% reported

³⁰ *Winnipeg Child and Family Services v K LW*, [2000 SCC 48](#), ¶72; *Tanudjaja*, ¶69

³¹ *Decision*, ¶228

³² *Decision*, ¶229

³³ *Decision*, ¶16,58-59,164

³⁴ *Decision*, ¶60,165

mental health issues, and 27% reported acquired brain injuries.³⁵ This is consistent with the evidence of the Named Respondents, who all reported having disabilities, predominantly mental health and substance use related. Some Encampment residents may lack capacity to instruct counsel.³⁶

- for many, living at the Encampment is the only sheltering option available, or the only available option that meets their needs. The Region's shelter system is not accessible to all unhoused persons, with barriers related to lack of supply, as well as eligibility and disability-related restrictions.³⁷
- because there are no barriers to entry, the Encampment operates as a necessary, inclusive refuge for unhoused individuals who cannot access (or maintain access to) the Region's indoor shelter options, in circumstances where outdoor sheltering is otherwise prohibited everywhere else.³⁸ These barriers impact people with mental health and substance use disabilities much more severely.³⁹
- the Encampment started in 2021 on the site of an unused gravel lot. Its population is always fluid; the number of people sheltering in it has varied as the unhoused gain and lose other forms of shelter and also due to seasonality.⁴⁰
- Encampment residents rely on essential services nearby or provided directly to them (e.g., drop-in centre, soup kitchen, harm reduction services, food and water donations).⁴¹

³⁵ [Decision](#), ¶224

³⁶ [Decision](#), ¶41,53-54,155

³⁷ [Decision](#), ¶145,170-171

³⁸ [Decision](#), ¶37,162

³⁹ [Decision](#), ¶145,170-171

⁴⁰ [Decision](#), ¶46,52,60,67,73,165

⁴¹ [Decision](#), ¶52

Legal Context in Which the By-Law Operates

17. The AJ determined that the Code of Use By-Law [“CUB”]⁴² prohibits outdoor sheltering on all other Region-owned lands (due to the limited exception carved out for the Encampment by *Persons Unknown* 2023) and that the Region will not permit outdoor sheltering once the Encampment is cleared.⁴³ Accordingly, the AJ correctly recognized that the By-Law cannot be considered in isolation: its enforcement, together with the CUB, would eliminate the only location in the Region where people experiencing homelessness can lawfully erect rudimentary outdoor shelter.⁴⁴

18. Further, in April 2024, the Region adopted an official Plan to End Chronic Homelessness (“PECH”) to “prevent, address, and end homelessness.” In doing so, the AJ found that the Region committed itself to take a human rights approach to ending homelessness, self-imposing obligations (including cost-related consequences) to address the root causes of homelessness as a means of achieving long-term, sustainable change.⁴⁵ The PECH is centered in a human rights framework, meaning that homeless individuals are considered rights holders whose agency must be respected and that the Region has a duty to care for their housing needs. The PECH also incorporates the Region’s commitment to comply with national and international human rights

⁴² Code of Use By-Law and Amendments [“CUB”], Sch.B, ss 2(2)(e),(t), “RComVol1”, ¶14-15

⁴³ *Decision*, ¶38,57,162

⁴⁴ *Decision*, ¶184-185; *Canadian Council for Refugees v Canada (Citizenship and Immigration)*, 2023 SCC 17, ¶69 [“CCR”]

⁴⁵ PECH, RComVol1, ¶402,408-410

law.⁴⁶ Remaining consistent with the PECH was an explicitly stated objective of the Region when passing the By-Law.⁴⁷

19. The AJ also adhered to the Supreme Court’s jurisprudence on the role of international law in *Charter* interpretation – ratified human rights instruments inform the breadth and scope of *Charter* rights and the principles of fundamental justice, while non-binding sources are relevant and persuasive, but not determinative.⁴⁸ He further correctly recognized that when international law obligations are incorporated into domestic law or policy, such as in the federal *National Housing Strategy Act*⁴⁹ (“NHS”) or the PECH, they assist in determining *Charter* compliance.⁵⁰

Life, Liberty, and Security of the Person

Life and Security of the Person

20. The AJ correctly focused on whether, based on the evidence, the By-Law engaged the claimants’ rights to life and security of the person by interfering with their ability to protect themselves from the grave risks associated with forced eviction and unsheltered homelessness.⁵¹ State action has been found to engage s.7 where laws prevent vulnerable people from taking measures that reduce pre-existing risks.⁵²

⁴⁶ PECH, RComVol1, ¶402

⁴⁷ Region Report PDL-LEG-25-021, RComVol1, ¶28; Region’s Further Amended Notice of Application, Appeal Book and Compendium – Region [“ABComRegion”], Tab 5, p.135, ¶2(h)(iii)

⁴⁸ *Quebec (Attorney General) v 9147-0732 Québec Inc.*, [2020 SCC 32](#), ¶31-36 [“9147-0732 Québec”]

⁴⁹ [SC 2019](#), c29, s313, preamble, [s 4](#)

⁵⁰ [Mathur](#), ¶53; [La Rose](#), ¶38,45

⁵¹ [Decision](#), ¶137

⁵² [Bedford](#), ¶60-72,88-89; [PHS](#), ¶93

21. The AJ’s finding that the claimants’ rights to life and security of the person were engaged by the By-Law was consistent with prior caselaw and evidence before the court concerning the risks of hypothermia, heatstroke, and disease; the loss of medication, food, and clothing; the inability to access health services; and the psychological distress and trauma resulting from forced eviction and unsheltered homelessness, in a context where accessible indoor shelter is unavailable for most and outdoor sheltering is prohibited.⁵³

22. As well, the AJ found that the By-Law would push an already marginalized population away from vital sources of health and community support thereby increasing segregation, exclusion, and stigmatization.⁵⁴ This is analogous to the impact of the communicating law on outdoor sex workers in *Bedford*, which was found to have the effect of displacing them from familiar to more isolated areas, thereby increasing the risks they faced.⁵⁵

23. Although a select few of the Region’s homeless were offered “Alternative Accommodation”, the AJ correctly found that this was insufficient to negate the risk of the By-Law’s negative impact on the rights to life and security of the person of those impacted by the By-Law, as discussed further below.⁵⁶

24. Finally, despite the Appellant’s description of living in the Encampment as a “preference”,⁵⁷ the AJ appreciated the practical reality that availability and accessibility of indoor

⁵³ *Decision*, ¶141-146,170-171,186,188; *Black et al. v City of Toronto*, 2020 ONSC 6398, ¶50-52 [“*Black*”]; *Adams BSCS*, ¶143-145, aff’d *Adams BCCA*, ¶39; *Abbotsford (City) v Shantz*, 2015 BCSC 1909, ¶132 [“*Shantz*”]; *Kingston*, ¶78-79; *Vandenberg v Vancouver (City) Fire and Rescue Services*, 2023 BCSC 2104, ¶143-145 [“*Vandenberg*”]

⁵⁴ *Decision*, ¶231

⁵⁵ *Bedford*, ¶68-72

⁵⁶ *Decision*, ¶162,184-185,189-191

⁵⁷ Region Factum, ¶54

shelter is critical to understanding whether a person can meaningfully be said to “choose” to reside in an encampment.⁵⁸ Choices are constrained or non-existent when made in the context of poverty, substance abuse, disability, and insufficient indoor shelter alternatives.⁵⁹

Scope of Persons Impacted by the By-Law

Impact on “Residents”

25. The By-Law establishes a Transitional Protocol requiring the Region to make “best efforts” to develop Individual Housing Plans (IHPs) and offer “Alternative Accommodation” to “Residents”⁶⁰ (those who happened to be at the Encampment on April 16, 2025). However, the AJ found no requirement that the Alternative Accommodation be accessible or adequate, and further, that the three IHPs in the record did not address individuals’ needs.⁶¹ Accordingly, a rejection of an offer of Alternative Accommodation could be for any reason, including lack of accessibility.

26. Most of the Alternative Accommodation offered by the Region to “Residents” was temporary motel or emergency shelter space, which the AJ found was not suitable or safe for people who lack capacity or have serious mental health and/or substance use disabilities.⁶² This finding was amply supported by the evidence and was not the “unsupported hypotheses of enthusiastic counsel.”⁶³

⁵⁸ Similar arguments about choice negating constitutional protection were rejected in *Bedford*, ¶¶79-85; *PHS*, ¶¶97-106; *Fraser v Canada (Attorney General)*, 2020 SCC 28 ¶¶86-92 [“*Fraser*”]

⁵⁹ *Persons Unknown 2023*, ¶106

⁶⁰ Also called “Existing Residents”

⁶¹ *Decision*, ¶181,231

⁶² *Decision*, ¶145,150,231

⁶³ AG Factum, ¶34. See Appendix A for citations.

