

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 RECORD 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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The Mental Health Legal Committee**

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Respondents
(Respondents/Cross-Applicants)

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TAB 1

Court of Appeal File No.: COA-26-CV-0897
COA-26-CV-0836

COURT OF APPEAL FOR ONTARIO

BETWEEN:

THE REGIONAL MUNICIPALITY OF WATERLOO

Appellant
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-AND-

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**NOTICE OF MOTION 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)**

THE PROPOSED INTERVENER, the Canadian Drug Policy Coalition, HIV Legal Network, and Waterloo Region Drug Action Team (the “Drug Policy Interveners”), will make a motion to a judge on a date and time to be fixed by the Court.

PROPOSED METHOD OF HEARING: The motion is to be heard

- ☒ In writing under subrule 37.12.1 (1);
- ☒ In the alternative, in writing as an opposed motion under subrule 37.12.1 (4);
- ☐ In person;
- ☐ By telephone conference;
- ☐ By video conference.

at the following location: 130 Queen Street West, Toronto, Ontario, M5H 2N5.

THE MOTION IS FOR:

1. An order granting the Drug Policy Interveners leave to jointly intervene as a coalition, as a friend of the court pursuant to Rule 13.02 of the *Rules of Civil Procedure* on the following terms:
 - (a) the Drug Policy Interveners may, jointly, file a factum not exceeding 10 pages on or before the date set by the Court;
 - (b) the Drug Policy Interveners may present oral submissions at the hearing of the appeal, of a length to be determined by the Court;
 - (c) the Drug Policy Interveners shall coordinate with the parties and any other intervener(s) and make best efforts to avoid duplication of submissions;
 - (d) the Drug Policy Interveners shall not raise new issues or adduce new evidence, other than the affidavit of DJ Larkin filed in the within motion; and
 - (e) there shall be no costs awarded for or against the Drug Policy Interveners in respect of this motion for leave to intervene and the proposed intervention in the appeal itself.
2. Such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

3. The Drug Policy Interveners have a real, substantial and identifiable interest in the issues raised in the Appeal;
4. In particular, the Drug Policy Interveners have an interest in the intersection between drug policy and homelessness, as experienced by unhoused people who use drugs – an intersecting demographic which forms the majority of the Respondents in this appeal;
5. The Drug Policy Interveners' submissions will provide a unique, useful and distinct perspective based on special experience and expertise that is not otherwise available to the Court;
6. Collectively, the Drug Policy Interveners have been centrally engaged in all manner of drug policy development, drug policy reform, and related education across Canada for decades, and bring a balance of local and national perspectives;
7. All three of the Drug Policy Interveners represent and collaborate with a range of individuals and organizations, including unhoused people who use drugs, whose lives, health, and liberty will be affected by this Court's analysis of the matter;
8. The Drug Policy Interveners will avoid duplication of arguments made by other parties and interveners and will not seek to expand the existing record;
9. The Drug Policy Interveners will abide by the terms of the timetable set by the Court if granted leave to intervene and will not delay the hearing of the appeal;
10. Rules 1.04, 13.02, 13.03(2), 37, and 61.16 of the *Rules of Civil Procedure*.
11. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

12. the Affidavit of DL Larkin;
13. the factum filed in support of this motion; and
14. such further and other evidence as counsel may advise and this Honourable Court may permit.

October 21, 2026

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-and-

JOSEPHINA DUGAS et al

Appellant

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PROCEEDING COMMENCED AT TORONTO

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TAB 2

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COA-26-CV-0836

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**AFFIDAVIT OF DJ LARKIN
(AFFIRMED ON OCTOBER 21, 2026)**

In support of the Canadian Drug Policy Coalition's joint motion, with the HIV Legal Network and the Waterloo Region Drug Action Team, for Leave to Intervene, I, DJ LARKIN, Executive Director of the Canadian Drug Policy Coalition, of the City of Vancouver, in the Province of British Columbia, AFFIRM as follows:

1. I am the Executive Director of the Canadian Drug Policy Coalition / la coalition Canadienne des politiques sur les drogues (“CDPC”). I am authorized to make this affidavit on behalf of CDPC. I have personal knowledge of the facts and matters hereinafter deposed to, save and except where same are stated to be made on information and belief, and where so stated, I verily believe them to be true.
2. I affirm this affidavit in support of the joint motion brought by the CDPC, the HIV Legal Network (“Legal Network”), and the Waterloo Region Drug Action Team (“WR DAT”) (together, the “Drug Policy Interveners”), and for no other, or improper, purpose. In accordance with the July 23, 2026, Directions of the Case Management Judge, I attach a draft of the Drug Policy Interveners proposed factum in this intervention. The draft factum is attached as **Exhibit “A”**.
3. I have worked in close collaboration with the Legal Network over many years. More recently, I have also worked in collaboration with WR DAT. Where I depose to facts and matters concerning the Legal Network, I do so based on information provided by its co-Executive Director, Sandra Ka Hon Chu. Where I depose of matters concerning WR DAT, I do so based on information provided by its volunteer, Michael Parkinson, who is authorized to provide information on behalf of the WR DAT.
4. I hold a Juris Doctor from the University of British Columbia and was called to the bar in British Columbia in 2011. I have practiced constitutional and regulatory law with the Department of Justice; represented prisoners in federal and provincial correctional facilities with Prisoners’ Legal Services in administrative and human rights matters; worked alongside and represented people living at intersections of homelessness/housing precarity, drug use and criminalized labour (e.g. sex work, panhandling) in constitutional, human rights and administrative matters. I have also appeared before numerous courts on issues related to substance use policy and associated legal matters.

THE DRUG POLICY INTERVENERS’ RELEVANT EXPERIENCE AND EXPERTISE

A. THE CANADIAN DRUG POLICY COALITION

5. CDPC is a federally incorporated not-for-profit, non-partisan civil society coalition that collaborates with hundreds of organizations and thousands of individuals from across Canada. CDPC has been active since 2010 as a project hosted by Simon Fraser University and now operates as an independent not-for-profit as of April 2026. Its working partners include people who use drugs, their families, healthcare professionals, academics across multiple disciplines, drug policy experts, research institutes, legal and policy organizations, and service providers.
6. CDPC's mission is to facilitate improvement in Canadian and international drug policy and legislation. For our organization, 'drug policy' includes intersectoral statutory requirements as well as actions by various levels of government in Canada and internationally, on topics such as harm reduction, criminal justice, public health, public safety and consumer protection, as these pertain to currently illegal drugs. CDPC envisions a safe, healthy, and just Canada in which drug policy and legislation as well as related institutional practices are based on evidence, research, human rights, social inclusion, and public health principles.
7. In pursuit of its mission, CDPC promotes evidence-based, public health-oriented drug policies while focusing on areas where change is achievable. CDPC promotes policies aimed at preventing overdose deaths, expanding harm reduction and regulated-voluntary treatment programs, reducing harmful outcomes from criminal justice system involvement and promoting the legal regulation of presently illegal drugs for both consumer and public safety.
8. CDPC is governed by a Board of Directors, comprised of people from across Canada who are engaged in a range of drug policy, HIV/AIDS, public policy, and health-related issues, and people with lived and living experience and expertise. We regularly collaborate with highly experienced academic researchers and a variety of organizational partners at local, regional, national, and international levels, and we mandate the inclusion of people who use drugs and drug user-led organizations in the development of drug policies.
9. CDPC works with numerous national and regional civil society and research organizations across sectors to identify intersecting policy structures and advance intersectoral analysis, including organizations with a focus on housing and homelessness. For example, CDPC works with the National Right to Housing Network and the Women's National Housing and Homelessness Network.

10. CDPC has recently completed the following major drug policy reform projects:

- a. 2026, “Drug Futures Workshop: Federal Legislative Framework Brief”: a detailed legislative overview exploring enabling and limiting aspects of federal legislation in addressing drug-related deaths and injuries caused by unregulated drugs of variable ingredients and potency;
- b. 2025, “Critical Conversations: Developing a Community-Based Methodology for Engaging Chinese Language Groups about Supervised Consumption Services”: a community-partnered dialogue series with Chinese-speaking seniors exploring promising practices for improving knowledge and shifting views on drug use and harm reduction services, and addressing misinformation in Chinese language communities;
- c. 2024, “To End a Crisis: Vision for BC Drug Policy”: a policy synthesis and statement of community priorities for policy reform co-created with people who use drugs, healthcare providers, and policy experts;
- d. 2024, “Getting to Tomorrow”: a national initiative that partnered with 13 communities across Canada to produce community dialogues on issues impacting people who use drugs and to co-develop recommendations for policy reform to improve lives and safety for all people (phase 1 launched in 2013, phase 2 launched in 2018, completed in 2024);
- e. 2024, “Imagine Safe Supply”: a community-partnered independent research initiative exploring barriers to medical services and envisioning the principles and practices that would better support people seeking support to limit their exposure to the unregulated drug supply (academic publications forthcoming); and
- f. 2022, “Unbreaking Canada’s Drug Policies: A Relational Model for Knowledge Co-Production and Dissemination”: a year-long 26-session cohort process with municipal elected officials, social planners, and regional health authority staff to engage in self-reflective learning to guide durable policy understandings.

11. CDPC is currently undertaking major drug policy reform projects in:

- a. Detailing law reform pathways for alternative policy models that promote public health and public safety through regulatory controls over the currently illicit and unregulated (for contents and potency) drug supply that are consistent with Canada's Constitutional division of powers, international commitments, and policy context;
- b. Identifying policy options to support workers impacted by substance use including specific focus on support systems for workers in the trades and construction industry who are disproportionately impacted by drug-related deaths;
- c. Supporting universal and publicly administered access to diverse modalities of voluntary treatment and substance use health services and interrogating the use of involuntary detention for drug treatment;
- d. Integrating substance use policy and services analysis into broader socioeconomic equity oversight mechanisms domestically and internationally;
- e. Assessing successes and lessons learned from British Columbia's three-year policy initiative to decriminalize simple drug possession.

CDPC's National Law and Policy Reform Work

12. CDPC has a history of advocacy in pursuit of public health-focused law and policy reform. Examples include:

- a. On February 28, 2026, CDPC provided written submissions to the Ontario government regarding how Ontario's *Restricting Public Consumption of Illegal Substances Act, 2025* foreseeably increases the risk of death, serious injury, psychological harm, and discrimination, particularly for people who are unhoused, living in poverty, and Indigenous people.
- b. On December 30, 2025, CDPC released *Addiction Treatment in Context: Principles for a System of Just, Accessible, and Voluntary Care*, a detailed analysis and position statement on addictions treatment systems.

- c. On December 12, 2025, a member of CDPC staff was called to testify at the Supreme Court of British Columbia in a successful Constitutional challenge to section 5(2) of the *Controlled Drugs and Substances Act*, regarding government inaction in implementing non-prescription service models to provide alternatives to the unregulated drug supply (*R v Kalicum*, [2026 BCSC 1855](#)).
- d. On March 24-25, 2025, CDPC intervened in coalition with the Toronto Overdose Prevention Society, Toronto Harm Reduction Alliance and WR DAT, before the Ontario Superior Court of Justice in *The Neighbourhood Group Community Services et al v Ontario* regarding legislation causing the closure of supervised consumption services (“SCS”) in Ontario. The coalition brought forward a public health analytical framework to improve harm prevention, ensure clarity in legal interpretation, support evidence-based policy making, and to align public safety and public health goals in interpreting s 7 of the *Charter*, including the interpretation of the principles of fundamental justice *The Neighbourhood Group Community Services et al v HMKRO*, [2025 ONSC 1934](#).
- e. On January 14, 2025, CDPC, alongside L’Association des Intervenants en Dépendance du Québec and the Harm Reduction Nurses Association/ l’Association des infirmiers et infirmières en réduction des méfaits, intervened before the SCC in *His Majesty the King v Paul Eric Wilson*, [2025 SCC 32](#), to provide a public health analytical framework to improve harm prevention and clarity in the law’s application, and to ensure that any examination of the Good Samaritan provision of the *Controlled Drugs and Substances Act* (“CDSA”) is devoid of latent biases and misconceptions about drug use.
- f. On July 31, 2024, CDPC, in collaboration with the Legal Network, Pivot Legal Society and Harm Reduction Nurses Association, provided written submissions to the “Canada Gazette, Part I, Volume 158, Number 22: Controlled Substances Regulations”.
- g. On January 10, 2024, CDPC provided written submissions to the House of Commons Standing Committee on Health study on the “Opioid Epidemic and Toxic Drug Crisis”.
- h. On September 20 and October 6, 2023, CDPC led submissions to the UN Special Rapporteur on the right to adequate housing and the Special Rapporteur on extreme

poverty and human rights, in response to a call for input on the “decriminalization of homelessness and extreme poverty,” wherein CDPC (along with a number of community partners) outlined the legislative and enforcement mechanisms through which people living at intersections of poverty, homelessness, and criminalized drug use are imperiled and harmed by policies that increase isolation and displacement, cause barriers to and interrupt health care, and disproportionately lead to criminal justice involvement based on social status.

- i. On October 19, 2022, subsequent to written submissions made April 29, 2022, CDPC testified before the Standing Senate Committee on Legal and Constitutional Affairs on *Bill C-5, An Act to Amend the Criminal Code and the Controlled Drugs and Substances Act* (“*Bill C-5*”), regarding reforms to the *CDSA*.
- j. In 2022, CDPC intervened in *R v Ellis*, [2022 BCCA 278](#), to address the authority of a judge to depart from an established sentencing range, particularly for people who are driven to selling drugs on the street to address their own drug dependence. The British Columbia Court of Appeal agreed with CDPC’s submission that sentencing ranges act as “navigational buoys” and found that a person trafficking in drugs to ensure their own supply of drugs should attract a lower level of moral blameworthiness in sentencing.
- k. In 2021, CDPC was among 21 organizations, including the Legal Network, that developed and released *Decriminalization Done Right: A Rights-Based Path for Drug Policy*, a joint policy synthesis and vision co-developed with people who use drugs, academics, healthcare services, and policy experts.
- l. In 2019, CDPC was granted intervener status in *Edmonton-based Chinatown & Area Business Association v Canada (Attorney General)*, [2019 FC 236](#), wherein CDPC addressed whether third party community groups are entitled to procedural fairness in decisions regarding exemptions under s 56.1 *CDSA*. The Federal Court relied on CDPC’s submissions in determining that third party community organizations may be entitled to only minimal procedural fairness in circumstances where they have been invited to participate in the process.

- m. On April 5, 2017, CDPC provided written submissions to and testified before the House of Commons Standing Committee on Health and the Standing Senate Committee on Legal and Constitutional Affairs regarding *Bill C-37: An Act to amend the Controlled Drugs and Substances Act and to make related amendments to other Acts*, 1st sess, 42nd Parl, 2017 regarding amendments to s 56.1 of the *CDSA* to streamline exemptions and promote accessibility to SCS.
- n. In November 2014, CDPC testified at the House of Commons Standing Committee on Public Safety and National Security regarding *Bill C-2: Respect for Communities Act*, 2nd Sess, 41st Parl, 2015 (“*Bill C-2*”) regarding onerous application criteria for SCS exemptions. The written brief informing this testimony was co-developed with the Legal Network.
- o. On December 4, 2013, CDPC testified at the House of Commons Standing Committee on Health about the Government’s role in addressing prescription drug misuse and evidence-based interventions to prevent fatalities related to opioid consumption, including relaxing the prescription status of naloxone and reducing barriers to calling 911 in the event of overdose. The Committee recommended both issues for follow-up. In March 2016, Health Canada changed the prescription status of Naloxone to allow pharmacies to provide it without prescription. In May 2017, the *Good Samaritan Drug Overdose Act*, S.C. 2017, c. 4 received Royal Assent, which provides some legal protection for individuals who call 911 when experiencing or witnessing an overdose.

CDPC’s History of Coalition-Based Policy Work

- 13. In addition to the recent works and advocacy noted above, CDPC has produced numerous policy documents and publications over the last 14 years.
- 14. Former-Executive Director, Donald McPherson, sat on Health Canada’s “Expert Task Force on Substance Use”, which published two reports to the Associate Assistant Deputy Minister, Controlled Substances and Cannabis Branch of Health Canada.

15. In 2016, Mr. McPherson, co-authored the book *More Harm than Good: Drug Policy in Canada* detailing the harmful effects of drug prohibition on public health and offering policy and programming alternatives.
16. In June 2013, CDPC released a policy brief in consultation with experts working in frontline overdose prevention programs across Canada titled, *Opioid Overdose Prevention and Response in Canada*, addressing several multi-jurisdictional policy barriers that hinder the scale-up of opioid overdose prevention and treatment initiatives.
17. In May 2013, CDPC launched its first comprehensive analysis of drug policy in Canada, *Getting to Tomorrow: A Report on Drug Policy in Canada*.
18. In February 2012, CDPC released its foundational report, *Changing the Frame: A New Approach to Drug Policy in Canada*. The report called for Canada's drug laws and policies to be based on public health principles and peer-reviewed evidence.

B. HIV LEGAL NETWORK

19. The Legal Network / Réseau Juridique VIH (formerly the Canadian HIV/AIDS Legal Network) is a non-governmental organization founded in 1992 and federally incorporated in 1993 as a not-for-profit organization with charitable registration. It is the only national organization in Canada that works exclusively on legal and policy issues related to HIV and AIDS, and it is one of the world's leading expert organizations in this field. Since 2002, the Legal Network has been a non-governmental organization in Special Consultative Status with the UN Economic and Social Council ("ECOSOC").
20. For more than three decades, the Legal Network has been a leading voice advocating for the implementation of harm reduction services for people who use drugs in Canada, including legal reforms to support more effective, evidence-based health-protection and promotion services for people who use drugs.
21. The Legal Network has also done extensive work at the intersection of drug policy reform and housing/homelessness, as detailed below.

The Legal Network Interventions on Drug Policy and Harm Reduction Services

22. Since 1998, the Legal Network has intervened before courts in jurisdictions across Canada in cases concerning laws that affect people living with HIV and/or populations particularly affected by HIV and by punitive laws and policies, such as people who use drugs.
23. The following are a selection of cases in which the Legal Network has been granted intervener status to advance arguments related to the constitutionality of drug laws:
 - a. *The Neighbourhood Group Community Services et al v HMKRO*, [2025 ONSC 1934](#), regarding the constitutionality of provincial legislation limiting access to SCS;
 - b. *R v Sharma*, [2022 SCC 39](#), involving the constitutionality of restrictions on conditional sentences;
 - c. *R v Lloyd*, [2016 SCC 13](#), involving the constitutionality of provisions of the *CDSA* imposing a mandatory minimum sentence for certain drug offences;
 - d. *R v Smith*, [2015 SCC 34](#), involving a *Charter* challenge to Canada's medical cannabis regime;
 - e. *R v Mernagh*, [2013 ONCA 67](#), involving a *Charter* challenge to Canada's medical cannabis regime; and
 - f. *Canada (Attorney General) v PHS Community Services Society*, [2011 SCC 44](#), regarding access without risk of criminal prosecution to a SCS.
24. Further, the Legal Network has been granted public interest standing in four coroners inquests studying toxic drug deaths in provincial and federal prisons in Ontario, providing our expertise in access to harm reduction services in carceral settings: Elgin-Middlesex Detention Center (2020), Niagara Detention Centre (2024), Hamilton Wentworth Detention Centre (2024), and Collins Bay Institution (2026).
25. Additionally, following two decades of research and of extensive engagement with the federal government, in 2012 the Legal Network initiated a constitutional application against the

Government of Canada because of its refusal to implement needle and syringe programs (“NSP”) — an essential health service for people who use drugs — in Canada’s federal prisons, alongside three community-based HIV organizations and a man formerly incarcerated in a federal prison who contracted hepatitis C (“HCV”) through the use of non-sterile drug injection equipment. In the resulting judgment, *Simons et al v Minister of Public Safety et al*, [2020 ONSC 1431](#), the Court held that “the applicants presented compelling constitutional arguments” in their initial application based on ss 7 and 15(1) of the *Charter* regarding the right of people in prison to access sterile injection equipment.

The Legal Network’s Other Court Interventions

26. The Legal Network has a long history of intervening to offer rigorous analysis on a variety of legal issues which informs their expertise and ability to offer thoughtful and appropriate submissions in this matter.
27. Notably, in 2014 the Ontario Court of Appeal granted intervener status to the Legal Network in *Tanudjaja v Canada (Attorney General)*, [2014 ONCA 852](#), as part of a coalition of organizations representing the interests of people living with physical, sensory, intellectual and mental health disabilities, and people with HIV, to demonstrate how Governments’ choice of policies and programs, and in particular their lack of a cohesive strategy to address homelessness and inadequate housing, impact on the mental and physical health and human dignity of people living with disabilities.
28. The following is a selection of the Legal Network’s court interventions on other issues, such as the criminalization of HIV non-disclosure, sex work, and medical assistance in dying:
 - a. *R v Ndhlovu*, [2022 SCC 38](#);
 - b. *R v Aziga*, [2023 ONCA 12](#);
 - c. *R v Kirkpatrick*, [2022 SCC 33](#);
 - d. *Sherman Estate v Donovan*, [2021 SCC 25](#);
 - e. *R v NG*, [2020 ONCA 494](#);

- f. *ETFO et al v Her Majesty the Queen*, [2019 ONSC 1308](#);
- g. *R v Boone*, [2019 ONCA 652](#);
- h. *R v Thompson*, [2018 NSCA 13](#);
- i. *The Christian Medical and Dental Society of Canada et al. v College of Physicians and Surgeons of Ontario*, [2018 ONSC 579 \(Div. Ct.\)](#), [2019 ONCA 393](#);
- j. *R v Gowdy*, [2016 ONCA 989](#);
- k. *Carter v Canada (Attorney General)*, [2015 SCC 5](#);
- l. *R v Wilcox*, [2014 SCC 75](#);
- m. *R v Hutchinson*, [2014 SCC 19](#);
- n. *R v Felix*, [2013 ONCA 415](#);
- o. *R v Mekonnen*, [2013 ONCA 414](#);
- p. *Canada (Attorney General) v Bedford*, [2013 SCC 72](#) and [2012 ONCA 186](#);
- q. *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society*, [2012 SCC 45](#);
- r. *R v Mabior*, [2012 SCC 47](#) and *R v DC*, [2012 SCC 48](#);
- s. *DC v R*, [2010 QCCA 2289](#);
- t. *R v Mabior (CL)*, [2010 MBCA 93](#);
- u. *R v Wright*, [2009 BCCA 514](#);
- v. *R v JT*, [2008 BCCA 463](#); and
- w. *R v Cuerrier*, [1998 CanLII 796 \(SCC\)](#).

29. As a member of the Canadian Alliance for Sex Work Law Reform (“Alliance”), the Legal Network is also a co-applicant in an ongoing application in the Ontario Court of Appeal, pursuant to ss. 7, 15, 2(b) and 2(d) of the *Charter*, challenging the constitutionality of the criminal sex work offences, and also intervened as a member of the Alliance in *R v NS*, [2022 ONCA 160](#), involving a constitutional challenge to the third party sex work offences.

The Legal Network’s Drug Policy Reform and Harm Reduction Policy Work

30. The Legal Network has an extensive history of work on issues related to harm reduction and drug policy, and has produced significant literature, public legal education materials, in-depth analysis and advocacy resources on these issues. Of note are the following examples of work in Canada most directly relevant to the questions raised in the instant appeal.
31. In 1999, the Legal Network released *Injection Drug Use and HIV/AIDS: Legal and Ethical Issues*, a report analyzing the impact of punitive drug laws on people who inject drugs as well as on efforts to prevent HIV and provide care in Canada. The report prompted an official public, written response from Health Canada and then Minister of Health that welcomed many of the recommendations put forward.
32. In 2002, the Legal Network released its report *Establishing Safe Injection Facilities in Canada* to inform Canadian law and policy so that it could support the implementation of this key harm reduction service for people who use drugs, following which the Legal Network produced multiple analyses and reports on the topic of SCS, including:
- a. 2007, *A Helping Hand: Legal Issues Related to Assisted Injection at Supervised Injection Facilities*;
 - b. 2014, in collaboration with the CDPC, a critical analysis of *Bill C-2*, which was submitted to the House of Commons and Senate committees studying the bill;
 - c. 2017, submissions to the House of Commons Standing Committee on Health and the Standing Senate Committee on Legal and Constitutional Affairs regarding *Bill C-37*, amendments to s 56. *CDSA* to streamline exemptions and promote SCS accessibility;

- d. 2019, *Overdue for a Change: Scaling up Supervised Consumption Services in Canada*, detailing the state of SCS in Canada and outlining persistent barriers to their expansion;
 - e. 2022, an updated analysis of assisted injection in *Provider-Assisted Injection in Ontario's Supervised Consumption Services: Frequently Asked Questions*;
 - f. 2024, *Scaling Up Supervised Consumption Services: What Has Changed In Canada?*, assessing barriers and facilitators faced by current and future SCS operators; and
 - g. 2024, *How to Innovate in an Emergency: Legal and Policy Measures to Scale Up Safe Supply at Supervised Consumption Services*.
33. In 2004, the Legal Network published *Prison Needle Exchange: Lessons from a Comprehensive Review of International Evidence and Experience*, one of the earliest and most comprehensive global reviews of the evidentiary and legal basis for prison-based NSP, following which the Legal Network produced multiple analyses and reports on this topic, including:
- a. 2009, *Clean Switch: The Case for Prison Needle and Syringe Programs in Canada*;
 - b. 2010, *Under the Skin: A People's Case for Prison Needle and Syringe Programs*;
 - c. 2016, in collaboration with Dr. Emily van der Meulen, Toronto Metropolitan University, and Prisoners with HIV/AIDS Support Action Network ("PASAN"), *On Point: Recommendations for Prison-Based Needle and Syringe Programs in Canada*; and
 - d. 2022, again in collaboration with Dr. van der Meulen, *Points of Perspective: Research Report on the Federal Prison Needle Exchange Program in Canada*, following which we co-authored peer-reviewed journal articles drawing from our empirical research: "Securitizing carceral health: a realist review of Canada's prison needle exchange program," *Health and Justice*, 2025 and "Drug Use Stigma and Reprisal: Barriers to Prison Needle Exchange in Canada," *The Prison Journal*, 2024.
34. In 2006, drawing on its collaboration with the BC Centre for Excellence in HIV/AIDS, the Legal Network published *Mandatory Minimum Sentences for Drug Offences: Why Everyone*

Loses, and subsequently submitted briefs to and/or appeared before, the House of Commons Standing Committee on Justice and Human Rights in 2006 and in 2009, and in 2017, submitted a brief to the Department of Justice on this topic, in response to its review of criminal sentencing policy.

35. In 2007, the Legal Network collaborated with PASAN to produce the pioneering report *Hard Time: HIV and Hepatitis C Prevention Programming for Prisoners in Canada*, outlining legal and human rights issues related to HIV and HCV prevention and harm reduction in prisons, and updated this report in 2025 with *Hard Time Persists: HIV and Hepatitis C Prevention Programming for Prisoners in Canada*.
36. In 2012, the Legal Network conducted research on alternatives to imprisonment for people who use drugs, analyzed in a detailed report entitled *Impaired Judgment: Assessing the Appropriateness of Drug Treatment Courts as a Response to Drug Use*.
37. In 2017, as a public legal information initiative, the Legal Network produced wallet cards outlining the protections afforded by the newly passed *Good Samaritan Drug Overdose Act*, and in 2019-2020, evaluated and summarized the impact of the law and public legal education materials in a report entitled *The Good Samaritan Drug Overdose Act: The Good, The Bad, and The Ineffective*. Drawing from this primary research, the Legal Network also co-authored three peer-reviewed journal articles on this topic:
 - a. “‘That’s why people don’t call 911’: Ending routine police attendance at drug overdoses,” in the *International Journal of Drug Policy* in 2021;
 - b. “‘The Law Doesn’t Protect Me’: Examining the Effectiveness of Good Samaritan Drug Overdose Legislation,” in *Substance Use & Misuse* in 2022 and
 - c. “‘The Law is too Grey’: Liminal Legality and Moral Injury in Encounters with Drug Law Enforcement,” in *Social & Legal Studies* in 2024.
38. In 2020, the Legal Network produced a report entitled *Gendering the Scene: Women, Gender-Diverse People, and Harm Reduction in Canada*, highlighting the state of harm reduction services in Canada in the context of gender and reviewing the largely ignored impacts of laws

and policies that affect women and gender-diverse people who use drugs. One key finding was the numerous barriers women and gender-diverse people who use drugs face in accessing shelter and how this increased their risk of violence and other harm.

