Court File Nos.:COA-26-CV-0836 COA-26-CV-0897

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

THE REGIONAL MUNICIPALITY OF WATERLOO

Appellant (Applicant/Cross-Respondent)
Respondent on Motion

THE ATTORNEY GENERAL OF ONTARIO

Appellant (Intervener)
Respondent on Motion

-and-

JOSEPHINA DUGAS, TERRA-LYNN WEBER, AVERY AMENT, AARON PRICE, JEREMY LINTON, JEREMY NICHOL, JAMES HAMMOND, JAKOB STUBBS, JAMES DAVIS, JASON PAUL, NOAH HELSBY, JOSEPH BRADLEY, JOSEPH SADLER, JULIE 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 (Respondents/Cross-Applicants)
Respondents on Motion

# MOTION FACTUM OF THE PROPOSED INTERVENER

## CANADIAN LAWYERS FOR INTERNATIONAL HUMAN RIGHTS (CLAIHR) AND CANADIAN CIVIL LIBERTIES ASSOCIATION (CCLA)

**October 21, 2026**

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## PART I – INTRODUCTION

**1.** The Canadian Lawyers for International Human Rights (CLAIHR) and Canadian Civil Liberties Association (CCLA) bring this motion for leave to intervene in the appeal brought by the Regional Municipality of Waterloo (the "Region") and the Attorney General of Ontario seeking to set aside the Judgement of Justice Gibson dated May 12, 2026,[1] which declared unconstitutional certain By-laws[2] which sought to close an encampment that served as the shelter of last resort for those experiencing homelessness in the Region.

2. In finding that that the impugned By-laws violated sections 7 and 15 of the *Canadian Charter for Rights and Freedoms* (the *Charter*), the application judge relied in part on the right to adequate housing in the International Covenant on Economic, Social and Cultural Rights (ICESCR), and on authoritative treaty-body interpretations, to assess the measures required by ss. 7 and 15 to mitigate those harms.[3] The application judge also considered the *National Housing Strategy Act*, legislation that implements Canada's commitments to the right to adequate housing under international human rights law ("IHRL"), and the commentary of the Federal Housing Advocate charged with overseeing the implementation of that legislative commitment, as well as the Region's own *Plan to End Chronic Homelessness* (PECH).[4]

3. It is trite that the need for shelter is fundamental to survival and engages the inherent dignity and autonomy of all people. The issues raised in this appeal transcend the immediate interests of the parties and engage with the fundamental rights and freedoms of the most vulnerable and marginalized members of the community. This appeal thus raises significant issues of public

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1 *The Regional Municipality of Waterloo v Named Respondents and Persons Unknown*, 2026 ONSC 2971 [Decision].
2 By-law 25-021, original and as amended, Respondents' Compendium Volume 1 ("RComVol1"), pp.20-25,32-40.
3 Decision at paras 105–134, 138–139, 142–154; International Covenant on Economic, Social and Cultural Rights, Can. T.S. 1976 No. 46, arts 2(1), 2(2) and 11(1) [ICESCR].
4 Decision at paras 126–138.

importance and also raises critical issues concerning the reception of IHRL in Canada's legal order and the role of the right to adequate housing in interpreting ss. 7 and 15 of the *Charter*.

4. CLAIHR and the CCLA have significant and distinct expertise which position them to provide a useful and unique perspective on the IHRL issues that the parties have raised.

5. CLAIHR is a well-recognized expert in IHRL. It regularly intervenes in court proceedings to provide assistance on issues relating to IHRL, including the application of that law through domestic legislation and by Canadian courts.[5]

6. The CCLA has broad expertise in civil liberties and has intervened in 360+ legal proceedings raising *Charter* issues, including several recent cases addressing s. 7 and encampments or housing.[6] The CCLA was granted leave to intervene in the applications under appeal and made unique submissions on the interpretive relevance of IHRL to s. 7 of the *Charter* in the context of encampment responses, as well as the relevance of the *National Housing Strategy Act* and the Region's Plan to End Chronic Homelessness in adopting IHRL commitments.[7]

7. With this combined expertise, CLAIHR/CCLA proposes a useful and distinct contribution addressing: (i) how the presumption of conformity for binding sources of IHRL and the "relevant and persuasive" principle for non-binding sources apply to the interpretation of ss. 7 and 15 of the *Charter* in relation to homelessness and encampments; (ii) the relevance of the international human right to adequate housing, as an economic and social right subject to progressive realization, to the interpretation of the obligations arising under ss. 7 and 15 of the *Charter*; and (iii) whether and

