

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)

**MOTION RECORD OF THE PROPOSED
INTERVENER ATTORNEY GENERAL OF
ALBERTA**

(Motion returnable November 10, 2026)

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BETWEEN:

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

Applicants (Appellants)

-and-

NAMED RESPONDENTS AND PERSONS UNKNOWN

Respondents (Respondents)

**NOTICE OF MOTION FOR LEAVE TO
INTERVENE OF THE PROPOSED INTERVENER,
ATTORNEY GENERAL OF ALBERTA**

(APPLICATION UNDER Rules 1.04, 13.02 and 13.03(2)
of the *Rules of Civil Procedure*, RRO 1990, Reg 194)

The Attorney General of Alberta (AGAB) will make a motion for leave to intervene in the above-referenced appeal, to be dealt with in writing if unopposed, or to be heard on November 10, 11, or 12, 2026 by video conference if opposed, pursuant to the directions of Huscroft JA.

THIS MOTION IS FOR:

1. An order granting AGAB:
 - a. Leave to intervene as a friend of the court in this appeal on a without costs basis;
 - b. Permission to file a factum of not more than ten (10) pages, or such other length the court may deem appropriate;

- c. Permission to present oral argument at the hearing of this appeal of not more than fifteen (15) minutes, or such other duration as the court may deem appropriate; and
- d. Such further or other Order that the circumstances require and that the said Judge may deem just.

THE GROUNDS FOR THE MOTION ARE:

- 2. The applicant for leave to intervene, the AGAB, has a significant interest in this appeal.
- 3. Pursuant to section 1(1) Schedule 9 of Alberta's *Government Organization Act*, RSA 2000, c G-10, Alberta's Minister of Justice is the AGAB.
- 4. The central issues in this appeal concern the scope and effect of section 7 and 15 of the *Charter* in relation to actions taken by governments to address the challenges of homeless encampments.
- 5. This appeal may be the first time an appellate court will address whether homelessness is an analogous ground under section 15 of the *Charter*.
- 6. The outcome of this appeal may have significant consequences 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.
- 7. 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.

8. Specifically, the AGAB will argue that:
 - a. Analogous grounds under section 15 of the *Charter* are limited to those grounds which it is impossible for an individual to change (immutable) or which are “constructively immutable”;
 - b. The key focus in recognizing a new “constructively immutable” ground is whether that characteristic is essential to an individual’s “personal identity”; and
 - c. Homelessness is neither truly immutable, nor a personal characteristic essential to one’s personal identity, and is not analogous to the enumerated grounds in section 15 of the *Charter*.
9. Granting the AGAB leave to intervene will not prejudice any of the parties.
10. The AGAB will take the record as it finds it and will not seek to supplement the record.
11. The AGAB will abide by any schedule set by this Court in respect of this appeal.
12. The AGAB does not seek its costs of the proposed intervention and respectfully requests that none be awarded against it.
13. The AGAB relies on rules 1.04, 13.02 and 13.03(2) of the *Rules of Civil Procedure*, RRO 1990 Reg 194.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

14. Affidavit of Margaret Unsworth, KC, sworn October 20, 2026;
15. Factum filed herewith;

16. Such further or other material as counsel may advise and this Honourable Court may permit.

October 20, 2026

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Named Respondents*

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*Counsel to the respondent
Amicus Curiae*

NOTICE TO THE RESPONDENT TO THE MOTION: A respondent to the motion may serve and file a response to this motion within 10 days after service of the motion. If no response is filed within that time, the motion will be submitted for consideration to a judge or the Registrar, as the case may be.

If the motion is served and filed with the application for leave to appeal, then the Respondent may serve and file the response to the motion with the response to the application for leave to appeal.

B E T W E E N:

THE REGIONAL MUNICIPALITY OF WATERLOO et al

- and -

NAMED RESPONDENTS et al

Appellants

Respondents

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PROCEEDING COMMENCED AT
TORONTO

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Applicants (Appellants)

-and-

**NAMED RESPONDENTS AND PERSONS
UNKNOWN**

Respondents (Respondents)

**AFFIDAVIT OF MARGARET UNSWORTH, KC
(Sworn October 20, 2026)**

I, Margaret Unsworth, KC, of the City of Edmonton, in the Province of Alberta, SWEAR
AND SAY AS FOLLOWS:

1. I am employed by His Majesty the King in right of Alberta with the Department of Justice. Specifically, I hold the position of General Counsel with the office of the Assistant Deputy Minister, Legal Services Division. I am authorized to provide this affidavit on behalf of the Attorney General of Alberta (AGAB). I have personal knowledge of the matters set out herein, except where stated to be based on information and belief, in which case I believe the information to be true.
2. The AGAB has a significant interest in this appeal.
3. Pursuant to section 1(1) Schedule 9 of Alberta's *Government Organization Act*, RSA 2000, c G-10, Alberta's Minister of Justice is the AGAB.
4. The duties and responsibilities of the AGAB are set out in section 2 Schedule 9

of the *Government Organization Act*, which, *inter alia*, provides as follows:

