

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

THE REGIONAL MUNICIPALITY OF WATERLOO

Appellant (Applicant/Cross Respondent)
Respondent on Motion

-and-

THE ATTORNEY GENERAL OF ONTARIO

Appellant (Intervener)
Respondent on Motion

-and-

**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
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JORDAN CAMM, TERRANCE COLE, XANDER HARKER, CHARLES KOCHER, ALINE
JEFFERY, MICHAEL JEFFERY, AND PERSONS UNKNOWN**

Respondents (Respondents/Cross Applicants)
Respondents on Motion

FACTUM OF THE PROPOSED INTERVENERS

**Charter Committee on Poverty Issues (CCPI) and the
National Right to Housing Network (NRHN)**

In Support of the Motion for Leave to Intervene

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PART I - NATURE OF THE MOTION

1. The Charter Committee on Poverty Issues (CCPI) and the National Right to Housing Network (NRHN) seek leave to intervene jointly in this appeal pursuant to rules 13.02 and 13.03(2) of the *Rules of Civil Procedure*. They seek leave to file one joint factum of up to 10 pages, or such further length as the Court may permit, and to make oral submissions at the hearing of the appeal, on a schedule to be fixed by the Court.¹
2. The appeal is from the judgment of Justice Gibson dated May 21, 2026, declaring that the Region of Waterloo’s Site-Specific By-Law and Amended By-Law violate ss. 7 and 15 of the *Charter* and are of no force and effect. The application judge retained jurisdiction “such that the Region may request to return before the Court once it has promulgated either a Safe Tenting Protocol or provided an alternative site for an encampment somewhere reasonably proximate to 100 Victoria, or both.”²
3. The application judge found that the amended by-law’s Transition Protocol “does not follow the obligations of a human rights-based approach in PECH and does not adequately mitigate the s.7 deprivations.” He found that it is underinclusive, does not address systemic issues related to rising homelessness or the underlying issues of insufficient shelter space and the lack of affordable housing, is time-limited, and applies only to a minority of the Named Respondents and encampment residents – those arbitrarily deemed by the Region to be

¹ *Rules of Civil Procedure, RRO 1990, Reg 194*, rr 13.02 and 13.03(2).

² *The Regional Municipality of Waterloo v Named Respondents and Persons Unknown*, 2026 ONSC 2971 at paras 256, 258–59 [Decision].

“Residents”.³ The application judge also recognized homelessness as an analogous ground under s. 15 of the *Charter*.⁴

4. The Region asks this Court to set aside that judgment or, in the alternative, to provide direction on what measures are required for its site-specific by-law closing the encampment at 100 Victoria to comply with the *Charter*.⁵

PART II – FACTS

The Proposed Interveners

5. CCPI is a national committee founded in 1988 to bring together people with lived experience of poverty, advocates, and constitutional and human rights law experts. CCPI has been granted leave to intervene in numerous *Charter* cases addressing poverty, homelessness, equality, and access to essential public benefits, including in *Quebec (Attorney General) v Kanyinda*, 2026 SCC 7 and, jointly with NRHN, in the proceeding below. CCPI has extensive experience and unique expertise in the issues arising in this appeal. It has intervened in many cases before the Supreme Court of Canada and other courts to address similar issues to those arising in this case.⁶

6. NRHN is a pan-Canadian coalition of organizations, advocates, experts, and people with lived experience committed to the progressive realization of the right to adequate housing. NRHN has worked extensively on the development and implementation of rights-based

³ [Decision](#) at paras 189–91.

⁴ [Decision](#) at para 204.

⁵ Notice of Appeal of the Regional Municipality of Waterloo, dated June 22, 2026, at pp 1–2 [Notice of Appeal].