39. In 2020, the Legal Network produced *Decriminalizing People who use Drugs: A Primer for Municipal and Provincial Governments*, to support governments in requesting local exemptions from the federal health minister to effectively decriminalize simple drug possession in their jurisdictions, and the Legal Network's research on this topic has been cited by local health officers and municipal councilors in Vancouver, Montreal, and Toronto to advance such reform. This informed the Legal Network's central involvement and leadership in the co-development of *Decriminalization Done Right: A Rights-Based Path for Drug Policy* report noted above at subparagraph 11 (k).
40. In 2020, the Legal Network was invited by Health Canada to participate in, and present at, a Knowledge Exchange series on "Regulating Supervised Consumption Sites and Services," following Health Canada's Notice of Intent to develop new regulations under the *CDSA*. At the meeting, the Legal Network, together with Dr. Elaine Hyshka, a public health researcher from Alberta, presented, *Modernizing Canada's Supervised Consumption Services Regulatory Framework: Aligning with Current Evidence and Enabling Innovation*.
41. In 2022, the Legal Network together with the Centre on Drug Policy Evaluation, made written and oral submissions to the House of Commons Standing Committee on Justice and Human Rights regarding its study of *Bill C-5*, focusing on the section of the bill that pertained to "Evidence-based Diversion Measures" and proposing specific amendments.
42. In 2024, the Legal Network released *Connection, Care, Community: Strengthening Harm Reduction for GBT2Q People who Use Drugs in Canada*, and an accompanying policy brief with nearly 30 recommendations to this end, including recommendations regarding legislative and policy reform.
43. In 2025, the Legal Network released *It's Not So Simple: The impact of simple drug possession and trafficking offences on health equity*, examining the consequences of recent shifts in how police and prosecutors pursue and lay drug possession and trafficking charges.

44. In 2026, the Legal Network published *Know Your Rights: Ontario's Safer Municipalities Act*, to provide legal information about what the law says, the powers that police have under the law, and what rights people have if they are stopped by police under the law.

The Legal Network's Policy Work on Access to Shelters for People who use Drugs

45. Based on its 2020 findings in *Gendering the Scene: Women, Gender-Diverse People, and Harm Reduction in Canada* (cited above) regarding the lack of shelter for women and gender-diverse people who use drugs in Canada, the Legal Network convened a national roundtable of violence against women (VAW) shelters across Canada engaged in low-barrier, harm reduction practices to better understand how these organizations remain accessible to all women and gender-diverse individuals fleeing violence, including those who use drugs. This resulted in the 2024 report *Towards Access for All: Best and Promising Practices from Low-Barrier, Harm Reduction Shelters in Canada*, detailing practices that aim to promote shelter accessibility across Canada.
46. Expanding on this research, Legal Network staff conducted a policy scan and met with front-line staff, directors, and peers from emergency shelters, homeless shelters, and transition houses to understand how Canadian jurisdictions promote shelter accessibility for all people who use drugs. This resulted in a 2025 report *Shelter Right: A Blueprint for Inclusive Shelters in Canada*, detailing policies and practices of low-barrier shelters for people who use drugs across Canada and recommendations to reduce persistent barriers.
47. More recently, in 2026, the Legal Network produced *Responsive Shelter*, a series of “Know Your Rights” resources addressing the rights of women, trans, and gender-diverse people who use drugs to access and remain in VAW shelters in Ontario. The resources explain the legal protections against discrimination based on drug use, shelters’ obligations to accommodate people who use drugs, and the rights of shelter residents when using, carrying, or storing drugs. They also address interactions with police and child protection services, including the particular challenges faced by parents who use drugs while living in shelters.
48. This work was also informed by engagement with shelters across Ontario to better understand the challenges they face in supporting people who use drugs and to identify promising

practices. The Legal Network documented examples of low-barrier, harm reduction-based approaches adopted by a select few shelters across the province, including flexible admission policies, overdose prevention measures, individualized safety planning, and approaches that minimize unnecessary police involvement. Together, these resources aim to improve access to safe and inclusive shelter services for people who use drugs.

C. THE WATERLOO REGION DRUG ACTION TEAM

49. The WR DAT is a volunteer-run organization in the Waterloo Region, dedicated to eliminating drug-related risks and harms by advancing evidence-informed drug policies to improve individual and community health and safety in Waterloo Region. Its mission is to facilitate systemic change through community collaboration grounded in evidence, equity, and the expertise of people most affected by drug policy.
50. In the present proceeding, WR DAT is represented by one of its founding volunteers, Michael Parkinson. Mr. Parkinson also serves as the Executive Director of the Drug Strategy Network of Ontario. He has worked in housing, homelessness, and drug policy in the Waterloo Region since 1995. Prior to his role with WR DAT, Mr. Parkinson was employed by its predecessor organization, the Waterloo Region Crime Prevention Council (“WRCPC”). WRPDC was a multi-sectoral, community-led entity, administratively situated within the Regional Chair’s office. It served as advisory body to the Region of Waterloo Council.
51. In 2022, the WRCPC was wound down because it was defunded by the Regional Municipality of Waterloo. WR DAT was established by volunteers in 2021-22, to fill gaps in drug-related policy and practice as WRCPC was being closed.
52. The membership of WR DAT is a mix of direct service workers (e.g. shelters and outreach workers), health and medical services, social services, people who consume unregulated substances, academics from area universities and colleges, and community members. The WR DAT receives no funding.
53. The WR DAT’s functions also include an advisory role to municipal and regional councilors. The WR DAT has encouraged Regional Council to develop a new community-led regional drug strategy that meets the needs of the local community.

54. The WR DAT and its predecessor, WRCPC, have significant knowledge of drug policy as it impacts people living in the Waterloo Region. Highlights of these organizations' collective work include:

- a. In 2006, Mr. Parkinson began leading the WRCPC's drug-related work at the intersection of substance use, crime, victimization, and safety. WRCPC became known as a trusted leader in drug-related issues at local, provincial, and national levels.
- b. The WRCPC was the first in Canada to identify bootleg fentanyl as a potential threat to health and safety in 2008, issuing the first Advisory in 2013 with Peterborough Police Service, and in 2016 with the Ontario Association of Chiefs of Police.
- c. Between 2006 and 2022, the WRCPC was responsible for facilitating many significant drug-related policy interventions: the Waterloo Region Integrated Drugs Strategy; the Overdose Monitoring and Response System; naloxone provision via Ontario's health units and correctional services; development and passage of the *Good Samaritan Drug Overdose Act*; and mobile health services.
- d. WRCPC was responsible for hosting hundreds of public education and training events; facilitating primary research with participants who used drugs; and developing or informing several strategic plans in the Region, such as the Violence Prevention Plan, Youth Engagement Strategy, and the Homelessness to Housing Plan.
- e. During the COVID-19 pandemic, WRCPC assisted in establishing a temporary, low-barrier shelter that primarily served men who were experiencing addiction to unregulated drugs, primarily fentanyl. The shelter was the first to include supervised consumption services, extensive wrap-around supports, and provided a new operating template for other shelters.
- f. In 2021, WR DAT collaborated on a unique research project with participants who were surviving in shelters or encampments, and regularly consuming unregulated substances. The research - [\(Un\)Safe](#) - was shared with elected officials, community

- members, and service providers, and via webinars. The research laid the foundation for a large federal grant aiming to assist PWUD experiencing homelessness.
- g. In 2023-2024, when the province of Ontario announced the defunding of the Consumption and Treatment Services (“CTS”) site near the 100 Victoria Street site, the WR DAT collaborated with area stakeholders and urged the province to reverse direction. In September 2024, both the [City of Kitchener](#) and the [Region of Waterloo](#) passed separate motions imploring the province to not defund Kitchener’s CTS site.
 - h. Regardless, the CTS site was forced to close. Following the closure of the CTS site, anticipating a rise in public drug consumption and overdoses, the WR DAT hosted emergency overdose response training sessions for downtown businesses and residents.
 - i. In March of 2025, WR DAT intervened in coalition with the CDPC, Toronto Overdose Prevention Society, and Toronto Harm Reduction Alliance before the Ontario Superior Court of Justice in *The Neighbourhood Group Community Services et al v HMKRO* regarding legislation causing the closure of SCS/CTS sites in Ontario. WR DAT joined this coalition of intervenors because one of the applicants affected by the provincially mandated CTS closures is from Kitchener. Details on this intervention are also included at paragraphs 11(d) and 22(a), above.
 - j. The WR DAT is currently part of a research project funded by the Canadian Institute for Health Research and led by faculty of the University of Waterloo, examining issues of drug possession in Waterloo Region.
55. The collective experience and expertise possessed by WR DAT’s members has no equal in the Waterloo Region. In particular, the WR DAT brings decades of experience working at both the individual and systems levels at the intersection of substance use, homelessness, individual and community safety. WR DAT’s expertise and knowledge of the local context will assist the Court.

C. THE DRUG POLICY INTERVENERS' INTEREST IN THIS PROCEEDING

56. I have reviewed the Decision, written submissions made and relevant portions of the record in this matter. Based on these, it is my view that, in coalition, the Legal Network, WR DAT, and CDPC have a substantial interest in the matters raised, and special expertise and perspective that will assist this Court with the issues raised in this appeal.
57. The record in this appeal demonstrates that most of the Named Respondents living at 100 Victoria Street ("the Encampment") are people who use drugs. Their experiences of homelessness are impacted by drug policy and legislation in Ontario and the Region of Waterloo. The Drug Policy Interveners collectively bring significant expertise on issues of drug policy and its lived impacts on people who use drugs.
58. As outlined above, the Drug Policy Interveners have been centrally engaged in all manner of harm reduction service policy development, drug policy reform, including with regards to the intersection between drug policy and shelter or housing access, and related education across Canada for decades.
59. The Drug Policy Interveners balance national and local perspectives. As national organizations, the CDPC and Legal Network represent and advocate for individuals in Ontario and across the country, who will be directly and significantly affected by the outcome of this matter. As a local organization based in Waterloo Region, WR DAT brings a critical local perspective to issues of drug policy in the region, which directly impact many of the Named Respondents.
60. All three of the Drug Policy Interveners represent and collaborate with a range of individuals and organizations, including unhoused people who use drugs, whose lives, health, and liberty will be affected by this Court's analysis of the matter. Our interest is more than merely jurisprudential in nature.
61. All three of the Drug Policy Interveners have done significant work in coalition with those who provide front-line services to people who use drugs and people who are experiencing homelessness. They hold significant knowledge regarding drug policy and its interplay with the housing crisis, and have longstanding history of identifying stigma in local policy contexts,

including misinformed understandings of public safety related to drug use and harm reduction services, particularly for people also impacted by lack of housing and other health services.

62. The Drug Policy Interveners have expertise on, and deep concern about, the rights of unhoused people who use drugs or are perceived to use drugs across Canada, and how these rights are impacted by drug policy choices. The review of these issues in Ontario has implications for the communities CDPC and the Legal Network serve in this province, but also on the approach that will be taken to similar issues all over the country.
63. The determinations of this honourable Court will transcend the facts of this particular appeal. They will affect the life, safety, and liberty of unhoused people who use drugs living in encampments across Ontario and Canada.

D. THE COALITION'S DISTINCT PERSPECTIVE

64. The networks of the Legal Network, CDPC, and WR DAT include both a local and national cross-section of people who use drugs, families of people who use drugs, service providers, legal organizations, drug policy researchers and experts, and healthcare professionals. Jointly, our organizations are uniquely positioned to provide the Court with understandings of drug policy and principles for legal analysis that are essential to addressing the questions before the Court.
65. If granted leave to intervene, our legal submissions will be informed by years of firsthand knowledge and experience working on evidence-based, public health-focused drug policy and health services provision in Canada. The Drug Policy Interveners have served as trusted sources to courts, legislators, municipal councils, and other public bodies where analysis of harm reduction health services, drug policy, and legislation is relevant to their work.
66. If granted leave to intervene, the Drug Policy Interveners will confine their submissions as directed by the Court and will consult accordingly to ensure that their submissions will not duplicate other submissions or delay the progress of the proceedings.

67. I confirm that I have reviewed the written representations to be filed with this motion for leave to intervene in the proceeding and that they accurately summarize the submissions we would propose to make to the Court, if granted leave to intervene. The Drug Policy Interveners will:
- a. abide by the timetable set by this Court;
 - b. comply with any terms and conditions imposed if granted leave to intervene; and
 - c. not be seeking any costs associated with the intervention or the appeal (and requests that none be awarded against them).
68. The Drug Policy Interveners have communicated with Respondents' counsel, who is supportive of the intervention.

AFFIRMED before me by video conference in accordance with O. Reg. 431/20 at the City of Toronto on October 21, 2026.

Signed by:

Maryana Kapushchak

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Maryana Kapushchak

A Commissioner for Taking Affidavits

Maryana Kapushchak
a Commissioner, etc., Province of Ontario for
Kastner Ko LLP, Barristers and Solicitors,
Expires August 25, 2028

The affiant was located in Vancouver, BC.

Signed by:

DJ Larkin

BBEE3E740B5A41E

DJ Larkin

Applicant

*This is Exhibit A referred to in
the affidavit of DJ Larkin,
affirmed before me this 21st day of
October, 2026.*

Signed by:

Maryana Kapushchak

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A COMMISSIONER FOR TAKING AFFIDAVITS

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

COURT OF APPEAL FOR ONTARIO

BETWEEN:

THE REGIONAL MUNICIPALITY OF WATERLOO

Appellant
(Applicant)

-AND-

**JOSEPHINA DUGAS, TERRA-LYNN WEBER, AVERY AMENT, AARON PRICE,
JEREMY LINTON, JEREMY NICHOL, JAMES HAMMOND, JAKOB STUBBS,
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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)

**DRAFT FACTUM OF THE PROPOSED INTERVENER
THE CANADIAN DRUG POLICY COALITION & THE HIV LEGAL NETWORK &
WATERLOO REGION DRUG ACTION TEAM
(Pursuant to Rule 13.02 of the Rules of Civil Procedure, PRO 1990, Reg 194)**

October 21, 2026

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**Amicus Curiae for Persons Unknown,
The Mental Health Legal Committee**

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PART I – OVERVIEW OF FACTS AND POSITION

1. The lives and constitutional rights of people who use drugs are at the heart of this appeal.
2. The Canadian Drug Policy Coalition, the HIV Legal Network, and the Waterloo Region Drug Action Team (collectively, the “Drug Policy Interveners”) accept the facts as described in the Respondents’ materials but amplify the critical fact that the large majority of the Named Respondents self-identify as people who use drugs (“PWUD”).¹
3. As unhoused PWUD, these Respondents’ lives are tightly regulated by a complex network of drug policies and legislation. On a daily basis, they are subject to stigma, criminalization, and legal precarity because of their status as PWUD.
4. The constitutional analysis before the Court cannot be divorced from this legal context and these Respondents’ lived realities.
5. Accordingly, the Drug Policy Interveners submit that the Court’s assessment of By-Law 25-021 (the “By-Law”) must account for the legislative context governing drug use in the Province of Ontario and the Region of Waterloo. The Drug Policy Interveners submit that this drug policy context raises three important considerations for the *Charter* analysis:
 - a. First, the By-Law’s effects cannot be treated as merely site-specific where PWUD lack lawful, accessible, and practically viable alternatives to shelter themselves.
 - b. Second, the analysis cannot be confined to “existing residents” where legislative choices increasingly make transience the on-the-ground reality in encampments, particularly for PWUD.
 - c. Third, homelessness becomes structurally immutable where legislative choices both reflect and reinforce stigma associated with drug use among unhoused people, while materially constraining access to stable housing.

¹ *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”*] (Shared Respondent Backgrounds).

PART II – STATEMENT OF ARGUMENT

6. The analysis in this case cannot occur in a vacuum. The effects of the By-Law on those who shelter at 100 Victoria Street (the “Encampment”) must be assessed in their full context, “including the social, economic and cultural context in which the legislation was enacted.”²
7. For PWUD, the relevant legal context extends beyond the four corners of the By-Law; it includes legislative and policy choices governing drug use in Ontario and the Region.
8. Courts must assess the effects of an impugned law in its full legal context, “irrespective of how the parties frame their challenge.”³ Although the Drug Policy Interveners acknowledge that “courts play no role in the policy development process, no role in the choices made by the government in proposing legislation, and no role in the legislature’s decision to pass a law,”⁴ the Court’s legitimate constitutional function requires consideration of the context created by related policy and legislative choices.⁵ Failure to consider the “overall effects” of interrelated laws may constitute an error of law.⁶
9. This principle is essential where an affected vulnerable population is subject to a “complex web of statutes and regulations.”⁷ For unhoused PWUD, this “web of statutes and regulations” includes Ontario’s drug-policy framework. Provincial laws governing access to harm reduction services, public drug use, and drug-related activity in rental premises shape the effects of the By-Law on PWUD.
10. The Appellants, the Regional Municipality of Waterloo (the “Region”) and the Attorney General of Ontario (“Ontario”), argue that the By-Law is constitutional because: (1) it is site-

² *R v Levkovic*, [2010 ONCA 830](#), para [30](#).

³ *Canadian Council for Refugees v Canada (MCI)*, [2023 SCC 17](#), para [69](#).

⁴ *Cycle Toronto v Ontario (Attorney General)*, [2026 ONCA 582](#), para [21](#).

⁵ Ruth Sullivan, *Statutory Interpretation*, 3rd ed (Toronto: University of Toronto Press, 2016) at 179, 181.

⁶ *Ontario (AG) v Working Families Coalition (Canada) Inc*, [2025 SCC 5](#), para [43](#).

⁷ *Ontario (Attorney General) v G*, [2020 SCC 38](#), para [51](#).

specific; (2) it affects only those counted as residing at the encampment in April of 2025; and (3) its effects are mitigated by offers of alternative accommodation to “existing residents”.

11. Those submissions cannot, however, be understood in isolation from the related legal context. Ontario and the Region’s recent laws and policies have created a reality where the Encampment is the only shelter of last resort for many unhoused PWUD.
12. In this context, removal from a particular Encampment does more than require a person to relocate; it displaces PWUD into conditions that pose greater risks to their life, liberty, and security of the person and subjects them to further discriminatory treatment.

A. Drug Policy Context in Ontario and the Region

13. In the last two years, Ontario has enacted several measures that directly affect where people can use drugs, whether PWUD can access appropriate healthcare, how public drug use is enforced, housing security for PWUD, and the risk of harm when using drugs in isolation.
14. These measures include eliminating access to services and safer spaces to consume drugs. The *Community Care and Recovery Act*, which came into force on April 1, 2025, restricts the establishment and operation of supervised consumption services (“SCS”) within 200 metres of designated premises, including schools and child-care centres in Ontario.⁸ It also requires provincial approval before municipalities and local boards may seek or support a federal exemption to establish or maintain a SCS.⁹
15. Although the 200-metre prohibition was suspended in *The Neighbourhood Group et al v HMKRO*, 2025 ONSC 1934 (“*TNG*”) pending the determination of a *Charter* challenge to the

⁸ *Community Care and Recovery Act*, 2024, [SO 2024, c 27, Sch 4](#), s. 2.

⁹ *Community Care and Recovery Act*, s. 3.

legislation,¹⁰ the restrictions were subsequently accompanied by provincial funding decisions that resulted in the closure of most services across the province, including in the Region.¹¹

16. As the court noted in *TNG*, studies indicate that 90.5% of SCS users are homeless or unstably housed,¹² and SCS users “are amongst the most marginalized people in society.”¹³
17. Ontario has also developed new provincial offences for consuming drugs in public places. The *Safer Municipalities Act* came into force in Ontario on June 5, 2025. It enacted the *Restricting Public Consumption of Illegal Substances Act*, which authorizes law enforcement officers to direct a person whom they have “reasonable grounds to believe” is consuming an “illegal substance” in a “public place” to stop consuming the drug and/or leave the place.¹⁴ A person who does not comply commits a provincial offence punishable by a fine of up to \$10,000, imprisonment for up to six months, or both.¹⁵ “Public place” is defined broadly enough to include locations where people commonly shelter, including the Encampment.
18. These new provincial offences operate alongside, and in addition to, the existing criminal prohibitions on possession and trafficking under the *Controlled Drugs and Substances Act*.¹⁶
19. Ontario’s legislative choices have also made it significantly more difficult for PWUD to access and maintain rental housing. Since July 1, 2026, the *Measures Respecting Premises with Illegal Drug Activity Act* creates significant financial penalties for landlords in Ontario who knowingly permit drug-related offences on their premises, including drug production and

¹⁰ *The Neighbourhood Group et al v HMKRO*, [2025 ONSC 1934](#) at para [60](#) [“Neighbourhood Group”].

¹¹ See e.g., “More desperation for homeless people as shelter, CTS site closes”, RCOM Volume 1 at Tab 42 [Exhibit “B” to the Affidavit of Sara Escobar].

¹² *Neighbourhood Group* at [para 17](#).

¹³ *Neighbourhood Group* at [para 4](#).

¹⁴ *Restricting Public Consumption of Illegal Substances Act*, 2025, [SO 2025, c 5, Sch 1](#), s. 3.

¹⁵ *Restricting Public Consumption*, s. 9.

¹⁶ *Controlled Drugs and Substances Act*, [SC 1996, c 19](#), ss. 4-5.

trafficking.¹⁷ By creating such significant penalties, the *Measures Respecting Premises with Illegal Drug Activity Act* discourages landlords from renting to or retaining PWUD as tenants.

20. All the while, the *Residential Tenancies Act*, permits landlords to seek an eviction where a tenant or another occupant “commits an illegal act”, which includes possessing drugs for personal use.¹⁸ In cases where a tenant, occupant, or visitor produces or traffics an “illegal drug,” the *Residential Tenancies Act* provides for an expedited process for eviction.¹⁹
21. Ontario’s legislative choices have made the conditions of homelessness more dangerous for PWUD, especially in the context of the unregulated and variable drug supply, which courts have found to be a primary driver of harm and death.²⁰ Restrictions on SCS significantly narrow access to places where people – particularly those who are unhoused – can use drugs without the threat of criminalization and connect with health, harm reduction, housing, and other supports. At the same time, increased penalties for public drug use heighten the risks of using drugs in the very spaces to which people turn when safer indoor options are unavailable.
22. The Region’s own policy choices further exacerbate the By-Law’s effects on PWUD. The Drug Policy Interveners agree with the Respondents that the By-Law cannot be examined apart from the Code of Use By-Law and Amendments (the “CUB”). While the By-Law authorizes removal from the Encampment, the CUB prohibits outdoor sheltering elsewhere in the Region.²¹ Their combined effect is to leave many chronically homeless people – including the Named Respondents, most of whom are PWUD – without a lawful place to shelter.

¹⁷ *Measures Respecting Premises with Illegal Drug Activity Act*, 2025, [SO 2025, c 6, Sch 8](#), ss. 2, 12.

¹⁸ *Residential Tenancies Act*, 2006, [SO 2006, c 17](#), s. 61(1).

¹⁹ *Residential Tenancies Act*, 2006, [SO 2006, c 17](#), s. 61.

²⁰ *Harm Reduction Nurses Association v British Columbia (AG)*, [2023 BCSC 2290](#), [para 79](#), upheld on appeal: [2024 BCCA 87](#). [“HRNA, BCSC”] at [para 66](#); *R v Kalicum*, [2026 BCSC 1855](#) at [para 73](#).

²¹ *Waterloo*, 2026, para 162. See also: Named Respondents’ Factum, para 62.

23. For PWUD, the Encampment is particularly important because many indoor alternatives – including shelters and motels – either prohibit drug use outright or force people to consume drugs in secret, isolated from peer safety networks.²² For this reason, the application judge appropriately found that shelters and motels are “are not always appropriate or available for people who ... [have] substance use issues.”²³
24. This complete legal and policy context cannot be ignored. Fines, displacement, heightened surveillance, arrests, and other penal consequences destabilize people who are already living in poverty and relying on precarious housing arrangements.²⁴ New risks for landlords, together with expedited eviction processes, further encourage the exclusion of PWUD from housing. The CUB’s blanket prohibition on outdoor sheltering leaves PWUD with nowhere left to go.
25. In this context, the Encampment provides a last resort source of shelter, community, peer support, and safety. An Encampment’s fixed and known location also enables health, outreach, and harm reduction workers to find and support residents.²⁵ Rather than requiring people to search for services while moving between isolated locations, residents can be reached by mobile healthcare and outreach workers at a known site close to essential services.²⁶
26. Displacement from encampments disrupts those protective networks, impedes access to health and other supports, and pushes people into remote and isolated spaces, where they are more likely to use drugs alone, causing them to be “isolated and out of sight [... and] at a much higher risk of dying from an unreversed overdose.”²⁷ For these reasons, courts have found that displacement can cause irreparable harm: “displacement can override ingrained safety habits

²² See e.g., Affidavit of Aaron Price, RCOM, Vol 1, Tab 24 at paras. 12, 19.

²³ *Waterloo*, 2026, para 145.

²⁴ *HRNA, BCSC*, [paras 73-88](#).

²⁵ *Waterloo*, 2026, para 52.

²⁶ *Waterloo*, 2026, para 52.

²⁷ *HRNA, BCSC*, [para 79](#).

– including a tendency to use drugs with others – leading people to use alone and far from medical help. Displacement, to this extent, may readily contribute to fatalities and life-threatening infections.”²⁸

27. The By-Law must be assessed against this reality, and its effects must be understood within this broader legal framework that makes transience, exclusion, and heightened risk the lived reality for many unhoused PWUD.

B. The By-Law’s Effects are Not “Site-Specific”

28. Ontario and the Region submit that the By-Law is constitutional because it is “site-specific,”²⁹ In their submission, the fact that the By-Law facially only applies to 100 Victoria Street distinguishes it from “every other Ontario case on encampments.”³⁰
29. This purported distinction overlooks the on-the-ground reality for unhoused PWUD and is semantic when considered alongside the CUB and Ontario’s drug policy framework.
30. It is well-established that “both purpose and effect of legislation are relevant in determining constitutionality.”³¹ The principle has permeated *Charter* jurisprudence since its earliest days.³² While the By-Law may be site-specific in *purpose*, it is not site-specific in *effect*.
31. Taken in context, the effect of the By-Law is to deprive unhoused PWUD of a shelter of last resort while they face: prohibitions on tenting elsewhere in the Region; barriers to temporary indoor shelters; loss of virtually all access to safer spaces to use drugs; barriers to accessing stable rental housing; and increased punitive consequences for drug use. Together, these conditions push PWUD further into poverty, housing precarity, and life-threatening isolation.

²⁸ *HRNA, BCSC*, [para 82](#).

²⁹ See e.g., Factum of the Appellant, The Regional Municipality of Waterloo, paras 50-53; 57; 100 [Region Factum]; Factum of the Appellant, the Attorney General of Ontario, paras 41-46 and 64-70.

³⁰ Region Factum, para 50.

³¹ *R v Big M Drug Mart Ltd.*, [1985] [1 SCR 295](#), 331. Emphasis added.

³² See e.g., *Big M Drug Mart*; *R v Morgentaler*, [1988] [1 SCR 30](#), 62.

32. The Appellant, Ontario, characterizes the issue as a “positive right to enter and shelter on public property”.³³ This is inaccurate. Rather, people must shelter *somewhere*. Here, the By-Law’s effects, when considered in context, create a blanket prohibition on sheltering and enable state-sanctioned evictions – a clear deprivation of section 7 rights.
33. In this regard, this case is squarely aligned with the dominant trend in encampment jurisprudence, which has consistently found that blanket prohibitions on sheltering and/or by-laws that enable forced evictions constitute deprivations of section 7 rights. The judge below correctly followed precedent when he found deprivations of the rights to life (because forcing persons to “sleep rough” exposes them to a risk of serious harm, including death),³⁴ liberty (because of a loss of personal autonomy, coupled with a risk of arrest),³⁵ and security of the person (because of state-imposed psychological stress and physical risk).³⁶

C. Constitutional Obligations Cannot be Confined to “Existing Residents”

34. The Region and Ontario submit that the application judge erred by assessing the effects of the By-Law on persons not captured by the By-Law’s narrow definition of “Existing Residents” – that is, persons who were physically present at the Encampment on April 16, 2025.³⁷
35. However, the factual reality is that most Encampment residents, including the Named Respondents, “move in and out of the Encampment as they lose and gain indoor shelter.”³⁸ This reality is amplified for PWUD, for whom the application judge found that emergency shelters and motels are “not always appropriate or available.”³⁹ The broader drug policy

³³ Ontario Factum, para 53.

³⁴ *Waterloo, 2026*, para 186.

³⁵ *Waterloo, 2026*, para 187.

³⁶ *Waterloo, 2026*, para 188.

³⁷ See e.g., Ontario Factum, paras 50-63; Region Factum, paras 8-9; 33-36; 55; 60-61; 100.

³⁸ *Waterloo, 2026*, para 165.

³⁹ *Waterloo, 2026*, para 145.

context contributes to this instability through increased barriers to housing, destabilizing criminal charges, and forced displacement from public space.

36. Considering the judge’s factual findings and the drug policy context, the Region cannot limit its constitutional obligations to those present at the Encampment on an arbitrarily chosen date.
37. Collectively, the Appellants’ arguments regarding site specificity and Existing Residents lay bare an impoverished view of *Charter* rights and perpetuate a “false dichotomy” that undermines the government’s domestic and international law commitments to pursue rights-based measures to address homelessness.⁴⁰ The reality is that “no right can exist without some form of corresponding obligation.”⁴¹ Focusing on the “site specific” form of the By-Law or only analyzing its effects on “Existing Residents” would produce an arbitrary outcome where the government can self-select to whom it owes constitutional obligations.

D. Homelessness is made Structurally Immutable for many PWUD

38. The Drug Policy Intervenors endorse the Respondents’ submission that recognizing an analogous ground under s. 15 requires a nuanced and multi-factorial approach.
39. However, on the record before the Court, it is not necessary to consider the second *Corbiere* factor: whether it is a trait that “the government has no legitimate interest in expecting us to change.”⁴² This is because homelessness is made immutable by the structural legal, financial and social constraints⁴³ imposed on unhoused people, in particular PWUD, which create a circumstance that simply “is not within the control of the individual.”⁴⁴ A substantive equality

⁴⁰ *Waterloo*, 2026, para 138.

