

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)

MOTION RECORD

[Motion for Leave to Intervene]

DATED: Oct. 21, 2026.

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Amicus Curiae for Persons Unknown,
The Mental Health Legal Committee

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

COURT OF APPEAL FOR ONTARIO

BETWEEN:

THE REGIONAL MUNICIPALITY OF WATERLOO

Appellant
(Applicant/Cross Respondent)

and

THE ATTORNEY GENERAL FOR ONTARIO

Appellant
(Intervener)

and

JOSEPHINA DUGAS, TERRA-LYNN WEBER, AVERY AMENT, AARON PRICE,
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HARKER, CHARLES KOCHER, ALINE JEFFERY, MICHAEL JEFFERY, AND
PERSONS UNKNOWN

Respondents
(Respondents/Cross-Applicants)

NOTICE OF MOTION BEFORE A SINGLE JUDGE

The Moving Party, British Columbia Civil Liberties Association (“BCCLA”), will make a motion to Justice Huscroft on November 10, 11, or 12, 2026, at 10:00am at Osgoode Hall, 130 Queen Street West, Toronto, Ontario, M5H 2N5, or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard (choose appropriate option)

- ☐ In person
- ☐ By telephone conference
- ☒ By video conference
- ☐ **In writing** under subrule 37.12.1(1) because it is (choose one of the following reasons)
 - ☐ on consent
 - ☐ unopposed
 - ☐ made without notice
- ☐ **In writing as an opposed motion** under subrule 37.12.1(4)

THE MOTION IS FOR:

- a) An order under R 13.02 and R 13.03(2) of the *Rules of Civil Procedure*, RRO 1990 Reg 194 [**Rules**] granting BCCLA leave to intervene in this appeal as a friend of the court;
- b) An order permitting BCCLA to file a factum no longer than 10 pages on the appeal, or any such other length the Court may deem appropriate;
- c) An order permitting BCCLA to present oral arguments at the hearing of the appeal, of a length to be determined by the Court;
- d) An order that BCCLA will not be awarded costs or have costs awarded against it at the appeal or on this motion; and
- e) Any further or other order as the Court may deem appropriate.

THE GROUNDS FOR THE MOTION ARE:

1. 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 and the first by the Ontario Court of Appeal.

2. 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 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.

3. BCCLA is a well-recognized and unaffiliated advocacy group that has been promoting civil liberties across Canada since 1963. 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.

4. The four factors under the test for intervention favour granting BCCLA leave to intervene:

- a. **Nature of the appeal:** the appeal is a *Charter* case involving issues of national interest. BCCLA is a well-recognized advocacy group that has

intervened on hundreds of cases before the Supreme Court of Canada, and has intervened in numerous constitutional cases before this court and in other encampment and bylaw enforcement cases. 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*, and continues to actively engage in research and advocacy outside of litigation in support of the rights of those experiencing homelessness. Given its specialized expertise on the issues on appeal, BCCLA can offer an important perspective to the Court that is distinct from the immediate parties.

- b. **Issues arising in the appeal:** this appeal raises issues that have broad implications beyond the immediate parties. BCCLA seeks to intervene to clarify the proper approach to s. 7 in the context of state restrictions on outdoor sheltering. The Court would benefit from BCCLA's experienced perspective on this issue. BCCLA has a real and identifiable interest in this appeal given its advocacy and research work regarding the rights of individuals suffering from homelessness.
- c. **Likelihood that BCCLA will make useful contributions to resolve the appeal:** 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.

- d. **Prejudice to the immediate parties:** granting BCCLA leave to intervene will not prejudice any party. BCCLA will not file any additional evidence or unduly expand the issues. Its proposed submissions are on a distinct legal point. Granting BCCLA leave to intervene will not delay the hearing of this appeal.

5. BCCLA does not seek costs and asks that none be awarded against it;
6. BCCLA relies on Rules 13 and 37 of the *Rules*;
7. Such further and other grounds as counsel may advise and this Honourable Court deem just.

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

1. The affidavit of Vibert Jack, with supporting exhibit, affirmed on 21 Oct 2026; and
2. Such further and other evidence as counsel may advise and this Honourable Court deem just.

DATED: October 21, 2026



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The Mental Health Legal Committee

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

Applicants
(Appellants)

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at TORONTO

NOTICE OF MOTION

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PERSONS UNKNOWN

Respondents
(Respondent/Cross Applicants)

AFFIDAVIT OF VIBERT JACK

I, **VIBERT JACK**, of the City of Vancouver, solemnly affirm and say:

1. I am the Litigation Director of the British Columbia Civil Liberties Association ("BCCLA"), and as such have personal knowledge of the matters contained in this affidavit. Where I do not have personal knowledge, I state the source of my information and believe it to be true. When referring to BCCLA's activities in which I have not personally participated, I have familiarized myself with the relevant facts and have based my account on this knowledge.

2. I affirm this affidavit on behalf of BCCLA in support of its motion for leave to intervene in this appeal under Rule 13.03(2) of the *Rules of Civil Procedure*. I am authorized to affirm this affidavit on behalf of BCCLA.

A. OVERVIEW OF BCCLA'S MOTION

3. The issues raised in this appeal are substantially important to BCCLA and its members.

4. This appeal concerns the constitutionality of a By-law which implemented a phased closing of an encampment located in the Waterloo region. The appellant the Regional Municipality of Waterloo sought guidance from the Court regarding the constitutionality of the By-law. The respondents are 24 chronically homeless individuals living in the Waterloo region. The respondents initiated a Responding Application seeking, *inter alia*, a declaration that the By-law violates their s. 7 and s. 15(1) rights.

5. 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 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.

6. 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.

7. BCCLA's proposed arguments are further detailed in its draft factum.

B. BCCLA

8. BCCLA is a non-profit, non-partisan, unaffiliated advocacy group incorporated in 1963. It has thousands of supporters across the country.