27. Motels lack the level of support required for high-needs individuals and behavioural issues stemming from mental health disabilities frequently lead to eviction. As well, unsupervised drug use can lead to overdose in isolation, a risk that the AJ found could be mitigated by the “buddy system” in the Encampment. Shelters can be destabilizing, overwhelming, and overstimulating for people who lack capacity or have serious mental health and/or substance use issues, and they can be difficult to access if a person has been previously banned.⁶⁴

28. If the Alternative Accommodation is lost due to “non-compliance with rules”, which the evidence established predominantly impacts persons with mental health or substance use disabilities (e.g., returning to the shelter by a certain time, drug abstinence rules), the By-Law only requires that “best efforts” be made to assist, without providing a mechanism for identifying such situations or how further accommodation would be secured.⁶⁵

29. Pursuant to the By-Law, anyone residing in the Encampment after the Transition Period can be evicted, including Residents.⁶⁶ The AJ recognized that the fluid nature of chronic homelessness made it reasonably foreseeable that a Resident could lose Alternative Accommodation and need to return to the Encampment.⁶⁷ This risk was particularly acute for individuals with mental health and substance use disabilities for whom shelter and motel placements were often unsuitable or unstable.⁶⁸

⁶⁴ [*Decision*](#), ¶145,170-171

⁶⁵ [*Decision*](#), ¶182

⁶⁶ [*Decision*](#), ¶40,65

⁶⁷ Of the 11 Residents who did not accept Alternative Accommodation, the Region stated that their whereabouts are “unknown or they are incarcerated”: UT#2, Answers to Undertakings of Aaron Moss, ABComRegion, Tab 45, ¶316. Blanket statements that they are “no worse off” than at the Encampment are unsubstantiated.

⁶⁸ [*Decision*](#), ¶40,65

Impact on Other Residents and Other Chronically Homeless

30. At least 10 of the Named Respondents lived in the Encampment after April 16, 2025. The By-Law states that these residents (who do not fall into the By-Law’s definition of “Residents”) can be removed from the Encampment prior to the date it is cleared pursuant to the *Trespass to Property Act* (“TPA”) if they engage in “Prohibited Activities”, which include “intimidating acts”, erecting a shelter, and residing at the Encampment.⁶⁹

31. There was no requirement for these residents to be offered indoor shelter prior to the closing of the Encampment.⁷⁰ While the By-Law itself does not directly restrict these residents from sheltering outdoors elsewhere on Region-owned property, it does when read together with the CUB.⁷¹

32. Finally, the AJ found that by removing this shelter of last resort, all chronically homeless in the Region would be deprived of the legal ability to erect rudimentary shelter to protect themselves when forced to live “rough” on the streets, which was the reality for 43% of the Region’s homeless. This, accordingly, risks depriving them of their rights to life and security of the person.⁷²

⁶⁹ By-Law, RComVol1, Sch B, 1(b),(d),(e), ¶38

⁷⁰ The Region acknowledged that people who do not qualify as “Residents” are at a “lower priority” for available resources: *The Regional Municipality of Waterloo v Persons Unknown and to be Ascertained*, [2025 ONSC 4774](#), ¶72

⁷¹ [Decision](#), ¶40

⁷² [Decision](#), ¶153,185

Liberty

33. *Amicus* agrees with the AJ and Respondents that liberty is engaged through the risk of warrantless arrest authorized by the By-Law.⁷³

34. The By-Law also engages liberty by affecting fundamental life choices inherent to personal autonomy and dignity.⁷⁴ Several courts have previously ruled that prohibiting the homeless from taking simple measures to protect themselves using rudimentary forms of overhead shelter, in circumstances where there is no indoor shelter alternative, is a significant interference with their dignity and independence.⁷⁵ This was supported by the expert evidence in the present case.⁷⁶

35. The Named Respondents' evidence was clear that living in the Encampment was a deeply personal choice with impacts on health, safety, and quality of life, made in the context of severely constrained choices. They noted the benefits of the Encampment including its relative safety; autonomy; privacy; the proximity to essential services such as the drop-in centre where residents can access food, water, showers, laundry, and use the telephone; the health and harm reduction services provide on-site; access to community donations of food, water, clothing, firewood; and the ability to live with their partner.⁷⁷

36. In *Drover*, the majority of this Court held that an individual's right to decide where to live is essential to personal autonomy and dignity and therefore falls within the core sphere of deeply

⁷³ *Decision*, ¶187; Respondents' Factum, ¶70-72

⁷⁴ *R v Malmo-Levine*; *R v Caine*, 2003 SCC 74, ¶85 per Gonthier and Binnie JJ; *Godbout v Longueuil (City)*, [1997] 3 SCR 844, per La Forest J, ¶66; *Drover v Canada (Attorney General)*, 2025 ONCA 468, per Gomery JA, ¶129-132 ["*Drover*"], leave to appeal granted June 26, 2025, 42005 (SCC)

⁷⁵ *Adams BCCA*, ¶109; *Vandenberg*, ¶144-147; *Persons Unknown 2023*, ¶98; *Kingston*, ¶79; *Shantz*, ¶188

⁷⁶ *Decision*, ¶187

⁷⁷ Respondents Factum, ¶13-15, 74, 102

personal decisions protected by s.7.⁷⁸ There is no principled basis to argue that this general statement about liberty would not equally apply to the claimants in the present case. To do otherwise would be to suggest that homeless people do not deserve the same level of dignity and autonomy afforded to others. It also invokes and reinforces paternalistic and ableist stereotypes about persons with mental health disabilities that they are unable to make “good” decisions about their own lives.⁷⁹

37. Contrary to the Appellants’ suggestion, engagement of the liberty interest is not the same as an unconstrained right to live wherever one pleases.⁸⁰

38. Notably, government-owned property is of a “special nature” and “quasi-fiduciary”.⁸¹ Public lands are held for the benefit of the public, which includes the homeless, and a government’s right of ownership cannot justify *Charter* violations.⁸² When exercising proprietary rights, the government is subject to “the overriding requirements of the *Charter*” because *Charter* rights “do not extend to the locations, but rather to the people occupying them.”⁸³

⁷⁸ [*Drover*, ¶131,199,216,220-221](#)

⁷⁹ *Ontario (Attorney General) v G*, [2020 SCC 38](#), ¶61-63 [“G”]; *R v Bharwani*, [2023 ONCA 203](#), ¶156; *aff’d* [2025 SCC 26](#)

⁸⁰ AG Factum, ¶63; Region Factum, ¶57

⁸¹ Region Factum, ¶57; *Committee for the Commonwealth of Canada v Canada*, [1991 CanLII 119](#), p154 *per* Lamer CJ [“Committee”]

⁸² [Committee](#), p154 *per* Lamer CJ

⁸³ [Committee](#), p165 *per* La Forest J; ¶202 *per* L’Heureux-Dubé J

Gross Disproportionality

39. Next, the AJ considered whether the By-Law’s effects on life, liberty, and security of the person were grossly disproportionate to its purposes.⁸⁴ *Amicus* adopts the Respondents’ submissions on gross disproportionality.⁸⁵

40. *Amicus* adds that the AJ was correct in recognizing that the negative consequences of the By-Law are more severe for those who have mental health or substance use disabilities, or who lack the mental capacity to understand the legal consequences of the By-Law’s enforcement.⁸⁶

41. The AJ found that forced evictions and displacement can have severe consequences for mental well-being, including deteriorating mental health and escalation of substance use.⁸⁷ Displacement may also expose individuals to physical or social violence, including violations of their rights, personal space, and dignity, causing significant distress, anxiety, and lasting psychological harm.⁸⁸ For individuals with substance use disabilities, eviction further increases the risk of overdose and death by disrupting access to essential medications and harm-reduction services, while severing social connections and support networks that help prevent people from using drugs alone.⁸⁹

⁸⁴ [Bedford](#), ¶120

⁸⁵ Respondents Factum, ¶79-85

⁸⁶ [Decision](#), ¶147; [Persons Unknown 2023](#), ¶117

⁸⁷ Affidavit of Dr. Sahil Gupta (August 13, 2025) (“Gupta Aff”), RComVol1, ¶17, pp170-171; Affidavit Dr. Bernadette Pauly (August 14, 2025) (“Pauly Aff”), RComVol1, ¶20(b), pp184-185; Affidavit of Marie-Josée Houle (August 15, 2025) (“Houle Aff”), RComVol1, ¶35, p266

⁸⁸ Gupta Aff, RComVol1, ¶17, pp170-171; Sanguen Health Centre Statement, RComVol1, p299; Houle Aff., RComVol1, ¶39, p267

⁸⁹ Pauly Aff, RComVol1, ¶20(e), pp186-187

International Law, the *NHSA*, and the PECH

42. The AJ correctly reviewed Canadian caselaw on s.7, with particular focus on encampment-related decisions.⁹⁰ He also reviewed binding and non-binding sources of international law, which he recognized carried different interpretive weight, and considered the following questions in the s.7 framework:

- a. When is a shelter space considered truly adequate, accessible, and safe?
- b. Did the By-Law sufficiently mitigate the risks to life, liberty, and security of the person to avoid engaging s.7 of the *Charter*?
- c. Were the By-Law's effects "outside the norms accepted in our free and democratic society" given the Transition Protocol?⁹¹

43. The AJ held that a "dignity-centric" approach that considers individuals' needs was required when considering the adequacy, accessibility, and safety of shelter space.⁹² Canadian jurisprudence has long recognized dignity as a fundamental value that serves as a guide for the interpretation of all *Charter* rights.⁹³ The AJ reviewed domestic jurisprudence finding that shelter spaces must be truly accessible to accommodate the varied needs of homeless populations.⁹⁴ Canada's international obligations, as adopted through the *NHSA*, reinforced the importance of dignity in the AJ's analysis.