⁴¹ *Waterloo*, 2026, para 138.

⁴² *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203, [para 13](#) [“*Corbiere*”].

⁴³ *Miron v Trudel*, [1995] 2 SCR 418, [para 153](#).

⁴⁴ *Andrews v Law Society of British Columbia*, [1989] 1 SCR 143, 195 (per La Forest J). See also: *Quebec (AG) v Kanyinda*, 2026 SCC 7, [para 222](#) (per Wagner C.J.)

analysis requires consideration of distinctions that “result from the law’s interaction with other statutes or circumstances,” including laws governing drug use, public space, and housing⁴⁵ that create and perpetuate homelessness. Even where housing status could be changed at some future point, that possibility does not negate present discrimination, nor does it deprive unhoused people of constitutional protection while it lasts.⁴⁶

40. Homelessness is the locus of the discrimination in the present case – one which disproportionately impacts and perpetuates stigma against PWUD. Homelessness has served as an “illegitimate and demeaning prox[y] for merit-based decision-making,”⁴⁷ and Ontario courts have acknowledged it is a “marginalized characteristic.”⁴⁸ The stigma attached to substance use, and the laws governing it, are intertwined with housing status. This connection arises whether an unhoused person has a substance use disorder, uses drugs occasionally and faces an overdose risk from unregulated supply, or is merely perceived to be a PWUD.
41. In fact, the intersecting stigma of drug use and homelessness is so pervasive in our society that it has even permeated some judicial decision-making. Recently, in *Heegsma v. Hamilton (City)*, 2026 ONCA 726, this Court had to remit a matter back to Superior Court because the judge below relied on impermissible stereotypes and myths about unhoused PWUD, leading the judge to improperly categorically reject their evidence as lacking credibility.⁴⁹

PART III – ORDER REQUESTED

42. The Drug Policy Intervenors respectfully request that this Court make an order in accordance with the above principles. They seek no costs and ask that no costs be ordered against them.

⁴⁵ See *Corbiere*, [para 62](#).

⁴⁶ *Falkiner v Ontario (Minister of Community and Social Services)*, [2002] 59 OR (3d) 481, [para 89](#).

⁴⁷ *Corbiere*, [para 13](#).

⁴⁸ *Neighbourhood Group*, [para 52](#).

⁴⁹ *Heegsma v Hamilton (City)*, [2026 ONCA 726](#), paras 4, 67, 72.

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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SCHEDULE “A” – LIST OF AUTHORITIES

1. *The Regional Municipality of Waterloo v Named Respondents and Persons Unknown*, 2026 ONSC 2971
2. *R v Levkovic*, 2010 ONCA 830
3. *Canadian Council for Refugees v Canada (MCI)*, 2023 SCC 17
4. *Cycle Toronto v Ontario (Attorney General)*, 2026 ONCA 582
5. Ruth Sullivan, *Statutory Interpretation*, 3rd ed (Toronto: University of Toronto Press, 2016)
6. *Ontario (AG) v Working Families Coalition (Canada) Inc*, 2025 SCC 5
7. *Ontario (Attorney General) v G*, 2020 SCC 38
8. *The Neighbourhood Group et al. v. HMKRO*, 2025 ONSC 1934
9. *Harm Reduction Nurses Association v British Columbia (AG)*, 2023 BCSC 2290
10. *British Columbia (Attorney General) v Harm Reduction Nurses Association*, 2024 BCCA 87
11. *R v Kalicum*, 2026 BCSC 1855
12. *R v Big M Drug Mart Ltd.*, [1985] 1 SCR 295
13. *R v Morgentaler*, [1988] 1 SCR 30, 62
14. *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203
15. *Miron v Trudel*, [1995] 2 SCR 418
16. *Andrews v Law Society of British Columbia*, [1989] 1 SCR 143
17. *Quebec (Attorney General) v Kanyinda*, 2026 SCC 7
18. *Falkiner v Ontario (Minister of Community and Social Services)*, [2002] 59 OR (3d) 481
19. *Heegsma v Hamilton (City)*, 2026 ONCA 726

SCHEDULE “B” – LIST OF STATUTES

Community Care and Recovery Act, 2024, SO 2024, c 27, Sch 4

ss. 2, 3

Prohibition re location of supervised consumption site

2 (1) Subject to subsection (4), no person shall establish or operate a supervised consumption site at a location that is less than 200 metres, measured in accordance with subsection (2), from a designated premises.

Measurement

(2) Subject to the regulations, the distance mentioned in subsection (1) shall be measured in accordance with the following rules:

1. The distance shall be measured from the geometric centre of the building in which a supervised consumption site is located.
2. In the case of a school, the distance shall be measured to the door primarily used by the public to enter the building in which the school is located for the purpose of accessing the area where the school operates.
3. In the case of a private school, the distance shall be measured from,
 - i. the centre of the building in which the school is located, as determined by the private school and made available on a Government of Ontario website, or
 - ii. if the private school is located only in a portion of a building, the centre of the portion of the building in which the school is located, as determined by the private school and made available on a Government of Ontario website.
4. In the case of a child care centre or EarlyON child and family centre, the distance shall be measured to the geographic coordinates of the street address of the child care centre or EarlyON child and family centre, determined through the use of software or a web service that implements an address geocoding process.
5. In the case of a premises prescribed for the purposes of clause (e) of the definition of “designated premises” in [section 1](#), the distance shall be measured to the point specified in the regulations.
6. If the measurement results in a number of metres that is not a whole number, the number shall be rounded up to the nearest whole number.

Geocoding

(3) If the regulations provide for a specific software or web service for the purposes of paragraph 4 of subsection (2), the distance to a child care centre or EarlyON child and family centre shall be measured using the prescribed software or web service.

Exception

(4) If a private school began providing instruction or a child care centre began operating after the day the *Safer Streets, Stronger Communities Act, 2024* received Royal Assent, subsection (1) does not apply to a supervised consumption site with respect to the private school or child care centre, as the case may be, until the day that is 30 days after the day the private school began providing instruction or the child care centre began operating.

Same

(5) Despite subsection (4), if the Minister specifies a day on which subsection (1) applies to a supervised consumption site, subsection (1) applies to the supervised consumption site as of that day.

[...]

Application for exemption to decriminalize

3 (1) Subject to such exceptions as may be prescribed, despite [sections 7 and 8](#) of the *City of Toronto Act, 2006* and [sections 9, 10 and 11](#) of the *Municipal Act, 2001*, a municipality or local board does not have the power to apply to Health Canada for an exemption under [subsection 56 \(1\)](#) of the *Controlled Drugs and Substances Act* (Canada) from any provision of that Act for the purpose of decriminalizing the personal possession of a controlled substance or precursor.

Applications related to supervised consumption sites, safer supply services

(2) Subject to such exceptions as may be prescribed, despite [sections 7 and 8](#) of the *City of Toronto Act, 2006* and [sections 9, 10 and 11](#) of the *Municipal Act, 2001*, a municipality or local board does not have the power, without the approval of the Minister, to do any of the following:

1. Apply to Health Canada for an exemption or a renewal of an exemption to the *Controlled Drugs and Substances Act* (Canada) for the purpose of operating a supervised consumption site.
2. Apply to Health Canada for funding under Health Canada's Substance Use and Addictions Program or any other Health Canada program in respect of safer supply

services, or enter into an agreement with the Government of Canada with respect to funding under such a program in respect of safer supply services.

3. Support, including by passing a by-law or making a resolution, an application made to Health Canada by any other person in respect of any matter described in paragraph 1 or 2.

Restricting Public Consumption of Illegal Substances Act, 2025, SO 2025, c 5, Sch 1

ss. 3, 9

Direction given by officer

3 (1) If an officer has reasonable grounds to believe that a person is consuming an illegal substance in a public place in contravention of [subsection 2 \(1\)](#), the officer may do one or both of the following:

1. Direct the person to cease consuming the illegal substance in the public place.
2. Direct the person to leave,
 - i. the public place, or
 - ii. a part of the public place, such as a structure being used as a dwelling where its use as a dwelling in the public place is not permitted by law.

[...]

Penalty

9 A person convicted of an offence under this Act is liable to a fine of not more than \$10,000 or to imprisonment for not more than six months, or both.

Controlled Drugs and Substances Act, SC 1996, c 19

ss. 4, 5

Possession of substance

4 (1) Except as authorized under the regulations, no person shall possess a substance included in Schedule I, II or III.

Obtaining substance

(2) No person shall seek or obtain

(a) a substance included in Schedule I, II, III or IV, or

(b) an authorization to obtain a substance included in Schedule I, II, III or IV

from a practitioner, unless the person discloses to the practitioner particulars relating to the acquisition by the person of every substance in those Schedules, and of every authorization to obtain such substances, from any other practitioner within the preceding thirty days.

Punishment

(3) Every person who contravenes subsection (1) where the subject-matter of the offence is a substance included in Schedule I

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding seven years; or

(b) is guilty of an offence punishable on summary conviction and liable

(i) for a first offence, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months, or to both, and

(ii) for a subsequent offence, to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding one year, or to both.

Punishment

(4) Subject to subsection (5), every person who contravenes subsection (1) where the subject-matter of the offence is a substance included in Schedule II

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years less a day; or

(b) is guilty of an offence punishable on summary conviction and liable

(i) for a first offence, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months, or to both, and

(ii) for a subsequent offence, to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding one year, or to both.

(5) [Repealed, [2018, c. 16, s. 195](#)]

Punishment

(6) Every person who contravenes subsection (1) where the subject-matter of the offence is a substance included in Schedule III

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding three years; or

(b) is guilty of an offence punishable on summary conviction and liable

(i) for a first offence, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months, or to both, and

(ii) for a subsequent offence, to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding one year, or to both.

Punishment

(7) Every person who contravenes subsection (2)

(a) is guilty of an indictable offence and liable

(i) to imprisonment for a term not exceeding seven years, where the subject-matter of the offence is a substance included in Schedule I,

(ii) to imprisonment for a term not exceeding five years less a day, where the subject-matter of the offence is a substance included in Schedule II,

(iii) to imprisonment for a term not exceeding three years, where the subject-matter of the offence is a substance included in Schedule III, or

(iv) to imprisonment for a term not exceeding eighteen months, where the subject-matter of the offence is a substance included in Schedule IV; or

(b) is guilty of an offence punishable on summary conviction and liable

(i) for a first offence, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months, or to both, and

(ii) for a subsequent offence, to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding one year, or to both.

(8) [Repealed, [2018, c. 16, s. 195](#)]

[...]

Trafficking in substance

5 (1) No person shall traffic in a substance included in Schedule I, II, III, IV or V or in any substance represented or held out by that person to be such a substance.

Possession for purpose of trafficking

(2) No person shall, for the purpose of trafficking, possess a substance included in Schedule I, II, III, IV or V.

Punishment

(3) Every person who contravenes subsection (1) or (2)

(a) if the subject matter of the offence is a substance included in Schedule I or II, is guilty of an indictable offence and liable to imprisonment for life;

(a.1) [Repealed, [2018, c. 16, s. 196](#)]

(b) if the subject matter of the offence is a substance included in Schedule III or V,

(i) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, or

(ii) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months; and

(c) where the subject-matter of the offence is a substance included in Schedule IV,

(i) is guilty of an indictable offence and liable to imprisonment for a term not exceeding three years, or

(ii) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding one year.

(4) [Repealed, [2012, c. 1, s. 39](#)]

Interpretation

(5) For the purposes of applying subsection (3) in respect of an offence under subsection (1), a reference to a substance included in Schedule I, II, III, IV or V includes a reference to any substance represented or held out to be a substance included in that Schedule.

(6) [Repealed, [2018, c. 16, s. 196](#)]

*Measures Respecting Premises with Illegal Drug Activity Act, 2025, SO 2025, c 6, Sch 8*ss. 2, 12**Prohibition, permitting misuse of premises**

2 (1) No person shall knowingly permit a premises of which the person is a landlord to be used in relation to a prescribed offence.

Defence

(2) It is a defence to a charge under subsection (1) that the defendant took reasonable measures to prevent the activity.

[...]

Penalties

12 (1) An individual who is convicted for contravening subsection 2 (1) is liable,

(a) on a first conviction in respect of that subsection, to a fine of at least \$10,000 and not more than \$250,000 or to imprisonment for a term of not more than two years less a day, or both; and

(b) on a subsequent conviction in respect of that subsection, to a fine of at least \$5,000 and not more than \$100,000 for each day or part of a day on which the offence occurs or continues or to imprisonment for a term of not more than two years less a day, or both.

Same, corporation

(2) A corporation that is convicted for contravening subsection 2 (1) is liable,

(a) on a first conviction in respect of that subsection, to a fine of at least \$25,000 and not more than \$1,000,000; and

(b) on a subsequent conviction in respect of that subsection, to a fine of at least \$10,000 and not more than \$500,000 for each day or part of a day on which the offence occurs or continues.

Other offences

(3) On conviction for having contravened section 3, subsection 6 (2) or 7 (4), section 10 or subsection 11 (2),

(a) an individual is liable to a fine of not more than \$100,000 or to imprisonment for a term of not more than one year, or both; and

(b) a corporation is liable to a fine of not more than \$250,000.

Residential Tenancies Act, 2006, SO 2006, c 17

s. 61

Termination for cause, illegal act

61 (1) A landlord may give a tenant notice of termination of the tenancy if the tenant or another occupant of the rental unit commits an illegal act or carries on an illegal trade, business or occupation or permits a person to do so in the rental unit or the residential complex. 2006, c. 17, s. 61 (1).

Notice

(2) A notice of termination under this section shall set out the grounds for termination and shall provide a termination date not earlier than,

(a) the 10th day after the notice is given, in the case of a notice grounded on an illegal act, trade, business or occupation involving,

(i) the production of an illegal drug,

(ii) the trafficking in an illegal drug, or

(iii) the possession of an illegal drug for the purposes of trafficking; or

(b) the 20th day after the notice is given, in all other cases. 2006, c. 17, s. 61 (2).

Definitions

(3) In this section,

“illegal drug” means a controlled substance or precursor as those terms are defined in the Controlled Drugs and Substances Act (Canada); (“drogue illicite”)

“possession” has the same meaning as in the Controlled Drugs and Substances Act (Canada); (“possession”)

“production” means, with respect to an illegal drug, to produce the drug within the meaning of the Controlled Drugs and Substances Act (Canada); (“production”)

“trafficking” means, with respect to an illegal drug, to traffic in the drug within the meaning of the *Controlled Drugs and Substances Act* (Canada). (“traffic”) 2006, c. 17, s. 61 (3).

THE REGIONAL MUNICIPALITY OF WATERLOO

-and-

JOSEPHINA DUGAS et al

Appellant

Respondents

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT TORONTO

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**THE REGIONAL MUNICIPALITY OF
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TAB 3

CITATION: The Regional Municipality of Waterloo v. Named
Respondents and Persons Unknown, 2026 ONSC 2971
COURT FILE NO.: CV-25-00000750-0000 and CV-25-00001341-0000
DATE: 2026/05/21

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

THE REGIONAL MUNICIPALITY
OF WATERLOO

Applicant

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– and –

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-) Professor *emerita* Martha Jackman, for the
-) intervener, The Charter Committee on
-) Poverty Issues / The National Right to
-) Housing Network
-)
-)
-) **HEARD:** April 16, 17 and 20, 2026

GIBSON J.

REASONS FOR DECISION

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Overview

[1] There is a homelessness crisis in Ontario. The number of unhoused people has risen sharply since the COVID-19 Pandemic. Province-wide, it is projected that the homeless population will more than double by 2035.

[2] While no one measure of homelessness is fully reliable, municipal governments are mandated to conduct periodic “point in time” counts (“PiT Counts”). In a September 2021 PiT Count, 1,085 people were counted as experiencing homelessness in Waterloo Region, with 75% classified as experiencing chronic homeless. By October 2024, those numbers had increased to 2,371 and 78% respectively.

[3] The growth in Waterloo Region (“the Region”) is consistent with provincial trends, which show significant growth in unhoused populations attributed to a complicated confluence of both national and international factors, but the situation in the Region is even more acute than elsewhere in the province. Between 2021 and 2025, the overall homeless count in the province increased by 49.1%; in Waterloo Region, the PiT Count increased by 118% over the same period. The unhoused population in the Region continues to grow, and significantly exceeds the number of available shelter beds and other housing options.

[4] As I observed in my earlier decision regarding an injunction in this matter, homelessness poses significant challenges to our contemporary society. It is an extraordinarily difficult problem

to grapple with. It presents a complex multi-faceted phenomenon of diverse origins not susceptible to easy resolution. There is no prevailing academic or policy consensus about the best way to address it. It highlights chronic public policy tensions between unhoused individuals who are amongst the most disadvantaged in society (and their advocates), and other citizens who tire of the violence, drug use, squalor and derogation from public order that often attends homeless encampments, the disruption to neighboring residents and businesses, the significant expenditure of public funds in attempting to mitigate these, as well as the impediments to projects of significant public importance and benefit which may arise from them.

[5] It requires a compassionate, empathetic and respectful response, one worthy of the aspirations and values of our Canadian society and duly attentive to the dignity and rights of the unhoused, but also one that is clear-eyed in attempting to achieve the appropriate balance between rights of individuals and the broader public interest. This litigation throws this tension into sharp relief.

[6] Homelessness is a fact on the ground. It is not going away in the proximate future. An ostrich approach will not suffice. Solutions to the homelessness crisis will require increased resources from all levels of government and other stakeholders, time to implement the required strategies, and a clear recognition of and focus upon the constitutional rights involved.

[7] What is clear is that all levels of government, and other actors in the public and private sectors, including healthcare, mental health and addiction supports, the justice system, charitable and religious organizations, and others, are required to work together to address this challenge.

[8] There are sharply diverging views about how best to tackle the issue of homelessness, and the optimal way ahead having regard to practical constraints on resources and the myriad competing alternative demands for the expenditure of public funds, as well as competing interests in advancing public infrastructure projects. The polarization of this debate at times seems to resemble a “dialogue of the deaf”, frequently characterized by the caricaturing of, and unwillingness to listen to, opposing viewpoints. This is not helpful.

[9] Developing solutions to address the growing homelessness issue involves policy and legislative choices that are within the primary purview of government, not the courts. Courts must be mindful of the limits of their institutional competence. However, in *Chaoulli v. Quebec (Attorney General)*, 2005 SCC 35, at para. 107, the Supreme Court of Canada has emphasized that constitutional oversight is the court’s duty even when faced with complex or contentious issues:

The fact that the matter is complex, contentious or laden with social values does not mean that the courts can abdicate the responsibility vested in them by our Constitution to review legislation for *Charter* compliance when citizens challenge it. As this Court had said on a number of occasions, “it is the high duty of this Court to ensure that Legislatures do not transgress the limits of their constitutional mandate and engage in illegal exercises of power...”

[10] As I noted in the previous injunction decision in this matter, *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2025 ONSC 4774, I am alive to the inherent public-interest function of the Regional Council as a democratically-elected body and the need to respect decisions made by those bodies in the appropriate balance of the Legislative, Executive and Judicial arms of government in our democratic society in Canada. Each has its proper role, and appropriate ambit of jurisdiction: in popular parlance, its “own lane.” Questions of the constitutionality of municipal enactments are clearly within the proper ambit of the Court’s jurisdiction to assess. Moreover, it must be noted that in the present case, it was the decision of the Region to proactively seek guidance and a declaration from the Court as to the constitutionality of the Site-Specific By-Law. It initiated the Application that is before the Court.

[11] Homelessness is a public policy issue that engages practical, moral and legal dimensions. The prevalence of encampments reflects Canada’s challenges in meeting its human rights obligation to ensure that all individuals have access to adequate housing - housing that is secure, affordable, habitable, accessible, culturally appropriate, and in a suitable location with access to services -, while faced with the practical constraints of available resources and the challenges in resource allocation, as well as planning for projects that aim to advance the public good.

[12] Assessing the issue of homeless encampments from a *Charter* perspective requires consideration of contending factors that often seem to pull in different directions. It is a complex

and contentious task, often fraught with emotion, with no simple solution. But it ultimately needs to be informed by one primary thought: The homeless are not Other. They are Us. They are rights bearers no less entitled than any other Canadian citizens to the full benefit and protection of the *Charter*.

Background

[13] Waterloo Region, along with many other municipalities in Ontario, has experienced the manifestation of these issues on the ground with increasing acuteness. The severity of the problem here may well have come in tandem with the rapid population growth which the Region has experienced in recent years. This has particularly crystallized around the property at 100 Victoria Street West in Kitchener (“100 Victoria” or “the Property”), which has become a flashpoint of controversy. There has been an encampment of unhoused persons on this location since 2021 (“the Encampment”), and it has already been the subject of significant public interest litigation in *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2023 ONSC 670 (“*Persons Unknown 2023*”).

[14] In addition to *Persons Unknown 2023*, there have been several other significant cases in Ontario in recent years which have also dealt with the question of homeless encampments: *The Corporation of the City of Kingston v. Doe*, 2023 ONSC 6662; *Poff v. City of Hamilton*, 2021 ONSC 7224; *Heegsma v. Hamilton (City)*, 2024 ONSC 7154; *Church of St. Stephen et al. v. Toronto*, 2023 ONSC 6566; and *Black et al. v. City of Toronto*, 2020 ONSC 6398. The decision on the appeal from the trial decision in *Heegsma*, in which Ramsay J. dismissed an application by 14 homeless individuals who applied for a declaration that the City of Hamilton’s enforcement of its parks by-law breached their s.7 and s.15 *Charter* rights, is currently under reserve at the Court of Appeal for Ontario.

[15] There have been cases engaging similar issues in other provinces as well, including *Matsqui-Abbotsford Impact Society v. Abbotsford (City)*, 2024 BCSC 1902, and *Clinique juridique itinérante c. Procureur général du Québec - Ministère des Transports et de la Mobilité durable du Québec*, 2025 QCCS 2087.

[16] Since *Persons Unknown 2023* was argued in 2022, the Region has more than doubled its operating budget for homelessness programs and services, from \$30.9 million to \$65.5 million, with corresponding increases in capacity. The Region has made significant efforts to address the needs of people experiencing homelessness. Despite this, the challenges have continued to grow. In a September 2021 point-in-time count (“PiT Count”), 1,085 people were counted as experiencing homelessness in the Region, with 75% classified as experiencing chronic homelessness. By October 2024, those numbers had increased to 2,371 and 78% respectively.

[17] The Region has a long-term plan to address chronic homelessness by 2030, together with community partners and other levels of government. This plan, adopted in April 2024, is known as the Plan to End Chronic Homelessness (“PECH”). The PECH was developed in consultation with stakeholders, calls for action from the other key partners in the fight against homelessness, and has the Region’s full support.

[18] The present case, however, is more limited in scope than *Persons Unknown 2023*, in which the Region sought the approval of the Court for a By-Law which the Region intended to be of general application to all its property in Waterloo Region. The Region and its contractual partner Metrolinx require 100 Victoria Street North for the specific purpose of constructing the Kitchener Central Transit Hub (“KCTH”) for the benefit of the entire population of the Region. The schedule for site remediation has evolved. It is now scheduled for October 2026, to prepare for construction commencing later, although this timeline is not fixed.

[19] Accordingly, on April 23, 2025, the Region passed a site-specific by-law (“the Site-Specific By-law”) to provide for vacant possession of 100 Victoria by December 1, 2025, accompanied by a plan (“Plan”) to provide alternative accommodation for those residing at 100 Victoria as of the date notice of the By-law was given (“Existing Residents”). Unlike all previous encampment cases, the present case considers a site-specific by-law with a specific purpose, rather than a general by-law.

[20] Under the Region’s Plan, the approximately 40 Existing Residents will be offered alternative accommodation by the Region’s team of licensed professional unsheltered support workers (“USWs”), who will work with the residents to develop individual housing plans (“IHPs”)

for them, tailored to their specific needs. The Region has allocated additional funding to try to ensure that they have a place to go. The Region indicates that it is confident that they can be transitioned to alternative accommodations. Some of the original 40 Existing Residents have made this transition, and some have left the Encampment of their own accord.

The Region's Application

[21] The Applicant in the present case, the Regional Municipality of Waterloo (the “Region”), initiated an application on June 9, 2025 pursuant to Rule 14.05 of the *Rules of Civil Procedure* seeking various forms of relief, including a declaration that its By-law Number 25-021, *A By-law Respecting the Use of 100 Victoria Street North, Kitchener (as Owned by the Regional Municipality of Waterloo) to facilitate the Kitchener Central Transit Hub and other Transit Development* (the “Site-Specific By-law”) complies with the *Canadian Charter of Rights and Freedoms* (“*Charter*”). The By-law contains prohibitions respecting 100 Victoria Street, a vacant lot that is the site of an outdoor encampment of vulnerable unhoused individuals. Prohibitions include a ban on erecting temporary structures (such as tents). Contravening the By-law constituted an offence with a penalty upon conviction of fines up to \$5,000.00. The By-law permits immediate enforcement of its provisions by police upon “Non-Residents” of the Encampment, defined as individuals who are assumed to have started residing on the property after April 16, 2025, the Public Notice date of the By-law, regardless of whether such individuals have alternative housing available to them. “Existing Residents” of the Encampment (those persons assumed to have already been residing on the property as of April 16, 2025) could not be removed until December 1, 2025, the date that the prohibition against all persons from entering onto, residing on or occupying 100 Victoria, was to take effect.

[22] The parties requested an adjournment of the dates originally scheduled for the hearing in November 2025, in order to engage in an attempt at mediation. When this proved unsuccessful, on January 9, 2026, Regional Council passed amendments to the Site-Specific By-Law (“the Amended By-Law”) to address some of the concerns that had been identified with the April 2025 version of the By-Law. The Amended By-Law seeks to defer the vacant possession date, remove the offence provision and to codify a transition policy.

[23] In its Further Amended Notice of Application, dated March 10, 2026, the Region makes application for a declaration that By-Law Number 25-021 of the Regional Municipality of Waterloo, *A By-Law Respecting the Use of 100 Victoria Street North, Kitchener (as Owned by the Regional Municipality of Waterloo) to facilitate the Kitchener Central Transit Hub and other Transit Development*, as amended January 9, 2026 by By-Law Number 26-001 (“the Amended By-Law”), complies with the *Charter of Rights and Freedoms*, as well as an interim and final order (“Injunction Order”) that any persons having notice of the Injunction Order are restrained and enjoined from breaching the Amended By-Law by remaining on and/or re-entering the property municipally known as 100 Victoria Street North in the City of Kitchener except as in accordance with the Amended By-Law.

[24] Alternatively, if the Court determines that it does not comply with the *Charter*, or is otherwise deficient, the Region seeks this Court’s direction as to the steps that it needs to take to close the Encampment at 100 Victoria Street North, so it can proceed with construction activities relating to the KCTH.

The Respondents’ Cross-Application

[25] The Respondents resist the Region’s application and have initiated a Responding Application and Notice of Constitutional Question seeking, *inter alia*, a declaration that the Site-Specific By-law, as Amended, violates their s. 7 and 15(1) *Charter* rights.

[26] The Respondent’s Notice of Constitutional Question is filed with respect to a Cross-Application, Court File No. CV-25-00001341-0000, which was heard together with the Application, CV-2500000750-0000, commenced by the Regional Municipality of Waterloo (the “Region”). The Cross-Applicants in Application CV-25-00001341-0000 are among the Respondents in CV-25-00000750-0000.

[27] The Cross-Applicants are chronically homeless individuals who shelter at an encampment located at 100 Victoria Street, Kitchener during periods when they lack accessible indoor shelter. They are facing eviction from the Encampment as a result of the Site-Specific By-law and the Amended By-law (collectively, the “By-laws”) enacted by the Respondent Regional Municipality

of Waterloo. The Cross-Applicants ask the Court to determine whether, in the absence of sufficient accessible shelter beds for the Region's homeless, the Region's efforts to address the individual needs of some of the Cross-Applicants is sufficient to ensure that the By-laws are compliant with the requirements of ss. 7 and 15 of the *Charter*. The material facts giving rise to the constitutional question are set out in the Applicant's Amended Notice of Application, issued on October 22, 2025.