9. The objectives of BCCLA include the promotion, defence, sustainment, and extension of civil liberties and human rights throughout Canada. BCCLA works to further its objectives in a variety of ways, including:

- a. preparing position papers and making submissions to governmental bodies at the federal, provincial, and municipal levels concerning the advancement of civil liberties and human rights and the implications for civil liberties and human rights of proposed legislative and policy initiatives;
- b. assisting individuals who are experiencing violations of their civil liberties or human rights, including assistance in pursuing administrative and informal remedies;
- c. engaging in public education, including by commenting on current civil liberties and human rights issues in various news media, participating in conferences and other public events at which civil liberties and human rights

are discussed, publishing newsletters and producing books and other publications regarding civil liberties and human rights issues, and maintaining a website containing many of BCCLA's position papers and other public documents; and

- d. taking action, in its own right, when it perceives violations of civil liberties or human rights by launching complaints with the government or other administrative agencies, or by appearing in court, sometimes as a plaintiff or applicant, but most often as an intervener in legal proceedings that raise civil liberties issues.

10. BCCLA's work is national in scope. It carries on its activities in federal, provincial, and territorial jurisdictions across the country.

C. BCCLA has knowledge and experience in the subject matter of this appeal

11. BCCLA has interest and expertise in issues relating to *Charter* rights (including section 7 and section 15 rights) and housing rights.

12. BCCLA has extensive experience intervening in cases implicating civil liberties and human rights. In granting BCCLA's contested motion to intervene in *France v. Diab* before the Court of Appeal for Ontario, Rouleau J.A. held that BCCLA had a substantial interest in the case owing to its "broad human-rights mandate" and that BCCLA was a "well-recognized group with special expertise and [a] broad membership base". A copy of this decision, issued in Chambers, is attached as **Exhibit "A"**. More recently, in *Heegsma*

v. Hamilton (City), 2025 ONCA 904 at para. [10](#), Favreau J.A. held that BCCLA has “extensive experience advocating for the protection of civil liberties and human rights”.

13. The Supreme Court of Canada (the “SCC”) has granted BCCLA leave to intervene in more than 100 appeals, making BCCLA one of the SCC’s most frequent non-governmental interveners.

14. BCCLA has also assisted this Court as an intervener on important constitutional matters, such as:

- a. *Canada (Attorney General) v. Bedford*, [2012 ONCA 186](#), in which BCCLA argued that the protection of liberty under s. 7 of the *Charter* encompasses core aspects of personal autonomy;
- b. *R. v. Mernagh*, [2013 ONCA 67](#), in which BCCLA argued that the exemption under the *Marihuana Medical Access Regulations* allowing for medical marijuana violated s. 7 of the *Charter* because it was illusory and operated erratically;
- c. *Frank v. Canada (Attorney General)*, [2015 ONCA 536](#), in which BCCLA argued that revoking the voting rights of non-resident Canadian citizens who have lived outside the country for five consecutive years or more until they re-establish residency in Canada infringes the rights of these citizens under s. 3 of the *Charter*;
- d. *R. v. Vice Media Canada Inc. and Ben Makuch*, [2017 ONCA 231](#), in which BCCLA invited the Court to develop the broad principles set out in *Lessard* for

a more specific and rigorous framework to guide judges in exercising judicial discretion over issuing production orders targeting the media;

- e. *Mathur v. Ontario*, [2024 ONCA 762](#), in which BCCLA argued that the distinction between positive and negative rights to screen out *Charter* claims is unhelpful and unprincipled, and should be rejected;
- f. *Alford v. Canada (Attorney General)*, [2024 ONCA 306](#), in which BCCLA argued that transparency and accountability are fundamental values underpinning parliamentary privilege;
- g. *Democracy Watch v. Ontario (Integrity Commissioner)*, [2025 ONCA 153](#), in which BCCLA argued that to uphold the principle of legality, public interest standing is required in many cases of judicial reviews of individualized decisions where the directly impacted parties have no interest in challenging a decision.

15. BCCLA's intervention experience also extends to cases about the eviction of unhoused individuals from public spaces under municipal by-laws, which is the subject matter of this appeal. Most recently, BCCLA was granted leave to intervene by this Court in *Heegsma v. Hamilton (City)*, [2025 ONCA 904](#), a case involving ss. 7 and 15 Charter challenges to a municipal by-law that prohibited individuals from erecting tents or living in parks. BCCLA's other related interventions include:

- a. *Victoria (City) v. Adams, et al.*, [2008 BCSC 1363](#) and [2009 BCCA 563](#), involving ss. 7 and 12 Charter challenges to a municipal by-law prohibiting

temporary abodes and the construction of temporary structures in a park overnight;

- b. *Abbotsford (City) v. Shantz*, [2015 BCSC 1909](#), involving a s. 7 Charter challenge to municipal by-laws that prohibited sleeping or being in a park overnight or erecting a temporary shelter without permit; and
- c. *Prince George (City) v Stewart*, CA47899, on appeal from [2021 BCSC 2089](#), CA47899, in which the City sought to appeal the lower court's decision to deny its statutory injunction against the occupants of encampments on municipal property. The Court granted BCCLA leave to intervene in the appeal on the issue of the test for granting injunctions where *Charter* rights were at stake. The City ultimately withdrew its appeal.

16. BCCLA is also a plaintiff, on the basis of public interest standing, in *Roy et al v City of Vancouver and Vancouver Board of Parks and Recreation*, British Columbia Supreme Court File No. S-250745, a *Charter* challenge to by-laws provisions of the City of Vancouver and the Vancouver Board of Parks and Recreation that restrict sheltering by unhoused persons in Vancouver to overnight hours only and authorize broad seizure of these individuals' possessions by by-law enforcement.

17. To bolster its ability to assist the Court, BCCLA has retained counsel with experience in the subject matter of this appeal. Julia Riddle of Arvay Finlay LLP has represented individuals experiencing homelessness and public interest groups in several cases involving the law of homelessness and the *Charter*. They are counsel to BCCLA in the *Roy* case discussed above, which was filed in early 2025 and is scheduled to proceed

to trial in 2027, and represented BCCLA in its successful application to intervene in the *Stewart* appeal. Mx. Riddle has also represented homeless individuals challenging orders evicting encampments in *Bamberger v. Vancouver (Board of Parks and Recreation)*, 2022 BCSC 49 (orders quashed as unreasonable, unconstitutional and procedurally unfair) and *Vandenberg v. Vancouver (City) Fire and Rescue Services*, 2023 BCSC 2104 (orders declared procedurally unfair), which involved arguments based on ss. 7 and 15 of the *Charter*.

