

COURT OF APPEAL FOR ONTARIO

BETWEEN:

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
(Respondent/Cross Applicants)

**FACTUM OF THE PROPOSED INTERVENER, BRITISH
COLUMBIA CIVIL LIBERTIES ASSOCIATION**

(Motion for Leave to Intervene)

DATED: October 21, 2026

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PART I – OVERVIEW

1. The British Columbia Civil Liberties Association (“**BCCLA**”) seeks leave to intervene in this appeal.

2. Homelessness continues to grow across Canada, yet the legal rights of individuals forced to live outside on public land continue to be seriously contested and poorly understood. This case stands to be a critical precedent on the law governing the *Charter* rights of unhoused persons. Despite their increasing consideration by the lower courts, this judgment will be only the second substantive Canadian appellate consideration of these issues (following *Victoria (City) v. Adams*, 2009 BCCA 563 eighteen years ago) and the first by the Ontario Court of Appeal.

3. BCCLA satisfies the test for obtaining intervention status on this critical issue of public importance. It is a seasoned intervener in *Charter* litigation and a well-recognized advocate for the civil liberties of persons experiencing homelessness, including as a litigant in cases involving the right to shelter. If granted leave, BCCLA will provide a useful and distinct contribution to shape the court’s analysis, focusing on the need to apply s. 7 in a manner that facilitates access to justice for the homeless population. BCCLA does not seek to augment the record or raise new issues and its proposed intervention will not prejudice the parties.

4. BCCLA respectfully requests it be granted leave to intervene.

PART II – SUMMARY OF THE FACTS

5. This appeal concerns the Regional Municipality of Waterloo (the “**Region**”)’s by-laws regulating sheltering by unhoused individuals in the Region (the “**By-laws**”). The appellant Region sought guidance from the court regarding the constitutionality of the By-law. The respondents, who are 24 chronically homeless individuals living in the Waterloo region, initiated a Responding Application seeking, *inter alia*, declarations that the By-laws violate their s. 7 and s. 15(1) rights and a declaration of invalidity. In reasons issued May 21, 2026, the Ontario Superior Court of Justice issued the declarations sought by the respondents.¹

6. BCCLA takes no position on the facts of this appeal.

PART III – ISSUES

7. The sole issue on this motion is whether the Court should exercise its discretion to grant BCCLA leave to intervene in this appeal.

PART IV – THE LAW AND ANALYSIS

A. The Four Factors Under the Rule 13.03 Test Favour Granting BCCLA Leave to Intervene

8. Rule 13.02 provides that the Court has discretion to grant any person leave to intervene as a friend of the court.² With leave from a judge designated by the Associate Chief Justice, Rule 13.03(2) allows any person to intervene as a friend of the court on an appeal.³

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

² *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 at [R 13.02](#) [*Rules*]

³ *Rules* at [R 13.03\(2\)](#)

9. The test for granting intervention under Rules 13.02 and 13.03(2) is flexible. The court examines the nature of the case, the issues arising, the likelihood of assistance from the proposed intervener, and the potential for prejudice.⁴

10. All four factors weigh in favour of granting BCCLA leave to intervene in this appeal.

The public law nature of this appeal favours granting BCCLA leave to intervene

11. This appeal involves public law issues of significant importance, namely the constitutionality of by-laws governing the lives of a highly vulnerable population. The test for granting leave is more relaxed in constitutional cases such as this one.⁵

12. Constitutional cases have their own criteria for proposed interveners to satisfy before leave is granted. Case law dictates that proposed interveners in constitutional cases must satisfy at least one of three criteria: ⁶

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

13. BCCLA satisfies all three criteria:

⁴ *Christian Heritage Party of Canada v. Hamilton (City)*, [2025 ONCA 700](#) at [para. 7](#) [*Christian*].

⁵ *Christian* at [para. 8](#)

⁶ *Christian* at [para. 9](#)

- a. **BCCLA is a well-recognized group with special expertise and a broadly identifiable membership base.** BCCLA is a national non-profit, non-partisan group that has been advocating for the protection of civil liberties and human rights since 1963, with thousands of supporters across the country.⁷ BCCLA has extensive experience intervening in *Charter* cases and has been cited by the Ontario Court of Appeal as a “well-recognized group with special expertise and [a] broad membership base”.⁸ BCCLA has previously intervened before this Court on constitutional matters on multiple occasions.⁹ The Supreme Court of Canada has granted BCCLA intervention status in more than 100 appeals, making it one of the most frequent non-government interveners at the highest court in the country.¹⁰ BCCLA also has specific expertise in the issues raised by this appeal.
- b. **BCCLA has an important perspective distinct from the immediate parties.** BCCLA brings the perspective of a public interest group with significant experience making submissions on and litigating the rights at issue in this proceeding in the specific context of homelessness. BCCLA is proposing to make highly relevant submissions distinct from those of the parties or other proposed interveners. BCCLA has worked collaboratively with respondents’ counsel and other proposed interveners to ensure that its arguments are distinct.
- c. **BCCLA has a real and identifiable interest in the subject matter of the appeal.**

This appeal concerns the *Charter* rights of individuals experiencing homelessness.