[28] The following are the legal bases for the constitutional question as framed by the Cross-Applicants. They submit that the By-Laws violate the s. 7 right to life, liberty, and security of the person of the Cross-Applicants, and that these violations are not in accordance with the principles of fundamental justice. The Cross-Applicants submit that the By-Laws violate their rights in a multitude of ways that cause deprivations of life, liberty, security of the person, including by:

- a. Preventing the Cross-Applicants from sheltering themselves at the Encampment site when the number of homeless in the Region outnumbers the Region's available and accessible shelter spaces. This leaves the Cross-Applicants unable to protect themselves from the elements in a context where the Region's Code of Use By-law (By-Law Number 13-050 of the Regional Municipality of Waterloo) and the *Trespass to Property Act*, R.S.O. 1990, c. T2, prohibit sheltering in areas not subject to the By-Laws;
- b. Failing to include rights-based measures to ensure access to longer-term adequate housing and supports in accordance with the Region's Plan to End Chronic Homelessness;
- c. Increasing the Cross-Applicants' risk of hypothermia, sunburn, heatstroke, dehydration, and fatigue;
- d. Depriving the Cross-Applicants of the privacy afforded by a tent or tarp, which they require for dignity, autonomy, and the ability to attend to personal hygiene or medical needs without fear of intrusion;
- e. Causing or contributing to the loss of the Cross-Applicants' belongings during and after their eviction, including important survival supplies;
- f. Requiring the Cross-Applicants to move to remote locations to avoid detection, where they are inaccessible to health and social services, and without assistance if they experience a crisis;

- g. Disrupting the Cross-Applicants' connections to food supplies, health care, addiction, housing supports, and other services available at the Encampment;
- h. Disrupting the emotional and physical support provided by the Cross-Applicants' community;
- i. Increasing the risk that the Cross-Applicants with substance use disabilities will be forced to use substances in isolated circumstances away from community supports, leaving them more vulnerable to fatal overdoses;
- j. Increasing the Cross-Applicants' social marginalization and causing them to experience loss of trust in authorities;
- k. Increasing the risk that the Cross-Applicants will be subjected to harms such as intimate partner violence, assault, sexual assault, and human trafficking by forcing them into circumstances where those harms are more likely;
- l. Increasing the risk that the Cross-Applicants will experience significant stress, destabilization, and trauma, in some cases exacerbating existing mental health conditions; and,
- m. In a context where trespass to property is an offence, increasing the risk that the Cross-Applicants will face charges, fines, arrest, or incarceration if they resist eviction under the By-laws.

[29] The Cross-Applicants submit that these deprivations of their rights to life, liberty and security of the person are arbitrary, overbroad, and grossly disproportionate to the purpose of the By-laws and do not accord with the principles of fundamental justice.

[30] The Cross-Applicants also submit that the By-Laws infringe s. 15(1) of the *Charter* by creating a distinction on enumerated grounds (disability, sex, marital status, Indigeneity / race) and/or analogous grounds (receipt of social assistance and homelessness), and imposing a burden or denying a benefit in a manner that reinforces, perpetuates or exacerbates disadvantage. Encampment residents, including the Cross-Applicants, belong to multiple enumerated and analogous groups and struggle with intersecting disadvantages. The By-laws cause disproportionate impact and fail to ensure reasonable accommodation of needs based on enumerated and analogous grounds, both individually and as they intersect. The Respondents say that this is for reasons including that:

- a. Women and persons who are gender diverse are less likely than men to be able to access indoor shelter that meets their needs when they are prevented from sheltering outdoors; and they experience unique safety risks arising from being unable to protect themselves by erecting even rudimentary shelter;
- b. Persons with disabilities disproportionately experience homelessness and are therefore disproportionately impacted by the By-laws to the extent that the By-laws cause or contribute to disadvantage for persons who are homeless;
- c. Persons with physical and mental disabilities are less likely to be able to access indoor shelter if they must leave the Encampment site due to physical barriers and lack of accessibility at emergency shelters, as well as service restrictions, rules and prohibitions on substance use, and barriers to complete intake procedures, and are therefore more likely to face the risks of unsheltered outdoor homelessness if they are prevented from sheltering outdoors;
- d. Persons with disabilities are disproportionately impacted by forced relocation, and by relocation to remote locations, to the extent that their disabilities impact their abilities to carry their belongings with them, disassemble shelters, and travel distances to access the food supplies, health care, and other supports and services located at or around the Encampment site;
- e. Persons with mental disabilities, such as mental illness and substance use disabilities experience disproportionate effects as described above, including increased psychological stress, exacerbation of existing mental illness, sleep deprivation, risk of starvation, risk of fatal overdose, increased risk of arrest, and loss of the protective effects of community and emotional support;
- f. Indigenous persons are disproportionately homeless and therefore disproportionately impacted by the By-laws to the extent that the By-laws cause or contribute to disadvantage for persons who are homeless;
- g. Indigenous persons are less able to access indoor shelter and face particular disadvantage from outdoor sheltering prohibitions due to: (1) the lack of culturally appropriate shelter supports, (2) past experiences of racism resulting in mistrust of authorities;
- h. Persons who are homeless constitute a socially marginalized and historically disadvantaged group subject to persistent stigmatization, stereotyping, political marginalization and social exclusion on the basis of a personal characteristic analogous to the enumerated grounds of discrimination under s. 15(1). Homelessness is also extremely difficult to change due to the lack of access to affordable housing, inadequacy of social assistance, as well as the stigma attached to being unhoused. The By-laws directly perpetuate and exacerbate the discrimination and disadvantage of homeless individuals and fails to accommodate the distinctive needs of persons

experiencing homelessness for access to accessible shelter, housing, and related supports necessary to the protection of life, security and substantive equality;

i. Persons who are in receipt of social assistance (as an analogous ground) face discrimination and disadvantage. Receipt of social assistance is extremely difficult to change due to a stigma associated with receiving social assistance and the inadequacy of social assistance. The inadequacy of social assistance and stigma attached to receipt of social assistance create barriers to finding affordable housing and employment. The By-laws exacerbate the discrimination and disadvantage of individuals receiving social assistance. The By-laws have the effect of reinforcing, perpetuating or exacerbating disadvantage of members of the above referenced groups.

[31] The Cross-Applicants submit that violations of ss. 7 and 15 cannot be justified by s. 1 of the *Charter*.

[32] They also submit that ss. 7 and 15 must be interpreted in accordance with the presumption of conformity with Canada's international human rights obligations, including under the *International Covenant on Civil and Political Rights*, *International Covenant of Economic, Social and Cultural Rights*, *Convention on the Elimination of All Forms of Discrimination Against Women*, *Convention on the Rights of the Child*, *International Convention on the Elimination of All Forms of Racial Discrimination*, and the *United Nations Convention on the Rights of Persons with Disabilities*. They contend that the Site-Specific By-law and the Amended Bylaw are inconsistent with ss. 7 and 15 interpreted in conformity with these obligations.

[33] The Cross-Applicants seek a declaration that the By-laws violate ss. 7 and 15 of the *Canadian Charter of Rights and Freedoms* and that they are not saved by s. 1. The Cross-Applicants ask:

a) that the By-laws be declared of no force and effect under s. 52(1) of the *Constitution Act, 1982*, in whole or in part; and,

b) any appropriate remedies pursuant to s. 24(1) of the *Charter* to prevent infringements.

[34] These countervailing applications raise significant issues of public importance relating to municipal encampment responses and the rights of some of the most vulnerable members of

society under sections 7 and 15 of the *Canadian Charter of Rights and Freedoms* (“*Charter*”).

Injunction and the hearing of the applications

[35] The Respondents successfully applied for an interlocutory injunction restraining the Region from enforcing or acting on any part of the Site-Specific By-law until their *Charter* claims are finally determined by the Court. This decision, *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2025 ONSC 4774 (“*Injunction Decision*”) was released in August 2025. Since that time, the parties engaged in an unsuccessful attempt at mediation in December 2025, and the Region amended its By-Law on Jan 9, 2026 (“the Amended By-Law”). The hearing of the contending applications took place over three days in April 2026. The outcome of this hearing is the subject of these Reasons for Decision.

[36] Persons have been sheltering at this location since 2021. In 2023, the Region applied to the Superior Court of Justice for permission to clear the site pursuant to a by-law prohibiting temporary structures on Region-owned lands (the “Code of Use By-Law”). In *Persons Unknown 2023*, Valente J. declined this request. Justice Valente declared that By-Law constitutionally inoperable in relation to the site, “insofar, and only insofar, as it applies to prevent the residents of the encampment from living on and erecting temporary shelters without a permit on the Property when the number of homeless persons exceeds the number of available accessible shelter beds in the Region”.

[37] Since then, the Region has provided basic services to the encampment such as waste disposal and portable toilets. Chronically homeless residents could count on it being available for no-barrier shelter of last resort. However, the Region has now enacted a new by-law with the specific objective of clearing this site, so that it can be converted for use as a “lay-down” site for the equipment needed to construct a transit hub (the “Site Specific By-Law”). That construction is tentatively scheduled to begin in late 2026, though the date is subject to change.

[38] The Region does not propose to permit outdoor sheltering anywhere else after the encampment is closed. The Respondents contend that they will be left with nowhere to go when they cannot access indoor shelter that meets their needs. In the compelling words of one

encampment resident: “[we] are at the bottom and now [they] are just taking away the bottom.”

[39] The conditions that led Justice Valente to declare the Code of Use By-Law constitutionally inoperable in relation to this site have only worsened since 2023. The Region is candid that its homeless population continues to exceed its shelter spaces.

[40] The Region says it will offer alternative accommodation to those persons who were physically present at the encampment on April 16, 2025, referred to by the Region as the “Existing Residents”. It is unclear how many of the persons remaining at the Encampment are “Existing Residents”. The By-Law does not make the eviction of Existing Residents contingent on alternative accommodation being achieved, and even they will be left with no shelter of last resort to return to if accommodation offered by the Region is only temporary. The Region has not made any formal commitments to the remaining persons that provided affidavits, who will, they assert, have nowhere to go if evicted.

Participants in the hearing

[41] An *Amicus Curiae*, counsel for the Mental Health Legal Committee, has also been appointed to represent the interests of “those persons living in the encampment whose capacity may be in issue and who have not retained counsel”. The *Amicus*’ position on the Applications is generally aligned with that of the Respondents.

[42] The Attorney General of Ontario intervenes as of right pursuant to s.109(4) of the *Courts of Justice Act* to make submissions to the Court in respect of the constitutional questions.

[43] Leave was granted to the Canadian Civil Liberties Association (“CCLA”), Aboriginal Legal Services (“ALS”) and the Charter Committee on Poverty Issues/ National Right to Housing Network (“CCPI/NRHN”) to provide factums and make oral submissions as interveners.

[44] These Reasons for Decision explain why the Region’s application will be dismissed, and the Respondents’ application will be granted in part.

Background Facts

The Regional Municipality of Waterloo

[45] The Region is an upper-tier municipality under the *Municipal Act, 2001*. The total population of Waterloo Region is estimated at 678,170 as of year-end 2024. The territory over which the Region has jurisdiction includes the cities of Cambridge, Kitchener, and Waterloo, and adjacent rural townships. The Kitchener-Waterloo-Cambridge metropolitan area is projected to have a population of 600,000 in 2025. The Region's responsibilities include public health, community services, public transit, and waste management. The Region does not have jurisdiction beyond its territory, or over the overall provision of healthcare services, education, social assistance, interest rates and monetary policies, or many other key policy areas which affect homelessness.

The 100 Victoria Property

[46] The Encampment site is a gravel parking lot located at 100 Victoria Street in the City of Kitchener. The Region owns the Property at 100 Victoria, which is on the corner of Victoria and Weber Streets in downtown Kitchener. VIA Rail/GO Transit and bus stations are to its east, with a commercial plaza to the west, a Metrolinx-owned rail corridor to the north, and a variety of businesses and a church to the south. The property is not a public park, nor a site that is normally open for public use. Despite this, however, since approximately December 2021, it has been the site of the Encampment, comprised of unhoused individuals and the tents and other temporary structures they have erected.

The Kitchener Central Transit Hub

[47] 100 Victoria is also the site of activities to be undertaken as part of the construction of the Kitchener Central Transit Hub ("KCTH"), a significant public transportation project. The Region said that Metrolinx requires the Property for construction set to begin in March 2026, and the Region requires vacant possession of the site by December 1, 2025, to carry out preparatory work, including site remediation. These timelines have shifted.

[48] The Regions says that the KCTH is a landmark project that will create significant economic

and social growth for residents of the Waterloo region. Once completed, the KCTH will act as a gateway to the Waterloo area, serving current and future residents, as well as visitors, and will redefine how people connect, commute, and experience the Waterloo community. The Region says that the KCTH is vital to the economic and social growth of the Region, and a key part of the Region's strategic priorities. It will combine numerous services, including ION light rail transit, Grand River Transit, expanded rail and bus GO Transit, VIA Rail, inter-city bus service, passenger vehicles and car shares, and cyclists and pedestrians, into one central and convenient transit hub in the heart of the region. A reduction in commuter times across the region will constitute a significant service to its residents. This is especially true for those who rely on public transit daily, including those who commute for work, seniors, students, lower-income residents, and people with disabilities.

[49] Metrolinx has advised the Region that it requires use of the Property for construction staging and laydown purposes. The Property will not be the location of the KCTH, which will be nearby, but rather is intended to be used in the construction phase. Staging and laydown are critical preparation activities for the construction of a physical project. They involve positioning and organizing construction materials (such as steel, concrete, bricks, wood), equipment and tools (including large construction machines and vehicles) and other items such as temporary structures for access during a project, to ensure worker safety and maintain workflow. The proximity, size and grade of a staging and laydown site are important factors to consider in choosing such a site. Since large construction equipment and materials are transported from the laydown site to or from the construction site, a laydown site that is even a short distance away can increase the chance of worker injury by increasing the distance materials or equipment needed to travel. On similar rail construction projects, workers have been injured by equipment falling over while traversing a grade raising or on shaky ground. This can also, on aggregate, add significant additional time to a project.

[50] The Region submits that 100 Victoria is the only space owned by the Region that is proximate to the construction work to be conducted by Metrolinx, of an adequate size, and on-grade with the construction site. The Region must provide the Property to Metrolinx in a condition fit for use, which means the Region will require time to engage in remediation and preparation of

the Property prior to turnover to Metrolinx. This may include clean up, investigations, geotechnical testing, soil testing and scraping, removal of hazardous materials, and/or groundwater monitoring. It will take the Region up to three months to complete this work.

[51] The Region says that it has considered whether it could provide Metrolinx with an alternative site but says that it has determined that no other site can be used. All other properties owned by the Region within 1 kilometer of the work are either properties that are already being used for the KCTH site or the Region's other works, have active ongoing uses, or are not on-grade or large or proximate enough for Metrolinx's purposes. The option of purchasing additional land is considered impractical because the cost of acquiring suitable land that is proximate to the construction site is prohibitively high and the types of land available in close proximity are not suitable for construction purposes. Further, the time required to identify, purchase, and prepare new land would delay the project timeline. Given that construction work will be taking place on all sides of the Property, including rail work, road work, and (most critically) demolition work, the Region is also concerned with the health and safety risks to anyone residing nearby while construction work is ongoing. The risks of heavy machinery or other fatal accidents must be taken into account.

Encampment and its residents

[52] Homeless persons began erecting tents on the site in or around December 2021. However, the number of persons sheltering at the encampment varies, as chronically homeless persons gain and lose other forms of shelter. Encampment residents rely on essential services near the encampment site. There is a drop-in space across the street where residents can access coffee, water, showers, and laundry. There is also a soup kitchen nearby where residents can have a daily meal and use the telephone. Health and harm reduction services are provided on-site by Sanguen Health Centre. Community volunteers attend regularly to provide clothing, firewood, blankets, food, and water.

[53] The Respondents' backgrounds reflect those of the Region's homeless. All of the Named Respondent affiants have disabilities - mental health or cognitive disabilities, substance use disabilities, or mobility impairments. Four of the affiants are Indigenous. A further four identify

as LGBTQ2S+. Seven of the affiants affirm to having survived childhood physical and sexual abuse, domestic violence, and/or sexual assault. Three shelter together with their partners. Six are women or identify as gender-diverse.

[54] The Respondents live in extreme poverty – some have no income at all, and others receive social assistance. Circumstances that cause the Respondents to rely on the encampment vary.

Court refused Region's previous application to clear the Encampment

[55] This Encampment was the subject of an earlier application in *Persons Unknown 2023*. In January of 2023, Valente J. dismissed the Region's application to evict encampment residents under By-law number 13-050 (the "Code of Use By-law"), which prohibited persons from erecting temporary shelters on Region-owned property without a permit. At that time, the Region advised that it ultimately intended to use the 100 Victoria site as a "laydown" area for equipment during the construction of a transit hub nearby. Justice Valente found that prohibiting sheltering deprived encampment residents of their life, liberty, and security of the person when insufficient sheltering options left them "with no alternative but to sleep outside". At that time, available shelter spaces fell short "by some 50% of what was required to shelter the Region's homeless". In arriving at that count, Valente J. found it was not appropriate to include motel spaces in the count, in part "because their availability is at the discretion of the motel operators". He also held that it was "simply not a matter of counting the number of spaces". Options needed to meet the "diverse needs" of the encampment residents to be accessible to them. Justice Valente directly rejected the Region's argument that it need only establish sufficient capacity to shelter current encampment residents in order to establish it would be constitutional to prohibit sheltering on Region property:

[94] Finally, I reject the Region's submission that, at the end of the day, in order to grant the relief it seeks, I need only be satisfied that there is sufficient capacity in the system to accommodate the Encampment residents. I reject this proposition because of the fluctuating and variable capacity of the system based on the Region's own numbers. Furthermore, were I to be guided by this principle, and satisfied that there is a sufficient bed capacity for the Encampment residents on any given day, how does this approach respond to the many other vulnerable

homeless individuals in the Region? It does not. The approach is particularly problematic in my view because the Region intends to be guided by this decision in its treatment of other encampments. Were I to accede to the Region's submission, it seems to me I would be helping to create an immediate disadvantage for those who are homeless and living outside encampments. I am not prepared to do that. [...]

[56] Justice Valente held that these deprivations of the s.7 *Charter* rights to life, liberty, and security of the person were not in accordance with the principles of fundamental justice because enforcement of the Code of Use By-Law against residents of this encampment site was overbroad and grossly disproportionate in relation to the By-Law's objectives. Those objectives included preventing disruption to the Region's operations and promoting use and enjoyment of Region premises. Justice Valente declared the By-law constitutionally inoperative insofar as it applied to prevent encampment residents from living on and erecting temporary shelters at the site, under circumstances where the number of people experiencing homelessness exceeded the available and accessible shelter beds in the Region. However, he directed that the Region could apply for an order to terminate the declaration upon it being in a position to satisfy the Court that the Code of Use By-law no longer violated the s. 7 *Charter* rights of the encampment residents. The Region has not done so, nor did the Region appeal the decision.

[57] The Encampment remains in place while other sheltering sites have been cleared. Following that decision, the Region has continued to provide basic services to the encampment, including waste disposal and portable toilets. Meanwhile other encampment sites in the Region have been closed, including sites on Regional land and land owned by lower-tier municipalities. An encampment at 150 Main Street in Cambridge was closed by the Region in August 2023. An additional site at Soper Park in Cambridge was cleared by the City of Cambridge in September of 2023. An encampment at Roos Island in Kitchener was closed by the City of Kitchener in spring of 2023.

Homelessness and accessible shelter in the Region

[58] Homelessness has more than doubled in the Region since the decision in *Persons Unknown*

2023 was released, and the Region's shelter system has not kept pace. One measure of homelessness in a municipality is the "Point in Time Count", which is a count of persons experiencing homelessness on a single night. The September 2021 Point in Time Count that the Court relied on in *Persons Unknown 2023* recorded 1,085 persons experiencing homelessness, including 412 who were "living rough", and 191 who were accessing emergency shelters. However, by October of 2024, the Region recorded 2,371 homeless, 1,009 of whom were "living rough", 446 in emergency shelters, and 153 in Region-funded motels.

[59] Effective June 6, 2025, the Region's Commissioner of Community Services affirmed the Region's emergency shelter capacity was 377. Taking the 2,371 homeless in the Region and the 377-shelter capacity effective June 6, 2025, this only covers 15% of the Region's homeless population, falling short by 85% of what is required. Accordingly, the Region has acknowledged that it cannot ensure that the number of homeless persons will not exceed the number of shelter spaces in 2025, even leaving aside whether available spaces meet the needs of encampment residents.

[60] The majority of the Region's homeless move in and out of homelessness. Of the 2,371 homeless persons captured by the 2024 Point in Time Count, 78% were "chronically homeless", which the Ontario Association of Municipalities defines to include persons in "prolonged or repeated periods of homelessness". This accords with the experience of the Named Respondents, who have moved in and out of the encampment as they lose and gain shelter alternatives.

Region's Plan to End Chronic Homelessness ("PECH")

[61] Approximately 15 months following the decision in *Persons Unknown 2023*, the Waterloo Regional Council passed a Plan to End Chronic Homelessness ("PECH"). Region staff had developed this document over more than a year, in collaboration with a Lived Expertise Prototyping Cohort and a group of "cocreators" consisting of system leaders and service staff. The Report is co-authored by the Region and the Social Development Centre Waterloo Region ("Social Development Centre"), an organization that facilitates inclusion of lived experience in policy development. The contributions of the Social Development Centre were facilitated by David Alton. The PECH prescribes a "human rights approach" to homelessness, where "people

experiencing homelessness are treated as rights holders” and “the Region has a duty of care for their housing needs”. It requires the Region to ensure that national and international human rights law are “appropriately prioritized amidst other legal obligations such as those regarding property rights, privacy and liability”. This “human rights approach” is set out in detail through the principles articulated in the UN Special Rapporteur on the Right to Adequate Housing’s “National Protocol for Homeless Encampments in Canada”, including Principle 2: Meaningful engagement and effective participation of homeless encampment residents, which provides that residents are entitled to meaningful participation in the design and implementation of policies, programs, and practices that affect them. Ensuring meaningful participation is central to respecting residents’ autonomy, dignity, agency, and self-determination. Engagement should begin early, be ongoing, and proceed under the principle that residents are experts in their own lives. The views expressed by residents of homeless encampments must be afforded adequate and due consideration in all decision-making processes. The right to participate requires that all residents be provided with information, resources, and opportunities to directly influence decisions that affect them.

Region passes Site-Specific By-Law

[62] On April 16, 2025, the Region provided public notice of the Site-Specific By-Law by posting a copy on its website. It did not post notice of the By-Law at the encampment site. The Site-Specific By-Law states that it is intended to “specifically regulate and govern 100 Victoria Street and to obtain vacant possession as of December 1, 2025.” A Report to Council upon the introduction of the By-Law specified the By-Law would “facilitate remediation of the property commencing December 1, 2025, and Metrolinx’s use of the property by March 2026” for the purpose of constructing the Kitchener Central Transit Hub. Council passed the Site-Specific By-Law on April 23, 2025. Effective upon its April 23, 2025 adoption by Council, the By-Law prohibits anyone who does not meet the definition of “resident” from sheltering at the encampment. It defines “resident” to mean persons “residing at 100 Victoria Street as of the date that notice of this bylaw is provided through the posting of the agenda for the Council meeting at which this By-law will be considered”. It further provides that “[c]ommencing on December 1, 2025, no person shall enter onto, reside on, or occupy 100 Victoria Street or any part thereof”. Persons contravening that provision would be guilty of an offence and liable for a fine of up to \$5,000.

[63] The By-Law authorizes the Region to, among other actions, erect fencing around the site to prevent entry, remove persons' personal property from the site, and take steps under the *Trespass to Property Act* to enforce the By-Law. The Region's Commissioner of Community Services affirms that the Region recognizes "approximately 40" persons as having resided in the encampment on April 16, 2025, ("the Existing Residents") that being the date "notice" of the By-Law was given. This count includes only four of the Named Respondents that provided affidavits.

[64] Council also directed staff to add \$814,333 to the regional housing budget in order to "implement a plan for alternative accommodation" for "current residents" of the encampment. Of this new funding, \$466,083 would go to "motels with social supports", \$77,000 to "site remediation", and \$271,250 to new supportive housing units. The funding for "motels with social supports" would be "temporary" and its continuation beyond 2026 is not specified. The Report to Council summarized a "transition plan" for the encampment, entailing Region staff providing "enhanced site support by focusing efforts and resources on current residents for available housing and shelter options and ongoing site management". This "operational effort" will "wind down before November 30th".

[65] Enforcement of the By-Law is not conditional on any encampment resident being offered alternative accommodation. The By-Law may be enforced whether or not residents are housed.

The Amended By-Law

[66] The Region passed an Amended By-Law on January 9, 2026. This adjusted the vacant possession date, removed the offence provision, and provided for a Transition Plan for the Existing Residents.

Current status of the Encampment

[67] The population of the Encampment varies, and the parties differ as to the number of individuals currently staying there. It has varied from the approximately 40 individuals thought to be there in April 2025, and the Region's most recent estimate of 10-12 occupants as of February 2026. The most recent estimate of the Respondents is that 15-20 people stay at the Encampment, and about 10-15 more people visit the Encampment each day. On April 8, 2026, 20 structures were

counted on the site. Smoke was coming from three structures. None of the original 40 Existing Residents remain on site, and the USWs have supported the transition of at least 22 more recent arrivals to alternative housing since May 2025. The parties are agreed that there are seasonal variations in the population of the Encampment, and that there are likely to be more people present with warmer weather in the spring, summer and fall, than in the winter.

Issues

[68] The Applicant Region's application, and the Respondents' Cross-Application and Notice of Constitutional Question requires the Court to consider:

- (i) The admissibility of contested expert evidence provided by both parties.
- (ii) Is this Court bound by horizontal *stare decisis* arising from Justice Valente's decision in *Persons Unknown 2023*?
- (iii) How do Canada's obligations under International Law bear on these questions?
- (iv) Does the Amended By-Law infringe s.7 of the *Charter*?
- (v) Should homelessness be considered an analogous ground for the purpose of s.15 of the *Charter*?
- (vi) Does the Amended By-Law infringe s.15 of the *Charter*?
- (vii) If the answer to issues (iv) or (vi) is yes, is the infringement saved by s.1 of the *Charter*?
- (viii) Should the Amended By-Law be quashed under s.273 of the *Municipal Act*?
- (ix) Should the Region be granted an injunction under s.440 of the *Municipal Act*?
- (x) If there is a breach that is not saved under s.1, what should the remedy be?
- (xi) Should the current interlocutory injunction be maintained?

Positions of the Parties

Position of the Applicant Region

[69] The Region submits that the Site-Specific By-law is fundamentally different in its purpose, scope, and context from the Code of Use By-law before Justice Valente in *Persons Unknown 2023*. In particular: (a) The Code of Use By-law applies to all Region-owned property throughout the Waterloo region. The By-law in this case applies only to 100 Victoria. (b) The Region took the position in *Persons Unknown 2023* that it would use the court's order as a precedent for other encampments across the Waterloo region, and relied upon the generic purpose of the Code of Use By-law for the s.7 analysis. In this case, the s.7 analysis turns on the specific purpose of the Site-Specific By-law. (c) The Region had not taken any specific steps to provide for the encampment residents in *Persons Unknown 2023*. The USW team did not yet exist (having been created in 2023), and there were no IHPs for the residents. In the present case, the Region says it is confident that it will be able to transition the willing Existing Residents successfully to alternative accommodation. (d) In *Persons Unknown 2023*, the court found that the existing emergency shelter capacity was likely less than the number of encampment residents (53) at the time. In the present case, the Region has provided net new funding to create additional capacity to accommodate the 40 Existing Residents as part of its Plan. (e) At the time that *Persons Unknown 2023* was argued, it was anticipated that the Region would require possession of 100 Victoria at some future point for KCTH construction, but there was no firm date. In the present case, there is a fixed date by which the Region requires possession of the Property, in order to conduct site remediation and hand over the Property to Metrolinx for construction commencing in March 2026. (f) At the time *Persons Unknown 2023* was argued, the Region had taken some significant steps to address homelessness, but not on the scale of its recent efforts. Between 2022 and 2025, the Region's operating budget for homelessness programs and services more than doubled, from \$30.9 to \$65.5 million. From the Encampment's establishment in 2021, it has almost tripled (from \$23.1 million).

[70] The Region enacted the Site-Specific By-law on April 23, 2025. Public Notice of the By-law was given on April 16, 2025. The By-law only purports to regulate activity on 100 Victoria, unlike the Code of Use By-law at issue in *Persons Unknown 2023*. The Region proactively seeks the guidance of this Court on its plan to close the encampment. It is unusual, if not unprecedented,

the Region says, for a government to seek a declaration that a duly enacted law complies with the *Charter*.

[71] In broad outline, the By-law, in the context of the Region's Plan, has these features: (a) The date by which the approximately 40 Existing Residents must leave was set for December 1, 2025, more than 7 months after the By-law was enacted, giving the Region time to work with them to transition them to alternative accommodation. (b) In the interim, the Region's team of USWs (licensed professionals comprising social workers, social support workers, and a registered nurse) has been attending the site to meet with encampment residents and develop IHPs with them, to tailor their housing solutions to their specific needs. (c) The Region has budgeted an additional \$814,333 in net new funding in 2025 alone, to ensure that there are additional resources for housing solutions for the residents who will need to transition to other accommodations because of the anticipated closure. This is intended to ensure that other unhoused people in the Waterloo region are not negatively affected (e.g., displaced or moved further down waiting lists) by the closure. (d) While the \$814,333 is nominally allocated specifically among additional rent supplements, motel rooms, and supportive housing, Region staff have the discretion to move funds between these categories to meet the specific needs of residents. The Region recognizes that the needs of residents are diverse, and some may be more suited to one form of accommodation rather than another.

[72] The By-law prohibits the carrying out of defined "Prohibited Activities" on the Property, including residing on the Property. However, the By-law makes two key distinctions which affect its application: first, between Existing Residents and those who are not Existing Residents and, second, between the transitional period of April 16, 2025 to November 30, 2025 (the "Transitional Period") and from December 1, 2025 onwards. The By-law defines an individual who was residing at the Property as of the date of Public Notice of the By-law (April 16, 2025) as a "Resident". Only Residents (also referred to as "Existing Residents") are entitled to remain at the Property during the Transitional Period. The Transitional Period and the By-law's prohibition on new individuals joining the Encampment are motivated by the need to assist Existing Residents, who are already at the Property, to find alternative shelter for when the Property is no longer available.

