

COURT OF APPEAL FOR ONTARIO

BETWEEN:

**THE REGIONAL MUNICIPALITY OF WATERLOO and ATTORNEY GENERAL FOR
ONTARIO**

Applicants (Appellants)

-and-

NAMED RESPONDENTS AND PERSONS UNKNOWN

Respondents (Respondents)

**FACTUM IN SUPPORT OF THE ATTORNEY GENERAL OF
ALBERTA'S MOTION SEEKING LEAVE TO INTERVENE**

(Motion returnable November 10, 2026)

ATTORNEY GENERAL OF ALBERTA

Alberta Justice
3rd Floor Bowker Building
9833 – 109 Street
Edmonton, AB T5K 2E8

Nicholas Trofimuk

(780) 422-2917

Nicholas.Trofimuk@gov.ab.ca

*Counsel for the Proposed Intervener,
Attorney General of Alberta*

TO: PALIARE ROLAND ROSENBERG ROTHSTEIN LLP
155 Wellington St W
Toronto, ON M5V 0C3

Gordon Capern
Tel: 416-646-4311
Gordon.capern@paliareroland.com

*Counsel to the appellants,
The Regional Municipality of Waterloo*

AND TO: ATTORNEY GENERAL OF ONTARIO
11th Floor, McMurtry-Scott Building
720 Bay Street
Toronto, ON M7A 2S9

Andrea Bolieiro
Andrea.bolieiro@ontario.ca

Sara Badawi
Sara.badawi@ontario.ca

*Counsel to the appellants,
Attorney General of Ontario*

AND TO: WATERLOO REGION COMMUNITY LEGAL SERVICES
Unit 101 - 450 Frederick St
Kitchener, ON N2H 2P5

Ashley Schuitema
Ashley.schuitma@wrcls.clcj.ca

Joanna Mullen
Joanna.mullen@wrcls.clcj.ca

*Counsel to the respondents,
Named Respondents*

AND TO: Karen Steward
Karenannesteward@yahoo.ca

Jen Danch
jdanch@swadron.com

*Counsel to the respondents,
Amicus Curiae*

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PART I – OVERVIEW

1. The Attorney General of Alberta (AGAB) seeks leave to intervene as a friend of the Court in this appeal, which addresses whether and how section 15 of the *Charter* applies to individuals experiencing homelessness.
2. The AGAB has a significant interest in this appeal. Appellate interpretation of constitutional provisions, and particularly the potential recognition of a new analogous ground under section 15 of the *Charter*, will likely have significant implications for Alberta and the AGAB.
3. If granted leave to intervene, the AGAB will make every effort to provide the Court with submissions that will be useful and different from those of the parties and other interveners. Specifically, the AGAB will assist the Court by elaborating on the relevant principles relating to the recognition of homelessness as an analogous ground under section 15 of the *Charter*.
4. Granting the AGAB leave to intervene will not prejudice any of the parties. The AGAB will take the record as it finds it and will not seek to supplement the record. The AGAB will abide by any schedule set by the Court in respect of this appeal.
5. The AGAB does not seek its costs of the proposed intervention and respectfully requests that none be awarded against it.

PART II – FACTS

6. The AGAB takes no position on the facts of this appeal.

PART III – ISSUES

7. The sole issue to be determined in this application is whether the AGAB should

be granted leave to intervene as a friend of the court in this appeal pursuant to rule 13.02. The AGAB submits that it meets the test and should be granted leave to intervene.

PART IV – LAW & ARGUMENT

8. The purpose of intervention as a friend of the court is to “render assistance to the court by way of argument”.¹ When deciding whether to grant leave to intervene, the following considerations are relevant:

- a. The nature of the case;
- b. The issues involved; and
- c. The likelihood that the proposed intervener will make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties.²

9. In determining whether a proposed intervener will make a useful contribution, the court focuses on the proposed intervener and its expertise or interest in the issues at stake and the specific contribution the intervener proposes to make.³

10. The test for granting leave in constitutional cases is more relaxed than in litigation between private parties, because of the public interest in the litigation.⁴ In such cases it is important for the court to receive a diversity of representations reflecting the wide-ranging impact of its decision.⁵ This provides the court with the benefit of various perspectives on the historical and sociological context, as well as policy and other

¹ [Rules of Civil Procedure](#), RRO 1990, Reg 194, [r 13.02](#).

² [Peel \(Regional Municipality\) v Greater Atlantic & Pacific Co of Canada Ltd \(CA\)](#), 74 OR (2d) 164 at 167; [Heegsma v Hamilton \(City\)](#), 2025 ONCA 904 at para [5](#).

³ [Elementary Teachers’ Federation et al v Her Majesty](#), 2018 ONSC 6318 at para [11](#).

⁴ [Heegsma v Hamilton \(City\)](#), 2025 ONCA 904 at para [6](#); [Elementary Teachers’ Federation et al v Her Majesty](#), 2018 ONSC 6318 at para [9](#); [BM v Ontario](#) 2026 ONCA 422 at para [9](#); [Cycle Toronto v Ontario \(Attorney General\)](#), 2025 ONCA 908 at para [10](#); [Reference re Greenhouse Gas Pollution Pricing Act](#), 2019 ONCA 29 at para [8](#).