D. BCCLA has a substantial interest in the subject matter of this appeal

18. Part of BCCLA’s core mandate includes advocating for the rights and liberties of marginalized groups, which include those experiencing poverty and homelessness.

19. To that end, in addition to the litigation mentioned above, BCCLA is actively engaged in research, advocacy, open letters and submissions related to social supports for those experiencing homelessness, which include:

- a. [“Joint letter from the BCCLA and Pivot to the Federal Housing Advocate: Submission on the Review of Encampments in Canada: Evictions of Hasting Tent City” \(April 4, 2023\);](#)
- b. [“Injunctions Will Not Solve Homelessness: BCCLA Reacts to Prince George Withdrawing Tent City Appeal” \(March 29, 2022\);](#)
- c. [“Open Letter from the BCCLA demanding that the Vancouver Park Board withdraw its request for an injunction to remove people from CRAB Park” \(December 1, 2021\);](#)

- d. [“Joint Letter to City of Vancouver regarding Decriminalizing Poverty”, \(March 11, 2021\);](#)
- e. [“Joint letter to Vancouver Park Board on by-law amendment regarding sheltering in parks” \(July 28, 2020\);](#) and
- f. [“Safety for People in Homeless Encampments” \(May 21, 2020\).](#)

E. BCCLA’s intervention will not unduly delay the proceeding or prejudice the parties

20. If granted leave to intervene, to avoid any prejudice or delay, BCCLA:

- a. will abide by any schedule set by the Court;
- b. will not file any additional evidence, unduly expand the issues, or add to the record;
- c. will not seek costs;
- d. will not unreasonably delay or lengthen the hearing of this appeal;
- e. has developed unique arguments in consultation with the respondents’ counsel and other proposed interveners; and
- f. will comply with any terms and conditions imposed on its intervention.

21. BCCLA seeks no costs on this motion and respectfully requests that none be awarded against it.

AFFIRMED BEFORE ME in the City)
Vancouver, British Columbia, on 21 Oct)
2026.)
)



_____)
A Commissioner for taking Affidavits)



VIBERT JACK

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This is Exhibit "A" referred to in the 1st Affidavit of Vibert Jack affirmed by Vibert Jack of the City of Vancouver before me at the City of Vancouver, in the Province of British Columbia, on October 21, 2026.

A handwritten signature in blue ink, consisting of a stylized 'S' followed by a circular flourish and a horizontal line extending to the right.

COURT OF APPEAL FOR ONTARIO

DATE: 20130509

DOCKET: M42235, M42240, M42242, M42243 (C53812, C55441)

P.S. Rouleau J.A. (In Chambers)

IN THE MATTER OF an appeal of a committal order pursuant to s. 49 of the
Extradition Act, S.C. 1999, c. 18

AND IN THE MATTER OF an application for judicial review pursuant to s. 57 of
the *Extradition Act*, S.C. 1999, c. 18

BETWEEN

The Attorney General of Canada, on behalf of the Republic of France

Respondent

and

Hassan Naim Diab

Appellant

and

Canadian Civil Liberties Association, Amnesty International, British Columbia
Civil Liberties Association, Canadian Association of University Teachers

Proposed Interveners

AND BETWEEN

The Minister of Justice of Canada

Respondent

and

Hassan Naim Diab

Applicant

and

Canadian Civil Liberties Association, Amnesty International, British Columbia
Civil Liberties Association, Canadian Association of University Teachers

Proposed Interveners

Marlys A. Edwardh and Daniel Sheppard, for the applicant/appellant

Janet Henchey and Jeffrey G. Johnston, for the respondent

Mark Sandler, for the proposed intervener, the Canadian Association of
University Teachers

James Stribopoulos, for the proposed intervener, the Canadian Civil Liberties
Association

Lorne Waldman, for the proposed intervener, Amnesty International

Brendan van Niejenhuis and Justin Safayeni, for the proposed intervener, the
British Columbia Civil Liberties Association

Heard: May 2, 2013

Rouleau J.A.:

A. OVERVIEW

[1] The applicant/appellant has been ordered committed and surrendered for extradition to France. He has appealed the extradition judge's committal order and applied for judicial review of the Minister of Justice's surrender order. Amnesty International, the Canadian Civil Liberties Association (the "CCLA"), the British Columbia Civil Liberties Association (the "BCCLA"), and the Canadian

Association of University Teachers (“CAUT”) have each brought a motion for leave to intervene in the proceedings. The motions were heard together. The Crown opposed the interventions, while the applicant/appellant consented. For the reasons that follow, I grant Amnesty International, the CCLA, and the BCCLA leave to intervene in the proceedings. I decline to grant CAUT leave to intervene.

B. FACTS

[2] Dr. Hassan Naim Diab was born in Lebanon in 1953. He became a Canadian citizen in 2006. He is a university sociology professor in Ottawa. In 2008, the Republic of France submitted a request to Canada to extradite Dr. Diab to stand trial in France on charges related to a 1980 terrorist bombing of a synagogue in Paris, which killed four people, injured over forty others, and destroyed a significant amount of property. The Record of the Case (“ROC”) submitted to Canada by France included the evidence of a French handwriting expert which purported to identify Dr. Diab as one of the bombers (the “Bisotti Report”), as well as information whose source and circumstances of reception were unknown (“intelligence evidence”).

[3] At the committal stage of his extradition proceedings, Dr. Diab tendered the evidence of three leading forensic document examiners who provided strong criticism of the Bisotti Report. On this basis, Dr. Diab argued that the Bisotti Report was “manifestly unreliable” and ought not to be considered on the issue of committal. One aspect of Dr. Diab’s legal argument was that if expert evidence in

a ROC is found to lack threshold reliability such that it would not be admissible in a Canadian court, then it should be considered manifestly unreliable for the purposes of an extradition proceeding. The extradition judge disagreed with this proposed approach. He further decided that the Bisotti Report could not be declared manifestly unreliable without weighing the competing inferences offered by the defence's three experts with those put forth in the Report, which falls outside the role of an extradition judge. The extradition judge also found that there was sufficient evidence to grant the application for committal and ordered Dr. Diab's committal on June 6, 2011.

