

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, 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 AND TO BE ASCERTAINED

Respondents
(Respondents/Cross-Applicants)

**MOTION FACTUM OF THE PROPOSED INTERVENER,
Canadian Drug Policy Coalition, HIV Legal Network, and Waterloo Region
Drug Action Team
(Pursuant to Rule 13.02 of the *Rules of Civil Procedure*, RRO 1990, Reg 194)**

October 21, 2026

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PART I – OVERVIEW

1. The Canadian Drug Policy Coalition (“CDPC”) and HIV Legal Network (“Legal Network”), and the Waterloo Region Drug Action Team (“WR DAT”) (together, the “Drug Policy Interveners”) jointly seek leave to intervene in this appeal.
2. This appeal concerns the constitutionality of Regional Municipality of Waterloo By-Law 25-021 (the “By-Law”), which prohibits sheltering at the encampment located at 100 Victoria Street in Kitchener (the “Encampment”). The appeal raises significant questions under ss. 7 and 15 of the *Canadian Charter of Rights and Freedoms* concerning the circumstances in which governments may prohibit people from sheltering on public property.
3. The intersection of homelessness and drug use is central to this appeal.
4. A large majority of the Named Respondents identify as people who use drugs (“PWUD”), and they experience homelessness within a legal framework that regulates where they may use drugs, whether they can access harm reduction services, and their ability to obtain or retain housing. Given the harms and stigma attached to both homelessness and drug use, understanding that context is inseparable from assessing the By-Law’s constitutional effects.
5. The Drug Policy Interveners seek to assist the Court by providing submissions on how the complete legislative context of drug policy in Ontario and the Region bears on three issues engaged by this appeal:
 - a. whether the By-Law’s effects can be treated as merely site-specific where PWUD lack lawful, accessible, and practically viable alternatives to shelter themselves;
 - b. whether the constitutional analysis can be confined to “existing residents” where legislative choices increasingly make transience the on-the-ground reality in encampments, particularly for PWUD; and
 - c. whether homelessness is structurally immutable where legislative choices both reflect and reinforce stigma associated with drug use among unhoused people, while materially constraining access to stable housing.

6. The Drug Policy Interveners bring decades of experience and expertise at the nexus of drug law, policy, and public health, with direct knowledge of the realities facing PWUD in Waterloo Region. They are uniquely placed to assist the Court. Their submissions will provide the legal and policy context necessary to assess the By-Law's practical effects, the significance of transience, and the structural barriers underlying homelessness.
7. The Proposed Interveners respectfully submit that they meet the test for intervention and should be granted leave to intervene.

PART II - THE FACTS

8. In support of this motion, the Drug Policy Interveners rely on the affidavit of DJ Larkin, affirmed October 21, 2026 and the materials filed by the parties.¹ If granted leave to intervene, the Drug Policy Interveners will rely on the existing record and will not seek to adduce fresh evidence.
9. The Drug Policy Interveners accept the facts as described in the Respondents' materials but amplify the critical fact that a large majority of the Named Respondents identify as PWUD.² The application judge also found that people move in and out of 100 Victoria Street ("the Encampment") as they lose and gain indoor shelter, and that shelters and motels are "not always appropriate or available" for PWUD.³
10. Against that backdrop, the Encampment functions as a shelter of last resort for many chronically homeless people in Waterloo Region. For PWUD, its importance is heightened by

¹ Affidavit of DJ Larkin, sworn 21 October 2026, Moving Party Motion Record ["MPMR"] at Tab 2 ["Larkin Affidavit"].

² *The Regional Municipality of Waterloo v Named Respondents and Persons Unknown*, [2026 ONSC 2971](#), [para 155](#), MPMR at Tab 3 ["*Waterloo, 2026*"]. See also: Appendix A to the Factum of the Named Respondents ["Named Respondents' Factum"].