[73] The Encampment has existed on the Property since approximately December 2021. Given

the inherent dangers of Encampment living, the Region has taken significant steps to ameliorate the living conditions on the site. This includes hiring on-site security and pest control, arranging for regular cleaning of the Property and waste-bins onsite to address the significant garbage that accumulates at the Encampment, and installing and servicing onsite portable toilets. Despite the Region's significant efforts, the evidence before this court, the Region submits – including that of the Respondents themselves – demonstrates that the Encampment continues to be a site of widespread public drug use, potentially volatile self-policing and physical violence, and fires.

[74] There have been five reported deaths at the Encampment since January 2022. This likely underreports the true number of deaths related to the Encampment because it does not include cases where an individual is found at the Encampment but pronounced dead in hospital, or where long-term health effects that contribute to a death are related to the Encampment, but the deceased passes away off-site. Deaths also occur in the shelter system, but it appears that they may occur at a lower rate.

[75] The Region has documented the following risks to residents and the broader public arising from the Encampment environment: (a) overcrowding and congestion on the site; (b) evidence of drug paraphernalia that has not been properly disposed of, including syringes and needles; (c) barbecues, propane tanks, and the presence of significant debris on the site, which create significant fire risks; (d) security incidents on the site, including violent altercations between residents of the Encampment; (e) significant clutter and garbage on the Property; (f) evidence of rodent activity on the site, including rodent feces; (g) the presence of human urine and feces; and (h) construction of semi-permanent structures out of sandbags, with no building permits and no apparent adherence to any building standards.

[76] While the Region has devoted significant resources to improve health outcomes at the Encampment in the interim, its public position has always been that the Encampment will not be permitted to exist in perpetuity. This is consistent, the Region submits, with guidance from the National Working Group on Homeless Encampments, that encampments “should not be understood as a solution to homelessness and should not be permanent”, and with the PECH. This has been underscored by the Region's publicized need to use the Property for KCTH construction,

a fact that has been publicly advertised for years. However, as set out above, the Region only received confirmation from Metrolinx in December 2024 of the date by which it required vacant possession of the site.

[77] The Region contends that given the specific purpose of obtaining possession of 100 Victoria for construction of the KCTH, the By-law (in light of the Plan for residents) is neither overbroad nor grossly disproportionate to the substantial public benefit that the KCTH will bring to the entire region. The By-law does not contravene any principle of fundamental justice under s.7. It also cannot be bad faith, the Region submits, for the Region to enact a By-law that it promptly brings to the court for guidance as to its constitutionality.

[78] In its submissions on the hearing of the applications, the Region emphasized that the issues raised by the Amended By-Law are more limited and discrete than those before Valente J. in *Persons Unknown 2023*. From the outset, it says, the Region has taken a “light touch” approach to enforcement. In oral submissions, counsel for the Region submitted that the Region can be trusted to take a “responsible” approach to clearing the Encampment. The Region submits that the Amended By-Law strikes an acceptable balance on the issues that arise from the need to use 100 Victoria for construction purposes. It does not need to be perfect, or reflect the optimal approach, as long as it is *Charter*-compliant.

[79] The Region emphasizes that the Encampment poses significant health and safety risks. These include overcrowding, improperly disposed of drug paraphernalia, fire hazards, violence between residents, significant garbage accumulation, rodent activity, the presence of human urine and feces, and construction of semi-permanent structures with no apparent adherence to building standards. Surrounding residents and businesses have experienced significant disruption to the enjoyment of their property, including theft and a pervasive sense of insecurity. There have been several major fires. There have been reports of weapons, including one person waving a machete at a passerby. There are also significant costs. The Region currently spends approximately \$66,200 per month maintaining the Encampment, exclusive of staffing costs for social supports, outreach facilities, or bylaw staff who regularly attend the property.

[80] The Region contends that the original and Amended By-Law were developed in the broader context of years of engagement and consultation with stakeholders, advocates and experts on the issue of addressing homelessness.

[81] The Region submits that the By-Laws do not infringe s.7 of the *Charter*, as there is no deprivation of life, liberty or security of the person, and that the Bylaw does not contravene the principles of fundamental justice, as it is not overbroad nor grossly disproportionate. It also submits that the By-Law does not contravene s.15 of the *Charter*, as it does not create a distinction, and any distinction does not reinforce, perpetuate or exacerbate disadvantage.

[82] The Region further submits that if an infringement of either s.7 or s.15 is found, that it is demonstrably justified under s.1 of the *Charter*. The limit is prescribed by law that has a pressing and substantial objective, and there is proportionality between the law's objectives and its means, minimally impairing the Respondents' rights, and that the salutary effects of the Bylaw outweigh its deleterious effects.

[83] The Applicant Region insists that the Bylaw was passed in good faith and should not be quashed under s.273 of the *Municipal Act*.

[84] The Region also submits that it should be granted a statutory injunction under s.440 of the *Municipal Act* permitting it to enforce the Bylaw as required.

[85] The Region seeks a Declaration that the Amended Bylaw complies with the *Charter*, the dismissal of the Respondents' Cross-Application to declare the Bylaw invalid under the *Charter* and quash the Amended Bylaw under s.273 of the *Municipal Act*, and a grant to the Region of an injunction under s.440 of the *Municipal Act*.

Position of Respondents (Cross-Applicants)

[86] Even leaving aside the issue of s. 15, the Respondents contend, in *Persons Unknown 2023* Valente J. has already held that application of a municipal By-Law to restrict sheltering at this very site deprived encampment residents of their life, liberty, and security of the person in a manner

that was overbroad and grossly disproportionate, and therefore not in accordance with the principles of fundamental justice, and that he further found that the resulting infringement of s. 7 of the *Charter* was not justified by s. 1 of the *Charter*. Since that time, the conditions that led the Court to find a deprivation of life, liberty, and security of the person have only worsened. It is true, they note, that the principles of fundamental justice at issue - overbreadth and gross disproportionality - turn on assessing the infringement to life, liberty, or security of the person against the objectives of the By-Law. The Respondents recognize that the Region's new By-Law has a differently stated objective. It specifies that it is enacted "to specifically regulate and govern 100 Victoria Street and to obtain vacant possession as of December 1, 2025", whereas the Code of Use By-Law was intended to "prevent disruption to the Region's operations", among other purposes. But the Respondents insist that the objective is only superficially different. At issue in the *Persons Unknown 2023* decision was whether the Code of Use By-Law permitted the Region to obtain vacant possession of the site so that it could ultimately be used as an equipment lay-down site for construction of the transit hub. This is the very use that is before this Court in the underlying application. The Region should not be permitted, the Moving Parties insist, to use an unconstitutional By-Law to remove vulnerable persons from their shelter of last resort.

[87] The Respondents also contend that there is a serious issue in relation to the By-Laws' illegality under s. 273 of the *Municipal Act, 2001*. A by-law is "illegal" for the purpose of s. 273 if it is passed in "bad faith", which will be indicated where the by-law is enacted "without the degree of fairness, openness, and impartiality required of a municipal government". Indicia of bad faith may include a failure to consult on the by-law, and a failure to provide meaningful notice to affected stakeholders. The Respondents assert that these indicia are established here based on, among other factors, the Region's failure to advise encampment residents of the By-Law in a manner sufficient for them to provide meaningful input, and the Region's failure to comply with the consultation processes approved by Council.

Evidence

[88] A very substantial Application Record has been provided by both parties, including many affidavits and transcripts of cross-examinations. The parties have each tendered expert evidence. At a high level, the parties' medical experts agree that being unhoused, including in encampments,

is associated with significant risks and negative health outcomes as compared to being housed, but they differ on the preferability of the Encampment as compared to indoor shelter options such as emergency shelters and motels. The Region put forward Dr. Sharon Koivu. The Respondents put forward Dr. Hwang, Dr. Gupta, and Bernadette Pauly, a registered nurse with a PhD in nursing. The Region submitted that she should not be qualified as an expert witness and, if she is so qualified, that her evidence be given little weight by the Court. The Respondents also lead affidavit evidence from persons outside the medical sphere, the Federal Housing Advocate Marie Josee Houle, and Drs. Laura Pin, Kaitlin Schwan and Gaetz. The Region objects to their evidence, saying that it is unbalanced and unreliable. The Region says that the Respondents' other witnesses, Sara Escobar, Jacara Droog, David Alton and Angela Alt speak to the difficulties in providing services and options to the unhoused population, but that while their evidence is sympathetic, it is tainted by advocacy and strays into impermissible argument or opinion. The Respondents also provided affidavits from current or former residents of the Encampment.

Analysis

First Preliminary Issue: Expert Evidence

[89] There are two preliminary issues that should be addressed prior to turning to a more fulsome consideration of the s.7 and s.15 issues at the heart of this litigation. The first preliminary issue is the admissibility of the parties' expert evidence. The Named Respondents challenge the admissibility of Dr. Koivu's evidence. The Region challenges the admissibility of the evidence of Dr. Pauly, Dr. Pin, and Canada's Federal Housing Advocate Marie Josee Houle. They also describe the evidence of Drs. Schwan and Gaetz as "purportedly 'expert'".

[90] To be admissible, expert evidence must be (a) relevant; (b) necessary; (c) not subject to an exclusionary rule; and (d) proffered by a properly qualified expert. Where these threshold criteria are met, judges retain a discretionary gatekeeping role to ensure that the probative value of the expert evidence does not outweigh its risks. The necessity of expert evidence is not to be judged by too strict a standard; what is required is that the opinion is necessary because it provides information "which is likely to be outside the experience and knowledge of a judge or jury" and allows them to form an independent judgment. Expert witnesses provide the trier of fact with

ready-made inferences and opinions typically based on second-hand evidence. The most significant risks in admitting expert evidence are the danger that a jury will be unable to make an effective and critical assessment of the evidence and/or that experts might usurp the function of the trier of fact. These concerns are lessened in judge-alone trials.

[91] Expert evidence is often especially necessary in *Charter* litigation to ensure that courts avoid deciding important systemic issues in a factual vacuum. The Supreme Court of Canada has been vigilant to ensure that a proper factual foundation exists before measuring legislation against the provisions of the *Charter*, particularly where the effects of impugned legislation are the subject of the attack.

[92] There are two categories of facts in *Charter* litigation: “adjudicative facts” which are specific (“who did what, where, when, how and with what motive”); and “legislative facts” which establish the purpose and background of legislation, including the social, economic, cultural, political, and legal context in which legislation was enacted; the latter are more general in nature and therefore subject to less stringent admissibility requirements. “Social facts” are “cousins” of “legislative facts, and are defined as social science research that is used to construct a frame of reference or background context for deciding factual issues; both social and legislative facts may involve policy considerations. Legislative and social fact evidence is best presented through expert witnesses so that it can be tested through cross-examination.

[93] In *Charter* challenges seeking remedies under s. 52(1) of the *Constitution Act, 1982*, legislative facts are often the most relevant, as illustrated by the Supreme Court’s acceptance that reasonable hypotheticals or reasonable foreseeability can establish a *Charter* claim. Legislative and social facts are likely to be dispositive in some cases, even where these facts are of a general nature or cannot be demonstrated with greater precision than the subject matter permits. At its core, the present application implicates systemic challenges rather than the circumstances of any one claimant. Expert evidence on legislative and social facts is therefore indispensable to ensure that the court has a complete record.

[94] I conclude that the evidence of all of these witnesses is of assistance to the Court, and

should be admitted, subject to weight.

[95] Dr. Pauly's expert opinion evidence should be admitted because it meets each of the four *Mohan* factors (relevance, necessity, absence of an exclusionary rule and a properly qualified expert): *R. v. Mohan*, 1994 CanLII 80 (SCC), [1994] 2 S.C.R. 9; See also: *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23. Dr. Pauly is a registered nurse and public health researcher with more than a decade of experience in the field of homelessness. She has published extensively in this area and been part of numerous publicly funded research teams defining and enumerating homelessness and evaluating responses to homelessness. Her evidence on the demographics of encampments provides relevant and necessary context for this Court's analysis under both ss. 7 and 15 of the *Charter*, and her evidence on the impact of encampment evictions and displacements is relevant and necessary to the assessment of whether there is a deprivation of s. 7. While parts of one of her previous affidavits were found not to comply with British Columbia's Civil Rules in *Brett*, there is no indication that her affidavit in this case has similar defects, and she has provided expert evidence in nine other cases. In any event, Dr. Pauly has signed an acknowledgment of her duty to the Court, which "will generally be sufficient" to establish "independence and impartiality".

[96] This Court should also admit the evidence of Canada's Federal Housing Advocate, Marie Josée Houle. The Region's objection to her evidence is that she is an advocate on encampment issues. However, courts have been clear that advocacy alone does not undermine the admissibility of expert evidence because many experts are advocates and, particularly in public interest litigation, it would be surprising not to have experts who have expressed points of view and advocated for particular outcomes. That Ms. Houle had previously written publicly to the Region to express the same view she now expresses in her affidavit – that its Site-Specific By-Law is inconsistent with the human rights approach – merely reinforces that this is her opinion. Ms. Houle, too, has signed the acknowledgement of her duty of "independence and impartiality" to this Court.

[97] The Region's objection that Dr. Pin lacks qualification is unfounded. Dr. Pin has engaged in research and published extensively on the issues with respect to which she offers her opinions. The Region itself has deemed her expertise on these topics sufficient to hire her as its consultant.

The Region also objects that whether the By-Law is consistent with the “human rights approach” is not proper subject for opinion evidence. Regardless of whether this is the case, this Court may admit evidence as to what the “human rights approach” requires, just as in negligence cases, an expert may opine on what the standard of care requires.

[98] The Region’s objections to the evidence of Drs. Schwan and Gaetz is equally unfounded on the record. Both have published extensively on the issues for which they give evidence and Dr. Schwan was lead researcher on the largest ever Canadian study “examining women and gender diverse people’s distinct housing experiences, challenges, and service needs”. The evidence of Dr. Schwan provides relevant and necessary context for the Named Respondents’ sex-based s. 15 argument. The evidence of Dr. Gaetz regarding the definition and causes of homelessness is also relevant and necessary to this Court’s s. 15 analysis, having regard to the Supreme Court’s instructions in *Kanyinda*, described below, that courts must consider such context in assessing disadvantage.

[99] I also consider that the evidence of Dr. Koivu is of assistance to the Court.

Second Preliminary Issue: Horizontal Stare Decisis

[100] The second issue concerns the application of the doctrine of horizontal *stare decisis*. The conditions under which a legal determination is binding on courts of coordinate jurisdiction were addressed by a unanimous Supreme Court in *R. v. Sullivan*, 2022 SCC 19. Horizontal *stare decisis* dictates that a Superior Court decision is binding on coordinate judges, who may only depart from it if an exception from *Re Hansard Spruce Mills*, 1954 CanLII 253 (BC SC), [1954] 4 D.L.R. 590 (B.C.S.C.) applies. These are:

- a. subsequent decisions have affected the validity of the impugned judgment;
- b. it is demonstrated that some binding authority in case law, or some relevant statute was not considered (*in percuriam*);
- c. the judgment was unconsidered, a *nisi prius* judgment given in circumstances familiar to all trial Judges, where the exigencies of the trial require an immediate decision without opportunity to fully consult authority.

[101] None of these exceptions apply here with regard to the s. 7 issues. Nor can the Region's current application be distinguished on its facts. To the contrary, the conditions that led Justice Valente to find a deprivation of life, liberty, and security of the persons have only worsened since *Persons Unknown*. The Region's provision of IHPs for 40 persons, most of whom are not Named Respondents, does not change that its chronically homeless have no place but this site to shelter when they lose other options. As the Region has conceded, it is not in a position to ask the Court to lift its declaration pursuant to the terms set by *Persons Unknown*. The By-Laws are new in form but not in substance. It is the substance - the purpose and effect of legislation - that determines whether *stare decisis* applies. Horizontal *stare decisis* binds this Court to follow Justice Valente's previous determination that it is unconstitutional to prohibit sheltering on this site when "the number of homeless persons exceeds the number of available and accessible shelter beds in the Region." The fact that the By-Laws are different in name from the Code of Use By-Law does not prevent the application of *stare decisis*. This is because the By-Laws' object and impact are substantively identical as those already considered by this Court. There is no meaningful distinction between prohibiting loitering and sheltering in order to "prevent [...] the disruption of the Region's operations on the Designated Premises" and restricting sheltering to "specifically regulate and govern 100 Victoria Street and to obtain vacant possession" where the purpose of vacant possession in either case is the same - supporting construction of the Region's transit hub.

[102] In any event, if I am wrong in this assessment and horizontal *stare decisis* does not apply, it is of little practical consequence in this instance because Justice Valente's decision in *Persons Unknown 2023* is persuasive authority, and I agree with his conclusions regarding the law concerning the application of s.7 of the *Charter* in this context.

[103] While this Court is bound by *Persons Unknown 2023*'s legal determinations with respect to s. 7, it is not so bound with respect to s. 15. This is because the Supreme Court's March 6, 2026, decision in *Kanyinda* has rendered the *Persons Unknown 2023* s. 15 analysis invalid, such that, if *stare decisis* does apply, the first *Hansard Spruce Mills stare decisis* exception permits this Court to determine the issue for itself. In *Persons Unknown 2023*, Justice Valente rejected the s. 15 claim of homeless persons who were women, gender diverse, and/or disabled on the basis that "homelessness" itself was not an enumerated or analogous ground. However, the majority reasons

in *Kanyinda* now make clear that a s. 15 violation may be established in relation to an enumerated/analogous subset of a broader group that is not, in itself, identified by an enumerated or analogous ground. Justice Valente's basis for finding no breach of s. 15 is therefore invalid after *Kanyinda*.

Proper approach to Charter Interpretation

[104] *Charter* rights must be interpreted in a generous, purposive, and contextual manner to secure the full benefit of the *Charter's* protections: *Quebec (Attorney General) v. 9147-0732 Quebec Inc.*, 2020 SCC 32, at para. 7. This means that the right at issue must be informed by the specific purposes of that right, the larger purposes that animate the *Charter* as a whole, and the social realities in which the alleged *Charter* breaches occurred. Further, courts are required to presume that the *Charter* provides protections at least as broad as those afforded by similar international human rights documents ratified by Canada; that is, they provide a constitutional floor, not a ceiling: *Taylor v. Newfoundland and Labrador*, 2026 SCC 5, at paras. 76 - 85. Federal, provincial, territorial, and municipal governments are all equally bound by international human rights instruments ratified by Canada: *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5, at para 303.

[105] The presumption of conformity is an established interpretive principle in *Charter* litigation. The text of binding international instruments reflect Canada's international human rights obligations and are an important indicia of the meaning of the full benefit of the *Charter's* protection. The presumption of conformity is an interpretive tool in delineating the "breadth and scope of *Charter* rights" and defining the principles of fundamental justice: "[o]ur *Charter* is the primary vehicle through which international human rights achieve domestic effect" and that in particular, ss. 7 and 15 "embody the notion of respect of human dignity and integrity": *R v. Ewanchuk*, [1999] 1 S.C.R. 330, at para. 73.

[106] Canada has voted in favour or ratified several international instruments that recognize adequate housing as a fundamental human right that is inextricably linked to other rights, including the rights to life, security of the person, and equality. In addition to the *Universal Declaration of Human Rights* and the *International Covenant on Economic, Social and Cultural Rights*, Canada has ratified the *Convention on the Elimination of All Forms of Discrimination Against Women*, the

International Convention on the Elimination of All Forms of Racial Discrimination, and the *Convention on the Rights of Persons with Disabilities*, all of which recognize housing as a fundamental human right. The UN has further recognized that all individuals should possess “a degree of security of housing tenure that guarantees legal protection against forced eviction”, that security of tenure can include informal settlements such as occupations of land, and further that “forced eviction constitutes a gross violation of human rights”: *Victoria (City) v Adams*, 2008 BCSC 1363, at para. 89, aff’d 2009 BCCA 563.

The Application of International Law

[107] Canada uses a dualist system for the reception of international law, meaning that treaties ratified by the Executive require legislative implementation to be binding domestically. Ratified treaties do not automatically become part of Canadian law. They must be implemented by federal or provincial legislation to be enforceable in domestic courts. Customary International Law (laws recognized through state practice and *opinion juris*) is automatically adopted into Canadian law unless it conflicts with existing legislation. Canadian courts interpret domestic laws in a manner that conforms with international obligations, often utilizing international law to interpret the *Charter*. This means that when a statute or enactment is ambiguous, courts prefer the interpretation that aligns with Canada’s international obligations.

[108] Canadian courts possess a robust ability to rely upon international legal instruments to interpret the content or scope of any *Charter* right or principle: *Quebec (Attorney General) c 9147-0732*, 2020 SCC 32, at para. 37 (“*Quebec*”). While courts must pay attention to whether a source of international law is binding or non-binding, both sources may be relevant and persuasive in *Charter* interpretation. Binding sources refer to international human rights obligations that Canada has ratified. They carry more interpretative weight. Non-binding sources include non-ratified declarations, covenants, conventions, judicial and quasi-judicial decisions of international tribunals and customary norms. Non-binding sources may be treated as “relevant and persuasive, but not determinative, interpretive tools”: *Quebec*, at paras. 30 - 38.

[109] These applications raise significant issues of public importance relating to municipal encampment responses and the rights of some of the most vulnerable members of society under

sections 7 and 15 of the *Charter*. Section 7 must be interpreted in a manner that fully recognizes the inherent dignity and autonomy of those experiencing homelessness. Such an approach is consistent with the *Charter*'s foundational values and Canada's international human rights obligations which have been adopted into domestic law through the *National Housing Strategy Act*, SC 2019, c29 ("*NHSA*").

[110] Canada's international obligations, as adopted through the *NHSA*, establish a basic human right to adequate shelter centered in human dignity. These obligations require state actors to treat those experiencing homelessness as right-holders entitled to effective remedies, due process, and genuine and meaningful consultation in any encampment response. The By-laws' failure to afford these rights to all who rely on the encampment as a shelter of last resort is relevant to assessing (i) the severity of the liberty infringement; and (ii) whether the By-Laws accord with the principles of fundamental justice.

[111] Adopting a dignity-centric approach to section 7 requires evaluating whether alternative shelter space is truly "adequate", "accessible", or "safe" based on the needs of each individual. This requires engaging with their personal history, lived experience, and identification with one or multiple intersecting grounds. The Supreme Court of Canada in *Kanyinda* affirmed that an intersectional approach must be adopted in interpreting equality rights under section 15(1) of the *Charter*. The Court should recognize the acute effects that flow from the interaction between the protected grounds and the social and economic realities of chronic homelessness.

[112] Canada's international and domestic obligations relating to the right to adequate housing and protections against forced evictions are persuasive and relevant considerations in interpreting the scope and content of section 7 of the *Charter*.

[113] The most powerful interpretive tool relating to international human rights obligations is the presumption of conformity. The presumption of conformity provides that *Charter* rights should be interpreted to provide at least as broad protection as that afforded by Canada's binding international legal obligations: *Taylor v. Newfoundland and Labrador*, 2026 SCC 5, at para. 82. The international instruments that Canada chooses to ratify are therefore important interpretive

tools in understanding what the *Charter* protects.

[114] Canada has ratified several binding international instruments that give rise to obligations where a state action deprives shelter, including the *International Covenant on Economic, Social and Cultural Rights* (“ICESCR”) and the *Universal Declaration of Human Rights* (“UDHR”). As Canada’s ratification of the ICESCR and UDHR pre-date the *Charter*, these obligations are also part of the *Charter*’s historical context and therefore may carry additional interpretive weight: *Quebec*, at para. 41-42.

The Right to Adequate Housing in International Law

[115] Canada signed the UDHR when it was adopted by the United Nations General Assembly in 1948. The UDHR provides that Member States shall commit to progressive measures to help secure the universal and effective observance of its rights for all peoples under their jurisdiction. Article 25(1) of UDHR provides that “everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including... housing”.

[116] Canada acceded to the ICESCR in 1976. Article 11(1) of the ICESCR also recognizes the right to adequate housing as a necessary component of an adequate standard of living. The rights contained in the ICESCR are subject to interpretation by the UN Committee on Economic, Social and Cultural Rights (CESCR), which is a body of independent experts tasked with monitoring implementation of the ICESCR by State Parties. In 1991, the CESCR issued *General Comment #4: The Right to Adequate Housing* to identify the principal issues important to the realization of the right to adequate housing under Article 11(1) of the ICESCR. The *General Comments* are considered sources of non-binding international law, which should be treated as relevant and persuasive authority to the issues addressed in this case.

[117] *General Comment #4* articulates an enriched concept of the right to adequate housing, recognizing it “is of central importance for the enjoyment of all economic, social and cultural rights.” The CESCR instructs that the right to adequate housing should not be narrowly construed as a right to a roof over one’s head, but rather as “the right to live somewhere in security, peace and dignity.” It is a right afforded to all persons “irrespective of income or access to economic

resources”.

[118] *General Comment #4* sets out several factors relevant to the actualization of the right to adequate housing under Article 11(1). These factors include, amongst others: (i) legal security of tenure (which encompasses legal protection against forced evictions from informal settlements), (ii) access to services and facilities (e.g. healthcare, schools, food and water), (iii) habitability (e.g. adequate protection from cold, heat, rain, disease), and (iv) accessibility and cultural adequacy.

[119] In 1991, the CESCR released *General Comment #7: The Right to Adequate Housing: Forced Evictions*. *General Comment #7* provides guidance on why forced evictions violate international human rights obligations and outlines the very narrow circumstances in which a state-initiated eviction may be consistent with international human rights obligations.

[120] The concept of ‘forced evictions’ articulated in *General Comment #7* is broad, applying to evictions from temporary informal settlements on public land, even where the individual being subject to eviction does not have a legal right to occupy the land. Like *General Comment #4*, *General Comment #7* unequivocally establishes that forced evictions are *prima facie* inconsistent with the rights contained in the ICESCR, including Article 11(1), and will only be justified in the most exceptional circumstances where “all legal resources and remedies are available to those affected.” *General Comment #7* recognizes that forced evictions can compound other sources of inequality and particularly have a disproportionate impact on marginalized groups, like women:

10. Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction. Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless.

[121] *General Comment #7* provides that at a minimum, prior to carrying out any eviction, State Parties are required to explore all feasible alternatives in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. An eviction cannot comply

with the ICESCR without appropriate due process and procedural protections being provided to the affected persons, including an opportunity for genuine and meaningful consultation, a process for recourse, and the provision of remedies to those being evicted. *General Comment #7* explicitly prohibits evictions that render those affected homeless or vulnerable to other human rights violations. *General Comment #7* at para. 3 defines the term “forced evictions” as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”

[122] On April 30, 2020, the UN Special Rapporteur on the Right to Housing released a National Protocol for Homeless Encampments in Canada (the “Protocol”). The Protocol summarizes the ICESCR obligations relating to forced evictions as follows:

International human rights law does not permit governments to destroy peoples’ homes, even if those homes are made of improvised materials and established without legal authority. Governments may not remove residents from encampments without meaningfully engaging with them and identifying alternative places to live that are acceptable to them. Any such removal from their homes or from the land which they occupy, without the provision of appropriate forms of legal protection, is defined as a ‘forced eviction’ and is considered a gross violation of human rights...

[123] The Protocol outlines eight principles to guide Canadian governments on how to take a human rights-based approach to encampment responses. The human-rights based approach articulated in the Protocol is anchored in Canada’s international obligations relating to housing under the ICESCR, as interpreted through *General Comment #4* and *#7*. The first principle requires treating those living in an encampment as rights-holders. Per the UN Special Rapporteur, this means shifting away from an approach of “criminalizing, penalizing, or obstructing homeless encampments” to “an approach rooted in rights-based participation and accountability.”

[124] Principle 4 requires state actors to explore all viable alternatives prior to eviction from an encampment, ensuring meaningful and effective participation of residents in discussions regarding the future of an encampment and their needs in sheltering alternatives. The Protocol centers meaningful engagement and effective participation of encampment residents as key to respecting

dignity, agency and self-determination. In terms of what constitutes meaningful engagement, the Protocol provides:

... Engagement should begin early, be ongoing, and proceed under the principle that residents are experts in their own lives. The views expressed by residents of homeless encampments must be afforded adequate and due consideration in all decision-making processes. The right to participate requires that all residents be provided with information, resources, and opportunities to directly influence decisions that affect them...

[125] Principle 5 specifically addresses relocation from an encampment. It provides that meaningful, robust, and ongoing engagement with encampment residents is required for relocation decision-making. Relocation must not result in the continuation or exacerbation of homelessness or fracture families or partnerships. Adequate alternative housing, with all necessary amenities, must be provided to all residents prior to any eviction.

International Obligations Adopted by Canada and the Region

[126] Canada's decision to enact the *NHSA* in 2019 necessarily strengthens the force that Canada's international obligations should play in interpreting the scope and content of section 7. The *NHSA* codifies Canada's commitment to housing as a fundamental human right and recommitted Canada to the progressive realization of the right to adequate housing as defined in the ICESCR.