⁶ Affidavit of Bruce Porter, affirmed September 28, 2026 [Porter Affidavit] at paras 3–20; [Quebec \(Attorney General\) v Kanyinda](#), 2026 SCC 7.

approaches to homelessness, including through submissions to the Federal Housing Advocate, parliamentary committees, UN human rights bodies, and municipal governments. NRHN has particular expertise in international human rights norms incorporated into national legislation and their application to positive obligations of all orders of government to address rights violations caused by homelessness.⁷

PART III – ISSUES AND ANALYSIS

Requirements for Leave to Intervene

7. This Court has identified three criteria for granting intervener status: a proposed intervener should (i) have a real, substantial and identifiable interest in the subject matter of the proceedings; (ii) have an important perspective distinct from the immediate parties; or (iii) be a well-recognized group with a special expertise and a broadly identifiable membership. The proposed intervener must be able to make a useful contribution, in light of the nature of the case and the issues which arise, without causing injustice to the immediate parties.⁸ In addition, this Court has recognized that cases under the *Charter* may have a significant impact on others who are not immediate parties and, for that reason, there has been a relaxation of the rules governing leave to intervene in those cases.⁹

8. As outlined below, CCPI and NRHN jointly meet all three of the criteria set out by the Ontario Court of Appeal for intervener status, and they will make a useful contribution to the appeal.

⁷ Affidavit of Michèle Biss, affirmed October 1, 2026 [Biss Affidavit] at paras 3–22.

⁸ *Bedford v Canada (Attorney General)*, 2009 ONCA 669 at para 2.

⁹ *Peel (Regional Municipality) v Great Atlantic & Pacific Co of Canada Ltd* (1990), 74 OR (2d) 164 (CA) at p 167.

A. Real and Substantial Interest

9. The application judge found that the Region faces a serious homelessness crisis and that the number of people experiencing homelessness far exceeds available shelter options. He responded to the Region's request for judicial guidance respecting its constitutional obligations toward the homeless population in the Region when there are inadequate shelter spaces for that population. This appeal will determine whether the Region may deny homeless people any place to shelter themselves, so long as it takes measures to provide access to shelters or housing for the small number of homeless people who live in the Victoria Street encampment at a designated point in time or, alternatively, whether it has constitutional obligations to address the needs of others who are homeless within its jurisdiction. These are questions of substantial importance not only for the Region but for municipalities, courts, and people experiencing homelessness across Ontario.¹⁰

10. CCPI and NRHN have a direct and substantial interest in these issues. Both organizations work to ensure that *Charter* rights are interpreted in a manner that responds to the lived realities of homelessness. They were granted leave to intervene before the application judge and made submissions on the same constitutional questions that the Region now asks this Court to resolve.¹¹

B. Distinct and Useful Perspective

11. The proposed intervention will provide a distinct perspective on the relationship between homelessness, the rights to life and security of the person, and substantive equality. CCPI and NRHN do not seek to repeat the Respondents' submissions or to supplement the evidentiary

¹⁰ [Decision](#) at paras 1–3, 9–10, 23–24, 58–60, 164–71, 250; Notice of Appeal at pp 1–2.

¹¹ Porter Affidavit at paras 9, 19–21; Biss Affidavit at paras 16, 20–23.

record. They will focus on how existing *Charter* doctrine applies to the issues on appeal identified by the Appellant. The parties and other interveners are not focusing on the extent of the Region's ss. 7 and 15 obligations to address the needs of homeless persons, beyond providing an alternative place to pitch a tent, to remedy the *Charter* deprivations found by the application judge. Nor are other interveners focusing on the question of judicially discoverable and manageable standards, identified by this Court in *Tanudjaja v Canada (Attorney General)*,¹² and how this issue must be resolved in order for courts to assess whether measures adopted to mitigate the deprivations of *Charter* rights caused by homelessness are *Charter* compliant.