³ [Waterloo, 2026](#), paras 145; 165.

the fact that many indoor alternatives either prohibit drug use or make it more likely that people will consume drugs alone and away from peer supports.

11. The appeal also unfolds within a broader provincial and municipal legal and policy framework affecting PWUD, including the *Community Care and Recovery Act*,⁴ the *Restricting Public Consumption of Illegal Substances Act*,⁵ the *Measures Respecting Premises with Illegal Drug Activity Act*,⁶ the *Residential Tenancies Act*,⁷ and the Region's Code of Use By-Law. Together, these measures restrict access to supervised consumption services, create new enforcement powers and offences relating to public drug consumption, limit outdoor sheltering elsewhere in the Region, and affect housing security for PWUD.
12. It is against this combined factual and legal backdrop that the Drug Policy Interveners seek leave to intervene.
13. The Drug Policy Interveners, collectively, bring decades of national experience in drug policy, constitutional litigation affecting PWUD, and knowledge of the local conditions for PWUD in Waterloo Region. They are uniquely positioned to assist the Court in assessing the impacts of the By-Law in the full factual and legal context that bears on unhoused PWUD.

A - Canadian Drug Policy Coalition

14. CDPC is a national, non-partisan civil society coalition active since 2010.⁸ It collaborates with hundreds of organizations and thousands of individuals across Canada, including people who use drugs and their families, health-care professionals, academics, drug policy experts, research institutes, legal and policy organizations, and service providers. CDPC emphasizes

⁴ *Community Care and Recovery Act*, 2024, [SO 2024, c 27, Sch 4](#), ss. 2-3.

⁵ *Restricting Public Consumption of Illegal Substances Act*, 2025, [SO 2025, c 5, Sch 1](#), ss. 3, 9.

⁶ *Measures Respecting Premises with Illegal Drug Activity Act*, 2025, [SO 2025, c 6, Sch 8](#), s. 2.

⁷ *Residential Tenancies Act*, 2006, [SO 2006, c 17](#), s. 61.

⁸ Larkin Affidavit, para 5.

the inclusion of people who use drugs and drug user-led organizations in the development of drug laws and policies.

15. CDPC works to advance evidence-based drug laws and policies grounded in human rights, social inclusion, and public health.⁹ Its work spans drug policy, criminal justice, public health, and public safety, with a focus on preventing toxic drug deaths, expanding access to harm reduction and voluntary treatment, and reducing the harms associated with criminalization.
16. CDPC has extensive experience examining the intersection of drug policy, homelessness, criminalization, and access to health services.¹⁰ It collaborates with organizations working on housing and homelessness and has provided legal and policy expertise to courts, legislatures, and public bodies. Its work particularly relevant to this appeal includes:
 - a. Intervening in *The Neighbourhood Group et al v HMKRO*, [2025 ONSC 1934](#) (“TNG”), together with WR DAT and other community organizations, regarding provincial legislation restricting supervised consumption services in Ontario. The coalition advanced a public-health framework for the interpretation of s. 7 of the *Charter* and the principles of fundamental justice;¹¹
 - b. Intervening before the Supreme Court of Canada in *His Majesty the King v Paul Eric Wilson*, [2025 SCC 32](#), where CDPC addressed latent bias and misconceptions about drug use in the interpretation of the *Good Samaritan* provision of the *Controlled Drugs and Substances Act*;¹²
 - c. Making submissions to the UN Special Rapporteur on the right to adequate housing and the Special Rapporteur on extreme poverty and human rights regarding the decriminalization of homelessness and extreme poverty, including the ways legislative and enforcement mechanisms can increase isolation and displacement, interrupt health care, and disproportionately expose people living at the intersection of homelessness and criminalized drug use to the criminal justice system;¹³
 - d. Intervening in *R v Ellis*, [2022 BCCA 278](#), concerning the treatment of people who sell drugs in circumstances connected to their own drug dependence;¹⁴ and
 - e. Participating for more than a decade in legislative and policy processes concerning

⁹ Larkin Affidavit, paras 5-7.