⁵ [Elementary Teachers’ Federation et al v Her Majesty](#), 2018 ONSC 6318 at paras [9](#), [11](#).

considerations that bear on the validity of legislation.⁶

11. The proposed intervener usually must establish at least one of three criteria:
 - a. it has a real, substantial and identifiable interest in the subject matter of the proceedings;
 - b. it has an important perspective distinct from the immediate parties; or,
 - c. it is a well-recognized group with a special expertise and a broadly identifiable membership base.⁷
12. As will be set out in more detail below, the AGAB meets the test to be granted leave to intervene as a friend of the court in this appeal.

A. The AGAB Has a Real Interest in This Appeal

13. The issues raised by this appeal are of real interest to the AGAB. This appeal concerns the interpretation and application of sections 7 and 15 of the *Charter* in the context of governmental responses to homelessness.
14. Jurisprudence from appellate courts like the Ontario Court of Appeal, while not binding, will be influential in other provinces including Alberta. This appeal may be the first time a provincial appellate court will analyze whether homelessness should be recognized as an analogous ground under section 15 of the *Charter*.
15. The implications of this decision will likely affect the governmental response of Alberta, and municipalities within Alberta, in relation to homelessness and encampments. Recognizing a new analogous ground would also have wide-ranging implications on the

⁶ [Heegsma v Hamilton \(City\)](#), 2025 ONCA 904 at para 6.

⁷ [Heegsma v Hamilton \(City\)](#), 2025 ONCA 904 at para 6.; [PS v Ontario](#), 2014 ONCA 160 at para 6; [Bedford v Canada \(Attorney General\)](#), 2009 ONCA 669 at para 2; [BM v Ontario](#), 2026 ONCA 422 at para 10.

Alberta government, including for legislative initiatives relating to housing, human rights, encampments, and governmental enforcement actions.

16. Provincial governments have “a direct interest in the subject matter” of appeals concerning the interpretation and application of *Charter* provisions.⁸ This appeal concerns legal issues “of general importance”, and there is a “strong nexus between the issues raised in the proceeding ... and the interests of the Government of Alberta and the population it serves”.⁹

17. Homelessness is an ongoing issue in Alberta,¹⁰ and the AGAB provides advice to Alberta in relation to this issue. Alberta’s work in addressing encampments is informed, in part, by the jurisprudence from the courts in encampment-related and other *Charter* cases. Alberta is required to balance the needs of its vulnerable homeless populations with the needs and interests of other Albertans. As the advisor to a different provincial government facing issues with homelessness, the AGAB will provide a unique perspective and understanding of the issues raised in this appeal.

18. The outcome of this appeal may have significant implications with respect to law-making and executive functions of the Alberta government, the scope and nature of constitutional litigation in Alberta involving homeless encampments, the responsibilities of the AGAB in advising the government and defending legislation, and governmental liability.

⁸ [Saskatchewan \(Minister of Education\) v UR Pride Centre for Sexuality and Gender Diversity](#), 2024 SKCA 74 at para 9; See similarly [Reference re Greenhouse Gas Pollution Pricing Act](#), 2019 ONCA 29 at paras 1-2.

⁹ [Tsleil-Waututh Nation v Canada \(Attorney General\)](#), 2017 FCA 102 at paras 18-23.

¹⁰ See e.g. [Coalition for Justice and Human Rights Ltd v Edmonton \(City\)](#), 2024 ABKB 26 at paras 1-2.

B. The AGAB Has a Useful and Distinct Perspective

19. Alberta has similar concerns with homelessness as Ontario, but the issues faced and the governmental responses are unique to each factual situation and not identical.¹¹

20. If granted leave to intervene, the AGAB will make every effort to advance submissions that are different from and expand upon those advanced by the Regional Municipality of Waterloo, the Attorney General of Ontario, and the other potential interveners. The AGAB intends to focus its submissions on the following points:

- a. The key focus of the constructive immutability inquiry is whether that characteristic is connected to an individual's "personal identity". Courts consider other factors in recognizing grounds, but these other factors are in support of the central inquiry of whether the proposed ground is sufficiently connected to personal identity;
- b. Homelessness is neither immutable nor constructively immutable, and therefore should not be recognized as an analogous ground under section 15.

21. Although "some overlap is permitted",¹² the AGAB will make every effort not to duplicate the submissions of the Parties. The AGAB's proposed submissions are set out in its draft Intervener Factum, attached as Schedule "C".

22. In sum, the AGAB has a real interest in the issues raised on appeal and a valuable and distinct perspective. The AGAB submits that its perspective and submissions will be

¹¹ See e.g. *Coalition for Justice and Human Rights Ltd v Edmonton (City)*, 2024 ABKB 26 at paras 1-2; <https://www.alberta.ca/homelessness-response/>.