C. Recognized Expertise

12. CCPI has long-standing expertise in *Charter* litigation addressing homelessness and the application of ss. 7 and 15 of the *Charter* to access to benefits such as subsidized childcare, housing, health care or social assistance. NRHN has particular expertise in rights-based housing law and policy, including the *National Housing Strategy Act (NHSA)*,¹³ the Federal Housing Advocate's work, and municipal implementation of rights-based approaches to homelessness.¹⁴

D. No Prejudice or Delay

13. CCPI and NRHN will rely solely on the existing record, will coordinate their submissions to avoid duplication, and will comply with any timetable set by the Court. Their participation will not prejudice any party or delay the appeal.¹⁵

¹² *Tanudjaja v Canada (Attorney General)*, 2014 ONCA 852 [*Tanudjaja*] at paras 33–35.

¹³ *National Housing Strategy Act*, S.C. 2019, c. 29, s. 313 [*NHSA*].

¹⁴ Porter Affidavit at paras 5–19; Biss Affidavit at paras 9–21.

¹⁵ Porter Affidavit at para 21; Biss Affidavit at para 23.

E. Useful and Distinctive Contribution

14. CCPI and NRHN’s proposed submissions are useful and distinctive. CCPI and NRHN seek to assist the Court on three issues they addressed in their intervention before the application judge and that are squarely raised by the Notice of Appeal, the Appellant’s Factum and the factum of the Attorney General of Ontario:¹⁶

- i) Whether the application judge was correct in finding that the amended by-law’s Transition Protocol “does not adequately mitigate the s. 7 deprivations” because it “does not address the systemic issues related to rising homelessness” ... and “does not address the underlying issues of insufficient shelter space and the lack of affordable housing”;¹⁷
- ii) Whether recognizing homelessness as an analogous ground under s. 15 clarifies the nature of the discrimination at issue in this case and the measures required to accommodate the needs of the Respondents and other homeless persons; and
- iii) Whether this Court’s concerns in *Tanudjaja* about judicially discoverable and manageable standards for assessing whether measures to address homelessness comply with the *Charter* are answered in this case by the application judge’s reliance on human rights standards adopted in the Region’s Plan to End Chronic

¹⁶ Notice of Appeal at pp 7–10; Factum of the Appellant, Regional Municipality of Waterloo, at paras 51–67, 87–95 [Appellant’s Factum]; Factum of the Appellant/Intervener, Attorney General of Ontario, at paras 50–60, 76–95 [Ontario Factum].

¹⁷ [Decision](#) at paras 189-190.

Homelessness (PECH) and the *NHSA*, together with this Court’s decision in *Mathur v Ontario*.¹⁸

15. CCPI and NRHN will respond to the Appellant’s submission that the application judge should have confined the analysis to risks facing designated occupants of 100 Victoria Street, arguing that he properly considered the rights of the Respondents who were not designated as residents and of others experiencing homelessness because the by-laws operate against persons who lack any accessible indoor alternative or lawful outdoor place to shelter and because the Region sought constitutional guidance. In so doing, CCPI and NRHN will address the distinctive issue of whether, in addition to a safe tenting protocol or an alternative site for an encampment, ss. 7 and 15 also require further measures to mitigate the identified deprivations of rights under ss. 7 and 15 caused by living outside without access to accessible shelter, longer-term housing options or necessary support services.

16. CCPI and NRHN will make a distinct submission under s. 15 by responding to the Appellant’s characterization of homelessness as merely a socio-economic “fact,” rather than an element of personal identity linked to dignity, and by explaining what recognizing homelessness as an analogous ground contributes to the s. 15 analysis in this and other cases concerning encampments and homelessness, based on the Supreme Court of Canada’s substantive equality jurisprudence.¹⁹

17. In addressing this Court’s concerns in *Tanudjaja* about the appropriate roles of courts and legislatures, including the need for judicially discoverable and manageable standards to inform

¹⁸ *Tanudjaja* at paras 33–35; *Decision* at para 138; *Mathur v Ontario*, 2024 ONCA 762 [*Mathur*] at paras 69–72.