¹⁰ Larkin Affidavit, para 9.

¹¹ Larkin Affidavit, para 12(d).

¹² Larkin Affidavit, para 12(e).

¹³ Larkin Affidavit, para 12(h).

¹⁴ Larkin Affidavit, para 12(j).

supervised consumption services, toxic drug incident prevention, the criminalization of PWUD, and barriers to harm reduction services.¹⁵

17. CDPC's work therefore speaks directly to the interaction between drug policy, homelessness, criminalization, public space enforcement, displacement, and access to health and harm reduction services that lies at the centre of the proposed intervention.

B - HIV Legal Network

18. The Legal Network is a national non-governmental organization founded in 1992.¹⁶ For more than three decades, it has advocated for the health and human rights of marginalized populations, including PWUD, through legal research, policy reform, and constitutional litigation. Its work includes research and advocacy at the intersection of drug policy, homelessness, and access to health and harm reduction services.
19. The Legal Network has extensive experience intervening in constitutional litigation concerning drug laws and harm reduction, including:
- a. *Canada (Attorney General) v PHS Community Services Society*, [2011 SCC 44](#), concerning access to a supervised consumption site without risk of criminal prosecution;¹⁷
 - b. *TNG*, concerning the constitutionality of provincial legislation restricting access to supervised consumption services;¹⁸
 - c. *R v Lloyd*, [2016 SCC 13](#), concerning the constitutionality of mandatory minimum sentences for drug offences;¹⁹ and
 - d. *R v Sharma*, [2022 SCC 39](#), concerning restrictions on conditional sentences.²⁰
20. The Legal Network has also contributed to constitutional litigation directly concerning homelessness and the rights of PWUD. In *Tanudjaja v Canada (Attorney General)*, [2014](#)

¹⁵ Larkin Affidavit, paras 10-18.

¹⁶ Larkin Affidavit, paras 19-21.

¹⁷ Larkin Affidavit, para 23(f).

¹⁸ Larkin Affidavit, para 23(a).

¹⁹ Larkin Affidavit, para 23(c).

²⁰ Larkin Affidavit, para 23(b).

[ONCA 852](#), the Ontario Court of Appeal granted the Legal Network intervener status as part of a coalition addressing how government housing policies and programs, including the absence of a cohesive strategy to address homelessness and inadequate housing, affect the health and dignity of marginalized populations.²¹

21. The Legal Network has particular expertise concerning the legal, policy, and practical barriers faced by PWUD in accessing harm reduction services, shelters, and housing. Its research and policy work includes:

- a. More than two decades of research on supervised consumption services, including legal and policy barriers to their establishment and operation;²²
- b. Research on the operation and limits of the *Good Samaritan Drug Overdose Act* and the effects of drug law enforcement on PWUD;²³
- c. *Towards Access for All: Best and Promising Practices from Low-Barrier, Harm Reduction Shelters in Canada*, drawing on engagement with shelters across Canada to identify practices that improve accessibility for women and gender-diverse people who use drugs;²⁴
- d. *Shelter Right: A Blueprint for Inclusive Shelters in Canada*, examining barriers to shelter access for PWUD and promising low-barrier practices, informed by engagement with frontline shelter workers, directors, and peers;²⁵
- e. *Responsive Shelter*, a series of legal information resources addressing the rights of women, trans, and gender-diverse people who use drugs to access and remain in violence against women shelters in Ontario, informed by engagement with shelters across the province;²⁶
- f. *Know Your Rights: Ontario's Safer Municipalities Act (2026)*, explaining the legislation's police enforcement powers and the rights of people stopped by police under the Act;²⁷ and
- g. *It's Not So Simple: The impact of simple drug possession and trafficking offences on health equity*, examining the health consequences of drug possession and trafficking enforcement.²⁸

²¹ Larkin Affidavit, para 27.