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5 Motion Record at Tab 2, Affidavit of James Yap [Yap Affidavit] at para. 6.
6 Decision; *Heegsma v. Hamilton (City)*, 2026 ONCA 726 [*Heegsma*], *Kingston v Doe*, 2023 ONSC 6662 [*Kingston*]; *Wright v Yukon (Government of)*, 2024 YKSC 41 [*Wright*].
7 Motion Record at Tab 3, Affidavit of Harini Sivalingam [Sivalingam Affidavit] at paras. 4-5.

how legislative and policy measures implementing Canada's IHRL commitments inform *Charter* interpretation.

8. CLAIHR/CCLA have a long track record of offering useful contributions as intervenors, without raising new issues or supplementing the record. If granted leave to intervene, CLAIHR/CCLA will take no position on disposition; rely on the existing record; add no evidence or issues; avoid duplication; and comply with the Court's schedule and limits.

## PART II – FACTS

9. CLAIHR/CCLA will rely on the record and will not seek to expand the issues raised.

## PART III – STATEMENT OF ISSUES AND LAW

10. The only issue on this motion is whether CLAIHR/CCLA should be granted leave to intervene as a friend of the Court under Rule 13.02 of the *Rules of Civil Procedure.*[8]

### The Test for Leave to Intervene

11. Rule 13.02 provides discretion to grant any person leave to intervene as a friend of the court. The test for intervention under Rule 13.02 and 13.03(2) is well-established. It was set out by Dubin C.J.O for the Ontario Court of Appeal in *Peel*:

> Although much has been written as to the proper matters to be considered in determining whether an application for intervention should be granted, in the end, in my opinion, the matters to be considered are the nature of the case, the issues which arise and the likelihood of the applicant being able to make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties.[9] [emphasis added]

12. The "nature of the case" is an important factor under the *Peel* test. In *Charter* cases, the standard for intervention is more relaxed.[10] There can be no real question that this appeal raises

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8 *Rules of Civil Procedure*, RRO 1990, Reg 194 [*Rules*] s 13.02.
9 *Peel (Regional Municipality) v Great Atlantic & Pacific Co. of Canada Ltd*, 1990 CanLII 6886 (ONCA) at p. 1 [*Peel*].
10 *Kastner v Health Professions Appeal and Review Board*, 2022 ONSC 5553 [*Kastner*]at para 36; *Animal Justice v. Ontario (Attorney General)*, 2024 ONCA 941 [*Animal Justice*], at paras. 10–13.

issues of immense public importance. The Court of Appeal for British Columbia nicely summarized the constitutional context for a similar appeal in *Adams*:

> [4] […] The constitutional context applies the most lofty of guaranteed human rights – the rights to life, liberty and security of the person – to the needs of some of the most vulnerable members of our society for one of the most basic of human needs, shelter. Thus, though the trial judge's decision in this case is narrow in scope, it takes on wide meaning and implications for all.[11]

13. This Court has held that in *Charter* cases specifically, a proposed intervener under Rule 13.02 typically must establish at least one of the following three criteria to satisfy the useful contribution requirement:

i. a real, substantial and identifiable interest in the subject matter of the proceedings;

ii. an important perspective distinct from the immediate parties; or

iii. that it is a well-recognized group with special expertise and a broadly identifiable membership base.[12]

14. CLAIHR/CCLA's proposed intervention meets each of these criteria.

**CLAIHR/CCLA Have Special Expertise and an Interest in the Issues Raised**

15. CLAIHR is a federally incorporated registered charity. It is a non-governmental organization of lawyers, law students, legal academics, and other jurists, founded in 1992 to promote IHRL within and in connection to Canada through education, research, and advocacy.