⁹⁰ [*9147-0732 Québec*, ¶37](#)

⁹¹ [*Decision*](#), ¶110; [*Bedford*](#), ¶120

⁹² [*Decision*](#), ¶111

⁹³ [*R v Bissonnette*, 2022 SCC 23](#), ¶59

⁹⁴ [*Decision*](#), ¶29,55

44. Next, considering whether the Transition Protocol mitigated the risks to life, liberty, or security of the person, the AJ cited several reasons why they did not: the By-Law impacted more than the select few Residents who were offered Alternative Accommodation; the few IHPs in the record were inadequate as they did not consider the claimants' needs; and the Alternative Accommodation offered was neither suitable nor sustainable for people with serious mental health or substance use disabilities. The failure of the By-Law to treat people experiencing homelessness as rights-holders entitled to effective remedies, due process, and meaningful consultation as required by the PECH⁹⁵ and supported by international law and the *NHSA*, bolstered the AJ's findings that the By-Law did not mitigate the serious risks faced by the claimants.

45. With respect to the gross disproportionality analysis, in addition to the expert evidence respecting the harms associated with forced evictions and unsheltered homelessness, the AJ also considered international law norms that have been incorporated into domestic law and policy (*NHSA* and the PECH) to provide a lens through which to consider whether the deprivation at issue was "outside the norms" accepted in our free and democratic society.⁹⁶

46. Accordingly, the AJ did not constitutionalize non-binding international guidelines or confer a veto over encampment closure. He properly considered international law and the Region's own policy commitments as relevant context in applying established s.7 principles to the By-Law.

47. The AJ also did not incorporate international law's right to adequate housing into s.7 of the *Charter*.⁹⁷ Instead, he correctly referenced the presumption of conformity with respect to binding international instruments and noted that these are an "important indicia" of the meaning of "the

⁹⁵ PECH, RComVol1, pp402,408

⁹⁶ [*Decision*](#), ¶106,122

⁹⁷ AG Factum, ¶80-85

full benefit of the *Charter*'s protection."⁹⁸ He referred to the *Convention on the Rights of Persons with Disabilities*, ratified by Canada in 2010, as one such Convention enshrining indivisible and interdependent rights to adequate housing, as well as life, security of the person, and equality."⁹⁹ The AJ's review of binding international law supported and confirmed his purposive interpretation of the scope of s.7.¹⁰⁰

48. Finally, the AJ did not convert "aspirational" international rules into binding *Charter* rights.¹⁰¹ He did not issue a ruling enforcing international law's right to adequate housing within the Region. Instead, he correctly reasoned that the presumption of conformity is an interpretive aid only, and not a presumption that gives immediate effect to international obligations subject to progressive realization. The PECH envisions functional zero homelessness by 2030, a vision respected in the AJ's s.24(1) remedy. In the interim, however, the AJ was correct to concern himself with the *Charter* rights of homeless individuals who must live somewhere when they cannot access indoor shelter.

⁹⁸ *Decision*, ¶104-106; [9147-0732 Québec](#), ¶22-39

⁹⁹ *Convention on the Rights of Persons with Disabilities*, [\[2010\] Can TS No 8](#), Preamble, Arts 1-5, 9, 10, 14, 28

¹⁰⁰ [9147-0732 Québec](#), ¶22

¹⁰¹ *Region Factum*, ¶63-65

Section 15(1)

Stare Decisis

49. The AJ correctly concluded that he was not bound by the s.15(1) analysis in *Persons Unknown 2023* given the Supreme Court’s recent decision in *Kanyinda*, such that the first *Spruce Mills* exception to horizontal *stare decisis* applied.¹⁰²

50. Although the two part s.15(1) test remains unchanged, *Kanyinda* reinforced the importance of intersectionality and clarified that s.15(1) violations may arise “from the nexus between a distinction that *may not* be rooted in an enumerated characteristic and a subgroup that *must* share an enumerated ground.”¹⁰³ In keeping with *Kanyinda*, the AJ correctly recognized that “[w]here discrimination affects only a subgroup, the failure to account for intersecting identities...could effectively obscure the specific adverse effects experienced by that subgroup.”¹⁰⁴ This approach was not applied in *Persons Unknown 2023*.

51. If, however, this Court determines that the AJ was bound by *stare decisis*, *Amicus* agrees with the Respondents that this Court is not so bound and may decide these legal issues for itself.¹⁰⁵

¹⁰² *R v Sullivan*, [2022 SCC 19](#), ¶[73-76](#) [“*Sullivan*”]. The first exception applies where a subsequent decision affects the validity of the prior judgment.

¹⁰³ *Quebec (Attorney General) v Kanyinda*, [2026 SCC 7](#), ¶[42-43](#) [“*Kanyinda*”]

¹⁰⁴ *Decision*, ¶[202](#); *Kanyinda*, ¶[46,51](#)

¹⁰⁵ Respondents Factum, ¶[78](#); *Essex (County) v Enbridge Gas Inc.*, [2025 ONCA 268](#), ¶[34](#)

The AJ's Section 15(1) Analysis Was Necessary

52. The AG suggests that the AJ's determination of the s.15(1) claim, including with respect to homelessness as an analogous ground, was unnecessary given his determination that the By-Law breached s.7.¹⁰⁶

53. The Supreme Court has cautioned that the *Charter* should not be treated as if there is a hierarchy of rights with s.15(1) occupying a lower tier.¹⁰⁷ This ensures that redress for the particular harms associated with equality rights are not systematically dismissed.

54. Factors weighing against judicial policy considerations of restraint include the possibility of appeal and fairness to the parties, both of which were engaged in this matter.¹⁰⁸ Access to justice also favours addressing the s.15(1) claim, given the barriers marginalized people experiencing homelessness face in obtaining judicial recognition of their equality rights.

55. Further, the Region itself initiated this application seeking a declaration that the By-Law complies with “the *Charter*”, not just s.7.¹⁰⁹ Given the extensive litigation that has occurred since 2023 regarding this Encampment, it would not have been appropriate for the AJ to leave some of the core issues unanswered. To do so would have given the Region less guidance about how to move forward in a *Charter*-compliant way. The AJ benefitted from a fulsome evidentiary record and submissions from the parties and interveners on this issue.

¹⁰⁶ AG Factum, ¶95

¹⁰⁷ [CCR](#), ¶180

¹⁰⁸ [CCR](#), ¶181

¹⁰⁹ ABComRegion, Tab 5, p.132

Section 15(1) in the Disability Context

56. The AJ correctly framed and applied the s.15(1) test to the disability context in this case.

57. The purpose of s.15(1) “reflects a profound commitment to promote equality and prevent discrimination against disadvantaged groups.”¹¹⁰ Substantive equality is the “philosophical premise” and “animating norm” of s.15(1).¹¹¹ Further, the “equality guarantee has a powerful remedial purpose”.¹¹²

58. Step 1 of the s.15(1) test may be satisfied through evidence of adverse impact discrimination in which a seemingly neutral law can have disproportionate impacts – the focus is on the effects of the law, not on its purpose.¹¹³ Adverse impact discrimination is “especially relevant” in the disability context because “government will rarely single out disabled persons for discriminatory treatment.”¹¹⁴ In addition, the analysis at Step 1 must incorporate intersecting realities to capture the complexity of the claimant group.¹¹⁵

59. A claimant must establish a causal link between the impugned law and the discriminatory impact. The adverse impact must be caused or contributed to by the impugned law, but the law need not be the only or dominant cause of the disproportionate effect.¹¹⁶ Further, a claimant does

¹¹⁰ *Fraser v Canada (Attorney General)*, [2020 SCC 28](#), ¶27 per Abella J [“Fraser”]