²² Larkin Affidavit, para 32.

²³ Larkin Affidavit, para 37.

²⁴ Larkin Affidavit, para 45.

²⁵ Larkin Affidavit, para 46.

²⁶ Larkin Affidavit, paras 47-48.

²⁷ Larkin Affidavit, para 44.

²⁸ Larkin Affidavit, para 43.

22. The Legal Network’s combined experience in constitutional litigation, drug policy analysis, and research on shelter accessibility will assist the Court in assessing how the broader legal and policy framework affects the circumstances of unhoused PWUD, including the availability of viable alternatives to the Encampment and the structural barriers to obtaining and maintaining stable housing.

C - Waterloo Region Drug Action Team

23. WR DAT is a volunteer-run organization established in 2021-2022 to advance evidence-informed drug policies and improve community health and safety in Waterloo Region.²⁹ Established as the Waterloo Region Crime Prevention Council (“WRCPC”) was being wound down, WR DAT brings together frontline service providers, health professionals, academics, people who use drugs, and community members. Its work includes advising municipal and regional councillors and supporting the development of community-led drug policy.
24. WR DAT and its predecessor, WRCPC, have extensive experience addressing the intersection of drug use, homelessness, and public safety in Waterloo Region. WR DAT’s founding volunteer, Michael Parkinson, has worked on these issues locally since 1995.³⁰
25. Their collective work has included developing regional drug strategies, overdose monitoring and response initiatives, mobile health services, and research with PWUD. Notably, WRCPC helped establish a temporary, low-barrier shelter during the COVID-19 pandemic that incorporated supervised consumption services and wraparound supports.³¹ WR DAT also collaborated on *(Un)Safe*, a 2021 research project involving people who used unregulated drugs while living in shelters or encampments.³²

²⁹ Larkin Affidavit, paras 49-54.

³⁰ Larkin Affidavit, para 50.

³¹ Larkin Affidavit, para 54(e).

³² Larkin Affidavit, para 54(f).

26. WR DAT has been directly involved in issues affecting people who use drugs in the vicinity of the Encampment. In 2023-2024, it worked with local stakeholders to oppose the provincial decision to close the supervised consumption services (SCS) site near 100 Victoria Street.³³ Following the site's closure, WR DAT organized emergency overdose response training for downtown businesses and residents. WR DAT also intervened alongside CDPC and other organizations in [TNG](#), challenging provincial legislation restricting SCS.³⁴
27. WR DAT therefore brings direct knowledge of the local conditions affecting unhoused PWUD, including the availability of harm reduction services, barriers to safer drug consumption, and the intersection of drug policy, homelessness, and community safety in Waterloo Region. Its local expertise complements the national legal and policy experience of CDPC and the Legal Network and will assist the Court in assessing the By-Law within the broader regional context in which it operates

PART III - THE ISSUE

28. Should the Drug Policy Interveners be granted leave to intervene?

PART IV - THE LAW AND ARGUMENT

29. The Drug Policy Interveners seek leave to intervene as a friend of the Court pursuant to Rule 13.02 of the *Rules of Civil Procedure*, for the purpose of rendering assistance to the court by way of argument.³⁵
30. The governing test is well established. The Court considers “the nature of the case, the issues which arise and the likelihood of the applicant being able to make a useful contribution to the

³³ Larkin Affidavit, para 54(g)-(h).

³⁴ Larkin Affidavit, para 54(i).