16. Its leadership, membership, and Advisory Board include experts in international human rights law.[13] CLAIHR's members and leadership have experience working for the United Nations on human rights and post-conflict recovery; working with persons in need of protection through

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11 *Victoria (City) v. Adams*, 2009 BCCA 563 [*Adams*] at para 4.
12 *Bedford v. Canada (Attorney General)*, 2009 ONCA 669 (CanLII) [*Bedford*] at para 2.
13 Yap Affidavit at para. 7.

the United Nations High Commissioner for Refugees and other international legal organizations; campaigning against torture and cruel, inhuman or degrading treatment; representing interveners at all levels of court; making submissions and appearing before parliamentary committees; filing submissions with United Nations periodic reviews and Special Rapporteurs; and lecturing on international human rights.[14]

17. CLAIHR's objectives include analyzing laws, institutions, and practices affecting human rights; strengthening IHRL instruments and institutions that protect human rights, domestically and internationally; promoting awareness of international human rights issues among Canadians generally and within the Canadian legal community; and supporting lawyers, legal organizations and other entities dedicated to achieving human rights. A large part of CLAIHR's work involves intervening in court proceedings concerning IHRL, including the application of that law through domestic legislation and by Canadian courts.[15]

18. CLAIHR has been granted leave to intervene by courts at several levels in Canada in proceedings involving IHRL and its relationship to Canadian law as outlined in the Affidavit of James Yap.[16] It was an intervenor in *Mathur v. Ontario*, 2024 ONCA 762, in which CLAIHR and the Center for International Environmental Law jointly addressed the relevance of Canada's international human rights and environmental obligations to s. 7 of the *Charter* in the context of climate change. The impact of *Mathur* is at issue in the present appeal.

19. Founded in 1964, the CCLA is a national, non-profit, independent, nongovernmental organization dedicated to promoting respect for and observance of fundamental human rights and

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14 Yap Affidavit at para. 9.
15 Yap Affidavit at para. 6.
16 Yap Affidavit at para. 12.

civil liberties in Canada.[17] The CCLA has a broad membership-base with thousands of supporters from all walks of life in communities across Canada.

20. The CCLA has well-recognized expertise in the fundamental freedoms protected by the *Charter*. Over the last five decades, it has intervened in 360+ legal proceedings raising *Charter* issues across all levels of court.[18] It has specifically intervened in dozens of cases addressing the scope of ss. 7 and 15, including several recent *Charter* cases addressing state-initiated encampment responses or the right to adequate housing under IHRL.[19]

21. The CCLA's valuable contributions as an intervenor defending and promoting civil liberties have been recognized by the courts on numerous occasions. For example, in *Batty*, the court commended the balanced assistance provided by the CCLA in a case dealing with reconciling competing public interests. Brown J. [as he then was] stated: "Let me say that I appreciate the assistance which counsel for the CCLA provided to me during the hearing. The CCLA acted as a true friend of the court."[20] Likewise, in *Tadros*, former Associate Chief Justice O'Connor commented that the CCLA "has substantial experience in promoting and defending the civil liberties of Canadians".[21]

**CLAIHR/CCLA Will Offer a Distinct Perspective and Make a Useful Contribution**

22. CLAIHR/CCLA will bring their unique subject-matter expertise and public interest perspectives to the IHRL issues raised by this appeal. CCLA provided useful submissions on the

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17 Sivalingam Affidavit at paras. 6-7.
18 Sivalingam Affidavit at para. 10.
19 Decision, *Heegsma*; *Kingston*.
20 *Batty v. City of Toronto*, 2011 ONSC 6862 at para 22.
21 *Tadros v. Peel Regional Police Service*, 2008 ONCA 775 at para 3.

IHRL issues in the application below, and CLAIHR adds additional IHRL expertise to their joint intervention.

23. The draft factum CLAIHR/CCLA have filed along with its motion record demonstrates a distinct perspective from any of the parties on the IHRL issues raised. CLAIHR/CCLA are uniquely positioned to address IHRL and the domestic jurisprudence using IHRL sources to interpret the scope and content of the *Charter*.

**The CCLA's Intervention Will Not Cause Prejudice**

24. CLAIHR/CCLA appreciates the need for intervenors to be of assistance to the Court. CLAIHR/CCLA's intervention will not cause prejudice or delay the appeal. If granted leave to intervene, CLAIHR/CCLA will not raise new issues and will also work proactively and cooperatively with the other parties and/or intervenors to avoid duplication of submissions.