[4] At the surrender stage of his extradition proceedings, Dr. Diab submitted to the Minister of Justice that if he were surrendered to France, among other things, he would be tried on the basis of the secret intelligence contained in the ROC, which may have been derived from torture-based interrogations. The Minister of Justice nevertheless ordered Dr. Diab's surrender on April 4, 2012.

[5] Dr. Diab appealed the decision of the extradition judge granting committal and sought judicial review of the Minister of Justice's decision to surrender him to France. The issue in the committal appeal is whether the evidence in the ROC is sufficient to grant committal; and a focus of the appeal is whether the evidence contained in the Bisotti Report is "manifestly unreliable", as well as the test for making such a finding in the circumstances of this case. The issue in the application for judicial review is whether the Minister's decision to surrender Dr.

Diab was reasonable. One focus of the judicial review is Dr. Diab's concerns about the use of intelligence and torture-derived evidence in the French trial, as well as the appropriate standard of proof to show that evidence is drawn from torture-based interrogations.

C. ISSUES AND THE LAW

[6] The issue in these motions is whether Amnesty International, the BCCLA, the CCLA, and CAUT should be granted leave to intervene in Dr. Diab's appeal of the extradition judge's committal order and/or his application for judicial review of the Minister's surrender order, as friends of the court, pursuant to s. 23(1) of the *Criminal Appeal Rules*, SI/93-169, and rules 13.02 and 13.03(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

[7] All parties to these motions agree on the principles applicable to granting leave to intervene. The court must consider the nature of the case, the issues which arise in it, and particularly, the likelihood of the applicant being able to make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties: *Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada Ltd.* (1990), 74 O.R. (2d) 164 (C.A.), at p. 167. This court elaborated in *Bedford v. Canada (Attorney General)*, 2009 ONCA 669, 98 O.R. (3d) 792, at para. 2, that in a *Charter* case, the proposed intervener generally

also meets at least one of three “*Dieleman*”¹ criteria: either that the intervener has a real, substantial and identifiable interest in the subject matter of the proceedings; it has an important perspective distinct from the immediate parties; or it is a well-recognized group with a special expertise and a broad, identifiable membership base. The rules regarding intervention are also relaxed in *Charter* cases, in recognition of the fact that such issues impact others who are not party to the litigation: *Peel*, at p. 167. The overarching consideration is always that identified in *Peel*, however, which requires the proposed intervener to show that they will make a useful contribution beyond that which would be offered by the parties and without causing an injustice to the immediate parties: *R. v. McCullough* (1995), 24 O.R. (3d) 239 (C.A.), at p. 243. See also *Childs v. Desormeaux* (2003), 67 O.R. (3d) 385 (C.A.).

D. POSITIONS OF THE PARTIES

(1) Amnesty International

[8] Founded in 1961, Amnesty International is an international organization operating in 162 countries that works to prevent human rights violations. It seeks leave to intervene in the judicial review proceedings, and proposes to make submissions on the standard of proof to be met by a person claiming the use of torture-derived evidence in an extradition context. Specifically, if granted leave to intervene, Amnesty International will argue that a person sought must establish a

¹ *Ontario (Attorney General) v. Dieleman* (1993), 16 O.R. (3d) 32 (Gen. Div.), at p. 39.

“plausible connection” between evidence put forward by the requesting state and torture, which will trigger the Minister’s duty to make inquiries; and that if the Minister finds a “real risk” that the evidence is derived from torture, the Minister must refuse to extradite the person sought. Amnesty International has argued that it will draw on its expertise and special knowledge of international human rights law and jurisprudence in making these submissions.

(2) The CCLA

[9] The CCLA is a national organization constituted to promote respect for fundamental human rights and civil liberties. It seeks leave to intervene in Dr. Diab’s appeal and judicial review proceedings in order to make submissions on two main issues: 1) the ability of an extradition judge to engage in a limited weighing of the evidence at the committal stage, placed in a broader context of concerns about all types of unreliable evidence that could be used by a requesting state and 2) whether it would violate s. 7 of the *Charter* to surrender an individual where information from unknown sources, provided in unknown circumstances, will be relied on as evidence in the foreign trial. The CCLA states that it will bring its expertise in balancing competing rights and interests, and its distinct national perspective, to bear on these issues and to place them in a wider context.

(3) The BCCLA

[10] Incorporated in 1963, the BCCLA is a non-profit advocacy group that aims to promote, defend, sustain, and extend civil liberties throughout British Columbia and Canada. It seeks leave to intervene in the judicial review proceedings in order to make submissions regarding the proper procedure for the Minister to follow in assessing whether a person sought will be tried on the basis of torture-derived evidence in the requesting state. Specifically, the BCCLA will argue that once a person sought has discharged their burden of proof of demonstrating a “plausible connection” between the evidence and torture, the Minister must either rebut that plausible connection or satisfy himself that the person sought can fully and fairly challenge the use of torture-derived evidence in the requesting state. The BCCLA has further proposed to discuss, in practical terms, the types of evidence that can demonstrate or rebut a plausible connection, and the types of protections the requesting state must offer to allow for the challenge of torture-tainted evidence. The BCCLA submits that in making these arguments, it will rely on its expertise in issues relating to the interplay between civil liberties and national security, foreign relations, and law enforcement.

(4) CAUT

[11] Established in 1951, CAUT is a national representative for Canadian academic personnel and represents 68,000 professors, librarians, researchers, and other academic professionals. CAUT’s mandate includes the defence of

academic freedom, equality and human rights for academic staff, and the protection of the integrity of scholarly work. CAUT seeks leave to intervene in Dr. Diab's committal appeal. CAUT argues that it has a real and substantial interest in this proceeding, as well as a distinct perspective to offer, because of its involvement in issues related to intellectual rigour, scientific and academic integrity, and the standards to be applied to evaluate the adequacy and reliability of scholarly work. If granted leave to intervene, CAUT proposes to assist the court in determining how threshold reliability is appropriately evaluated in the context of a discipline such as handwriting analysis, and specifically the impact of flawed and biased methodology on the threshold reliability of expert evidence.