¹¹¹ *Fraser*, ¶27

¹¹² *G.*, ¶39

¹¹³ *Fraser*, ¶27-49

¹¹⁴ *Eldridge v British Columbia (Attorney General)*, [\[1997\] 3 SCR 624](#), ¶64 [“Eldridge”]

¹¹⁵ *Kanyinda*, ¶51

¹¹⁶ *R v Sharma*, [2022 SCC 39](#), ¶44 [“Sharma”]

not need to establish exactly why the law being challenged has this impact.¹¹⁷ Finally, a causal connection may be established through reasonable inference.¹¹⁸

60. Step 2 of the s.15(1) test requires a claimant to establish that the law imposes burdens or denies a benefit in ways that reinforce, perpetuate or exacerbate disadvantage.¹¹⁹ An intersectional, contextual approach incorporates “the nature and intensity of the disadvantage”, accords weight to the “concrete lived realities of marginalized individuals”, and recognizes that intersecting identities can render the experience of discrimination “particularly acute.”¹²⁰

61. Further, s.15(1) is engaged even if the legislation only “perpetuates the disadvantage of “some” members of the protected group.”¹²¹

62. The AJ correctly observed that the role of s.15(1) is to address the ways in which the State interacts with persons with disabilities.¹²² In particular, the AJ appreciated that government cannot fail to identify the added burdens that an otherwise neutral law imposes when individuals with disabilities must function “in a world relentlessly oriented to the able-bodied.”¹²³

¹¹⁷ [Sharma](#), ¶46; [Kanyinda](#), ¶59

¹¹⁸ [Sharma](#), ¶49(c); [Kanyinda](#), ¶59

¹¹⁹ [Kanyinda](#), ¶61

¹²⁰ [Kanyinda](#), ¶63

¹²¹ [Kanyinda](#), ¶66

¹²² [Decision](#), ¶226; [G](#), ¶39

¹²³ [Decision](#), ¶226-227 citing *Granovsky v Canada (Minister of Employment and Immigration)*, 2000 SCC 28 ¶33 [“*Granovsky*”]; see [G](#), ¶1

The By-Law Creates Disproportionate Adverse Impacts and Reinforces, Perpetuates and Exacerbates Disadvantage

63. It is recognized that generally, people living with disability, including those with mental health diagnoses, “face persistent stigma and prejudicial treatment” which imposes “profound and widespread social, political, and legal disadvantage”.¹²⁴

64. In the particular circumstances of the case before him, the AJ applied s.15(1)’s intersectional lens to find that homeless individuals who also have disabilities experience disproportionate adverse impacts as a direct result of the By-Law’s operation and further, that the By-Law reinforces, perpetuates, and exacerbates disadvantage for this group.¹²⁵

65. Statistical, expert, participant expert, and Named Respondent affidavit evidence were all available to the AJ and firmly supported his factual conclusions that enforcement of the By-Law caused disproportionate impact and deepened pre-existing disadvantages, including lack of stability, difficulty accessing services, increased health problems, risk of death, isolation, segregation, exclusion, and stigmatization.¹²⁶ Portions of the evidence available to the AJ are repeated here for ease of reference (despite being duplicative of some of the evidence described above in the s.7 analysis):

¹²⁴ G., ¶1

¹²⁵ Decision, ¶154,197-198,200-203,212-215,224,227-230. *Amicus* adopts the Respondents’ position at ¶94 of their factum that the AJ relied on appropriate types of evidence. G., ¶61

¹²⁶ Decision, ¶230-231

(a) Evidence that, if evicted from the encampment, this group would be less likely to access and maintain indoor shelter:

- i. crowded shelter spaces are inaccessible and unsafe for many individuals with severe mental health disabilities,¹²⁷
- ii. higher risk of being barred from emergency shelters and motels due to unstable presentations and disruptive behaviours associated with mental health disabilities,¹²⁸
- iii. access to motels is at the discretion of owner-operators who may decline to rent rooms to individuals with behavioural or substance use disabilities,¹²⁹
- iv. shelters segregate genders and prohibit heterosexual couples, including those with disabilities who rely on their partner for support, from remaining together,¹³⁰
- v. less access to indoor shelter means this group must disproportionately shelter outdoors, making them more likely to interact with law enforcement and face legal consequences under the *TPA*,¹³¹ and

¹²⁷ See Appendix A

¹²⁸ For example: Josephina Dugas was barred from shelters and a motel: Dugas Affidavit, RComVol1, p72 ¶11; Kyle York was barred from a shelter: York Affidavit, RComVol1, p129 ¶14; Megan Lopes was barred from shelters for aggressive behaviour: 1st Lopes Affidavit, RComVol1, p56 ¶8

¹²⁹ [Decision](#), ¶171; 2nd Lopes Affidavit, RComVol1, pp55-57 ¶3-14; Helwig Affidavit, RComVol1, pp322-23, ¶7-11; 1st Escobar Affidavit, RComVol1, pp306-07, ¶20-24

¹³⁰ A. Jeffery Affidavit, RComVol1, pp94-98; Helsby Affidavit, RComVol1, p117, ¶5

¹³¹ Affidavit of Dr. Stephen Hwang (May 6, 2025) (“Hwang Affidavit”), RComVol1, pp161, ¶13; Gupta Affidavit, RComVol1, pp171, ¶d-e; Pauly Affidavit, RComVol1, pp184, ¶2a. See Respondents Factum ¶39 for summary of By-Law fines and enforcement powers under the *TPA*

- vi. forced eviction and displacement often exacerbates mental health symptoms, which in turn makes it more difficult to find and maintain indoor shelter.¹³²

(b) Evidence of disproportionate difficulty accessing food, clothing, hygiene, and healthcare if forced to live in more remote outdoor locations:

- i. at least six of the Named Respondents have physical disabilities that cause chronic pain and limit their mobility,¹³³
- ii. essential drop-in services are located beside the Encampment and are therefore more accessible,¹³⁴
- iii. volunteers bring clothing, firewood, blankets, food, and water directly to the Encampment,¹³⁵
- iv. if forced to live in remote locations, some may find it more difficult or impossible to access these essential services,¹³⁶
- v. living rough accompanied by mobility limitations means increased social isolation and going hungry more often,¹³⁷

¹³² Xander Harker attempted suicide after an eviction from another encampment: Harker Affidavit, RComVol1,p101,¶13-15; see also, Hwang Affidavit, RComVol1,pp159-61,¶9-13; Gupta Affidavit, RComVol1,pp169-75,¶16-22; Pauly Affidavit, RComVol1,pp183-90,¶19-26.

¹³³ For example, Charles Kocher has a drainage tube in his chest, Kocher Affidavit, RComVol1, pp88-92; Noah Helsby cannot walk long distances due to injuries from a car accident: Helsby Affidavit, RComVol1, pp118,¶6; Respondents' Factum, Appendix A

¹³⁴ Sanguen Statement, RComVol1,p299; *Decision*,¶52

¹³⁵ *Ibid.*

¹³⁶ Helsby Affidavit, RComVol1, pp.118-9,¶6,13

¹³⁷ Linton Affidavit, RComVol1,p49,¶17; Hwang Affidavit, RComVol1,pp159-61,¶9-13

- vi. some Named Respondents lost their belongings, including medications and harm reduction supplies during previous encampment evictions,¹³⁸ and
- vii. the blanket prohibition on erecting outdoor shelter will exacerbate existing health conditions, while decreasing access to pharmacies and medical services.¹³⁹

(c) Evidence that persons struggling with substance use disorders are more likely to use alone and experience a fatal overdose:

- i. evictions can destabilize health and lead to increased drug use,¹⁴⁰
- ii. in the Encampment, residents mitigate the risk of overdose by using a “buddy system,”¹⁴¹
- iii. individuals living rough have decreased access to Naloxone, opioid antagonist, or safer supply medications than at the Encampment where harm reduction support is provided,¹⁴²
- iv. most emergency shelters do not permit substance use; this prohibition can lead to eviction or service restrictions,¹⁴³

¹³⁸ Gupta Affidavit, RComVol1 p170-1, ¶16d-17b; Harker Affidavit, RComVol1,p101,¶13-15; Helsby Affidavit, RComVol1,p.118,¶10; Hwang Affidavit, RComVol1,pp159-61,¶9-13

¹³⁹ Hwang Affidavit, RComVol1,pp159-61,¶9-13

¹⁴⁰ Gupta Aff, RComVol1, pp170-171, ¶17; Pauly Aff, RComVol1, p184-185, ¶20(b); Houle Aff., RComVol1, p266, ¶35

¹⁴¹ Affidavit of Angela Allt (June 20, 2025) (“Allt Aff”), *Amicus Curiae* Compendium (“AmicusCom”), Tab 5, p 2, ¶172; Affidavit of Eddy Grignon (July 7, 2026) (“Grignon Aff”), AmicusCom, Tab 13, p 44, ¶17

¹⁴² Pauly Aff, RComVol1, pp186-187, ¶20(e)

¹⁴³ Gupta Affidavit, RComVol1, p169

- v. eviction from the Encampment forces those who use drugs to shelter alone in parks, alleyways, and stairwells,¹⁴⁴
- vi. the risk of overdose death is higher when living rough outdoors and in motel rooms in comparison to the Encampment because people tend to use drugs alone,¹⁴⁵ and
- vii. it is easier for harm reduction and medical outreach workers to find their clients at the Encampment compared to searching for clients living rough or who move frequently from shelter to shelter.¹⁴⁶

Homelessness as an Analogous Ground

66. *Amicus* adopts the Respondents' submissions respecting homelessness as an analogous ground.¹⁴⁷

67. *Amicus* adds that the analogous grounds inquiry is contextual rather than formalistic,¹⁴⁸ keeping "the focus on equality for groups that are disadvantaged in the larger social and economic context."¹⁴⁹ Disability is analysed under s.15(1) with attention to the reality that discrimination is often the product of society's reaction to the disability, and therefore socially constructed, and

¹⁴⁴ Linton Affidavit, RComVol1, pp49, ¶17; Camm Affidavit, RComVol1, p80, ¶18; Cole Affidavit, RComVol1, p.147, ¶27.