25. CLAIHR/CCLA will not seek costs and asks that no costs be awarded against it.

**PART IV – ORDERS REQUESTED**

26. CLAIHR/CCLA seeks order(s) that:

a) CLAIHR/CCLA is granted leave to intervene in this appeal as a friend of the Court under Rule 13.02 of the *Rules of Civil Procedure*;

b) CLAIHR/CCLA may file a factum of up to 10 pages, or of such other length as the Court may permit;

c) CLAIHR/CCLA may make oral submissions at the hearing of the appeal, of a length to be determined by this Court; and

d) that there be no costs of this motion and no costs in the appeal as they relate to CLAIHR/CCLA.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Craig Scott

Kristen Allen

Counsel for the Proposed Interveners CLAIHR and CCLA

**SCHEDULE "A"**

**AUTHORITIES**

**Jurisprudence**

1. *Kingston v Doe*, 2023 ONSC 6662 [***Kingston***].
2. *Wright v Yukon (Government of)*, 2024 YKSC 41 [***Wright***].
3. *Peel (Regional Municipality) v Great Atlantic & Pacific Co. of Canada Ltd*, 1990 CanLII 6886 (ONCA) [***Peel***].
4. *Kastner v Health Professions Appeal and Review Board*, 2022 ONSC 5553 [***Kastner***].
5. *Animal Justice v. Ontario (Attorney General)*, 2024 ONCA 941 [Animal Justice]
6. *Victoria (City) v Adams*, 2009 BCCA 563 [***Adams***].
7. *Bedford v Canada (Attorney General)*, 2009 ONCA 669 (CanLII) [***Bedford***].
8. *Batty v City of Toronto*, 2011 ONSC 6862 [***Batty***].

9. *Tadros v Peel Regional Police Service*, 2008 ONCA 775 [***Tadros***].

10. *Mathur v. Ontario*, 2024 ONCA 762 [*Mathur*]

**International Sources**

1. *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 U.N.T.S. 3, Can. T.S. 1976 No. 46, 6 I.L.M. 360 [**ICESCR**].

## SCHEDULE "B"

**Legislation**

1. *Rules of Civil Procedure*, RRO 1990, Reg 194, Rule 13.02

**Leave to Intervene as Friend of the Court**

**13.02** Any person may, with leave of a judge or at the invitation of the presiding judge or associate judge, and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument. R.R.O. 1990, Reg. 194, r. 13.02; O. Reg. 186/10, s. 1; O. Reg. 711/20, s. 7; O. Reg. 383/21, s. 15.

**Leave to Intervene in Divisional Court or Court of Appeal**

**13.03** …

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

2. *National Housing Strategy Act*, S.C. 2019, c. 29, s. 313 2, s. 4

**Declaration**

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 building 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.

Court File Nos.:COA-26-CV-0836 COA-26-CV-0897

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

THE REGIONAL MUNICIPALITY OF WATERLOO

Applicant (Appellant)
Respondent on Motion

THE ATTORNEY GENERAL OF ONTARIO

Appellant (Intervener)
Respondent on Motion

-and-

JOSEPHINA DUGAS, TERRA-LYNN WEBER, AVERY AMENT, AARON PRICE, JEREMY LINTON, JEREMY NICHOL, JAMES HAMMOND, JAKOB STUBBS, JAMES DAVIS, JASON PAUL, NOAH HELSBY, JOSEPH BRADLEY, JOSEPH SADLER, JULIE 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 (Respondents in Appeal)
Respondents on Motion

**CERTIFICATE**

1. I am satisfied as to the authenticity of every authority listed in Schedule A and cited in this factum. I am satisfied that every quotation from an authority that appears in the factum accurately reproduces the text of the authority

Kristen Allen

Lawyer for the Proposed Interveners CLAIHR and CCLA

| | | |
|---|---|---|
| THE REGIONAL MUNICIPALITY OF WATERLOO<br>Applicant (Appellant) | and | JOSEPHINA DUGAS et al.<br>Respondents (Respondents in Appeal) |

Court File Nos.: COA-26-CV-0836 / COA-26-CV-0897

***COURT OF APPEAL FOR ONTARIO***

PROCEEDING COMMENCED
AT TORONTO

**NOTICE OF MOTION FOR LEAVE TO INTERVENE
OF THE PROPOSED INTERVENERS
CANADIAN LAWYERS FOR INTERNATIONAL HUMAN RIGHTS (CLAIHR)
AND THE CANADIAN CIVIL LIBERTIES ASSOCIATION (CCLA)**

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