(5) The Crown

[12] The Crown does not dispute the particular areas of expertise of Amnesty International, the CCLA, or the BCCLA, or their substantial interest in this case. The Crown submits, however, that the submissions of Amnesty International, the CCLA, and the BCCLA are duplicative of those already being advanced by Dr. Diab. Further, the proposed interveners' attempts to differentiate their submissions from those of Dr. Diab improperly expand the scope of the proceedings in this court, thereby doing an injustice to the Crown. They therefore should not be permitted to intervene.

[13] The Crown does dispute that CAUT has a substantial interest in the committal appeal and asserts that CAUT's submissions are duplicative of Dr.

Diab's. Crown counsel also argued that CAUT is putting itself forward on appeal as a new expert on the reliability of the Bisotti Report. The Crown's position is that CAUT ought not to be granted leave to intervene.

E. ANALYSIS

[14] I am to consider the nature of the case, the issues which arise in it, and the ability of each proposed intervener to make a useful contribution to this case without causing injustice to the parties, as well as the three *Dieleman* criteria.

[15] The Crown argued that the prompt and expeditious nature of extradition proceedings requires intervention to be granted only sparingly. I do not consider that a different test for intervention in extradition proceedings is warranted. Prejudice to a party, including delay, is certainly a factor to be considered, but each motion for leave to intervene, whether it is in a committal appeal, in a judicial review of a surrender order, or in any other appeal, must be decided on its own facts.

[16] Several issues which arise in this case are of significant public importance. Questions at issue in this case which transcend the litigation between the immediate parties include: what qualifies as manifestly unreliable expert evidence in a ROC, particularly when the extradition decision is almost totally dependent on that expert opinion? how should an extradition judge determine the sufficiency of the evidence contained in a ROC in such circumstances? if intelligence evidence may be used at the trial in the requesting state, is surrender

in violation of s. 7 of the *Charter*? how can a person sought show that torture-derived evidence may be used at their foreign trial? how may or must the Minister respond to allegations of torture-derived evidence? The importance of these questions and their constitutional dimensions favour intervention.

[17] I disagree with the Crown's submission that Amnesty International, the CCLA, and the BCCLA offer merely "me-too submissions", which duplicate Dr. Diab's arguments without contributing further to the resolution of the appeal. Interveners need not take a different position than the appellant or make arguments that are different than those advanced by the appellant. The issue is whether they can assist the court or illuminate the issues before it due to their "special knowledge and expertise", which allows them "to place the issue in a slightly different perspective": *R. v. Seaboyer* (1986), 50 C.R. (3d) 395 (C.A.), at p. 398.

[18] I am satisfied that Amnesty International can offer a unique international perspective, particularly upon the standards of proof applicable to demonstrating that torture-derived evidence forms part of the case against the person sought. In my view, the CCLA also brings a broad, informed perspective to two issues. First, how the sufficiency of the evidence ought to be determined by the extradition judge at the committal stage, particularly in the circumstances of this appeal where the outcome on committal was based almost wholly on an expert report that the appellant argues was unreliable and upon which it would be dangerous

to convict. Second, whether it violates the *Charter* to permit surrender in the face of the possible use of intelligence evidence at the foreign trial. It is also my opinion that the BCCLA proposes a distinctive two-stage analysis, and some practical considerations, as to how torture-based evidence can be dealt with at the ministerial stage of extradition proceedings.

[19] Furthermore, I am satisfied that Amnesty International, the CCLA, and the BCCLA each have a substantial interest in this case owing to their broad human-rights mandates, offer a distinct, comprehensive perspective on the issues, and are well-recognized groups with special expertise and broad membership bases.

[20] In my view, the submissions being proposed by these interveners will not significantly broaden the scope of the proceedings. Their intervention will not prejudice either of the immediate parties to the litigation, as they have undertaken not to augment the record, duplicate submissions already made, or seek costs in relation to the appeal. Moreover, this appeal is being case-managed and any delay occasioned by the interveners can thereby be kept to a minimum.

[21] Despite their commendable intentions and the able advocacy of their counsel, I am not however satisfied that CAUT will perform a like service to the hearing of this appeal. CAUT proposes to discuss how threshold reliability of expert evidence may be assessed by an extradition judge, particularly in the context of handwriting analysis. However, the evidence of three experts on this

very issue was before the extradition judge and on his committal appeal, the appellant focuses almost exclusively on that evidence and that issue. CAUT's proposed submissions will be duplicative of those of the appellant. Furthermore, while important, the issue of the threshold reliability of expert evidence regularly comes before this court and I see little benefit in receiving CAUT's submissions as to how a court is to approach this issue. Therefore, I would deny CAUT leave to intervene in the committal appeal.

F. CONCLUSION

[22] Leave to intervene in the judicial review proceedings is granted to Amnesty International, the BCCLA, and the CCLA; the CCLA is further granted leave to intervene in the committal appeal. All interveners are subject to the following conditions:

- i. they shall take the record as it exists and not seek to augment it;
- ii. they may each file a factum not to exceed 15 pages in length;
- iii. the facta of the interveners are to be filed within 14 days hereof;
- iv. the CCLA is to file only one factum dealing with both the committal appeal and the judicial review issues;
- v. they may each have up to 15 minutes for oral argument, subject to the discretion of the panel; and
- vi. the interveners shall not seek costs nor be exposed to costs in the appeal.

[23] I decline to grant CAUT leave to intervene in these proceedings.

[24] Any issues arising as a consequence of this decision, including the timing and length of the respondent's factum, can be dealt with as part of the case management process.

[25] There will be no award as to the costs of these motions.

Released: May 10, 2013

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

Applicants
(Appellants)

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at TORONTO

AFFIDAVIT OF VIBERT JACK

(BCCLA's Motion for Leave to Intervene)

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

BETWEEN:

THE REGIONAL MUNICIPALITY OF WATERLOO

Appellant
(Applicant/Cross Respondent)

AND

THE ATTORNEY GENERAL FOR ONTARIO

Appellant
(Intervener)

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

Respondents
(Respondent/Cross Applicants)

**FACTUM OF THE PROPOSED INTERVENER, BRITISH
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DATED: 21 October 2026

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The Mental Health Legal Committee

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PART I – OVERVIEW

1. This case concerns a fundamental issue of civil liberties: in what circumstances may the state interfere with a homeless individual's attempts to create a dignified life for themselves by sheltering outdoors? This appeal will be only the second time this issue has been substantively considered by an appellate court in Canada, and will be a decision of profound importance to the ever-rising number of people being forced to live out their lives in public space. BCCLA intervenes to make three related submissions.