³⁵ *Rules of Civil Procedure*, [RRO 1990, Reg 194](#), Rule 13.02.

resolution of the appeal without causing injustice to the immediate parties.”³⁶

31. The nature of the proceeding informs that analysis. A more onerous standard applies where intervention is sought in a private dispute. By contrast, where the proceeding involves the state and raises issues that transcend the interests of the immediate parties and engage matters of public policy, the threshold is less stringent.³⁷
32. The overarching consideration remains whether the proposed intervenor is likely to make a useful contribution. Usefulness may arise where an intervenor brings a different perspective to an issue already before the Court, even if its submissions overlap to some extent with those of a party. Entirely duplicative submissions, however, are not useful.³⁸
33. The proposed intervention satisfies that test. This appeal is a public constitutional proceeding whose implications extend beyond the immediate parties; the Drug Policy Interveners propose to address issues already before the Court from a distinct perspective grounded in their expertise; and their participation will not cause injustice to the parties.

A. The nature of the appeal favours intervention.

34. This is not a private dispute. The appeal concerns the constitutionality of government action and the application of ss. 7 and 15 of the *Charter* to people experiencing homelessness.
35. The issues extend beyond the circumstances of the Named Respondents. The Court’s determination will address the constitutional limits on government responses to encampments and the treatment of people experiencing homelessness, including PWUD, in a broader legal and policy environment governing public space, drug use, harm reduction, and housing.

³⁶ *Peel (Regional Municipality) v Great Atlantic & Pacific Co. of Canada Ltd (CA)*, [\(1990\) 74 OR \(2d\) 164](#); *GG v Ontario*, [2026 ONCA 164](#), [para 12](#) [“GG”].

³⁷ *GG*, [para 14](#).

³⁸ *GG*, [para 12](#).

B. The Drug Policy Interveners will make a useful and distinct contribution.

36. The Drug Policy Interveners’ proposed submissions³⁹ are directed to issues already squarely before the Court. They do not seek to advance new constitutional claims or expand the scope of the appeal. Rather, they seek to assist the Court in assessing the issues before it in the manner that is situated in the legal and policy context governing PWUD who experience homelessness.
37. Taken together, the Drug Policy Interveners bring a combination of national drug policy and human rights expertise, direct experience with constitutional litigation affecting PWUD, and knowledge of the conditions in Waterloo Region, all of which will assist the court in understanding the issues before it.
38. Drawing on that expertise, the Drug Policy Interveners propose to situate the By-Law within the legislative and policy framework governing PWUD in Ontario and Waterloo Region. That framework includes: the *Community Care and Recovery Act*, which restricts the establishment and operation of supervised consumption services;⁴⁰ the *Restricting Public Consumption of Illegal Substances Act*,⁴¹ which creates new enforcement powers and offences relating to public drug use; the *Measures Respecting Premises with Illegal Drug Activity Act*,⁴² and the *Residential Tenancies Act*,⁴³ which bear on housing security in circumstances involving drug-related activity; and the Region’s Code of Use By-Law, which prohibits outdoor sheltering elsewhere in the Region.

³⁹ For a complete overview of the Drug Policy Interveners proposed submissions, Larkin Affidavit at Exhibit “A”, Draft Intervention Factum of the Drug Policy Interveners, October 21, 2026.

⁴⁰ *Community Care and Recovery Act*, 2024, [SO 2024, c 27, Sch 4](#), ss. 2-3.

⁴¹ *Restricting Public Consumption of Illegal Substances Act*, 2025, [SO 2025, c 5, Sch 1](#), ss. 3, 9.

⁴² *Measures Respecting Premises with Illegal Drug Activity Act*, 2025, [SO 2025, c 6, Sch 8](#), s. 2.

⁴³ *Residential Tenancies Act*, 2006, [SO 2006, c 17](#), s. 61.