¹⁴⁵ Allt Aff, AmicusCom, Tab 5, ¶17, p 22

¹⁴⁶ Gupta Affidavit, RComVol1, pp172-173, ¶20; A. Price RComVol1, p140, ¶12

¹⁴⁷ Respondents Factum, ¶119-123

¹⁴⁸ *Kanyinda*, ¶42-43, Wagner CJ (concurring); *Kanyinda* ¶223

¹⁴⁹ *Miron v Trudel*, [1995] 2 SCR 418, ¶148; *Kahkewistahaw First Nation v Taypotat*, 2015 SCC 30, ¶19; this is consistent with Wagner CJ's concurring reasons in *Kanyinda*, recognizing important contextual factors that increase vulnerability for refugee women, including economic precarity, mental and physical health issues, and isolation

often caused by “thoughtless” legislative and administrative oversight.¹⁵⁰ These same principles inform the identification of analogous grounds.¹⁵¹

68. As an example, in *Eldridge*, deaf patients were afforded protection under s.15(1) even though many do not self-identify as disabled. It is not self-identification that evokes the legal protection, instead, it is the obligation of the State to remediate “compelled exclusion” from society.¹⁵² Eviction from the Encampment, when there is no other lawful place to shelter, is a form of compelled exclusion, as is homelessness generally. This engages the equality principles of the equal worth,¹⁵³ dignity, and the infinite value of human life that underpins s.15(1).¹⁵⁴

69. The Appellants argue that homelessness should not be recognized as an analogous ground because it is a “fluid social status of contentious definition.”¹⁵⁵ The same argument was made about disability and ultimately rejected during the drafting of the *Charter*. Early drafts of s.15(1) did not include disability. Only grounds considered “capable of more ready definition than others”, such as race, national or ethnic origin, colour, and religion, were included.¹⁵⁶ Ultimately, the ratified version included disability and since then, courts have navigated the challenge of articulating the legal definition of disability in a purposeful, contextual, and evolving way.

¹⁵⁰ *Granovsky*, ¶30,34; *Eaton v Brant County Board of Education*, [1997] 1 SCR 241, ¶67

¹⁵¹ *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203, ¶7-8 [“*Corbiere*”]

¹⁵² *Eldridge*, ¶57

¹⁵³ *Granovsky*, ¶54; *Law v Canada (Minister of Employment and Immigration)*, [1999] 1 SCR 497, ¶99 [“*Law*”]

¹⁵⁴ *Law* ¶40; *Granovsky*, ¶56

¹⁵⁵ AG Factum ¶92

¹⁵⁶ *Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada*, 32nd Parl, 1st Sess, No 36 (12 January 1981) at 13 (Jean Chrétien)

70. *Amicus* also agrees with the Respondents that the AJ correctly found homelessness to be constructively immutable.¹⁵⁷ *Amicus* adds that the Appellants’ assertion that constructive immutability is limited to characteristics that can only be changed at unacceptable cost to personal identity is inconsistent with appellate jurisprudence on disability. For example, in *Granovsky*, temporary or episodic disability received s.15(1) protection.¹⁵⁸ This is consistent with the AJ’s finding that the “transitory nature” of homelessness does not prevent its status from being an immutable characteristic.”¹⁵⁹

71. By recognizing homelessness as an analogous ground, the AJ is not thrusting an obligatory “magic wand” to end homelessness into the Region’s hands;¹⁶⁰ rather, it places a constitutional limit on how the Region must respond to individuals it seeks to displace.¹⁶¹

Section 1

72. The AJ correctly observed that s.7 protects fundamental human rights that are not easily overridden in the s.1 justification analysis by competing social interests.¹⁶² He cited *Carter*, which recognized that in some limited circumstances the State may be able to prove that a public good justifies a deprivation of s.7 – specifically, in cases where the competing societal interests are themselves protected under the Charter.¹⁶³ The AJ concluded that this is not such a case; he found that the By-Law is not a “complex regulatory response” and does not seek to balance competing rights; instead, effective April 1, 2026, it is a “bare sheltering prohibition.”¹⁶⁴ These findings are

¹⁵⁷ Respondents Factum, ¶8,118

¹⁵⁸ *Granovsky*, ¶27

¹⁵⁹ *Decision*, ¶207

¹⁶⁰ Region Factum ¶93

¹⁶¹ *Eldridge*, ¶64

¹⁶² *Decision*, ¶240-241; *Carter v Canada (Attorney General)*, 2015 SCC 5, ¶94 [“*Carter*”]

¹⁶³ *Carter*, ¶94

¹⁶⁴ *Decision*, ¶242

owed deference. A transit project is not the type of societal interest that is itself protected by the *Charter*.¹⁶⁵

73. The AJ correctly applied a systemic lens to his proportionality analysis. This litigation engages the *Charter* rights of “Persons Unknown”, vulnerable individuals mired in a daily struggle for survival, unsheltered and outdoors. They have no direct voice in this litigation, yet the By-Law creates severe risks to their physical and mental well-being, and strikes at their dignity, privacy and equality. For some, this lack of participation is the product of an inability to engage in complex lengthy litigation or even a lack of capacity to instruct counsel.¹⁶⁶ Capturing the impugned law’s impact on third parties is critical to promoting constitutional certainty (avoiding “a wilderness of single instances”), efficiency in the use of scarce judicial resources, access to justice, and the rule of law.¹⁶⁷

74. The AJ concluded that leaving 43% of the Region’s homeless without a lawful outdoor sheltering location when indoor options are unavailable is not within a range of reasonable alternatives.¹⁶⁸ In the circumstances, he found that the By-Law failed the minimal impairment branch of s.1 because reasonable alternatives were available; namely, safe tenting protocols or alternative outdoor sheltering sites.¹⁶⁹ The record supported this finding, it was not merely borne from the AJ’s own subjective “policy preference.”¹⁷⁰ This finding flowed from factual findings

¹⁶⁵ *R v Safarzadeh-Markhali*, [2016 SCC 14](#), ¶57

¹⁶⁶ *British Columbia (Attorney General) v Council of Canadians with Disabilities*, [2022 SCC 27](#), ¶115-116; *Decision*, ¶41

¹⁶⁷ *R v Nur*, [2015 SCC 15](#), ¶50-52, 63-64 [“Nur”]

¹⁶⁸ *Decision*, ¶242

¹⁶⁹ *Ibid.*

¹⁷⁰ *Region Factum*, ¶11

respecting the benefits of congregate outdoor sheltering sites; in addition, the AJ specifically referred to outdoor sheltering models of other municipalities as possible alternatives.¹⁷¹

75. Although the Region asserts, without citing any evidence, that safe tenting or an alternative site would “entail significant costs,”¹⁷² and that purchasing additional land is “impractical” (not impossible),¹⁷³ there were no specific details in the evidence as to what the actual cost of acquiring or allocating additional land might be, why that cost might be prohibitive, what percentage of the Region budget, the KCTH budget, or the Affordable Housing and Homelessness budget this might represent, or how long purchasing and preparing new land would take and how this timeframe would relate to the KCTH project timeline (which was constantly shifting). Financial considerations alone cannot justify *Charter* infringements especially where, as here, government is not distributing resources between disadvantaged groups.¹⁷⁴ Attempting to justify *Charter* violations based on budgetary constraints generally attracts strong judicial skepticism and is, practically, “nearly impossible to verify.”¹⁷⁵

76. The AJ was correct that in identifying reasonable alternatives, he was not “micro-managing” resources, but instead was engaging in the required judicial proportionality analysis.¹⁷⁶ All legislation is subject to the *Charter*, and it is the responsibility of the judiciary to review legislation for *Charter* compliance even when the matter is political, complex, contentious, or laden with social values.¹⁷⁷ It was the AJ’s task to determine whether less restrictive alternatives

¹⁷¹ [Decision](#), ¶251; 2nd Cross-Exam Dr. Pin, RComVol1, pp217-218

¹⁷² Region Factum, ¶96

¹⁷³ [Decision](#), ¶51

¹⁷⁴ [Eldridge](#), ¶85

¹⁷⁵ *Newfoundland (Treasury Board) v N.A.P.E.*, [2004 SCC 66](#), ¶72; *Conseil scolaire francophone de la Colombie-Britannique v British Columbia*, [2020 SCC 13](#), ¶152-153

¹⁷⁶ [Decision](#), ¶242

¹⁷⁷ *Chaoulli v Quebec (Attorney General)*, [2005 SCC 35](#), ¶107 [“*Chaoulli*”]; [La Rose](#), ¶34,35,44

were available in keeping with his factual findings.¹⁷⁸ The question was not whether alternative outdoor sheltering protocols or locations were a preferable policy choice, but whether such alternatives would be less impairing of ss.7 and 15(1) *Charter* rights.