2. **First**, the vulnerability of homeless individuals to state overreach and the fact that homeless individuals can only rely on complex civil litigation to protect their rights call for measures to simplify the s. 7 analysis in this context. This simplification can be achieved through the recognition of legal presumptions in the particular context of sheltering cases.

3. **Second**, this Court should recognize a presumption that displacement of a person sheltering in public space engages the s. 7 right to liberty. An appreciation for the ways that autonomy and dignity are engaged by creating shelter while homeless leads to the conclusion that forced displacement of a person sheltering is presumptively harmful to these interests.

4. **Third**, this Court should recognize a presumption that barring access to all outdoor space for sheltering is grossly disproportionate. Where data show that the number of unhoused people in a jurisdiction exceeds indoor options, it is logically established that some individuals will need to live outside. Outlawing this behaviour presumptively infringes s. 7 and is unconstitutional unless justified by the state.

PART II – SUMMARY OF THE FACTS

5. BCCLA takes no position on the facts of the appeal.

PART III – ISSUES

6. BCCLA takes no position on the outcome of the appeal. Its submissions address the appropriate framework to apply to assessing if state action against homeless people engages and/or infringes the *Charter*, specifically: the need to simplify the law applying to restrictions on the ability of homeless people to shelter themselves; the value of recognizing the s. 7 liberty interest is presumptively engaged by restrictions on shelter; and the value of recognizing that criminalizing sheltering in all outdoor spaces is presumptively grossly disproportionate where data show individuals need to live outside.

PART IV – THE LAW

A. The Section 7 Analysis in the Homelessness Context Should Be Adjusted to Protect the Vulnerable Against State Overreach

7. The harms that homeless people risk suffering when they are subject to anti-sheltering enforcement are some of the most profound harms the state can inflict. It is well-established that being forced to sleep rough, for many, is a significant interference with bodily autonomy, is highly psychologically distressing, increases one’s risk of being subject to violence or falling ill, and in many cases can be a death sentence.¹

8. Anti-sheltering enforcement is, however, unique among state actions that interfere with these most “fundamental” *Charter* rights.² Anti-sheltering enforcement can be compared to state actions to override an individual’s medical decision-making,³ to separate families,⁴ or to subject individuals to criminal sanction. Indeed, given the very real risk of

¹ *Victoria (City) v. Adams*, 2009 BCCA 563 at paras. 102, 110

² *Carter v. Canada (Attorney General)*, 2015 SCC 5 at para. 95 [*Carter*]

³ *A.C. v. Manitoba (Director of Child and Family Services)*, 2009 SCC 30 at paras. 100-102

⁴ *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, 1999 CanLII 653, [1999] 3 S.C.R. 46 at paras. 58-61

death from the state's actions, the potential consequences of anti-sheltering actions for the homeless individual may be the most extreme of any of these.

9. Both common law and legislation recognize the need for increased protection in these areas of potential widespread state overreach.⁵ Yet unlike in these other s. 7-limiting contexts, the state has not created a clearly defined process in which it must justify the necessity of its potentially *Charter*-infringing acts against specific encampments or individuals. The result is that homeless individuals' only option is to engage in complex civil litigation to defend their most basic rights, responding to injunction applications and launching constitutional challenges.

10. The ability of homeless persons to defend themselves against unlawful state action through these complicated mechanisms is limited due to the realities of extreme poverty, such as the difficulty of accessing and instructing counsel,⁶ which are largely outside the control of the courts to ameliorate.

11. However, the difficulties homeless people face in actualizing the *Charter*'s protections are further exacerbated by the unnecessary evidentiary complexity of the s. 7 analysis carried out in this context.

12. Requiring homeless people to repeatedly prove harm that can reasonably be inferred from the nature of the state action creates serious access-to-justice concerns. In turn, these access to justice concerns impacts the rule of law, which guarantees the rights of all citizens to protection from arbitrary and unconstitutional government action.⁷ The Supreme Court has repeatedly emphasized the "inextricable link between the rule of law

⁵ See e.g. [Health Care Consent Act, 1996](#), S.O. 1996, c. 2, Sch. A; [Child, Youth and Family Services Act, 2017](#), S.O. 2017, c. 14, Sch. 1.

⁶ *Vandenberg v. Vancouver (City) Fire and Rescue Services*, [2023 BCSC 2104](#) at paras. [32-33](#)

⁷ *Reference re Secession of Quebec*, [1998 CanLII 793 \(SCC\)](#), [1998] 2 SCR 217 at paras. [70-71](#)

and access to justice.”⁸ The rule of law cannot depend on the expectation of some of our society’s most vulnerable population to prove harm to their dignity and autonomy that is plain and obvious in the circumstances. Without practical and effective ways to challenge the legality of state action, the protection of the *Charter* remains out of reach.⁹

13. In BCCLA’s respectful submission, two presumptive inferences arise from the s. 7 jurisprudence that, if recognized, would simplify the process of litigating the right to shelter, and represent a meaningful step towards affording people who are homeless the protections promised to them by the Constitution.

B. A Law Enabling Forced Displacement of a Homeless Individual Presumptively Engages Individual Liberty

14. It is well-recognized that the s. 7 right to liberty is both closely tied to human dignity and “includes within its ambit the right to an irreducible sphere of personal autonomy”.¹⁰

15. While the courts have held in the context of many cases—including this one¹¹—that forced displacement of people experiencing homelessness from their chosen place of shelter constitutes an interference with dignity and autonomy, this has thus far been a fact-specific finding, the onus of which is on the homeless person to establish.

16. Yet properly conceived, the basic principles that animate the right to liberty in this context support any analysis of forced displacement starting from the presumption that such a state action will engage individual liberty.