¹⁹ Appellant’s Factum at para 90.

the determination of the *Charter* obligations raised in this appeal, CCPI and NRHN will address the central institutional issue in cases such as this: finding the appropriate “lane” for courts in relation to legislatures and governments.

18. Elaborating on the application judge’s reference to this Court’s decision in *Mathur*, CCPI and NRHN will submit that the *NHSA* and the PECH supply relevant legal standards that the Court can apply in providing the guidance the Region has requested regarding its constitutional obligations, without relying on a “freestanding right to housing” and without intruding on the Region’s or other governments’ roles in designing plans and targets for implementing obligations to progressively realize the right to adequate housing.²⁰

19. These submissions will be useful because this appeal presents the institutional concerns identified in *Tanudjaja* in a materially different context, including express findings by the application judge regarding the inadequacy of positive measures adopted by the Region to mitigate deprivations of *Charter* rights, the Region’s request for guidance on its constitutional obligations, and its affirmation of standards adopted from international legal sources in implementing its statutory obligation to develop a plan to address chronic homelessness with clear targets and timelines. CCPI and NRHN will make distinctive submissions not made by other parties or interveners regarding the statutory duties, plans, and rights-based commitments in the record in this case, that allow the Court to determine the scope of those obligations, while leaving the choice and implementation of lawful housing measures to the Region.²¹

²⁰ *Tanudjaja* at paras 33–35; *Decision* at para 138; *Mathur* at paras 69–72.

²¹ *Decision* at paras 9–10, 61–71, 138, 189–91.

20. CCPI and NRHN addressed these *Charter* issues before the application judge. Their intervention also addressed the complementary role of international human rights law in *Charter* interpretation, including standards incorporated into the PECH and the *NHSA*. In this appeal, CCPI and NRHN will focus their proposed intervention on the *Charter* issues described above and will rely on Canadian Lawyers for International Human Rights (CLAIHR) and the Canadian Civil Liberties Association (CCLA) to address the related role of international human rights standards, as implemented in the *NHSA* and PECH, in *Charter* interpretation. This allocation will provide the Court with both perspectives without duplication.²²

PART IV - ORDER SOUGHT

21. CCPI and NRHN respectfully request an order granting them leave to intervene jointly, permitting them to file a joint factum of up to 10 pages, or such further length as the Court permits, permitting oral submissions as directed by the Court, and ordering that there be no costs of this motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.



October 13, 2026

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Counsel for the Proposed Interveners
CCPI/NRHN

²² Porter Affidavit at para 9; Biss Affidavit at para 16.

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UNKNOWN**

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CERTIFICATION UNDER RULE 4.06.1(2.1)

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 the authority.



October 13, 2026

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Counsel for the Proposed Interveners CCPI/NRHN

SCHEDULE A – TABLE OF AUTHORITIES

JURISPRUDENCE

Authority	Factum paragraph(s)
<i>Bedford v Canada (Attorney General)</i> , 2009 ONCA 669	7
<i>Mathur v Ontario</i> , 2024 ONCA 762	14, 18
<i>Peel (Regional Municipality) v Great Atlantic & Pacific Co of Canada Ltd</i> (1990), 74 OR (2d) 164 (CA), 1990 CanLII 6886	7
<i>Quebec (Attorney General) v Kanyinda</i> , 2026 SCC 7	5
<i>The Regional Municipality of Waterloo v Named Respondents and Persons Unknown</i> , 2026 ONSC 2971	2–3, 9, 14, 18–19
<i>Tanudjaja v Canada (Attorney General)</i> , 2014 ONCA 852	11, 14, 17–19

LEGISLATION

Authority	Factum paragraph(s)
<i>Canadian Charter of Rights and Freedoms</i> , Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, ss 7, 15	passim
<i>National Housing Strategy Act</i> , SC 2019, c 29, s 313	12, 14, 18–20
<i>Rules of Civil Procedure, RRO 1990, Reg 194, rr 13.02, 13.03(2)</i>	1

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**FACTUM IN SUPPORT OF MOTION
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