77. Central to the AG’s finding on proportionality was the “extremity” of the Region’s position that once the Encampment was cleared, outdoor sheltering would be completely prohibited anywhere else on Region property.¹⁷⁹ This conclusion is in keeping with *Charter* jurisprudence: complete bans are almost impossible to characterize as “complex regulatory responses” and therefore difficult to justify at the minimal impairment stage of the s.1 analysis.¹⁸⁰

78. Having found that the By-Law was not minimally impairing, the AJ was not required to consider whether the deleterious and salutary effects of the law were proportional. A law that is not minimally impairing will not produce public benefits that outweigh the negative impacts on *Charter* rights.¹⁸¹ Nevertheless, the AJ’s conclusion that the deleterious effects were severe and outweighed any speculative salutary benefits of the KCTH was grounded in the evidence, constitute findings of fact and are owed deference. *Amicus* agrees with the Respondents that the anticipated benefits of the KCTH are not properly the subject of judicial notice.¹⁸²

¹⁷⁸ [Carter](#), ¶102-103

¹⁷⁹ [Decision](#), ¶250

¹⁸⁰ [Carter](#), ¶98,102-107,119; [Bedford](#), ¶162; *RJR-MacDonald Inc. v Canada (Attorney General)*, [1995] 3 SCR 199, ¶163-164; *Ramsden v Peterborough (City)*, [1993] 2 SCR 1084, pp1105-1106; [G.](#), ¶76

¹⁸¹ [Carter](#), ¶122; [Chaoulli](#), ¶99

¹⁸² Respondents Factum, ¶131

Remedy

79. A declaration of invalidity under s.52(1) of the *Constitution Act, 1982* can be sought on grounds that a law has unconstitutional effects on the claimant's rights or the rights of third parties. This is because it is the nature of the law, not the status of the claimant, that is in issue.¹⁸³ This is critical when the individuals impacted are marginalized and lack resources to mount their own subsequent constitutional challenges.¹⁸⁴ Given the evidence about the cyclic nature of chronic homelessness and the Region's inability to meet shelter demand, the AJ was entitled to consider the reasonably foreseeable scenario that a chronically homeless person in the Region, who is currently sheltered indoors, could lose that housing and would be prevented from lawfully erecting outdoor shelter due to the combined operation of the By-Law and the CUB.¹⁸⁵ This assessment of the evidence grounded the AJ's finding that the By-Law violated ss.7 and 15(1), making a declaration of invalidity appropriate and necessary.

80. With respect to s.24(1), appellate courts must "show considerable deference" to the AJ's choice of s.24(1) remedy.¹⁸⁶

81. The AJ was mindful of the constitutional division of powers and that he should not engage in "judicially legislating."¹⁸⁷ However, he issued a s.24(1) remedy in response to the Region's "proactive" request for both guidance on the constitutionality of the By-Law and judicial direction

¹⁸³ *Nur*, ¶51; *Quebec (Attorney General) v Senneville*, 2025 SCC 33, ¶46-48 ["Senneville"]

¹⁸⁴ *Heegsma*, ¶72; *Senneville*, ¶48; *Adams BCCA*, ¶4

¹⁸⁵ *Decision*, ¶60,164-165. Similar considerations of the impact of the law beyond the named claimants were accepted by the Court in *Bedford*, ¶158

¹⁸⁶ *Doucet-Boudreau*, ¶87

¹⁸⁷ *Decision*, ¶10,252

should the By-Law be declared of no force or effect,¹⁸⁸ a request the Region continues to make in this appeal.¹⁸⁹

82. The AJ’s s.24(1) ruling was grounded in his factual findings, amply supported by the evidence, which included: the Region’s shelter capacity covers only 15% of the homeless population and is inaccessible to many; the PECH is a longer term plan based on a human rights approach that aims to achieve functional zero homelessness only by 2030; the KCTH timelines for site remediation and construction are not fixed; those sheltering at the Encampment rely on essential survival services that can be accessed in or near the property; once the Encampment is cleared, outdoor sheltering will be completely prohibited on all Region-owned property; this total ban on public spaces where vulnerable unhoused individuals can erect survival shelter creates severe risks to health and life and exacerbates segregation, exclusion, and stigmatization; and these risks are more severe for persons struggling with mental health and substance use disabilities.¹⁹⁰

83. The AJ’s s.24(1) ruling was also firmly entrenched in the s.24(1) jurisprudence. Granting remedies is the courts’ “most meaningful function under the *Charter*.”¹⁹¹ Crafting s.24(1) remedies requires a purposive and generous approach to *Charter* interpretation to ensure that remedies are responsive and effective; a meaningful remedy must be relevant to the claimant’s unique experience and must address the circumstances in which the *Charter* right was violated.¹⁹²

¹⁸⁸ *Decision*, ¶10,24,252; Region Factum, ¶7

¹⁸⁹ Region Factum, ¶102

¹⁹⁰ *Decision*, ¶17-18,38,52,54,57,59,65,147,149-150,162,170,175,181-182,189-190,231,250

¹⁹¹ *Nelles v Ontario*, [1989] 2 SCR 170, p196

¹⁹² *Canada (Attorney General) v Power*, 2024 SCC 26, ¶32, 37 [“Power”]; *Doucet-Boudreau*, ¶25,55

84. A Superior Court’s remedial discretion pursuant to s.24(1) is broad, largely unfettered, flexible, and subject to ongoing development as new contexts receive *Charter* scrutiny.¹⁹³ While s.24(1) remedies must respect the constitutional division of powers, there is no “bright line” and a remedy may be appropriate “even if it touches on functions that are principally assigned” to another branch of government.¹⁹⁴ Finally, while there is a general presumption against combining s.52(1) and s.24(1) remedies, there is no outright prohibition;¹⁹⁵ the primary concern is to avoid duplication and double recovery. Combining remedies may be necessary to vindicate rights or “meaningfully deter future breaches.”¹⁹⁶

85. At the heart of the AJ’s s.24(1) remedy was a balanced answer to the central question in the litigation: given the Region’s need for the Encampment site at some future date, where are the Region’s chronically homeless expected to go once the Encampment is cleared and indoor accessible shelter is unavailable?¹⁹⁷

86. At the Region’s specific request, the AJ fashioned appropriate and just directions that would meaningfully address the plight of vulnerable homeless individuals when indoor shelter options are unavailable – and one that remained fair to the Region while not exceeding the limits of his judicial role. The s.24(1) order was not in the nature of *mandamus*. The Region was already providing services at the Encampment – the AJ’s remedy did not require the Region to do something novel that it was not already doing. As well, the AJ’s direction was made on an appropriate level of generality - namely, an alternative encampment site or a safe tenting protocol.

¹⁹³ [*Power*, ¶38-40](#)

¹⁹⁴ [*Doucet-Boudreau*, ¶56](#)

¹⁹⁵ [*G*, ¶142](#)

¹⁹⁶ [*Power*, ¶45](#)

¹⁹⁷ [*Decision*, ¶149](#)

The details of these generalized options were left to the Region to work out. Further, because the AJ remained seized, guidance could be sought on any practical limitations encountered by the Region.

PART IV: ORDER REQUESTED

87. *Amicus* agrees with the Respondents that the appeal should be dismissed in its entirety.