⁸ *Quebec (Attorney General) v. Senneville*, [2025 SCC 33](#) at para. 48, citing *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, [2014 SCC 59](#) at para. 39

⁹ *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, [2022 SCC 27](#) at para. 33

¹⁰ *R. v. Morgentaler*, [1988 CanLII 90 \(SCC\)](#), [1988] 1 S.C.R. 30 at p 166, per Wilson J, *Blencoe v. British Columbia (Human Rights Commission)*, [2000 SCC 44](#) at para. 50; *Godbout v. Longueuil (City)*, [1997 CanLII 335](#), [1997] 3 S.C.R. 844, at para. 66, per La Forest J

¹¹ *The Regional Municipality of Waterloo v. Named Respondents and Persons Unknown*, [2026 ONSC 2971](#) [RFJ] at paras. [141-45](#)

i. *The Autonomy Principle: Homeless People Are Presumptively Making the Best Choices Available to Them*

17. The heavy emphasis our legal order places on individual autonomy reflects the fact that, as a fundamental value, we expect individuals to have knowledge of their own selves, needs, and circumstances, and we presume that they are best placed to make choices within those constraints. While the state may still override a person's autonomy, the starting point is one of respect for individual autonomy.

18. This principle has often been discussed within the context of medical care, in which individuals are presumed to be capable of making decisions for themselves.¹² As this Court has stated, "personal autonomy is so entrenched in the traditions of our law as to be ranked as fundamental and deserving of the highest order of protection."¹³

19. In the context of an individual residing in a tent outside, the principle of autonomy takes on particular focus. It is without question that people who are sheltering outdoors deal with a variety of unpleasant realities that those of us accustomed to living in private, secure housing do not have to face. To state the obvious, a makeshift tent provides inferior protection against torrential rain, extreme cold, or rodents than a well-constructed building.

20. However, the alternatives available to that person may range from nonexistent to worse. They may be choosing between setting up a tent or sleeping under cardboard. They may be choosing between setting up a tent and lining up at a shelter to attempt to access one of a scarce number of beds for a night, and where they judge that the chances of that effort succeeding are so limited it does not warrant the time, energy, and exposure to the elements. They may be choosing between sleeping in a tent and accessing a shelter where

¹² *A.C. v. Manitoba (Director of Child and Family Services)*, 2009 SCC 30 at para. 40 [A.C.]; *Carter* at para. 66; *Fleming v. Reid*, [1991] O.J. No. 1083, 1991 CanLII 2728 (O.N. C.A.) at p. 2 [Fleming]

¹³ *Fleming* at p. 21

they know that based on the other persons present or their own history, they are at an increased risk of violence. The evidentiary record in this case, as well as the many others litigating these issues, speaks to the reality of these difficult choices.¹⁴

21. Respect for the principle of autonomy in our common law and *Charter* jurisprudence asks the law to recognize that an individual living in a tent is likely doing so because it is the best of their imperfect options. When a person is faced with such serious and challenging choices about their wellbeing, the law protects the “right to decide one’s own fate”.¹⁵

22. The principle of autonomy requires that person’s choice be viewed with a degree of humility and respect, such that it will not be interfered with absent evidence that doing so is in accordance with the principles of fundamental justice or is justified under s. 1.

ii. The Dignity Principle: Forced Decampment Severely Impacts Human Dignity

23. The second principle relevant to understanding the operation of the liberty right in the context of forced displacement of an encampment is that of dignity, as embedded in s. 7. The protection provided by s. 7 “is reflective of our country’s traditional and long-held concern that persons should, in general, be free from the constraints of the state and be treated with dignity and respect.”¹⁶

24. Forced decampments consist of dismantling the shelters of the residents and disposing of their possessions without their consent, just as the Region in this case proposes to do if permitted to enforce its Site-Specific By-law.¹⁷ In *Johnny*, a 2022 British Columbia

¹⁴ RFJ at paras. [145](#), [166](#), [170–171](#), [181](#), [190](#), [218](#), [220–221](#), [231](#)

¹⁵ *Carter* at para. [67](#), citing *A.C.* at para. [100](#)

¹⁶ *Gosselin v. Québec (Attorney General)*, [2002 SCC 84](#) at para. [206](#)

¹⁷ In this case, authorized by ss. 5(8) and (9) of the impugned Site-Specific By-law: Respondents’ Compendium, Tab 2

decision, the court considered the aftermath of a forced eviction, rather than (as many of these cases do) an anticipated eviction. Justice Coval summarized residents' evidence of the impacts on them in some detail.¹⁸ One person related losing her ID, birth certificate, and her brother's ashes along with the rest of her possessions, describing the experience as traumatizing.¹⁹ Individuals explain how the losses made them feel unsafe, heartbroken, and forced them to restart from square one with their efforts to find work, housing, and other building blocks of long-term stability.²⁰ One person explained how she lost gifts from her deceased mother, along with survival possessions, and was so devastated she attempted to commit suicide as a result.²¹

25. Forcibly disposing of the shelters and possessions of individuals who have nothing else runs contrary to their efforts to “survive and be treated like human beings”,²² and their very dignity. Homeless individuals describe, and courts have accepted, this experience as profoundly demeaning.

iii. The Presumption Against Forced Displacement

26. Where the state proposes to forcibly evict an encampment—whether by site-specific by-law (as here) by general by-law, or by injunction—proper respect for the principles of autonomy and dignity requires that action to be understood as presumptively engaging the liberty right under s. 7 of the *Charter*.

27. This presumption may be rebutted by evidence that a specific eviction will not affect the autonomy or dignity of the person affected. Yet accepting s. 7 engagement as a

¹⁸ *Prince George (City) v. Johnny*, [2022 BCSC 282](#) at paras. [52-53](#), [Appendix A](#)

¹⁹ *Johnny* 2022, Appendix A, Hope Jessica Perrault

²⁰ *Johnny* 2022, Appendix A

²¹ *Johnny* 2022, Appendix A, Deanna Marie Lindstrom

²² *Johnny* 2022, Appendix A, Danielle Lisa Willier

presumptive consequence of forced displacement would allow the court, and the litigants, to focus on the principles of fundamental justice as applicable, and the evidence of justification under s. 1.