39. The Drug Policy Interveners will submit that this framework is directly relevant to the Appellants' characterization of the By-Law as "site-specific."⁴⁴ A By-Law confined on its face to 100 Victoria Street cannot be assessed only by reference to its geographic boundaries where related laws restrict the other places in which unhoused PWUD may shelter, consume drugs more safely, or maintain access to health and harm-reduction supports. The proposed intervention will assist the Court in assessing the By-Law's actual effects on unhoused PWUD by situating the analysis in the necessary legal and factual context.
40. The same drug policy framework is relevant to the Appellants' reliance on the category of "Existing Residents."⁴⁵ The application judge found that those living in the Encampment move in and out as they lose and gain indoor shelter. The Drug Policy Interveners will address how barriers to indoor shelter and housing, enforcement of public drug use, restrictions on outdoor sheltering, and displacement contribute significantly to transience for PWUD. This context will assist the Court in determining whether constitutional protection can properly turn on physical presence at the Encampment on a single date.
41. Finally, the Drug Policy Interveners will address how this legislative and policy context bears on the proposed recognition of homelessness as an analogous ground under s. 15. Their submissions will focus on how laws and policies governing drug use, public space, shelter, and housing interact with broader legal, financial, and social constraints to make homelessness a circumstance beyond the control of many PWUD, while reinforcing the intersecting stigma associated with homelessness and drug use. They will address why the possibility that a person's housing circumstances may change in the future does not negate the discrimination

⁴⁴ See e.g., Factum of the Appellant, The Regional Municipality of Waterloo at paras. 50-53; 57; 100 [Region Factum]; Factum of the Appellant, the Attorney General of Ontario at paras. 41-46 and 64-70.

⁴⁵ See e.g., Ontario Factum at paras. 50-63; Region Factum at paras. 8-9; 33-36; 55; 60-61; 100.

they presently experience. These submissions will assist the Court in assessing whether homelessness should be recognized as an analogous ground under s. 15, including on the basis of its structural immutability for many PWUD.

42. The Drug Policy Intervenors' contribution is thus distinct from the broader constitutional arguments advanced by the parties. The Drug Policy Intervenors' submissions will center on how the legal and policy context governing PWUD informs the By-Law's effects, contributes to transience, and bears on the structural immutability of homelessness for many PWUD.

C. The intervention will not cause injustice to the parties

43. Granting leave will not cause injustice to the parties. The Drug Policy Intervenors will take the record as they find it, will not adduce fresh evidence, and will not raise new issues.
44. The Drug Policy Intervenors proposed submissions are contained in the within motion record⁴⁶ and are confined to issues already before the Court. The parties have clear notice of the position the Drug Policy Intervenors intend to advance, and have a fair opportunity to respond.
45. The Drug Policy Intervenors will comply with the Court's timetable and any limits imposed on the length or scope of their written and oral submissions. Their participation will not delay the hearing or otherwise interfere with the orderly determination of the appeal.
46. The proposed intervention is also designed to minimize duplication. The Drug Policy Intervenors will coordinate with the parties and any other intervenors, and will confine their submissions to the distinct drug policy context outlined above.

⁴⁶ See Larkin Affidavit at Exhibit "A", Draft Intervention Factum of the Drug Policy Intervenors, October 21, 2026.

47. The Drug Policy Intervenors respectfully submit that their intervention will make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties, and that leave should therefore be granted.

PART V - ORDER SOUGHT

48. The Drug Policy Intervenors respectfully request an order:

- a. granting CPDC, the Legal Network, and WR DAT leave to intervene jointly as friends of the Court in this appeal;
- b. permitting the Drug Policy Intervenors to make oral submissions at the hearing of the appeal, of a length to be determined by the Court;
- c. providing that the Drug Policy Intervenors shall rely on the existing record and shall not adduce fresh evidence;
- d. providing that the Drug Policy Intervenors shall not seek costs and that no costs be awarded against them; and
- e. granting such further and other relief as this Court considers just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of October, 2026.



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CERTIFICATE OF AUTHENTICITY

I, Frank Nasca, lawyer for the proposed intervener, Canadian Drug Policy Coalition, HIV Legal Network, and Waterloo Region Drug Action Team certify that I am satisfied as to the authenticity of every authority cited in this factum, pursuant to Rule 4.06. 1(2.1) of the *Rules of Civil Procedure*.

October 21, 2026



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**FACTUM
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