All of which is respectfully submitted

October 19, 2026



Mercedes Perez, Karen Steward, Jen Danch

Amicus Curiae

APPENDIX A:
Evidence that Most of the Alternative Accommodation Was Unsafe, Unsuitable, Inaccessible, or Inappropriate for Persons with Mental Health and Substance Use Disabilities

1. People with mental health or substance use disabilities may have an inability to follow behavioural expectations (as mental illness symptoms fluctuate with periods of crisis and dysregulation), which can lead to evictions and being barred from shelters or motels.¹⁹⁸
2. Shelters can be too crowded, overstimulating, overwhelming, or otherwise unable to meet their accommodation needs.¹⁹⁹
3. There is a disproportionate risk of harassment or violence in shelters to people with mental health issues.²⁰⁰

¹⁹⁸ Affidavit of Sahil Gupta, sworn August 15, 2025 (“Gupta Aff”), AmicusCom, Tab 1, ¶13-15, pp 7-9; UN Special Rapporteur on Adequate Housing, “A Human Rights Approach National Protocol for Homeless Encampments in Canada” (“National Protocol”), Ex D to Affidavit of David Alton, sworn June 23, 2025 (“Alton Aff”), AmicusCom, Tab 2, p 11; Affidavit of Sara Escobar, sworn June 23, 2025 [“1st Escobar Aff”], AmicusCom, Tab 3, ¶13, p 13; Affidavit of Kaitlin Schwan, sworn August 15, 2025 (“Schwan Aff”), AmicusCom, Tab 4, ¶24, p 17; Allt Aff, AmicusCom, Tab 5, ¶10-11, 15, pp 20, 22-23; Cross-examination of Sara Escobar (July 11, 2025), AmicusCom, Tab 6, p 25; Cross-examination of Dr. Laura Pin (December 3, 2025), AmicusCom, Tab 7, pp 27-29

¹⁹⁹ Allt Aff, AmicusCom, Tab 5, ¶18, pp 22-23; Gupta Aff, AmicusCom, Tab 1, ¶13-15, pp 7-9; Affidavit of Dr. Bernadette Pauly, sworn August 14, 2025 (“Pauly Aff”), AmicusCom, Tab 8, ¶8, p 31; Affidavit of Marie-Josée Houle, sworn August 15, 2025 (“Houle Aff”), AmicusCom, Tab 9, ¶45, p 35; Federal Housing Advocate Report on Encampments and Homelessness, Ex H to Houle Aff, AmicusCom, Tab 10, p 38; National Protocol, AmicusCom, Tab 11, p 40

²⁰⁰ Houle Aff, AmicusCom, Tab 9, ¶47, p 36; Affidavit of Sara Escobar, sworn February 20, 2026 (“3rd Escobar Aff”), AmicusCom, Tab 12, ¶29, p 42; Allt Aff, AmicusCom, Tab 5, ¶19, p 23

4. People with mental health or substance use issues may have an inability to follow restrictive rules in shelters (e.g., respecting substance use). Restrictive shelter environments can have a triggering effect on mental health and prior experiences of trauma.²⁰¹
5. Motels are not suitable or safe for those who lack capacity, have serious cognitive, mental health, and/or substance use issues, and they lack access to 24/7 support that high-needs people require.²⁰²
6. Unsupervised drug use in motels 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).²⁰³

²⁰¹ Houle Aff, AmicusCom, Tab 9, ¶23, 27, pp 33-34; Federal Housing Advocate Report on Encampments and Homelessness, Ex H to Houle Aff, AmicusCom, Tab 10, p 38; Allt Aff, AmicusCom, Tab 5, ¶19, p 23; Pauly Aff, AmicusCom, Tab 8, ¶8, p 31; Gupta Aff, AmicusCom, Tab 1, ¶13-14, pp 7-9

²⁰² Allt Aff, AmicusCom, Tab 5, ¶13-17, pp 20-22; 1st Escobar Aff, AmicusCom, Tab 3, ¶21-24, pp 14-15; Cross-exam Dr Pin, AmicusCom, Tab 7, pp 27-29

²⁰³ Allt Aff, AmicusCom, Tab 5, ¶17, p 22; Grignon Aff, AmicusCom, Tab 13, ¶17, p 44

Court File Nos. COA-26-CV-0836 and 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)

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)

CERTIFICATE

1. An order under subrule 61.09(2) is not required.
2. Amicus estimates that they will require 1 hour for the oral argument.
3. The factum complies with subrule 61.12(5.1).
4. The number of words contained in Parts I to V of this factum is 8,954.
5. I am satisfied as to the authenticity of every authority cited in the factum.
6. I am satisfied that every question from an authority that appears in the factum accurately reproduces the text of the authority.

Dated this October 19, 2026



Mercedes Perez, Karen A. Steward, Jen Danch
Amicus Curiae

SCHEDULE A – AUTHORITIES CITED

CASES

1. *Abbotsford (City) v Shantz*, [2015 BCSC 1909](#)
2. *Amalgamated Transit Union, Local 113 v Ontario*, [2024 ONCA 407](#),
3. *Barbra Schlifer Commemorative Clinic v Canada (Attorney General)*, [2014 ONSC 5140](#)
4. *Benhaim v St.-Germain*, [2016 SCC 48](#)
5. *Black et al. v City of Toronto*, [2020 ONSC 6398](#)
6. *Blencoe v British Columbia (Human Rights Commission)*, [2000 SCC 44](#)
7. *British Columbia (Attorney General) v Council of Canadians with Disabilities*, [2022 SCC 27](#)
8. *British Columbia Teachers' Federation v British Columbia*, [2015 BCCA 184](#)
9. *Canada (Attorney General) v Bedford*, [2013 SCC 72](#)
10. *Canada (Attorney General) v PHS Community Services Society*, [2011 SCC 44](#)
11. *Canada (Attorney General) v Power*, [2024 SCC 26](#)
12. *Canadian Council for Refugees v Canada (Citizenship and Immigration)*, [2023 SCC 17](#)
13. *Carter v Canada (Attorney General)*, [2015 SCC 5](#)
14. *Chaoulli v Quebec (Attorney General)*, [2005 SCC 35](#)
15. *Committee for the Commonwealth of Canada v Canada*, [1991 CanLII 119](#)
16. *Conseil scolaire francophone de la Colombie-Britannique v British Columbia*, [2020 SCC 13](#)
17. *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [\[1999\] 2 SCR 203](#)
18. *Deskin v Ontario*, [2023 ONSC 5584](#)
19. *Doucet-Boudreau v Nova Scotia (Minister of Education)*, [2003 SCC 62](#)

20. *Drover v Canada (Attorney General)*, [2025 ONCA 468](#)
21. *Eaton v Brant County Board of Education*, [\[1997\] 1 SCR 241](#)
22. *EFTO et al. v Her Majesty the Queen*, [2019 ONSC 1308](#)
23. *Eldridge v British Columbia (Attorney General)*, [\[1997\] 3 SCR 624](#)
24. *Essex (County) v Enbridge Gas Inc.*, [2025 ONCA 268](#)
25. *Fair Voting B.C. v Canada (Attorney General)*, [2005 ONCA 581](#)
26. *Flora v Ontario Health Insurance Plan*, [2008 ONCA 538](#)
27. *Fraser v Canada (Attorney General)*, [2020 SCC 28](#)
28. *Godbout v Longueuil (City)*, [\[1997\] 3 SCR 844](#)
29. *Gosselin v Québec (Attorney General)*, [2002 SCC 84](#)
30. *Granovsky v Canada (Minister of Employment and Immigration)*, [2000 SCC 28](#)
31. *Heegsma v Hamilton (City)*, [2026 ONCA 726](#)
32. *Housen v Nikolaisen*, [2002 SCC 33](#)
33. *Irwin Toy Ltd. v Quebec (Attorney General)*, [1989 CanLII 87 \(SCC\)](#)
34. *Kahkewistahaw First Nation v Taypotat*, [2015 SCC 30](#)
35. *La Rose v Canada*, [2023 FCA 241](#)
36. *Lalonde v Ontario*, [2001 CanLII 21164 \(ONCA\)](#)
37. *Law v Canada (Minister of Employment and Immigration)*, [\[1999\] 1 SCR 497](#)
38. *Masse v Ontario (Minister of Community and Social Services)*, [1996 CanLII 12491 \(ON Div Ct\)](#)
39. *Mathur v Ontario*, [2024 ONCA 762](#)
40. *Miron v Trudel*, [\[1995\] 2 SCR 418](#)
41. *Nelles v Ontario*, [\[1989\] 2 SCR 170](#)