C. Banning Outdoor Sheltering Where It Is Plainly Necessary Is Presumptively Grossly Disproportionate

i. Where The Homeless Population Outstrips Housing Availability, People Need Legal Sheltering Space In Order To Have Section 7 Rights

28. The second presumptive inference arising from the case law stems from the recognition of one legal and one factual reality.

29. First, homelessness is defined by a lack of consistent access to private property and, conversely, entails the occupation of public property. By necessity, people who do not have a private home to go to must occupy public space, as the respondents in this case have.

30. The occupation of public space is necessary to each of the s. 7 rights; as put by Jeremy Waldron, “everything that is done has to be done somewhere”.²³ The right to set up a tent is meaningless without a space on which to pitch it. Without space, that tent cannot protect from the elements, or against the attendant risks of death and psychological suffering. Without space, the ability to make the “inherently private choic[e]” to create private space for oneself no longer exists.²⁴ Section 7 requires, as a precondition, that individuals have not only a right to stay alive but also a right not be excluded from the space they need to do so.

31. Second, the question of whether public space will be required to be used for sheltering in a municipality can, in the present day, typically be determined by reference

²³ Jeremy Waldron, “[Homelessness and the Issue of Freedom](#)” (1991–2) 39 UCLA L Rev 295 at 296

²⁴ *R. v. Morgentaler*, [1988 CanLII 90 \(SCC\)](#), [1988] 1 S.C.R. 30 at p. 166

to simple data. Municipalities across Canada conduct regular Point-in-Time (PiT) Counts to enumerate the number of people experiencing homelessness in a given jurisdiction. Data are also commonly available to approximate the amount of subsidized housing or shelter available to house those who are homeless.

32. There may be some communities in which the availability of housing is roughly equivalent to the number of people experiencing homelessness, such that a constitutional analysis comes down to questions of a person’s genuine access to housing and its suitability for them. But in communities where the number of homeless outstrips the availability of housing—as is the case in the Region of Waterloo²⁵—the factual reality becomes apparent. As a matter of arithmetic, individuals will be living outdoors in public space.

ii. *Where Outdoor Sheltering Is Necessary, the Harms of A Prohibition Are Highly Unlikely To Be In Sync With Any State Objective*

33. Taking the two above propositions together allows a reviewing court to simplify the analysis of whether a law that proposes to eliminate legal outdoor sheltering locations engages s. 7 in a manner that is grossly disproportionate.

34. The inquiry of gross disproportionality compares the law’s purpose to its negative effects and asks if the law is “completely out of sync” with its object.²⁶ In circumstances where, as a factual reality, a municipality knows that individuals must shelter on public property because they have no other options, the impacts of prohibiting sheltering will plainly be profoundly severe. That prohibition will make the very existence of an entire group of vulnerable people illegal, and it is reasonably foreseeable that those individuals will be subject to severe deprivations of liberty, psychological harm, and risk of death. In

²⁵ RFJ at para. 145

²⁶ *Canada (Attorney General) v. Bedford*, [2013 SCC 72](#) at para. [125](#)

these circumstances, it is clear that very few, if any, state objectives could be proportionate to this harm.

35. In this context, it does not matter if there may be some individuals who may be able to access shelters (as the Region here argues with respect to the encampment residents). A grossly disproportionate effect on just one individual is sufficient to violate the principles of fundamental justice, and where PiT data show that dozens or, more commonly, hundreds of individuals will be sheltering outside out of necessity, the impact can be presumed.²⁷

36. It is unnecessary and inefficient for the legal process to require homeless individuals challenging an outdoor sheltering prohibition to prove that making their existence illegal will have severe negative effects. Further, the anticipated harm of a blanket ban is so extensive that it is highly unlikely it can be justified.

37. In these unique circumstances, it is appropriate to recognize that as a general presumption, a blanket ban will be grossly disproportionate.

PART V – ORDER REQUESTED

38. The BCCLA takes no position on the disposition of the appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED: _____ 2026

Julia Riddle

Lawyer for the Proposed Intervener, British
Columbia Civil Liberties Association

²⁷ *Bedford* at para. [122](#)

SCHEDULE A – AUTHORITIES

1. *A.C. v. Manitoba (Director of Child and Family Services)*, [2009 SCC 30](#)
2. *Blencoe v. British Columbia (Human Rights Commission)*, [2000 SCC 44](#)
3. *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, [2022 SCC 27](#)
4. *Canada (Attorney General) v. Bedford*, [2013 SCC 72](#)
5. *Carter v. Canada (Attorney General)*, [2015 SCC 5](#)
6. *Fleming v. Reid*, [1991] O.J. No. 1083, [1991 CanLII 2728](#) (O.N. C.A.)
7. *Godbout v. Longueuil (City)*, [1997 CanLII 335](#), [1997] 3 S.C.R. 844
8. *Gosselin v. Québec (Attorney General)*, [2002 SCC 84](#)
9. *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999 CanLII 653](#), [1999] 3 S.C.R. 46
10. *Prince George (City) v. Johnny*, [2022 BCSC 282](#)
11. *Quebec (Attorney General) v. Senneville*, [2025 SCC 33](#)
12. *R. v. Morgentaler*, [1988 CanLII 90 \(SCC\)](#), [1988] 1 S.C.R. 30
13. *Reference re Secession of Quebec*, [1998 CanLII 793 \(SCC\)](#), [1998] 2 SCR 217
14. *The Regional Municipality of Waterloo v. Named Respondents and Persons Unknown*, [2026 ONSC 2971](#)
15. *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, [2014 SCC 59](#)
16. *Vandenberg v. Vancouver (City) Fire and Rescue Services*, [2023 BCSC 2104](#)
17. *Victoria (City) v. Adams*, [2009 BCCA 563](#)

SCHEDULE B - LEGISLATION

18. [*Child, Youth and Family Services Act*](#), 2017, S.O. 2017, c. 14, Sch. 1.
19. [*Health Care Consent Act*](#), 1996, S.O. 1996, c. 2, Sched. A

Schedule C – OTHER SOURCES

20. Jeremy Waldron, “[Homelessness and the Issue of Freedom](#)” (1991–2) 39 UCLA L Rev 295

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)

**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

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

Applicants
(Appellants)

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at TORONTO

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

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L Rev 295