2 The Minister

- (a) is the official legal advisor of the Lieutenant Governor;
- (b) shall ensure that public affairs are administered according to law;
- (c) shall superintend all matters relating to the administration of justice in Alberta that are within the powers or jurisdiction of the Legislature or the Government;
- (d) shall advise on legislative acts and proceedings of the Legislature and generally advise the Crown on matters of law referred to the Minister by the Crown;
- (e) shall exercise the powers and is charged with the duties attached to the offices of the Attorney General and Solicitor General of England by law or usage insofar as those powers and duties are applicable in the Province of Alberta;
- (f) shall advise the heads of the several departments of the Government on matters of law connected with them respectively;
- (h) shall regulate and conduct litigation for or against the Crown or a public department in respect of subjects within the authority or jurisdiction of the Legislature;
- (i) is charged generally with any duties that may be at any time assigned to the Minister by law or by the Lieutenant Governor in Council;
- (j) is responsible for the conduct of the following matters, the enumeration of which shall not be taken to restrict the general nature of any provision of

this Schedule:

- (viii) the supervision of the offices of the courts of law in Alberta;
- (ix) the consideration of proposed legislation and other matters of a public nature.

5. The central issues in this appeal concern the scope and effect of sections 7 and 15 of the *Charter* as they relate to governmental action involving homeless encampments.

6. The outcome of this appeal may have significant consequences with respect to the law-making 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.

7. I am advised that following a July 23, 2026 meeting with the Parties in this action, The Honourable Huscroft JA issued Directions providing that any party seeking to intervene in this appeal must file their application by October 21, 2026.

8. If granted leave to intervene, the AGAB intends to focus written and oral submissions on the following positions:

- a) Analogous grounds under section 15 of the *Charter* are limited to those personal characteristics which it is impossible for an individual to change (immutable) or which are “constructively immutable”;
- b) The key focus of the constructive immutability inquiry is whether that characteristic is essential to an individual’s “personal identity”; and
- c) Homelessness is neither truly immutable, nor a personal characteristic

essential to one's personal identity, and is not analogous to the enumerated grounds in section 15 of the *Charter*.

9. If granted leave to intervene, the AGAB will not take a position on the merits of this appeal, will make every effort not to duplicate the submissions of any other party, will not delay the hearing of this appeal, will not raise further issues, and will abide by any order of this Court respecting its intervention.

10. I make this Affidavit in support of an application for intervention in this appeal by the AGAB.

SWORN BEFORE ME at the City of
Edmonton in the Province of Alberta this
20th day of October, 2026.



A Commissioner for Oaths in and for the
Province of Alberta

Jacky Primeau
A Commissioner for Oaths in
and for the Province of Alberta
My Commission Expires October 13, 29


Margaret Unsworth, KC

B E T W E E N:

THE REGIONAL MUNICIPALITY OF WATERLOO et al

- and-

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COURT OF APPEAL FOR ONTARIO

THE HONOURABLE)
JUSTICE) _____, THE ____ DAY OF
)
) _____, 2026.

BETWEEN:

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Applicants (Appellants)

-and-

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Respondents (Respondents)

APPLICATION UNDER Rules 1.04, 13.02, and 13.03(2) of the Rules of Civil
Procedure, RRO 1990, Reg 194

ORDER

THIS MOTION, made by the Proposed Intervener, Attorney General of Alberta,
for leave to intervene as a friend of the Court in the within Appeal, was heard/read on
_____, 2026.

ON READING the Motion Record and Factum of the Attorney General of Alberta
seeking to intervene, and on noting the positions of the Respondent and Appellants in
this matter:

1. THIS COURT ORDERS that Attorney General of Alberta is hereby granted leave to intervene as a friend of the Court in the within Appeal, subject to the terms of this Order;
2. THIS COURT ORDERS that the Attorney General of Alberta is permitted to make oral arguments of 15 minutes at the hearing of this Appeal;
3. THIS COURT ORDERS that the Attorney General of Alberta is permitted to file a factum of a maximum of 10 pages, in accordance with the timetable for this Appeal;
4. THIS COURT ORDERS that the Attorney General of Alberta shall not seek any costs at the hearing of the Appeal and no costs shall be awarded against it;
5. THIS COURT ORDERS that there shall be no costs awarded in this motion for leave to intervene.

(Signature of judge, officer or registrar)

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