⁷ Motion Record of the BCCLA, Tab 2, Affidavit of Vibert Jack, affirmed 10 Oct 2026 [“**Jack Affidavit**”] at para. 8

⁸ Jack Affidavit at para 12, Ex. A

⁹ Jack Affidavit at para 14

¹⁰ Jack Affidavit at para 13

Protecting these core civil liberties has been a part of BCCLA’s mandate for decades, intervening in *Adams* and multiple subsequent cases.¹¹ BCCLA is presently acting as a public interest litigant in a constitutional challenge to by-laws regulating sheltering in Vancouver, BC, also raising ss. 7 and 15(1) of the *Charter*,¹² and continues to actively engage in research and advocacy outside of litigation in support of the rights of those experiencing homelessness.¹³

The issues in this appeal have implications beyond the immediate parties

14. Issues that have broader implications than the immediate dispute between the parties weigh in favor of the court granting leave.¹⁴ It *Charter* cases of wide application, it is important for the court to have before it a diversity of perspectives that reflect the wide-ranging impacts of the decision.¹⁵

15. The appellants challenge the Superior Court’s interpretation and application of s. 7 of the *Charter* in the context of state action to displace unhoused people from where they are sheltering outdoors.

16. Homelessness is growing both in the Region at issue in this appeal and across the country.¹⁶

¹¹ Jack Affidavit at para. 15

¹² Jack Affidavit at para. 16

¹³ Jack Affidavit at paras. 9, 18-19

¹⁴ *Jones v. Tsige*, [2011 CanLII 99894](#) (Ont. Ct. App) at [para. 24](#) [*Jones*]

¹⁵ *Trinity Western University v. Law Society of Upper Canada*, [2014 ONSC 5541](#) (Ont. Div. Ct.) at [para. 9](#) [*Trinity*]

¹⁶ *The Regional Municipality of Waterloo v. Named Respondents and Persons Unknown*, [2026 ONSC 2971](#) at [paras. 2, 58-59](#).

17. The proper regulation of state action in this context has frequently come before the lower courts in the past decades, as illustrated by the thirty-six cases addressed in the appendices to the Region and the respondents' factums respectively. Yet these cases often consider the issues on rushed timelines in a summary fashion, often in the context of injunction applications, and have rarely been subject to appeal. Indeed, unhoused people face many challenges both litigating their rights and sustaining that litigation over time.¹⁷ Consequently, there has been little appellate guidance to ensure the legal analysis taking place in these cases is consistent and correct.

18. The Court's reasons on this case can consequently be expected to have both province-wide and national importance. BCCLA seeks to provide its specialized perspective on the issues accordingly.

BCCLA is likely to make a useful and distinct contribution in this appeal

19. While some overlap on the issues and arguments between the proposed intervenor and the parties is permitted,¹⁸ BCCLA has worked with respondents' counsel and other proposed interveners to ensure that its submissions are useful and distinct.¹⁹

20. BCCLA's proposed arguments are detailed in its draft factum.²⁰ BCCLA intends to address the need for greater clarity and simplification in the law given the significant access to justice and rule of law concerns that arise in this area. BCCLA proposes that this can be achieved by clarifying how the principles of autonomy and dignity inform the s. 7 liberty analysis in circumstances where the state restricts the ability of individuals to shelter

¹⁷ *Vandenberg v. Vancouver (City) Fire and Rescue Services*, [2023 BCSC 2104](#) at paras. [33-34](#)

¹⁸ *Elementary Teachers' Federation et al v. Her Majesty*, [2018 ONSC 6318](#) (Ont. Div. Ct) at [para 10](#).

¹⁹ Jack Affidavit at para 20(e).

²⁰ Motion Record, Tab 3, BCCLA's draft factum on appeal.

outdoors. BCCLA proposes clarity in the law could be achieved by recognizing two presumptions: first, that displacing homeless people from sheltering outdoors will presumptively engage their s. 7 *Charter* liberty rights; and second, that criminalizing sheltering in outdoor space where homelessness count data show outdoor sheltering is necessary both engages the *Charter* and is presumptively grossly disproportionate.