[127] Section 4 of the *NHSA* explicitly recognizes that housing is essential to the inherent dignity and well-being of the person. It provides:

4. It is declared to be the housing policy of the Government of Canada to
 - (a) Recognize that the right to adequate housing is a fundamental human right affirmed in international law;
 - (b) Recognize that housing is essential to the inherent dignity and well-being of the person and to build sustainable and inclusive communities;
 - (c) Support improved housing outcomes for the people of Canada; and

- (d) Further the progressive realization of the right to adequate housing as recognized in the International Covenant on Economic, Social and Cultural Rights.

[128] Section 13 of the *NHSA* establishes the Federal Housing Advocate as the housing rights accountability mechanism in Canada.

[129] The Federal Housing Advocate's 2024 Final Report called on all levels of government to commit to end forced evictions of encampments on public lands. As explained by the Federal Housing Advocate in her Affidavit in these applications, some of the specific recommendations made to municipal stakeholders in the Final Report include (i) adopting human rights-based solutions to addressing the needs of encampment residents, (ii) ensuring the development of bylaws include meaningful engagement with people with lived experiences, and (iii) allowing encampment residents to play a meaningful role in decision-making processes that affect them.

[130] In June 2025, the Federal Housing Advocate released a *Guide to Meaningful Engagement and Integrating a Human Rights-Based Approach to Encampment Responses* (the "Guide"), which "articulates eight key principles that are necessary to guide municipal decision-makers and staff in ensuring meaningful engagement is carried out and to implement a human-rights based approach to encampment responses." Each principle is accompanied by required actions. The Guide explains the human-rights based approach to encampment response as follows:

As the name suggests, a human rights-based approach requires a commitment to upholding and being accountable for all human rights for all people, without discrimination. It is also founded on the principles of participation, empowerment and accountability and requires the investment of time and resources in ensuring meaningful engagement with people living in encampments...

A human rights-based approach does not criminalize people experiencing homelessness. It takes care to ensure that responses do not inflict additional harm on people living in encampments. It respects autonomy and choice and attempts to meet people where they are and to support them in accessing adequate housing while respecting their dignity, autonomy and human rights.

[131] The Guide affirms that excluding people living in encampments from decision-making

about encampment responses perpetuates their marginalization and undermines autonomy and trust. A human rights-based approach requires meaningful consultation that begins before a decision is already made by the municipality. It requires a process which provides people with real choices and an opportunity to make informed decisions. In other words, engaging with affected groups only after decisions have been made does not constitute meaningful consultation, as it denies those groups a genuine opportunity to influence outcomes.

[132] The Region's Plan to End Chronic Homeless ("PECH") states that the Region "will be compliant with national and international human rights law and ensure it is appropriately prioritized amidst other legal obligations such as those regarding property rights, privacy, and liability." The PECH embraces many of the concepts set out in the *General Comments* as described by the UN Special Rapporteur and Federal Housing Advocate. Most fundamentally, the PECH explicitly commits to take a human-rights based approach, including by treating people experiencing homelessness as rights holders with agency. The Lived Experience Prototyping Report, which was also adopted by Region Council along with the PECH, highlights many of same principles as *General Comment #4* and *#7* including security of tenure.

[133] The international human rights commitments that Canada has made should inform the assessment of the principles of fundamental justice under s.7 which are applicable to these applications. Section 7 of the *Charter* requires that laws that interfere with life, liberty and security of the person conform with the principles of fundamental justice, the basic principles that underlie our legal system. These principles can be both procedural and substantive.

[134] The standards used by the UN Rapporteur and the Federal Housing Advocate to develop principles underlying a human rights-based approach to encampment responses, including robust and meaningful involvement of the chronically homeless in any decision-making around relocation, are relevant and persuasive criteria in assessing any mitigation of harm in the s. 7 gross disproportionality analysis. An individualized approach recognizes that those experiencing homelessness are not a homogeneous group. Many marginalized and vulnerable groups are disproportionately represented in the unhoused population, including indigenous peoples, racialized individuals, women, and people with disabilities.

Section 7

[135] I turn now to a more detailed examination of the s. 7 issues in this litigation.

[136] The Region is an “occupier” for the purpose of the *Trespass to Property Act* and it accordingly has the power to exclude persons from its properties. However, because the Region is a branch of “government”, it must exercise that power in accordance with the *Charter*. This means it may not require persons to leave its property if doing so would violate the *Charter*.

[137] The Named Respondents are clear that they do not assert property rights. It is important to appreciate this distinction. This is not a case about property rights. The Named Respondents do not claim a right to control this particular piece of land. They have not acquired “squatter’s rights” in any sense. Rather, they seek not to be deprived of the ability to erect the shelters they need to protect their own health and safety when they lack indoor alternatives. There is no unconstrained right to live wherever one pleases (just as there is no unconstrained right to be free from arrest or detention); it only means that the liberty interest, a component of the s. 7 inquiry, is engaged.

[138] Enforcement of a negative right may require a government to take positive steps. In this sense, the distinction between positive and negative rights can be a “false dichotomy” because “no right can exist without some form of corresponding obligation ... to do or not do something”: *La Rose v. Canada*, 2023 FCA 241 at para. 103. The Named Respondents are not seeking to impose free-standing positive obligations on the Region. However, similar to the Ontario Court of Appeal’s finding in *Mathur*, the Region has committed itself to the obligations set out in its PECH, which include taking a human rights-based approach to decision-making regarding homelessness. The question is whether, through the lens of that voluntarily imposed obligation, the By-Laws are *Charter* compliant and will not lead to a deprivation of rights. The Named Respondents seek for the Region to follow the standards it has set for itself through its PECH. The By-Laws might not result in a deprivation of s. 7 interests if the Region were to use the PECH consultation processes it committed itself to develop a “safe tenting protocol” to permit and regulate outdoor sheltering at other locations.

[139] On the evidentiary record, the Respondent’s s. 7 *Charter* rights are clearly engaged in ways

that are not in keeping with the principles of fundamental justice. Section 7 protects foundational and fundamental human rights. I agree with the submission of *Amicus* that the *Charter* accords rights which can only be fully enjoyed by people who are fed, are clothed, are sheltered, have access to necessary health care, to education, and to a minimum level of income.

[140] Section 7 of the *Charter* provides:

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

[141] The s. 7 right to life is engaged where the law or state action imposes death or an increased risk of death on a person, either directly or indirectly. Liberty is engaged when state compulsions or prohibitions affect fundamental life choices and extends beyond mere freedom from physical restraint. It includes the right to an irreducible sphere of personal autonomy wherein individuals may make inherently private choices free from state interference and relates to matters that are fundamentally or inherently personal such that they implicate basic choices going to the core of what it means to enjoy individual dignity and independence. The right to security of the person protects both the physical and psychological integrity of the individual. This right is infringed by “serious state-imposed psychological stress”, objectively measured, that need not rise to the level of nervous shock or psychiatric illness.

[142] Prohibiting homeless persons from taking measures to shelter themselves by erecting temporary structures in circumstances where there are no practical housing alternatives has been found to engage the right to life (due to exposure to risks of serious harm including death); the right to liberty (due to a significant interference with dignity and independence); and with security of the person (triggering or exacerbating anxiety, physical and psychological distress, and endangering health).

[143] In the present case, I agree with *Amicus* that the expert evidence of Dr. Stephen Hwang, an expert on the health impacts of homelessness and interventions to improve the health of unhoused individuals, raises a serious prospect that life, liberty, and security of the person are engaged: (a)

homeless individuals who are prohibited from erecting rudimentary shelter from the elements will suffer clear and direct adverse impacts on their health, such as a risk of hyperthermia (which can lead to death), serious skin and foot diseases, respiratory diseases, severe sunburn and heatstroke, and severe disturbed and fragmented sleep; (b) forced evictions from encampments contribute to the declining health of homeless individuals by leaving them with little choice but to seek outdoor shelter in more remote public spaces. This makes it difficult for them to access pharmacies, attend medical appointments or methadone clinics, and obtain food; (c) forced removal can lead to the loss of critical survival items, such as medical supplies, food, and clothing; (d) additionally, negative interactions with law enforcement cause emotional distress and build distrust, which exacerbates social exclusion and increases reluctance to seek health and social supports; and (e) moving people against their will from encampments, even with notice and engagement (such as preparing individual housing plans) can have adverse impacts. Forced evictions, or even the prospect of forced eviction, are traumatizing.

[144] A comparison of Point in Time counts from September 2021 (1,085 persons experiencing homelessness including 412 “living rough”) and October 2024 (2,371 experiencing homelessness, with 1,009 “living rough”) demonstrates that the problem of homelessness, including unsheltered chronic homelessness, has significantly exacerbated over the past three years.

[145] As of June 6, 2025, the Region’s overall emergency shelter capacity was 377 beds, a number that falls well short of the unhoused population’s needs. The capacity of 377 also needs to be contextualized since not all shelter beds are available to every individual, some for example may only be accessible to youth or women. It was acknowledged by one of the Region’s witnesses that very few of the 1,009 people “living rough” would be able to readily access a shelter bed, interim housing, or motels because these shelter options are already at high capacity. Emergency shelters are not always appropriate or available for people who lack capacity, have serious mental health, and/or substance use issues. Shelters can be destabilizing (by requiring people to move their belongings every morning) and overwhelming or overstimulating (by causing people with delusions to feel frightened or threatened). Risks in shelters include transmission of pathogens like tuberculosis and COVID-19, bed bugs, sleep deprivation, and violence. Further, if someone has previously been barred from a shelter (i.e. for behavioural issues or drug use) it is extremely

difficult for them to regain access. Similarly, motels are not suitable nor safe for some people, particularly those who lack capacity, have serious cognitive, mental health, and/or substance use issues. Motels do not provide the levels of support required for high-needs individuals; behavioural issues frequently lead to eviction and unsupervised drug use can lead to overdose with no one nearby to notice or assist (a risk that may be mitigated by the “buddy system” in the Encampment). Risks at motels include sex trafficking, drugs, and violence.

[146] The evidence supports the proposition that the By-laws deprive the Respondents’ rights to life, liberty, and security of the person in ways that are not in accordance with the principles of fundamental justice, specifically in a manner that is grossly disproportionate to the By-law’s object. The s. 7 analysis is only concerned with the question of whether the impugned law or State action infringes – or risks infringing – the *Charter* claimant’s rights. As stated by the Supreme Court, “[t]he question of justification on the basis of an overarching public goal is at the heart of s.1 but it plays no part in the s. 7 analysis”: *Canada (Attorney General) v. Bedford*, 2013 SCC 72, at para. 125. Further, gross disproportionality is not concerned with the number of people who experience grossly disproportionate effects; a grossly disproportionate effect on just one individual is sufficient to violate the norm: *Bedford*, at para. 122. The inquiry into the purpose of the law therefore focuses on the nature of the object, not on its efficacy.

[147] The primary purpose of the Region’s By-law is to obtain vacant possession of the Property where Existing Residents of the Encampment, vulnerable homeless individuals, have erected temporary shelters in circumstances where housing options are unavailable and/or inaccessible to them. Another purpose of the By-law is to prohibit Non-Residents, who are also vulnerable homeless individuals, from erecting temporary shelters at the property after April 16, 2025. As noted above, the risks to the Encampment residents include lack of stability, difficulty accessing services, increased health problems, exacerbation of mental health challenges, and risk of death. *Amicus* submits, and Justice Valente in *Persons Unknown 2023* accepted, and I agree, that these consequences are more severe for Encampment residents who suffer from mental illness or substance abuse to the extent that they may lack capacity to understand the legal consequences of the By-law’s enforcement.

[148] Justice Valente’s ruling included an order that the Region could apply to terminate the declaration “upon it being in a position to satisfy this Court that the By-law no longer violates the section 7 rights of the Encampment residents.” The Region has not applied to terminate the previous declaration of inoperability in the *Persons Unknown 2023* decision. It acknowledges that the number of homeless individuals continues to significantly exceed available and accessible housing and related supports and that this in turn has fueled an increase in encampments since the decision was rendered.

[149] The encampment at 100 Victoria Street North in Kitchener serves as a shelter of last resort for chronically homeless residents of the Regional Municipality of Waterloo. They rely on it when they cannot access indoor shelter. They must do so because the Region has insufficient indoor shelter to accommodate its homeless, but its Code of Use By-Law prohibits outdoor sheltering on all other Region-owned lands. However, two new By-Laws, the “Site-Specific” and “Amended Site-Specific” By-Laws, together “the By-Laws”) now provide for the Encampment to be closed so that it can be used as a “lay-down” site during construction of a transit hub. The Region is not prepared to allow its homeless to shelter anywhere else after the Encampment is closed. The Respondents pose an apt question: where are the Region’s chronically homeless expected to go when they cannot access indoor shelter?

[150] The Region has given assurances of alternate shelter to only those Cross-Applicants/Named Respondents (“Named Respondents”) who are among 40 persons it counted as present at the Encampment on April 16, 2025. However, this shelter is, for the most part, temporary motel or emergency shelter space, and the Region has made no provision for where persons may go if/when they lose these spaces. It has offered nothing to most of the Named Respondents, who are not among the counted 40, other than to “bring them within the Region’s housing stability system” - effectively, adding them to the waitlists they are already on.

[151] The Respondents assert, and I agree, that the Court has heard the Region’s arguments for closing this Encampment before. In *Persons Unknown 2023*, Justice Valente refused permission to clear this very site for the same proposed use. Then, as now, the Region asserted it would find temporary shelter for those then at the Encampment. Then, as now, the Region asserted

construction on the transit hub was to commence imminently. Then, as now, the Region asserted the Encampment posed health and safety risks. Nonetheless, Justice Valente declared that closing the Encampment would be contrary to s. 7 of the *Charter*, inviting the Region to apply for that declaration to be lifted upon “being in a position to satisfy this Court that the By-Law no longer violates the section 7 rights of the Encampment residents”. This has not been done.

[152] The Respondents insist that they do not assert an “unfettered right to seek shelter on publicly owned land.” Rather, they seek to hold the Region to the declaration the Court has already made. So long as insufficient indoor shelter requires the Region’s homeless to shelter outdoors, and so long as the Region maintains that they may not do so anywhere else, the Region cannot gain possession of the site.

[153] Closing the Region’s sheltering location of last resort continues to pose serious risk to the lives and health of the chronically homeless Named Respondents and Persons Unknown, who will have no sheltering location of last resort to catch them when they fall. This deprivation continues to be grossly disproportionate to the objective of closing the site so that it can be used for equipment lay-down. Enforcement of the By-Laws continues to violate s. 7 of the *Charter* where the conditions for this Court’s previous declaration continue to exist.

[154] There are also new issues before the Court. The first is how the Supreme Court’s decision in *Quebec (Attorney General) v Kanyinda*, 2026 SCC 7 (“*Kanyinda*”), issued March 6, 2026, impacts s. 15 equality rights arguments that Valente J. rejected in *Persons Unknown 2023*. The impacts of the By-Laws are particularly severe for those homeless who are women, gender diverse, disabled and/or Indigenous because persons from these *Charter*-protected groups are less likely to be able to access indoor shelter that meets their needs. In *Persons Unknown 2023*, Valente J. found no s. 15 infringement for those groups because homelessness itself was not a *Charter*-protected ground of discrimination. Following *Kanyinda*, it is now clear that homelessness need not be a *Charter*-protected ground for the Court to find a discriminatory impact on *Charter*-protected subsets of the homeless. In light of this fresh guidance, it is now apparent that removing shelter of last resort from the Region’s chronically homeless violates the s. 15 equality rights of those homeless who are least likely to be able to access indoor shelter - women, gender diverse, disabled

and/or Indigenous persons. Moreover, as discussed in detail below, I consider that the time has now come for homelessness to be recognized as an analogous ground for the purposes of s.15 of the *Charter*.

[155] Persons who rely on the Encampment for last resort shelter are citizens who may have made some bad decisions or experienced bad luck. Their backgrounds reflect those of the Region's homeless. All have disabilities - 18 have mental health or cognitive disabilities, 17 have substance use disabilities, and at least 4 have mobility impairments. Six are Indigenous. A further four identify as LGBTQ2S+. Nine affirm to having survived childhood physical and sexual abuse, domestic violence, and/or sexual assault. Six shelter together with their partners. Seven are women or identify as gender-diverse. They all live in extreme poverty – some have no income at all, and others receive social assistance. Circumstances that have caused the Named Respondents to rely on the Encampment vary.

[156] This Encampment was the subject of an earlier application to the Court in *Persons Unknown 2023*. In January of 2023, the Court dismissed the Region's application to close the Encampment under its "Code of Use By-Law", which prohibits persons from loitering on Region-owned property or erecting temporary shelters without a permit. Justice Valente found a purpose of the By-Law was to "prevent the disruption of the Region's operations on the Designated Premises". The Regional "operation" then at issue was transit construction. Then, as now, the Region advised that it intended to use the site initially as a "laydown" area for equipment during the construction of a transit hub, and later as a parking lot for the hub. Just as the Region now advises that construction is to commence imminently, the Region then advised that construction would commence in the spring of 2023. Just as the Court found there was no firm construction start date during litigation in 2022, here too the timelines for the project are continually shifting and it remains unclear when vacant possession is actually required, notwithstanding the latest information provided by the Applicant Region from Metrolinx. At the commencement of litigation, the date was December 1, 2025, then it shifted to April 1, 2026, then to the end of October 2026, but correspondence from Metrolinx indicates this "might be subject to further change". Having regard to that purpose, Justice Valente found that prohibiting sheltering deprived the Region's homeless of their life, liberty, and security of the person in a context where insufficient indoor sheltering options left them "with no alternative but to sleep outside". At that

time, available shelter spaces fell short “by some 50% of what was required to shelter the Region’s homeless”.

[157] The Region had also entered into contracts with motel operators to permit motels to be used for shelter, but Valente J. found it was not appropriate to include motel spaces in the count, in part “because their availability is at the discretion of the motel operators”.

[158] Then, as now, the Region asserted public health and safety concerns arising from the Encampment. It asserted that, in the months leading up to the hearing, there had been a significant increase in incidents involving police at the site. It cited rodent infestations, feces and urine on the site, fire hazards, physical altercations, and consumption of alcohol and drugs. Justice Valente accepted that these issues created risk, but questioned: “does not closing the Encampment simply move[...] all of these risks elsewhere. Furthermore, does not the Region have some responsibility to take further steps to mitigate these risks?” The Court held that in assessing whether persons sheltering at the Encampment had indoor sheltering alternatives, it was “simply not a matter of counting the number of spaces”.

[159] Justice Valente also directly rejected the Region’s argument that it need only find space for the persons then at the Encampment in order to establish it would be constitutional to clear the Encampment. Then, as now, the Region had offered assurances that it would find shelter space for each person then sheltering at the Encampment. In response, Valente J. held:

[94] Finally, I reject the Region’s submission that, at the end of the day, in order to grant the relief it seeks, I need only be satisfied that there is sufficient capacity in the system to accommodate the Encampment residents. I reject this proposition because of the fluctuating and variable capacity of the system based on the Region’s own numbers. Furthermore, were I to be guided by this principle, and satisfied that there is a sufficient bed capacity for the Encampment residents on any given day, how does this approach respond to the many other vulnerable homeless individuals in the Region? It does not. The approach is particularly problematic in my view because the Region intends to be guided by this decision in its treatment of other encampments. Were I to accede to the Region’s submission, it seems to me I would be helping to create an immediate disadvantage for those who are homeless and living outside encampments. I am not prepared to do that. [...]

[160] The Court found that closing the Encampment would put the lives of the Region’s homeless at risk, constituting a “deprivation” of life for the purpose of s. 7 because exposure to the elements without shelter could create serious harm, inducing death. It also found that closing the Encampment amounted to a deprivation of liberty, and of security of the person because it would “expose[...] the homeless of the Region to risk of significant health problems, both physical and psychological in nature”. These deprivations were not in accordance with the principles of fundamental justice, in part because they were grossly disproportionate to the By-Law’s objectives, which included preventing disruption to Regional operations.

[161] Rather than declaring the Code of Use By-Law generally inapplicable to homeless residents of the Region, Justice Valente issued a narrow declaration that it was inapplicable “only insofar[...] as it applies to prevent the residents of the Encampment from living on and erecting temporary shelters without a permit on the Property when the number of homeless persons exceed the number of available accessible shelter beds in the Region”. This left the Encampment as the only space in the Region where sheltering is not prohibited under the Code of Use By-Law. Justice Valente ordered “that the Region may apply to terminate” the declaration upon being in a position to satisfy the Court that the By-Law no longer violated the s. 7 rights of Encampment residents. The Region has not done so, nor did it appeal the decision, which remains in effect.

[162] The Code of Use By-Law continues to apply outside of the Encampment. The Region chose not to amend its Code of Use By-Law after *Persons Unknown*. Due to the Encampment-specific scope of Justice Valente’s declaration, the Code of Use By-Law therefore continues to restrict sheltering by the homeless on all other Region-owned land. Therefore, while the Encampment is not the only location in the Region where persons do shelter outside, it is the only location where they may do so lawfully without the risk of eviction. The Region’s Commissioner of Community Services has been clear that the Region is not prepared to permit sheltering anywhere else on its lands if the Encampment is cleared.

[163] Since *Persons Unknown 2023*, other encampment sites in the Region have been cleared, including sites on Region-owned land and land owned by lower-tier municipalities. For instance, an encampment at 150 Main Street in Cambridge was closed by the Region in August 2023. An

additional site at Soper Park in Cambridge was cleared by the City of Cambridge in September of 2023. An encampment at Roos Island in Kitchener was closed by the City of Kitchener in spring of 2023.

[164] Homelessness has more than doubled in the Region since *Persons Unknown* was released. The Region's housing stability system has not kept pace with this increase. In *Persons Unknown 2023*, Valente J. found the Region's shelter system could accommodate only 50% of the Region's homeless population. However, the Region's shelter capacity can now accommodate only 15% of the Region's total homeless. Another way of looking at this is that 43% of the Region's homeless live outdoors. Accordingly, the Region has acknowledged that it is not in a position to ask the Court to lift its declaration of invalidity – it cannot ensure that the number of homeless persons will not exceed the number of shelter spaces in 2026, even leaving aside whether available spaces are accessible to persons who depend on the Encampment site.

[165] The PiT Count is a count of persons experiencing homelessness on a single night. The Association of Ontario Municipalities describes this as an “undercount”. The September 2021 PiT Count that Valente J. referred to in *Persons Unknown 2023* recorded 1,085 homeless, including 412 “living rough”, and 191 accessing emergency shelters. By October of 2024, the PiT Count recorded 2,371 homeless, 1,009 of whom were “living rough”, 446 in emergency shelters, and 153 in motels. The majority of the Region's homeless move in and out of homelessness. Of the 2,371 homeless captured by the 2024 PiT, 78% were “chronically homeless”, defined as persons in “prolonged or repeated periods of homelessness”. This accords with the experience of the Named Respondents, who move in and out of the Encampment as they lose and gain indoor shelter.

[166] The Region's emergency shelter system has not kept pace with this increase in homelessness. As the Region's Commissioner for Community Services put it: this complex situation where the number of homeless individuals vastly exceeds the housing supports that the region can provide, has in turn caused an increase in encampments over the last few years. The Region's shelters can accommodate only 15% of Region's homeless. The Region's emergency shelter system consists of shelters and the motel spaces that Valente J. previously excluded from its shelter space count because availability was “at the discretion of motel operators”. Effective

February 27, 2026, the Region had 356 spaces in the emergency shelter system, across eight shelters. These spaces regularly operate at or near capacity. The Region's Commissioner of Community Services has been candid that the system has "capacity challenges". For instance, Region shelters turned persons away 171 times between October and December 2025, either due to being at capacity or due to service restrictions. Of the 356 spaces:

- a. 50 at Erb's Road shelter, are "tiny house" spaces. These spaces are "generally full". A person must meet criteria and complete a referral process to qualify for a space.
- b. 20 at YWCA Cambridge, are reserved for women and persons who are gender diverse. These operate 24 hours a day. In December, January, and February they operated over capacity.
- c. 22 at SHIP 84 Frederick Street, are reserved for women and persons who are gender diverse, but operate only overnight.
- d. 24 at oneROOF, are reserved for youth. These operate only overnight, though there is also a daytime drop-in program.
- e. 80 at Cambridge Shelter Corporation Bridges shelter, operate 24 hours per day, but are reserved for men.
- f. 10 at Safe Haven, are reserved for youth ages 12 - 17.
- g. 20 at Bridgecare shelter, are "primarily" for persons with complex medical needs. This shelter stopped accepting intakes as of September 2025.
- h. The remaining spaces, at ShelterCare ("House of Friendship") (100 spaces) and SHIP Edith MacIntosh (30 spaces), are for men only. SHIP Edith MacIntosh operates only overnight.

[167] The Region also offers 60 "winter warming" spaces between December and March. Of these, 30 are reserved for men, and 30 are for all genders. These are congregate spaces open overnight, with no beds. They operate over capacity. A third warming space had 100 co-ed warming spaces between January 26 and March 31, 2026, but it does not receive operational

funding from the Region. It, too, is a congregate space with no beds and has operated over-capacity.

[168] The Region also operates transitional housing that is not available on an emergency basis. Persons must qualify for transitional housing, and it is subject to waitlists. It is therefore not an option for a person who requires immediate shelter at a given moment.

[169] While many Named Respondents are on a waitlist for affordable housing, the anticipated wait is 8 to 10 years, with 11,421 households on the list as of November 6, 2025. The average wait for supportive housing units is 13.5 months.

[170] The existing shelter spaces are not accessible to all homeless persons. Some are inaccessible for obvious reasons: women cannot access spaces reserved for men; adults cannot access spaces reserved for youth; opposite sex couples cannot access single sex shelters without forced separation. However, there are also more nuanced access barriers relating to disability. Dr. Sahil Gupta, a physician whose clinical practice and research focuses on people experiencing homelessness, identified the following disability-related barriers to shelter access:

- Crowded congregate settings can destabilize persons with some mental health disabilities;
- Some persons' mental health impairments prevent them from complying with shelter rules;
- Many shelters cannot meet specific accessibility needs, such as accessibility for people with physical disabilities, allowance for pets, or proximity to an individual's usual pharmacy (for persons who require daily dispensed medications) or social supports.

[171] In addition to emergency shelter spaces, the Region funds motel stays for some persons. However, as Valente J. found in *Persons Unknown 2023*, these are subject to operator discretion. They are also typically funded for finite periods. Because motel spaces are subject to operator discretion, they are not reliable shelter for persons with mental health disabilities that cause

challenging behaviours.

[172] Approximately 15 months after Persons Unknown, the Region passed a new Plan to End Chronic Homelessness (“PECH”). The PECH mandates four “interventions” for Region housing and homelessness services: (1) Broadening our Current Housing/Prevention support continuum; (2) Community-Driven System Leadership; (3) Centering Lived Expertise and Equity-Owed Groups; and (4) Defining and Combining Housing First and Human Rights Approaches.

[173] The second of these, “Community-driven system leadership, sets out a leadership model revolving around a “Whole Community Leadership Table”, or “Co-Creator’s Table”, with “decision-making power over the implementation of the PECH”: “[t]he role of the Region as the Service System Manager remains, but would move from singularly driving these decisions to collaborating and supporting - working alongside the new leadership tables to guide PECH implementation”. The Table’s decision-making responsibility extends to decisions regarding “Unsheltered Homelessness & Encampments”. The Table is comprised of over 60 community organizations and individuals. It meets once a month.

[174] The third PECH intervention of “centring lived expertise and equity-owed groups” commits the Region to working together with a “Lived Expert Prototyping Cohort”. That Cohort consists of “Lived Experts” and representatives from mutual aid groups, advocacy groups, and agencies, along with some Region and City staff.

[175] The fourth PECH intervention requires the Region to take a “human rights approach” to ending homelessness. It defines this as an approach where: [p]eople experiencing homelessness are treated as rights holders, where their agency is respected, and where the Region has a duty of care for their housing needs. The Region will be compliant with national and international human rights law and ensure it is appropriately prioritized amidst other legal obligations such as those regarding property rights, privacy, and liability.

[176] This approach is set out more fully through the 8 principles of the United Nations Special Rapporteur on the Right to Adequate Housing’s “National Protocol for Homeless Encampments

in Canada: A Human Rights Approach”.

[177] On April 16, 2025, the Region posted notice of the Site-Specific By-Law on its website. It did not post notice at the Encampment site. Council passed the By-Law on April 23, 2025. Effective upon its adoption, the By-Law prohibited anyone who did not meet the definition of “Resident” from sheltering at the Encampment. It defined “Resident” to mean persons “residing at 100 Victoria Street” as of the April 16, 2025 notice date. It further provided that “[c]ommencing on December 1, 2025, no person shall enter onto, reside on, or occupy 100 Victoria Street”. Persons contravening either provision would be guilty of an offence and liable for a fine of up to \$5,000, but the By-Law also specified that the Region could take enforcement steps under the *Trespass to Property Act*. The By-Law further authorized the Region to, among other actions, erect fencing around the site to prevent entry, and remove persons’ personal property from the site.

[178] The Region’s Commissioner of Community Services affirms that the Region recognizes “approximately 40” persons as “residents”. The Region has not advised how many of the Named Respondents are included in this count, but at least 12 are not. On the same day that Council passed the By-Law, it directed staff to add \$814,333 to its housing stability budget. The new funding was made up of \$466,083 for “motels with social supports” and \$271,250 for new supportive housing units, with the remaining funds designated for site remediation. The funding for “motels with social supports” is only “temporary”. It “will not extend beyond 2026”.