42. *New Brunswick (Minister of Health and Community Services) v G(J)*, [1999 CanLII 653](#)
43. *Newfoundland (Treasury Board) v N.A.P.E.*, [2004 SCC 66](#)
44. *Ontario (Attorney General) v G*, [2020 SCC 38](#)
45. *Ontario (Attorney General) v Working Families Coalition (Canada) Inc.*, [2025 SCC 5](#)
46. *Quebec (Attorney General) v 9147-0732 Québec Inc.*, [2020 SCC 32](#)
47. *Quebec (Attorney General) v Kanyinda*, [2026 SCC 7](#)
48. *Quebec (Attorney General) v Senneville*, [2025 SCC 33](#)
49. *R v Bharwani*, [2023 ONCA 203](#)
50. *R v Bissonnette*, [2022 SCC 23](#)
51. *R v Heywood*, [\[1994\] 3 SCR 761](#)
52. *R v Malmo-Levine; R v Caine*, [2003 SCC 74](#)
53. *R v Nur*, [2015 SCC 15](#)
54. *R v Safarzadeh-Markhali*, [2016 SCC 14](#)
55. *R v Sharma*, [2022 SCC 39](#)
56. *R v Sullivan*, [2022 SCC 19](#)
57. *Ramsden v Peterborough (City)*, [\[1993\] 2 SCR 1084](#)
58. *RJR-MacDonald Inc. v Canada (Attorney General)*, [\[1995\] 3 SCR 199](#)
59. *Societe des Casinos du Quebec Inc. v Association des Cadres de la Societe des Casinos du Quebec*, [2024 SCC 13](#)
60. *Tanudjaja v Canada (Attorney General)*, [2014 ONCA 852](#)
61. *Taylor v Newfoundland and Labrador*, [2026 SCC 5](#)
62. *The Corporation of the City of Kingston v Doe*, [2023 ONSC 6662](#)

63. *The Regional Municipality of Waterloo v Named Respondents and Persons Unknown*, [2026 ONSC 2971](#)
64. *The Regional Municipality of Waterloo v Persons Unknown and to be Ascertained*, [2023 ONSC 670](#)
65. *The Regional Municipality of Waterloo v Persons Unknown and to be Ascertained*, [2025 ONSC 4774](#)
66. *Vandenberg v Vancouver (City) Fire and Rescue Services*, [2023 BCSC 2104](#)
67. *Victoria (City) v Adams*, [2008 BCSC 1363](#)
68. *Victoria (City) v Adams*, [2009 BCCA 563](#)
69. *Winnipeg Child and Family Services v K LW*, [2000 SCC 48](#)

SECONDARY SOURCES

1. Sanguliano & M. Friedman, “What is the Standard of Review for (Mixed) Constitutional Questions?”, [UBC Law Review](#), 56:3 2026

SCHEDULE B – LEGISLATION CITED

1. *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](#)

Guarantee of Rights and Freedoms **Rights and freedoms in Canada**

1. 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.

* * *

Legal Rights **Life, liberty and security of person**

7. 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.

* * *

Equality Rights **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.

* * *

Enforcement of guaranteed rights and freedoms

24 (1) 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.

* * *

General **Primacy of Constitution of Canada**

52 (1) 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.

2. *National Housing Strategy Act*, [SC 2019](#), c29, s313

Preamble

Whereas housing is essential to the inherent dignity and well-being of the person and to building sustainable and inclusive communities as well as a strong national economy in which the people of Canada can prosper and thrive;

Whereas access to affordable housing contributes to achieving beneficial social, economic, health and environmental outcomes;

Whereas improved housing outcomes are best achieved through cooperation between governments and civil society as well as the meaningful involvement of local communities;

Whereas national goals, timelines and initiatives relating to housing and homelessness are essential to improving the quality of life of the people of Canada, particularly persons in greatest need;

Whereas a national housing strategy would support a common vision, key principles and a coordinated approach to achieving improved housing outcomes;

Whereas a national housing strategy would contribute to meeting the Sustainable Development Goals of the United Nations;

And whereas a national housing strategy would support the progressive realization of the right to adequate housing as recognized in the International Covenant on Economic, Social and Cultural Rights, to which Canada is a party;

Now, therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

* * *

Declaration

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 building 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.

3. *Convention on the Rights of Persons with Disabilities*, [\[2010\] Can TS No 8](#)

Preamble

- (a) Recalling the principles proclaimed in the Charter of the United Nations which recognize the inherent dignity and worth and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world,
- (b) Recognizing that the United Nations, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, has proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind,
- (c) Reaffirming the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination,
- (d) Recalling the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,
- (e) Recognizing that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others,
- (f) Recognizing the importance of the principles and policy guidelines contained in the World Programme of Action concerning Disabled Persons and in the Standard Rules on the Equalization of Opportunities for Persons with Disabilities in influencing the promotion, formulation and evaluation of the policies, plans, programmes and actions at the national, regional and international levels to further equalize opportunities for persons with disabilities,
- (g) Emphasizing the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development,
- (h) Recognizing also that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person,
- (i) Recognizing further the diversity of persons with disabilities,
- (j) Recognizing the need to promote and protect the human rights of all persons with disabilities, including those who require more intensive support,

(k) Concerned that, despite these various instruments and undertakings, persons with disabilities continue to face barriers in their participation as equal members of society and violations of their human rights in all parts of the world,

(l) Recognizing the importance of international cooperation for improving the living conditions of persons with disabilities in every country, particularly in developing countries,

(m) Recognizing the valued existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities, and that the promotion of the full enjoyment by persons with disabilities of their human rights and fundamental freedoms and of full participation by persons with disabilities will result in their enhanced sense of belonging and in significant advances in the human, social and economic development of society and the eradication of poverty,

(n) Recognizing the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices,

(o) Considering that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them,

(p) Concerned about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status,

(q) Recognizing that women and girls with disabilities are often at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation,

(r) Recognizing that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and recalling obligations to that end undertaken by States Parties to the Convention on the Rights of the Child,

(s) Emphasizing the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities,

(t) Highlighting the fact that the majority of persons with disabilities live in conditions of poverty, and in this regard recognizing the critical need to address the negative impact of poverty on persons with disabilities,

(u) Bearing in mind that conditions of peace and security based on full respect for the purposes and principles contained in the Charter of the United Nations and observance of applicable human rights instruments are indispensable for the full protection of persons with disabilities, in particular during armed conflicts and foreign occupation,

(v) Recognizing the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms,

(w) Realizing that the individual, having duties to other individuals and to the community to which he or she belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the International Bill of Human Rights,

(x) Convinced that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, and that persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities,

(y) Convinced that a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities will make a significant contribution to redressing the profound social disadvantage of persons with disabilities and promote their participation in the civil, political, economic, social and cultural spheres with equal opportunities, in both developing and developed countries,

Have agreed as follows:

Article 1 – Purpose

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

Article 2 – Definitions

For the purposes of the present Convention:

"Communication" includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;

"Language" includes spoken and signed languages and other forms of non-spoken languages;
 "Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;

"Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

"Universal design" means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. "Universal design" shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

Article 3 - General principles

The principles of the present Convention shall be:

- a. Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- b. Non-discrimination;
- c. Full and effective participation and inclusion in society;
- d. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- e. Equality of opportunity;
- f. Accessibility;
- g. Equality between men and women;
- h. Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

Article 4 - General obligations

1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:
 - a. To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;
 - b. To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
 - c. To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;
 - d. To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;
 - e. To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;

- f. To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;
 - g. To undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost;
 - h. To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities;
 - i. To promote the training of professionals and staff working with persons with disabilities in the rights recognized in this Convention so as to better provide the assistance and services guaranteed by those rights.
2. With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.
 3. In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.
 4. Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of persons with disabilities and which may be contained in the law of a State Party or international law in force for that State. There shall be no restriction upon or derogation from any of the human rights and fundamental freedoms recognized or existing in any State Party to the present Convention pursuant to law, conventions, regulation or custom on the pretext that the present Convention does not recognize such rights or freedoms or that it recognizes them to a lesser extent.
 5. The provisions of the present Convention shall extend to all parts of federal states without any limitations or exceptions.

Article 5 - Equality and non-discrimination

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.
3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.
4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

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Article 9 – Accessibility

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:
 - a. Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;
 - b. Information, communications and other services, including electronic services and emergency services.
2. States Parties shall also take appropriate measures to:
 - a. Develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;
 - b. Ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;
 - c. Provide training for stakeholders on accessibility issues facing persons with disabilities;
 - d. Provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;
 - e. Provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;
 - f. Promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;
 - g. Promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;

- h. Promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

Article 10 - Right to life

States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

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Article 14 - Liberty and security of the person

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:
 - a. Enjoy the right to liberty and security of person;
 - b. Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.
2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation.

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Article 28 - Adequate standard of living and social protection

1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.
2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:
 - a. To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;
 - b. To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;

- c. To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;
- d. To ensure access by persons with disabilities to public housing programmes;
- e. To ensure equal access by persons with disabilities to retirement benefits and programmes.

- and -

**THE REGIONAL MUNICIPALITY OF
WATERLOO ET AL.**

DUGAS ET AL,

Appellants

Respondents

**ONTARIO
COURT OF APPEAL**

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