¹² *Elementary Teachers' Federation et al v Her Majesty*, 2018 ONSC 6318 at para 10; See e.g. *Reference re Impact Assessment Act*, 2022 ABCA 165 at paras 37, 44.

helpful to this Court.

C. No Undue Delay or Injustice Will Flow from Granting the AGAB Leave to Intervene

23. In the Directions following a July 23, 2026, meeting with the Parties, the Honourable Huscroft JA set out a timetable for intervention motions in this appeal. The AGAB will comply with the timetable and any further directions from the Court.

24. The AGAB will not introduce any fresh evidence in this appeal and is seeking only to intervene as a friend of the court. No undue delay or injustice will flow from granting the AGAB leave to intervene.

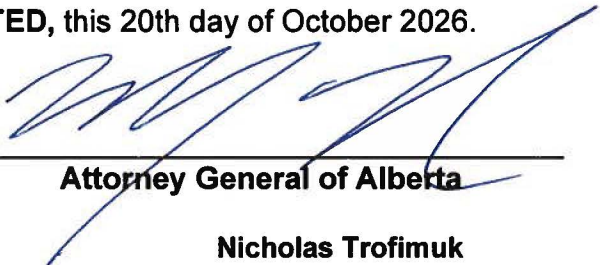
PART V – ORDER SOUGHT

25. The AGAB does not seek costs for its proposed intervention and asks that no costs be awarded against it.

26. The AGAB requests an order granting it leave to intervene in the appeal, including the right to file a factum not to exceed ten pages and the right to make oral argument at the hearing not exceeding fifteen minutes.

27. A copy of the AGAB's draft Order is at Tab 3 of its Motion Record.¹³

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 20th day of October 2026.



Attorney General of Alberta

Nicholas Trofimuk
(780) 422-2917

Nicholas.Trofimuk@gov.ab.ca

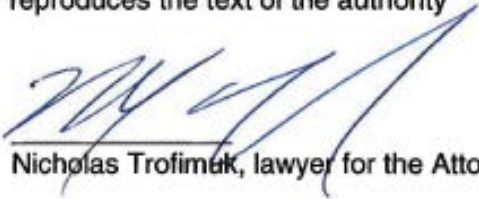
*Counsel for the Proposed Intervener,
Attorney General of Alberta*

¹³ Motion Record of the Attorney General of Alberta, Tab 3, Draft Order.

Schedule “A” – Authorities Cited

	Jurisprudence
1.	<i>Bedford v Canada (Attorney General)</i> , 2009 ONCA 669
2.	<i>BM v Ontario</i> , 2026 ONCA 422
3.	<i>Coalition for Justice and Human Rights Ltd v Edmonton (City)</i> , 2024 ABKB 26
4.	<i>Cycle Toronto v Ontario (Attorney General)</i> , 2025 ONCA 908
5.	<i>Elementary Teachers’ Federation et al v Her Majesty</i> , 2018 ONSC 6318
6.	<i>Heegsma v Hamilton (City)</i> , 2025 ONCA 904
7.	<i>Peel (Regional Municipality) v Greater Atlantic & Pacific Co of Canada Ltd (CA)</i> , 74 OR (2d) 164
8.	<i>PS v Ontario</i> , 2014 ONCA 160
9.	<i>Reference re Greenhouse Gas Pollution Pricing Act</i> , 2019 ONCA 29
10.	<i>Reference re Impact Assessment Act</i> , 2022 ABCA 165
11.	<i>Saskatchewan (Minister of Education) v UR Pride Centre for Sexuality and Gender Diversity</i> , 2024 SKCA 74
12.	<i>Tsleil-Waututh Nation v Canada (Attorney General)</i> , 2017 FCA 102

Pursuant to rule 4.06.1(2.1) I certify that I am satisfied that (a) every authority cited in the factum is authentic, and (b) every quotation from an authority that appears in the factum accurately reproduces the text of the authority

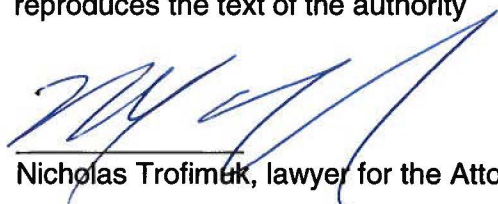


Nicholas Trofimuk, lawyer for the Attorney General of Alberta

Schedule “A” – Authorities Cited

	Jurisprudence
1.	<u>Bedford v Canada (Attorney General)</u> , 2009 ONCA 669
2.	<u>BM v Ontario</u> , 2026 ONCA 422
3.	<u>Coalition for Justice and Human Rights Ltd v Edmonton (City)</u> , 2024 ABKB 26
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5.	<u>Elementary Teachers’ Federation et al v Her Majesty</u> , 2018 ONSC 6318
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Nicholas Trofimuk, lawyer for the Attorney General of Alberta

Schedule “B” – Statutes Cited

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

Leave to Intervene as Friend of the Court

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