[179] On August 20, 2025, this Court issued an interim injunction restraining the Region from acting on any part of the By-Law until the conclusion of this hearing. On December 18, 2025, the Region posted notice on its website that it intended to amend the By-Law, with a meeting scheduled for January 7, 2026. It passed the Amended By-Law on January 9, 2026. The Amended By-Law called for the Encampment to be closed on April 1, 2026.

[180] The Amendments included a new “Transition Protocol” outlining steps the Region would take prior to removing those persons it deemed “Residents”. Under that Protocol, “Residents” would be offered “alternative accommodation” as set out in Individual Housing Plans (“IHPs”), which the Region would make “best efforts” to develop.

[181] The Region characterizes these IHPs as “personalized plans designed to match individuals with housing options reflecting their specific needs and preferences”. However, the three IHPs on the record do not support this contention. Two offer emergency shelter spaces, one of which the recipient could not accept because the spaces did not accommodate couples. The third offered a motel space. All three are undated, consist of only a few lines, and offer no information as to what the unnamed recipient’s “specific needs and preferences” are.

[182] The Protocol further provides that USWs will make “best efforts” to find “Alternative Accommodation” where a resident loses “Alternative Accommodation due to non-compliance with the rules”. However, there is no provision for how such situations would come to the Region’s attention, nor how the Region would find “Alternative Accommodation” where its shelter system is consistently at capacity and the wait list for subsidized housing is eight to ten years.

Section 7 analysis framework

[183] A claim that a state action breaches s. 7 proceeds in two steps. First, a claimant must establish that the impugned law or state action deprives them of life, liberty, or security of the person. This requires showing a “sufficient causal connection” between the law or action and the alleged interference with the s. 7 interest. A risk of such a deprivation suffices: *Canadian Council for Refugees v. Canada (Citizenship and Immigration)*, 2023 SCC 17, at para. 56 (“CCR”); *Carter v. Canada (Attorney General)*, 2015 SCC 5, at para. 62. A court “may consider ‘reasonable hypotheticals’ to determine whether a law is consistent with the *Charter*”: *R. v. Kloubakov*, 2025 SCC 25, at para. 143.

[184] Second, the claimant must show that this deprivation is not in accordance with the principles of fundamental justice. To establish a “sufficient causal connection” between a state action and a deprivation of life, liberty, or security of the person, the impugned law or state action need not be the only or the dominant cause of the prejudice suffered by the claimant. That other factors also have a causal connection to the harms alleged does not prevent a finding of causation. This means that even where risks faced by the Named Respondents are also caused by homelessness, poverty, violence, weather, and discrimination, state interference with their ability to protect themselves from those risks will still give rise to a sufficient causal connection.

Similarly, a “sufficient causal connection” between an impugned law and harm will exist even where the impugned law interacts with other laws to contribute to risk or harm: *CCR.*, at para. 64.

[185] The court must interpret the impact of an impugned law in the context of the legal scheme as a whole. This means that this Court must interpret the impact of the By-Laws in context with the restrictions arising from the Code of Use By-Law. While the By-Laws do not directly restrict the Named Respondents from sheltering elsewhere in the Region, they do when applied in context with the Code of Use By-Law. Here, the By-Laws contribute to the harms described below because they prevent the chronically homeless Named Respondents from taking steps to protect themselves from the dangers of unsheltered homelessness. When those persons that the By-Laws do not deem to be “Residents” are evicted from the Encampment with no place to go, when the temporary spaces the Region has offered to those it does deem “Residents” end, when chronically homeless Persons Unknown who are currently sheltering elsewhere face eviction and cannot access indoor shelter, they will be left with no space of last resort to catch their fall.

[186] The right to life is engaged where a law or state action creates an increased risk of death, either directly or indirectly. Just as Valente J. held in *Persons Unknown 2023* that preventing persons from sheltering at this site engaged their “life” interest, Canadian courts have repeatedly held that outdoor sheltering engages the s. 7 “life” interest of homeless persons when they lack accessible indoor alternatives. As this Court recognized in its earlier injunction decision, at para. 88, this is because “[p]rohibiting homeless persons from taking measures to shelter themselves by erecting temporary structures in circumstances where there are no practical housing alternatives has been found to engage the right to life (due to exposure to risks of serious harm including death).” This finding is supported on the record in this hearing. Dr. Hwang’s evidence is that “[t]here is no question that the lack of shelter for people living outside causes severe adverse effects on their health”. This is because “[h]omeless people who are prohibited from erecting even rudimentary shelter from the elements — such as tents, tarps, or cardboard barriers — will suffer clear and direct adverse impacts on their health”. While there is no question that outdoor homelessness is dangerous, with or without a tent, particular risks of unsheltered outdoor homelessness, or “sleeping rough” without any shelter, include:

- A lack of protection from wind and rain increases the wind chill effect, greatly increasing the risk of hypothermia.
- Prolonged exposure to wet and cold can lead to serious skin and foot diseases as well as respiratory diseases.
- The lack of protection from the sun greatly increases homeless people's risk of severe sunburn and heatstroke during the summer months.
- Lack of shelter leads to disturbed and fragmented sleep, causing serious health conditions.

[187] The right to liberty is engaged when state compulsions or prohibitions affect fundamental life choices. The right to liberty “protects an irreducible, core sphere of personal autonomy wherein individuals may make fundamental and inherently private choices free from state interference”: *Drover v. Canada (Attorney General)*, 2025 ONCA 4868, at para. 129. It protects an individual's choice of residence because the right to decide where to live is “essential to maintain personal autonomy and dignity”: *Drover*, at para. 131. The By-Laws engage the Named Respondents' liberty interests because they permit them to be arrested without warrant if they shelter on the property. However, multiple courts have also held that restricting the homeless from sheltering themselves engages the right to liberty because shelter is a matter “critical to any individual's dignity and independence”: *Persons Unknown 2023*, at para. 101. These determinations are consistent with the evidence in this case. Dr. Gupta explains how, for some residents, encampments provide a sense of “autonomy and self-determination”: “Encampments offer a sense of control over one's life and decisions, which is critical for psychological well-being”.

[188] The right to security of the person protects individuals' physical and psychological integrity. It is infringed by serious state-imposed psychological stress: *Carter*, at para. 64. As this Court has already found in relation to this very Encampment, “security of the person” is engaged by both by-laws restricting the homeless from sheltering, and forced encampment evictions.

[189] The Region'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. The Transition Protocol is underinclusive, does not address systemic issues and is time limited. The Transition Protocol applies only to a minority of the Named Respondents and encampment residents, those arbitrarily

deemed by the Region to be “Residents”.

[190] It leaves the remaining encampment residents with few if any options of alternative shelter once the Encampment is closed. A human rights-based approach requires that all residents be provided with resources. Second, it does not address the systemic issues related to rising homelessness. It does not address the underlying issues of insufficient shelter space and the lack of affordable housing. Transitioning Encampment residents into existing emergency shelter spaces means that other chronically homeless residents of the Region will be unable to access those same spaces, leading those persons to require a space where they can lawfully shelter outdoors. The Region’s addition of an imprecise number of motel rooms to its system until 2026 does not resolve this issue. As Valente J. put it in *Persons Unknown 2023*: “Were I to accede to the Region’s submission, it seems to me I would be helping to create an immediate disadvantage for those who are homeless and living outside encampments. I am not prepared to do that.”

[191] Third, even for the minority of Named Respondents included in the Protocol, supports are only temporary. The Protocol provides for storage of belongings for up to six months, but the waitlist for subsidized housing is 8 to 10 years. A human rights-based approach requires that relocation must not result in the continuation or exacerbation of homelessness.

[192] These deprivations are not in accordance with the principles of fundamental justice. The second branch of s. 7 requires a claimant to establish that an impugned provision conflicts with basic constitutional values, including that the impact of a law must not be grossly disproportionate to its objects. Gross disproportionality balances the negative effect on the individual against the purpose of the law, not against societal benefit that might flow from the law. It is “not concerned with the number of people who experience grossly disproportionate effects; a grossly disproportionate effect on one person is sufficient to violate the norm.”: *Bedford*, at para. 122. In *Persons Unknown 2023*, Justice Valente found that closing the Encampment was grossly disproportionate to the Region’s objectives, which included preventing disruptions to Regional operations. The operation at issue was the same proposed new transit hub that remains at issue. The Region’s intent, then, as now, was to use the site for equipment lay-down in the short-term, though it also advised that it would use it for parking in the longer term. The Region then advised

that construction on the transit hub would commence in the spring of 2023, just months after *Persons Unknown 2023* was released.

[193] The Court’s previous determination continues to apply. Contrary to the Region’s submission, the gross disproportionality analysis is not now “fundamentally different from *Persons Unknown*” on the basis that in that case, “the Region did not put any plan for the occupants of 100 Vic before Valente J.”. The Region did put such a plan before Justice Valente in *Persons Unknown 2023*. In the months leading up to that decision, Council had moved to develop a “plan to establish interim housing solutions for the regional residents experiencing homelessness including those currently residing in the encampment”. Pursuant to that plan, the Region advised the Court that it was implementing multiple “interim housing solutions”, including expanded transitional housing, homebased supports, emergency shelter, and a managed hybrid/outdoor shelter model. Justice Valente accepted the Region’s assurance that the Region was “committed to reserving spots for the Encampment residents at its emergency shelter locations”: *Persons Unknown 2023*, at para. 64. While the Region is now using a new term for these assurances – IHPs – the substance of its assurances are the same. There being no fundamental difference between either the By-Laws’ object or their “multiple and severe negative consequences” for the Named Respondents, the By-Laws remain grossly disproportionate to their goal in a context where the Region has chosen not to permit outdoor sheltering anywhere else.

[194] I find that the s.7 *Charter* rights of the Respondents are infringed by the By-Laws. It remains to consider whether the infringement is saved under s. 1.

Section 15

[195] Section 15(1) of the *Charter* provides:

15(1) Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

[196] In *Quebec (Attorney General) v. Kanyinda*, 2026 SCC 7, the Supreme Court of Canada

recently considered whether exclusion of refugee claimants from eligibility for subsidized daycare infringed their s.15 *Charter* right to equality. The majority of the Court found that the regulation at issue infringed s.15(1) of the *Charter* because it discriminates against women refugee claimants based on sex.

[197] Writing for a majority of the Court, Karakatsanis J. discussed the framework of s.15 analysis with a particular emphasis on intersectionality. Section 15(1) of the *Charter* protects individuals not only from laws which directly discriminate but also from adverse effects of discrimination. People in the same protected group may have very different experiences and face unique challenges based on their intersecting identities and realities. An intersectional approach is not novel in the s. 15(1) analysis. Intersecting group membership tends to amplify discriminatory effects or can create unique discriminatory effects not visited upon any group viewed in isolation. Consideration of a claimant group's intersecting identities is relevant at both stages of the s. 15(1) analysis.

[198] In the first step, which focuses on identifying a distinction based on an enumerated or analogous ground, consideration of a claimant group's intersecting identities and realities may assist in understanding how a government decision disproportionately impacts a particular claimant group. Differential treatment can occur on the basis of an enumerated or analogous ground despite the fact that not all persons belonging to the relevant group are equally mistreated.

[199] Claimants can satisfy step one of the s. 15(1) analysis even if they only make up a subgroup experiencing adverse effects.

[200] Consideration of a claimant group's intersecting identities and realities is similarly relevant under the second step of the s. 15(1) analysis, where courts must assess whether the distinction has the effect of reinforcing, perpetuating or exacerbating a claimant's disadvantage. Disadvantage can be intimately related to, if not rooted in, the specific identities and realities shared by a particular group.

[201] To prove an infringement of s. 15(1), a claimant must show the challenged law or state

action: (1) on its face or in its impact, creates a distinction based on listed or analogous grounds; and (2) imposes burdens or denies a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage.

[202] At the first step of the test, where a measure does not explicitly distinguish based on a protected ground, the claimant can still show that the law creates a distinction in effect because of the law's disproportionate impact on the protected group. While the claim must be clearly anchored in a recognized ground of discrimination, the claimant may also point to additional characteristics that contribute to establishing a disproportionate effect on the claimant group. Where discrimination affects only a subgroup, the failure to account for intersecting identities in step one of the s. 15(1) inquiry could effectively obscure the specific adverse effects experienced by that subgroup. Two types of evidence can help a claimant establish these impacts: (a) evidence about the claimant group's situation, including physical, social, cultural, or other barriers faced by the claimant group; and (b) evidence about the results produced by the challenged law in practice. However, no specific form of evidence is required.

[203] In some cases, a court may reasonably infer an adverse effect on a claimant group, or the disproportionate impact on a claimant group may be apparent and immediate and judicial notice can be taken when appropriate. While the evidentiary burden at the first step should not be undue, it must be fulfilled. The second step focuses on the protection of groups that have experienced exclusionary disadvantage based on group characteristics. Even if a law treats people differently based on a protected ground, it does not necessarily follow that the law increases or reinforces a disadvantage. The broader legislative context may also be relevant to the analysis at step two, but the emphasis on context must not conflate an analysis of the discriminatory impact of a measure on a disadvantaged group with a consideration of whether the distinction is justified based on legislative objectives. Courts should not ignore infringements of s. 15(1) merely because the law is ameliorative, non-arbitrary, or only perpetuates the disadvantage of some members of the protected group.

Homelessness as an analogous ground under s.15 of the Charter

[204] In my view, the time has come that homelessness should be recognized as an analogous

ground for the purposes of s.15 of the *Charter*. I draw support for this conclusion from the concurring reasons of Wagner CJC at paras. 216-228 in *Kanyinda*:

[216] **In my view, s. 15 of the Charter protects refugee claimant status as an analogous ground. This status is “of a kind similar” to the enumerated grounds, in that it shares “many similarities” with them** (*Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143, at p. 195, per La Forest J.). It is a ground that “s. 15 of the Charter is designed to protect” (*R. v. Turpin*, [1989] 1 S.C.R. 1296, at p. 1333). **This conclusion flows from a generous approach to the right to equality that reflects “the ‘continuing framework’ of the constitution and the need for ‘the unremitting protection’ of equality rights”** (*Miron v. Trudel*, [1995] 2 S.C.R. 418, at para. 145, per McLachlin J., as she then was, quoting *Andrews*, at p. 175, per McIntyre J., dissenting in part, but not on this point). **This inquiry takes into account the dual purpose assured by s. 15, that is, protecting human dignity and building a society in which everyone is recognized as being worthy of respect and consideration** (*Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203, at para. 5). Recognizing every person’s right to dignity and freedom to lead the life they want, in keeping with their full potential and in a manner respectful of collective interests, implies a duty to counter the disadvantages imposed on certain members of society on the basis of stereotyping and prejudice (*ibid.*; *Miron*, at paras. 145-46).

[217] Over time, this Court has developed a number of criteria and indicators that can be used to identify an analogous ground and screen out claims “having nothing to do with substantive equality”, in order to “keep the focus on equality for groups that are disadvantaged in the larger social and economic context” (*Kahkewistahaw First Nation v. Taypotat*, 2015 SCC 30, [2015] 2 S.C.R. 548, at para. 19, and *Dickson v. Vuntut Gwitchin First Nation*, 2024 SCC 10, at para. 193, both quoting L. Smith and W. Black, “The Equality Rights” (2013), 62 S.C.L.R. (2d) 301, at p. 336). On this non-exhaustive list, **the violation of human dignity and freedom resulting from a distinction based on a stereotype, rather than on individual capacity, worth or circumstances, is a first indicator** (*Miron*, at para. 148). Next, **the fact that a group has suffered historical disadvantage** (*ibid.*; *Andrews*, at p. 152; *Turpin*, at pp. 1331-32) or that it represents a “discrete and insular minority” (*Miron*, at para. 148, quoting *Andrews*, at p. 152, per Wilson J., and at p. 183, per McIntyre J.) may also be a relevant factor. **The vulnerability and marginalization of a group within society are other indicators. In addition, the “immutable” nature of an individual’s personal characteristics, including those that are “constructively immutable”, that is, changeable only at an unacceptable cost to personal identity, such as religion or citizenship** (*Corbiere*, at para. 13; *Dickson*, at para. 193), **is generally a common denominator for all analogous grounds. Lastly, recognition by legislators and jurists that a ground is discriminatory** is another helpful indicator for determining whether it is analogous to the enumerated grounds.

[218] Côté J. notes in her reasons that some of the indicators set out and adopted in our jurisprudence are not relevant to the analysis, notably because they are unrelated to the central criterion of immutability (paras. 355-58). With respect, **I am of the view that consideration of all of these factors not only assists in identifying the groups that the Charter is meant to protect but also favours a more flexible and progressive approach in the application of s. 15, one that is capable of recognizing contemporary forms of discrimination, beyond only its historical manifestations** (*Miron*, at para. 149; D. Gibson, “Analogous Grounds of Discrimination Under the Canadian Charter: Too Much Ado About Next to Nothing” (1991), 29 Alta. L. Rev. 772, at p. 788; J. Sealy Harrington, “Assessing Analogous Grounds: The Doctrinal and Normative Superiority of a Multi-Variable Approach” (2013), 10 J.L. & Equality 37, at pp. 52-55). 2026 SCC 7 (CanLII)

[219] In the present case, an analysis of these criteria leads to the conclusion that refugee claimant status is an analogous ground.

[220] First, a distinction based on refugee claimant status **may violate the dignity of the members of this group, because this migration status is apt to give rise to “stereotypical reasoning” and “distinctions which violate the dignity and freedom of the individual, on the basis of some preconceived perception about the attributed characteristics of a group rather than the true capacity, worth or circumstances of the individual”** (*Miron*, at para. 149). **This is a first indicator, even the “unifying principle”, for identifying an analogous ground** (*ibid.*). I must acknowledge that there is a great deal of prejudice against people who enter Canada in the hope of finding refuge here from persecution. Refugee claimants are accused of being cheats and queue-jumpers and of trying to take advantage of the generosity of Canadians by making fraudulent claims (*Canadian Doctors for Refugee Care v. Canada (Attorney General)*, 2014 FC 651, [2015] 2 F.C.R. 267, at paras. 13 and 837; Dr. J. Hanley, The labour implications of the exclusion of refugee claimants from Quebec’s subsidized childcare program (2020) (reproduced in A.R., vol. II, at pp. 68-90), at para. 54). Refugee claimant status thus **shares this common denominator; it may “serve as a basis for unequal treatment based on stereotypical attributes ascribed to the group, rather than on the true worth and ability or circumstances of the individual”** (*Miron*, at para. 147; see also *Corbiere*, at para. 13.

[221] I emphasize the similarity that can be observed between, on the one hand, the ground of refugee claimant status and, on the other, the grounds of non-citizenship, race and national or ethnic origin. Like discrimination on the basis of non-citizenship, discrimination on the basis of refugee claimant status is a “companion of discrimination on the basis of race and national or ethnic origin, which are listed in s. 15” (*Andrews*, at p. 195, per La Forest J.; see T. Rahimian, “Parental Undocumented Status as an Analogous Ground of Discrimination” (2020), 16 J.L. & Equality 93, at pp. 125-26). The application of a distinction

based on refugee claimant status — for example to deny a person a right or benefit — may lead the person to have a sense of inferiority regarding their place in the community. Judging a person on the basis of an administrative or migration status, rather than according to their merit or attributes, could well negate the person's dignity and worth. **A distinction based on refugee claimant status may therefore be incompatible with the respect owed to all human beings for who they are and may violate the fundamental principles of individual recognition and equality that every democratic society must guarantee.** These points confirm the similarity between refugee claimant status and the grounds currently protected by s. 15.

[222] Second, another characteristic associated with analogous grounds is the *immutability of the group members' personal characteristics*. In this case, I am of the view that refugee claimant status **is an immutable characteristic because it is a situation that, like citizenship, is “not within the control of the individual”, as it is “not alterable by conscious action” by the individual** (*Andrews*, at p. 195, per La Forest J.). In *Miron*, McLachlin J., as she then was, found that the ground of marital status is an immutable characteristic because it “often lies beyond the individual's effective control” and because the individual “exercises limited but not exclusive control over the designation” (para. 153). Here, a refugee claimant does not have exclusive control over the status of their claim (*Hogg and Wright*, at § 55:26). **They cannot alter this status on their own initiative by conscious unilateral action.** The exercise of state power is what can change a refugee claimant's situation. Moreover, it is important to note that a refugee claimant's decision to flee their country of origin is, in principle, not a choice made by that person, but rather a constraint imposed upon them (see, by analogy, *Taypotat*, at para. 26). A person waiting for refugee status exercises no control over the potential risk to their life or freedom in their country of origin. The person is also in limbo from the time their claim for refugee protection is filed (*R.F.*, at paras. 100-103; *I.F.*, *Association québécoise des avocats et avocates en droit de l'immigration*, at paras. 36-39; *I.F.*, *FCJ Refugee Centre and Madhu Verma Migrant Justice Centre*, at para. 23). **Finally, the transitory nature of migration status does not prevent this status from being considered an immutable characteristic for the purposes of analysis, just like the ground of discrimination on the basis of age. It is one of those characteristics that, “while they last”, are “considered beyond the individual's conscious control”** (*Gibson*, at p. 786; see also *Sealy-Harrington*, at pp. 54-55).

[223] My colleague Côté J. notes that the mere fact that a status depends on a government decision does not suffice to make it immutable. In her view, this logic could lead to the recognition of analogous protection for anyone who has submitted an application to the state, regardless of the nature of the application. However, the proposed analogy seems to stray from the realities faced by refugee claimants. **These realities can be better grasped by considering a set of contextual factors when identifying a new analogous group.** Rejecting a

formalistic analysis in fact helps to prevent the discrimination inquiry from resting on artificial distinctions.

[224] Third, refugee claimants **are a historically disadvantaged group. They have experienced considerable historical disadvantage, stereotyping, marginalization and stigmatization in Canadian society** (R.F., at paras. 98 and 117; I.F., *Canadian Association of Black Lawyers and Black Legal Action Centre*, at paras. 21-25; I.F., *FCJ Refugee Centre and Madhu Verma Migrant Justice Centre*, at paras. 17-21; see also L. Taylor, “Designated Inhospitability: The Treatment of Asylum Seekers Who Arrive by Boat in Canada and Australia” (2015), 60 McGill L.J. 333, at pp. 361-64; Rahimian, at pp. 125-26; Sealy-Harrington, at pp. 55-56; A. Neve and T. Russell, “Hysteria and Discrimination: Canada’s harsh response to refugees and migrants who arrive by sea” (2011), 62 U.N.B.L.J. 37). Similarly, refugee claimants form a “discrete and insular minority’ who come within the protection of s. 15” (*Andrews*, at p. 183, per McIntyre J., quoting *Graham v. Richardson*, 403 U.S. 365 (1971), at p. 372; see pp. 151-53, per Wilson J.; R.F., at para. 98). They are **“a group lacking in political power and as such vulnerable to having their interests overlooked and their rights to equal concern and respect violated”** (*Andrews*, at p. 152, per Wilson J.; see also p. 195, per La Forest J.; R.F., at para. 98; see also *Rahimian*, at p. 119).

[225] Fourth, refugee claimants **are a vulnerable and marginalized group in society** (R.F., at paras. 98-99 and 117; I.F., *Canadian Civil Liberties Association*, at para. 8; see also *Rahimian*, at pp. 120-24; Sealy-Harrington, at p. 56). **A number of factors contribute to increasing their vulnerability, including: the situation of poverty or economic precarity in which they find themselves; mental and physical health issues** related to exile, to integration difficulties or to uncertainty around their migration status and their future; the language barrier; **isolation and the lack of a family or support network; and difficulty accessing the labour market and social services** (see N. Dolan and C. Sherlock, “Family Support through Childcare Services: Meeting the Needs of Asylum-seeking and Refugee Families” (2010), 16 *Child Care in Practice* 147; G. Morantz et al., “Resettlement challenges faced by refugee claimant families in Montreal: lack of access to child care” (2013), 18 *Child & Family Social Work* 318). All of these factors act as barriers to their integration into Canadian society.

[226] Fifth, **international instruments and international organizations support the conclusion that refugee claimant status should be identified as an analogous ground**. For example, the United Nations Committee on Economic, Social and Cultural Rights expressly noted in its General Comment No. 20 that “[t]he Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers . . . , regardless of legal status and documentation” (General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), U.N. Doc. E/C.12/GC/20, July 2, 2009, at para. 30). Similarly,

the United Nations Committee on the Elimination of Racial 2026 SCC 7 (CanLII) Discrimination stated, in its General recommendation XXX, that “differential treatment based on citizenship or immigration status will constitute discrimination” and that states parties must “[e]nsure that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status” (General recommendation XXX on discrimination against non-citizens, U.N. Doc. CERD/C/64/Misc.11/rev.3, August 5, 2004, Articles 4 and 7).

[227] As my colleague Côté J. rightly points out, **these international instruments are, of course, not binding in themselves, but they may play a persuasive role in the interpretation of Charter rights. The Charter’s provisions and principles often bear similarities to those of international human rights instruments, which makes such instruments relevant interpretive tools for clarifying the meaning to be given to our own norms, drafted in general language** (Reference re Public Service Employee Relations Act (Alta.), [1987] 1 S.C.R. 313, at pp. 348-49, per Dickson C.J., dissenting). **As this Court recently reaffirmed, the use of non-binding international sources remains legitimate and instructive** (Quebec (Attorney General) v. 9147-0732 Québec inc., 2020 SCC 32, [2020] 3 S.C.R. 426, at paras. 35-38). **Here, without being determinative, these sources provide support for my analysis on the existence of a new analogous ground, in light of the other factors examined.**

[228] **All of these considerations, taken cumulatively, confirm that refugee claimant status should be recognized as an analogous ground.** It is among the “jurisprudential markers for suspect distinctions” and “constant markers of suspect 2026 SCC 7 (CanLII) decision making or potential discrimination” (*Corbiere*, at paras. 8 and 11). Refugee claimants are a group that is “disadvantaged in the larger social and economic context” (*Taypotat*, at para. 19, quoting Smith and Black, at p. 336; see also *Corbiere*, at para. 8). This conclusion takes into account the “context of the law which is subject to challenge” as well as the arguments made and evidence adduced concerning “the place of the group [of refugee claimants] in the entire social, political and legal fabric of our society” (*Andrews*, at p. 152; see also p. 154; *Turpin*, at pp. 1331-33; *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497, at paras. 29 and 93). **Recognizing refugee claimant status as an analogous ground therefore serves “to advance the fundamental purpose of s. 15(1)”** (*Law*, at para. 93). (Emphasis added).

[205] Homelessness clearly shares many of the attributes identified by Wagner C.J.C. The following considerations, taken cumulatively, confirm that homelessness should be recognized as an analogous ground.

[206] First, a distinction based on homeless status may violate the dignity of members of the

group, because this status is apt to give rise to stereotypical reasoning. Judging a person on the basis of this status, rather than according to their merit or attributes, could well negate a person's dignity and worth.

[207] Second, homelessness is a constructively immutable characteristic, because it is not a situation that is within the individual's control; it is not readily alterable by conscious action by the individual. The constellation of factors that may result in a person becoming and remaining homeless are many, but it can be extraordinarily difficult to extricate oneself from that situation, and it is not amenable to mere aspiration or simple choices: as the ancient folk aphorism succinctly observes, "if wishes were horses, beggars would ride." The transitory nature of homelessness does not prevent this status from being considered an immutable characteristic. It is one of those characteristics that, while they last, are considered beyond an individual's conscious control.

[208] Third, the homeless are a historically disadvantaged group, in addition to being a discrete and insular minority. They lack political power, which makes them vulnerable to having their interests overlooked and their rights to equal concern and respect violated.

[209] Fourth, the homeless are a vulnerable and marginalized group in society. A number of factors contribute to increasing their vulnerability, including a situation of poverty or economic precarity in which they find themselves as well as difficulty accessing the labour market and social services.

[210] Fifth, international instruments and international organizations support the conclusion that homeless status should be identified as an analogous ground.

[211] The first step of the test is satisfied. The Amended By-Law, on its face, creates a distinction based on the analogous ground of homeless status. At the second step of the s. 15 test, the claimant must demonstrate that the impugned provision imposes a burden or denies a benefit in a manner that has the effect of reinforcing, perpetuating or exacerbating a disadvantage suffered by the members of the protected group (*Taypotat*, at para. 20; *Sharma*, at paras. 28 and 51; *R. v. C.P.*, 2021 SCC 19, [2021] 1 S.C.R. 679, at para. 141, per Wagner C.J., concurring). This step itself has

two parts. First, the claimant must establish that the distinction imposes a burden or denies a benefit. Second, the claimant must prove that the burden is imposed, or the benefit denied, in a discriminatory manner, that is, in a manner that has the effect of reinforcing, perpetuating or exacerbating a disadvantage. The second step is satisfied in this case. It has been shown (1) that the distinction created the Amended By-Law denies a benefit, and (2) that this benefit is denied in a discriminatory manner.

Application of Kanyinda

[212] In *Kanyinda*, the Supreme Court of Canada found that Quebec's daycare subsidy scheme discriminated on the basis of sex by excluding refugee claimants. In coming to this determination, the majority emphasized that courts must take an intersectional approach to the discrimination analysis, having regard to a claimant's full context, including factors that are not enumerated or analogous grounds in and of themselves. *Kanyinda* did not alter the two-step test for discrimination under s. 15(1). The test continues to require a claimant to show that a challenged law or state action: (1) on its face or in its impact, creates a distinction based on listed or analogous grounds; and (2) imposes burdens or denies a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage. However, *Kanyinda* clarified how these steps apply where a claimant's disadvantage is caused by multiple factors, not all of which are *Charter*-protected.