21. BCCLA will argue that these presumptions are necessary to ensure that people experiencing homelessness are provided the same level of s. 7 protection that the *Charter* guarantees in other contexts.

BCCLA's intervention will not cause prejudice to the immediate parties

22. BCCLA's intervention will not cause any prejudice. BCCLA does not seek to supplement the record, expand the issues, or delay the proceedings in any way.²¹ It proposes to intervene on a specific legal issue through a brief factum and brief oral submissions. Prejudice does not result simply because a proposed intervener cares about the outcome of an appeal.²²

23. BCCLA has brought this motion well in advance of the hearing of this appeal, on the schedule set by the Court, and will abide by any future schedule set by this Court.²³ It is not seeking costs on this motion and will not seek costs at the appeal if granted leave.²⁴

PART V – Order Sought

24. BCCLA respectfully requests an order:

²¹ Jack Affidavit at para 20(b), (d).

²² *Christian* at [paras 15](#) and [26](#); *Trinity* at [para 10](#).

²³ Jack Affidavit at para 20(a).

²⁴ Jack Affidavit at para 20(c), 21.

- a. granting BCCLA leave to intervene in this appeal as a friend of the court pursuant to R 13.02 of the Rules of Civil Procedure;
- b. permitting BCCLA to file a factum of no longer than **10** pages, or any such other length as this Court may deem appropriate;
- c. permitting BCCLA to present oral arguments at the hearing of this appeal, of a length to be determined by this Court;
- d. ordering that BCCLA will not be awarded costs or have costs awarded against it on this motion or at the appeal; and
- e. any further or other order as this Court may deem appropriate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED: October 21, 2026



Julia Riddle
Lawyer for the Proposed Intervener, British
Columbia Civil Liberties Association

COURT OF APPEAL FOR ONTARIO

BETWEEN:

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
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HARKER, CHARLES KOCHER, ALINE JEFFERY, MICHAEL JEFFERY, AND
PERSONS UNKNOWN

Respondents
(Respondent/Cross Applicants)

**CERTIFICATE OF THE PROPOSED INTERVENER, BRITISH
COLUMBIA CIVIL LIBERTIES ASSOCIATION**

1. I certify that I am satisfied that: (a) every authority cited in this factum is authentic;
and (b) every quotation from an authority that appears in this factum accurately
reproduces the text of this authority.

DATED: October 21, 2026



Julia Riddle

Counsel for the Proposed Intervener, British
Columbia Civil Liberties Association

SCHEDULE A – AUTHORITIES

1. *Christian Heritage Party of Canada v. Hamilton (City)*, [2025 ONCA 700](#)
2. *Elementary Teachers’ Federation et al v. Her Majesty*, [2018 ONSC 6318](#) (Ont. Div. Ct)
3. *Jones v. Tsige*, [2011 CanLII 99894](#) (Ont. Ct. App)
4. *The Regional Municipality of Waterloo v. Named Respondents and Persons Unknown*, [2026 ONSC 2971](#)
5. *Trinity Western University v. Law Society of Upper Canada*, [2014 ONSC 5541](#) (Ont. Div. Ct.)
6. *Vandenberg v. Vancouver (City) Fire and Rescue Services*, [2023 BCSC 2104](#)

SCHEDULE B - LEGISLATION

Rules of Civil Procedure, R.R.O. 1990, Reg. 194, R 13.02, R 13.03(2)

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. R.R.O. 1990, Reg. 194, r. 13.02; O. Reg. 186/10, s. 1; O. Reg. 711/20, s. 7; O. Reg. 383/21, s. 15.

Leave to Intervene in Divisional Court or Court of Appeal

13.03

(2) Leave to intervene as an added party or as a friend of the court in the Court of Appeal may be granted by a panel of the court, the Chief Justice or Associate Chief Justice of Ontario or a judge designated by either of them. R.R.O. 1990, Reg. 194, r. 13.03 (2); O. Reg. 186/10, s. 2; O. Reg. 55/12, s. 1; O. Reg. 82/17, s. 16.

THE REGIONAL
MUNICIPALITY OF
WATERLOO et al.

-and-

JOSEPHINA DUGAS et al

Respondents
(Respondents on Appeal)

Court File No. COA-26-CV-0836

Court File No. COA-26-CV-0897

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COURT OF APPEAL FOR ONTARIO

Proceeding commenced at TORONTO

**FACTUM IN SUPPORT OF MOTION FOR
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