[213] Ms. Kanyinda asserted discrimination as a female refugee claimant. The fact that refugee claimant status itself was not an enumerated or analogous ground did not defeat her claim of sex-based discrimination. Rather, it shifted the framework to the specific context of refugee claimants, and it required the Court to consider the pre-existing disadvantage Ms. Kanyinda faced both as a refugee claimant and as a woman. While the impugned law caused disadvantage to both male and female refugee claimants, the question for the Court was whether this disadvantage was disproportionately experienced by female refugee claimants. It was not necessary for Ms. Kanyinda to establish that the impugned law disproportionately disadvantaged all women, or that its adverse impact was only felt by refugee claimants who were women, or that refugee status itself was *Charter* protected.

[214] Having regard to the majority’s analytical framework in *Kanyinda*, the s. 15 claim here does not hinge on whether homelessness itself is an enumerated or analogous ground (although I consider that it now should be recognized as such, as I have explained). Rather, the question is whether the By-Laws disproportionately impact those homeless who are women, gender-diverse, disabled, and Indigenous.

[215] The first branch of the s. 15 test is intended “to exclude claims that have ‘nothing to do with substantive equality’”: *Kanyinda*, para. 60. It is not meant to be “an onerous hurdle designed to weed out claims on technical bases”. Similar to s. 7, a claimant must only establish that the impugned law is one factor that contributes to an adverse impact to establish a sufficient causal connection. The first branch of the s. 15(1) test may be satisfied either where the impugned law gives rise to “built-in headwinds” for members of protected groups, or where it fails to accommodate members of protected groups: *Fraser v. Canada (Attorney General)*, 2020 SCC 28, at paras. 53 - 54. Instead of asking whether a law explicitly targets a protected group for differential treatment, a court must explore whether it does so indirectly through its impact on members of that group. While no specific form of evidence is required, a disproportionate impact amounting to a “distinction” for the purpose of step one may be established through (a) evidence about the claimant group’s situation, including barriers it faces; and (b) evidence about the results produced by the challenged law in practice: *Kanyinda*, para. 52.

Disproportionate impact upon women

[216] The By-Laws contribute to a sex-based disproportionate impact because they result in particular “built-in headwinds” for homeless persons who are women or gender-diverse. This is because: (a) homeless women and persons who are gender-diverse are less likely than homeless men to be able to access indoor shelter that meets their needs; and (b) restrictions on outdoor sheltering pose unique safety risks for homeless persons who are women and gender-diverse when they cannot access indoor shelter.

[217] Pursuant to the November 2024 PiT Count, 35% of the Region’s then 2,371 persons experiencing homelessness were women or gender-diverse. However, within the adult emergency shelter system, only 20 of the shelter spaces operating 24/7 (at YWCA Cambridge shelter) were

set aside for women/gender-diverse, whereas 180 were for men. Of the Region's single sex overnight shelters, 30 spaces are designated for men, whereas 22 are for women/gender-diverse. It is therefore common that all spaces designated for women/gender-diverse are full on a given night.

[218] This means that if the Encampment is closed, women and gender diverse persons will disproportionately need to find other ways to shelter outside of the municipal shelter system. These strategies, including sleeping rough in remote locations to avoid detection, resuming “unsafe and exploitative relationships”, and “exchanging sex for shelter” pose particular safety concerns for women and gender-diverse Encampment Residents. Violence from intimate partners or within families is a key pathway into homelessness for women and girls. A 2020 report by the YWCA of Kitchener-Waterloo found that 83% of women and gender-diverse persons experiencing homelessness in the Region had previously stayed in abusive or violent situations to avoid homelessness. This reflects the experience of homeless women nation-wide. The 2020 “Pan-Canadian Women’s Housing and Homelessness Survey”, co-authored by Dr. Schwan, is a mixed method survey of 500 women and gender diverse persons experiencing homelessness across the country. It found that women who were turned away from shelters used “alternative strategies such as survival sex, going back to their abuser, or navigating systems like healthcare or criminal justice to seek immediate shelter”, and that women were likely to rely on “relational, precarious, and dangerous supports to survive housing instability”.

[219] There is no doubt that homeless women and persons who are gender diverse may also face safety risks in encampments. However, Dr. Schwan’s research found that encampment living provided relative safety in comparison to the other available options. Her research demonstrates that “encampments can buffer women from exposure to violence, harassment, or abuse that they might otherwise experience when residing outdoors alone, or within situations of hidden homelessness. This was because female encampment residents could “‘look out for each other,’ warn each other of dangerous or exploitative men, watch over each other’s tents and possessions, and remain with partners or pets (e.g., dogs) who provided physical safety”.

[220] It is true that, between December to March, women may access the 30-co-ed congregate

winter warming spaces in addition to the shelter spaces reserved for women/gender diverse occupants. However, the evidence demonstrates that these are not safe for women. In the YWCA of Kitchener-Waterloo report, 73% of those surveyed had avoided using co-ed spaces because of safety concerns.

[221] The evidence also demonstrates particular safety risks for women in motels. For instance, the Region no longer places women or gender-diverse people at one of the four motels used for overflow shelter due to reports of sexual coercion and exploitation by motel staff under threat of eviction.

[222] The key question under step two is whether the law worsens or reinforces the disadvantage experienced by the protected group. The majority in *Kanyinda* emphasized that assessment of whether a distinction perpetuates disadvantage for the purpose of step two must “recognize that discrimination cannot be neatly packaged into a single ground and a person will often live with other circumstances, realities, or identities that may enhance or exacerbate their disadvantage”: *Kanyinda*, at para. 63. An impugned law need not be based on stereotypical assumptions to satisfy step two. The Court was emphatic about this in *Kanyinda*: “at the second step of the s. 15(1) test, there is no need to show that the challenged measure stereotypes or causes prejudice towards the protected group” because “such an approach incorrectly focuses the inquiry on whether a discriminatory attitude exists as opposed to a discriminatory impact [...]”: *Kanyinda*, at para. 67.

[223] The By-Laws impose burdens and denies benefits in a way that reinforces, perpetuates, and exacerbates disadvantage. Here, the By-Laws’ disproportionate impact on those homeless who are women and gender diverse is that it requires them to seek out particularly unsafe forms of shelter due to the disproportionate lack of municipal shelter spaces for these groups. This deepens the pre-existing disadvantage these groups already face. As the Supreme Court of Canada has recognized in *R. v. Barton*, 2019 SCC 33, at para. 1: “[w]e live in a time where myths, stereotypes, and sexual violence against women [...]are tragically common”. Women also experience disproportionate rates of deep poverty in comparison to men, due to what the Supreme Court has recognized as a multiplicity of economic barriers”: *Moge v. Moge*, [1992] 3 SCR 813.

Physical, Mental Health and Addiction Disabilities

[224] People struggling with mental health and addiction issues are vastly overrepresented in the Region's homeless population. According to the 2024 Point in Time (PIT) count, 72% of homeless people reported substance abuse, 70% reported mental health issues, and 27% reported acquired brain injuries. This is consistent with the reports of the nearly 80% of the Named Respondents who identified as having mental health or cognitive challenges. In addition, it is recognized that some persons who reside at the Encampment may lack capacity to instruct counsel. (This was one of the reasons why *Amicus* was appointed).

[225] The By-Laws have a disproportionately adverse impact on homeless individuals who also struggle with physical, mental health, cognitive and addiction-related disabilities.

[226] The duty to accommodate drives the obligation state actors have when interacting with and providing services to, people with disabilities. The Supreme Court of Canada noted in *Granovsky v. Canada (Minister of Employment and Immigration)*, 2000 SCC 28, at para. 33, that “[t]he Charter is not a magic wand that can eliminate physical or mental impairments” but what s.15(1) does is “address the way in which the state responds to people with disabilities” ensuring that governments “may not, intentionally or through a failure of appropriate accommodation” stigmatize or attribute functional limitations to the disability “or fail to recognize the added burdens which persons with disabilities may encounter in achieving self-fulfilment in a world relentlessly oriented to the able-bodied.”

[227] I accept the submission of *Amicus* that the Region has failed to recognize the heightened burdens that clearing the Encampment will impose on homeless persons with disabilities and has not implemented adequate accommodations to address the disproportionate impact of the By-Laws on this subgroup of Encampment residents.

[228] The protection of disadvantaged individuals and groups is at the heart of s. 15. This requires the court to recognize that people living in encampments are some of the most marginalized in society and who frequently face prejudice linked to colonialism, racism, sexism, ableism, and other forms of discrimination, particularly when analysing the effects of a law.

[229] This equality-based analysis was utilized in *Persons Unknown 2023* as illustrated by the following findings: a. to be of any real value, shelter spaces must be truly accessible to accommodate the varied needs of homeless people in the Region (para. 93); b. that the law at issue impacted marginalized people in the Region who were not named parties and that their rights deserved *Charter* protection (para. 94; para 104); c. arguments about personal “choice” cannot negate a breach of s. 7 where choices are constrained by poverty, drug addiction, disability, and insufficient shelter alternatives (para. 106); and d. people with mental illness, substance abuse, or capacity issues may feel the negative effects of a law more strongly (para. 117).

[230] What matters is not discriminatory attitude or intention, but impact. In order for the Court to appreciate how the By-Laws impose burdens and perpetuates disadvantage, the lived intersectional realities of claimants in the subgroup must be recognized: people experience discrimination as whole persons, not as an aggregate of separate characteristics. Lack of stability, difficulty accessing services, increased health problems, and risk of death are all burdens experienced disproportionately by people with serious mental health, cognitive, addiction, physical and other disabilities that are made worse by forced eviction. Enforcement of the By-Laws also undermines the community some Encampment residents have built, increasing isolation. These are all impacts that deepen pre-existing disadvantages.

[231] I agree with the submission of *Amicus* that the Transition Protocol only applies to a minority of arbitrarily selected homeless people in the Encampment who happened to reside there on April 16, 2025. Rather than provide a systemic response to homelessness, the effect of the By-Law is to push an already marginalized population away from vital sources of health and community support and access to basic forms of outdoor shelter crucial to survival given that there are no lawful outdoor tenting alternatives. By doing so, it increases segregation, exclusion, and stigmatization and puts the claimants at risk of serious harm or death. Rather than promoting intersectionality, accommodation and respect for people’s choice to know what’s best for them, there is no requirement that the Alternative Accommodation offered be accessible and adequate. Many of the shelter options included as Alternate Accommodation options are fundamentally unsuitable for people with mental health/addiction disabilities who comprise the vast majority of homeless in the Region. In fact, in some cases the Alternative Accommodation may be less safe

than the Encampment.

[232] I also agree with *Amicus* that dignity is at the heart of human rights. An accommodation plan that fulfils the Region's s.15(1) obligations would have to be developed in consultation with individuals who are chronically homeless and have disabilities.

Indigenous Identity

[233] The Amended By-Law will have a disproportionate impact on the Encampment's Indigenous residents and exacerbate ongoing harms and existing disadvantages.

[234] Homelessness among Indigenous people is not simply a matter of individual misfortune. For Indigenous people, it is well established that homelessness is a consequence of colonization which dispossessed Indigenous people of their land and resources, propelling and inflicting generations of systemic racism and ongoing trauma. Homelessness is a consequence of systemic and societal barriers, a lack of affordable and appropriate housing, and the individual person's specific history and challenges.

[235] Indigenous people in Canada are disproportionately under-housed, unhoused, and experience barriers to access affordable, permanent, stable, and supportive housing. In Waterloo Region, only 1.7% of the total population identify as Indigenous. However, 17% of the surveyed unhoused people in the 2024 PiT Count were Indigenous.

[236] Following the Supreme Court of Canada's analysis in *Kanyinda*, even if homelessness is not recognized as an analogous ground under s. 15(1), the Encampment's Indigenous residents will satisfy the first part of the s.15(1) test as a subgroup of the affected homeless population. The adverse effects of the By-Law arise in the nexus between homeless and race. The second part of the test is satisfied because the impacts of the By-Law are particularly severe for Indigenous people who are already unhoused and overrepresented in the homeless population. Upon eviction, Indigenous residents will be denied the benefit of culturally safe housing options and will face additional barriers due to shelter eligibility rules that disproportionately exclude them because of their Indigenous identities.

[237] Indigenous racial identity is a protected ground under s.15(1), and the By-Law creates a distinction based on its disproportionate impact on the Indigenous people living in the Encampment. The purpose of the By-Law is to evict the residents of the Encampment to facilitate the construction of the KCTH. Although the stated purpose of the By-Law is facially neutral, its effects disproportionately burden Indigenous residents of the Encampment and therefore amount to adverse effects discrimination.

Are the infringements to s.7 and s.15 Charter rights saved under s.1?

[238] Section 1 of the *Charter* provides:

The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

[239] In order to justify the infringements under s. 1, the Region must show that the By-Laws have a pressing and substantial object and that the means chosen are proportionate to that object. A law is proportionate if: (1) the means are rationally connected to the objective; (2) it is minimally impairing of the rights; and (3) there is proportionality between the deleterious and salutary effects of the law: *Carter*, para. 94; *R. v. Oakes*, [1986] 1 S.C.R. 103.

[240] It is difficult to justify a s. 7 violation. As Justice Valente recognized at para. 129 in *Persons Unknown 2023*, “[a] section 7 breach will rarely be justifiable under section 1 except ‘in cases arising out of exceptional conditions, such as disasters, the outbreak of war, epidemics and the like.’”

[241] This high standard is appropriate due to the fundamental nature of the interests s. 7 protects. As the Supreme Court of Canada put it in at para. 95 in *Carter*, it is “hard to justify a law that runs afoul of the principles of fundamental justice and is thus inherently flawed”.

[242] The Region asserts that this Court should take a deferential approach at s. 1 because the By-Laws are a “complex regulatory response” to the social problem of homelessness. However, the By-Laws are far from a “complex regulatory response”. They do not seek to balance competing

objectives or regulate Encampment conditions in the public interest. Rather, effective April 1, 2026, they are simply a bare sheltering prohibition. In any event, the By-Laws do not satisfy the *Oakes* test, failing the second and third step of the proportionality analysis. The second step asks if the provision “impair[s] ‘as little as possible’ the right or freedom in question”. A bare prohibition on sheltering at the only lawful sheltering site in the Region is not minimally impairing because the Region has not taken adequate steps to mitigate the impact of closing the Encampment on its chronically homeless. It is open to the Region to consider a safe tenting protocol or to designate other sites for sheltering. Either could permit the Region to obtain vacant possession while mitigating the harm caused by closure of the site. Contrary to the Region’s assertion, offering no sheltering location of last resort to the 43% of the Region’s homeless population living outdoors is not within a range of reasonable alternatives. Similarly, the Court is not “micro-manag[ing]” resources in finding that there are alternative, less harmful means of achieving the government’s objective. Rather, that is the precise purpose of this portion of the analysis.

[243] Finally, the third step of the test asks if there is a “proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of ‘sufficient importance’”. Only the third branch takes full account of the ‘severity of the deleterious effects of a measure on individuals or groups’”. If the lack of access to a benefit has a severe effect on the affected group, this will weigh especially heavily in the balancing exercise. I agree with the submission of the Named Respondents that in this case the cost of achieving the objective is simply too great; the deleterious effects outweigh the salutary effects described by the Region. The deleterious impacts are severe – the risk of deprivation to lives, liberty, and security of the person of the Region’s chronically homeless are significant. On the other hand, the Region has not actually demonstrated the salutary effects that will result from the transit hub. The anticipated benefits of the transit hub (greater connectivity, reduced transfer times, more efficient transit connections) are speculative. In cross-examination, the Region’s Acting Commissioner, Transportation admitted that his statements that the transit hub would dramatically improve transit access were not based on any specific modeling or empirical data that was projected for this project. In these circumstances, the *Charter* infringement is too high a price to pay for the benefit that actually results from the law. As Justice Carter stated at para. 87 in *Kingston*: “To borrow the language from *Bedford*, a law that prevents the homeless from avoiding

a serious risk of injury or death by erecting shelter overnight when there is nowhere else to go is a law that has lost sight of its purpose [...]

[244] I find that the infringements of the Respondents' s.7 and s.15 *Charter* rights are not saved under s.1. Accordingly, they constitute violations of these *Charter* rights.

Illegality under s.273 Municipal Act

[245] Pursuant to s. 273 of the *Municipal Act, 2001*, a court may quash a municipal bylaw, in whole or in part, for illegality. A by-law is "illegal" for the purpose of s. 273 if it is passed in "bad faith", which will be indicated where the by-law is enacted without the degree of fairness, openness, and impartiality required of a municipal government. Indicia of bad faith include a failure to consult on the by-law, and a failure to provide meaningful notice to affected stakeholders. They may also include: "questionable timing; [...] lack of notice; the usual practices and procedures are set aside; the parties most affected are kept in the dark; or the law singles out one individual or property": *Bertrand v. Ramara (Township)*, 2024 ONSC 7291, at para. 170.

[246] I do not assess that these indicia are engaged here. While the consultation engaged in and the notice provided by the Region with regard to the first By-Law were imperfect, these shortcomings were remedied by the Region's efforts surrounding the Amended By-Law. This portion of the Respondent's application will be dismissed.

Conclusion

[247] The issues before the Court on these applications are complex, difficult and of vital significance to the lives of many of the people involved. The situation is fluid. The pressures which drive the issue of homelessness in Waterloo Region, and at the Encampment in particular, are not static. There are inevitably some sharply differing views about the best way ahead. What is apparent to me at this stage however is that all parties should resist any temptation to caricature the positions or the motives of those with opposing views.

[248] The Region has engaged in a significant effort to move forward with the KCTH while respecting the *Charter* rights of the Respondents. I have, however, found that the Amended By-

Law is not constitutionally compliant with the *Charter*, as it infringes both s.7 and s.15(1), and is not saved under s.1. Accordingly, there will be a Declaration pursuant to s.52 of the *Constitution Act, 1982*, that the By-Law is unconstitutional and is of no force and effect.

[249] The potential benefit to the Region's general population of the proposed KCTH constitutes a genuine public interest. There are ways that this can still be accomplished while respecting the rights of Encampment residents.

[250] The Encampment is currently the only place in the Region where it is not illegal for homeless people to set up a tent or structure. The Region has clearly stated that if the Encampment is cleared, it is not prepared to allow homeless people to shelter outdoors anywhere on Region property. The extremity of this position is what ultimately drives the findings that the infringements are not saved by s.1. No one should romanticize or be starry-eyed about the Encampment. It is a miserable and desperate place. But it represents the only remaining safety valve for the Region's homeless as a refuge of last resort.

[251] To address disproportionate impact and individualized accessibility needs, an accommodation plan that fulfills the Region's s. 7 and s.15(1) obligations would need to include an alternative lawful encampment site of last resort, or a tenting protocol that facilitates access to essential services and healthcare on par with the current encampment. The Region could look by way of inspiration to the City of London or the City of Thunder Bay, both of which have created lawful designated encampment zones. For example, the City of London has promulgated a Community Encampment Plan which seeks to better balance the relevant contending considerations.

Remedy

[252] Courts must be careful not to engage in 'judicially legislating' beyond their sphere of competence and appropriate exercise of jurisdiction. However, in the present matter, the Applicant Region has specifically asked for direction from the Court in the event of a Declaration that the Amended By-Law is not *Charter* compliant.

[253] The observations of Iacobucci and Arbour JJ for the majority at paras. 55 - 59 in *Doucet-Boudreau v Nova Scotia (Minister of Education)*, 2003 SCC 62, at paras. 55 - 59, are apt:

First, an appropriate and just remedy in the circumstances of a Charter claim is one that meaningfully vindicates the rights and freedoms of the claimants. Naturally, this will take account of the nature of the right that has been violated and the situation of the claimant. A meaningful remedy must be relevant to the experience of the claimant and must address the circumstances in which the right was infringed or denied. An ineffective remedy, or one which was “smothered in procedural delays and difficulties”, is not a meaningful vindication of the right and therefore not appropriate and just (see *Dunedin*, supra, at para. 20, McLachlin C.J. citing *Mills*, supra, at p. 882, per Lamer J. (as he then was)).

Second, an appropriate and just remedy must employ means that are legitimate within the framework of our constitutional democracy. As discussed above, a court ordering a Charter remedy must strive to respect the relationships with and separation of functions among the legislature, the executive and the judiciary. This is not to say that there is a bright line separating these functions in all cases. A remedy may be appropriate and just notwithstanding that it might touch on functions that are principally assigned to the executive. The essential point is that the courts must not, in making orders under s. 24(1), depart unduly or unnecessarily from their role of adjudicating disputes and granting remedies that address the matter of those disputes.

Third, an appropriate and just remedy is a judicial one which vindicates the right while invoking the function and powers of a court. It will not be appropriate for a court to leap into the kinds of decisions and functions for which its design and expertise are manifestly unsuited. The capacities and competence of courts can be inferred, in part, from the tasks with which they are normally charged and for which they have developed procedures and precedent.

Fourth, an appropriate and just remedy is one that, after ensuring that the right of the claimant is fully vindicated, is also fair to the party against whom the order is made. The remedy should not impose substantial hardships that are unrelated to securing the right.

Finally, it must be remembered that s. 24 is part of a constitutional scheme for the vindication of fundamental rights and freedoms enshrined in the Charter. As such, s. 24, because of its broad language and the myriad of roles it may play in cases, should be allowed to evolve to meet the challenges and circumstances of those cases. That evolution may require novel and creative features when compared to traditional and historical remedial practice because tradition and history cannot be barriers to what reasoned and compelling notions of appropriate and just remedies demand. In short, the judicial approach to remedies must remain flexible and responsive to the needs of a given case.

At para. 87, they concluded:

Section 24(1) of the Charter requires that courts issue effective, responsive remedies that guarantee full and meaningful protection of Charter rights and freedoms. The meaningful protection of Charter rights, and in particular the enforcement of s. 23 rights, may in some cases require the introduction of novel remedies. A superior court may craft any remedy that it considers appropriate and just in the circumstances. In doing so, courts should be mindful of their roles as constitutional arbiters and the limits of their institutional capacities. Reviewing courts, for their part, must show considerable deference to trial judges' choice of remedy, and should refrain from using hindsight to perfect a remedy. A reviewing court should only interfere where the trial judge has committed an error of law or principle.

[254] In his recent (as-yet) unpublished paper, “A New Constitutional Remedy: The Declaration Plus”, Professor Kent Roach of the University of Toronto, an eminent authority on constitutional remedies in Canada, has advanced a useful proposal for what he describes as a “Declaration Plus”. This draft paper was shared with the Court on consent of all counsel, with the kind agreement of Professor Roach. At page 29 of his paper, Professor Roach states:

There is a need for an intermediate remedy that is stronger than a simple declaration but that is not so detailed that it can be immediately enforced by coercive sanctions of contempt of court. Courts should learn from failure of simple declarations in *Little Sisters* and *Khadr* to produce effective remedies for long-standing violations of constitutional rights in complex and dynamic situations.

In 2024, Canadian courts recognized the need for an intermediate remedy stronger than a bare declaration but not as strong as an enforceable mandatory order...

At page 30, he continues:

The Court in both *Restoule* and *Pekuakamiulnuatsh Takuhikan* stressed the breadth of the court's remedial powers and the need for creativity in remedial decision-making. It would be a mistake to limit this invitation to the Indigenous rights context or to view retention of jurisdiction as either an unfair penalty imposed on government or an extravagant expenditure of limited judicial resources. As suggested by my re-analysis of the important remedial precedents of *Little Sisters*, *Khadr* and *Doucet-Boudreau*, courts can and have used the declaration plus, including the retention of jurisdiction, in a way that would have

produced effective remedies while treating the government fairly and respecting the respective role of the courts and government.

[255] This proposal seems to me to be apt in the context of the present matter.

[256] As I have indicated, the Court declares that the Amended By-Law is not constitutionally compliant with the *Charter*, and is of no force and effect. As a ‘Declaration Plus’, I will retain jurisdiction in this matter 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, in order to request a review or further direction from the Court.

[257] I wish to express my appreciation to all counsel for their valuable assistance and the high quality of their written and oral submissions. It has been a privilege to benefit from the submissions of advocates of such caliber on all sides.

Order

[258] The Court Declares that:

1. The Site-Specific and the Amended By-Laws violate s.7 of the *Canadian Charter of Rights and Freedoms*, and are not justified under s.1 of the *Charter*;
2. The Site-Specific and the Amended By-Laws violate s.15(1) of the *Canadian Charter of Rights and Freedoms*, and are not justified under s.1 of the *Charter*; and,
3. Pursuant to s.52(1) of the *Constitution Act, 1982*, the Site-Specific and the Amended By-Law are of no force and effect.

[259] The Court Orders that:

1. The application of the Region is dismissed;
2. The cross-application of the Respondents is allowed in part;

3. There shall be an injunction restraining the Applicant, its servants, employees, agents, assigns, officers, directors and anyone else acting on its behalf from enforcing or acting on any part of the Site-Specific By-Law or Amended By-Law, including but not limited to:
 - i) directly or indirectly evicting the Named Respondents or other persons from the Encampment;
 - ii) preventing the Named Respondents or other persons' entry to or use of the Encampment site, directly or indirectly, including without limitation the use of fences or other barriers;
 - iii) preventing the Named Respondents or other persons from relocating their temporary shelters to another part of the Encampment site;
 - iv) prohibiting entry onto the premises of non-residents, including prohibiting vehicle access to the premises; and
 - v) disposing of or removing any personal belongings, real or personal property belonging to the Named Respondents or other persons and located at the Encampment.
4. Following its implementation of either a Safe Tenting Protocol, or the provision by the Region of an alternative Encampment site reasonably proximate to 100 Victoria Street, or both, the Region may seek further direction from the Court regarding its plan to clear the 100 Victoria Site for the purposes of the Kitchener Central Transit Hub.

Costs

[260] The parties are encouraged to agree upon appropriate costs. If the parties are not able to agree on costs, they may make brief written submissions to me (maximum three pages double-spaced, plus a bill of costs) by email to my judicial assistant at mona.goodwin@ontario.ca and to Kitchener.SCJJA@ontario.ca. The Named Respondents may have 14 days from the release of this decision to provide their submissions, with a copy to the Region; the Region a further 14

days to respond, with a copy to the Named Respondents; and the Named Respondents a further 7 days for a reply, if any. If no submissions are received within this timeframe, the parties will be deemed to have settled the issue of costs as between themselves. If I have not received any response or reply submissions within the specified timeframes after the Named Respondents' initial submissions, I will consider that the parties do not wish to make any further submissions and will decide on the basis of the material that I have received. There shall be no costs ordered against or in favour of *Amicus* or the Interveners the Attorney General of Ontario, CCLA, ALS or CCPI/NRHN.

Date: May 21, 2026

M.R. Gibson J.

CITATION: The Regional Municipality of Waterloo v. Named
Respondents and Persons Unknown, 2026 ONSC 2971
COURT FILE NO.: CV-25-00000750-0000 and CV-25-00001341-0000
DATE: 2026/05/21

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

THE REGIONAL MUNICIPALITY
OF WATERLOO

Applicant

– 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

Respondents/Cross-Applicants

REASONS FOR DECISION

M.R. Gibson J.

TAB 4

Court of Appeal File No.: COA-26-CV-0897
COA-26-CV-0836

COURT OF APPEAL FOR ONTARIO

) _____, THE ____
)
) DAY OF _____, 2026

B E T W E E N:

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)

ORDER

THIS MOTION, made by the proposed interveners, the Canadian Drug Policy Coalition, HIV Legal Network, and Waterloo Region Drug Action Team (the “Drug Policy Interveners”), for leave to intervene as a friend of the court, was heard this day at the courthouse in Toronto, Ontario.

ON READING the materials filed by the parties, including the motion record and factum of the proposed interveners, and on receiving submissions from counsel for the parties:

1. **THIS COURT ORDERS** that the Interveners are granted leave to intervene as a friend of the court pursuant to Rule 13.02 of the *Rules of Civil Procedure* on the following terms:
 - (a) The Drug Policy Interveners may, jointly, file a factum not exceeding 10 pages on or before the date set by the Court;
 - (b) the Drug Policy Interveners may present oral submissions at the hearing of the appeal, of a length to be determined by the Court;
 - (c) the Drug Policy Interveners shall coordinate with the parties and any other intervener(s) and make best efforts to avoid duplication of submissions; and
 - (d) the Drug Policy Interveners shall not raise new issues or adduce new evidence.
 2. **THIS COURT ORDERS** that there shall be no costs awarded for or against the Drug Policy Interveners in respect of this motion for leave to intervene and the intervention.
-

THE REGIONAL MUNICIPALITY OF WATERLOO**-and-****JOSEPHINA DUGAS et al**

Appellant

Respondents

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT TORONTO

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Canadian Drug Policy Coalition, HIV Legal
Network, and Waterloo Region Drug Action Team

THE REGIONAL MUNICIPALITY OF WATERLOO

-and-

JOSEPHINA DUGAS et al

Appellant

Respondents

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT TORONTO

**MOTION RECORD
OF THE PROPOSED INTERVENER**

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