

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

THE REGIONAL MUNICIPALITY OF WATERLOO

Appellant
(Applicant/Cross Respondent)

and

THE ATTORNEY GENERAL FOR ONTARIO

Appellant
(Intervener)

JOSEPHINA DUGAS, TERRA-LYNN WEBER, AVERY AMENT, AARON PRICE,
JEREMY LINTON, JEREMY NICHOL, JAMES HAMMOND, JAKOB STUBBS, JAMES
DAVIS, JASON PAUL, NOAH HELSBY, JOSEPH BRADLEY, JOSEPH SADLER, JULIE
YOUNG, KYLE YORK, MEGAN LOPES, STEPHANIE MCMILLAN, JEFFREY COUTO,
JORDAN CAMM, TERRANCE COLE, XANDER HARKER, CHARLES KOCHER, ALINE
JEFFERY, MICHAEL JEFFERY, AND PERSONS UNKNOWN

Respondents
(Respondents/Cross-Applicants)

FACTUM OF THE NAMED RESPONDENTS

October 9, 2026

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PART I – OVERVIEW

1. In form, the By-Law at issue in this appeal¹ targets a single site – a gravel lot at 100 Victoria Street North in Kitchener. In substance, it creates a blanket ban on outdoor sheltering throughout the Regional Municipality of Waterloo (the “Region”). It does so at a time when the Region’s indoor shelter capacity can accommodate only 15% of its homeless.²

2. The By-Law’s broad impact arises because of its interaction with the Region’s “Code of Use By-Law” (“CUB”), which prohibits sheltering on all other Region owned property.³ In 2023, the Superior Court declared the CUB constitutionally inoperable “insofar, and only insofar” as it applied to prevent persons 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”.⁴ This made the site (the “Encampment”) the *only* location for the Region’s chronically homeless to shelter without the threat of eviction. The By-Law now seeks to side-step this constitutional exemption, leaving the Region’s chronically homeless, including the Respondents, with no place to go when they lose other temporary shelter. Insufficient indoor shelter options give them no choice but to shelter outdoors, but the By-Law, together with the CUB, exposes them to eviction, fines, and arrest for doing so. As one person sheltering at the Encampment put it: “[we] are at the bottom and now [they] are just taking away the bottom.”⁵

¹ By-law 25-021, original and as amended, Respondents’ Compendium Volume 1 (“RComVol1”), pp.20-25,32-40.

² *The Regional Municipality of Waterloo v. Named Respondents and Persons Unknown*, [2026 ONSC 2971](#) (“*Decision*”), ¶164.

³ Code of Use By-Law and Amendments (“CUB”), Sch.B,ss.2(e),(t), RComVol1, pp.14-15.

⁴ *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, [2023 ONSC 670](#) (“*Persons Unknown 2023*”), ¶158.

⁵ Community Impact Consultation - Preliminary Report 100 Victoria April 22, 2025, Ex.H to Affidavit of David Alton (“Alton Affidavit”), RComVol1, p.297.

3. The Region asked the Court to determine the constitutionality of the By-Law and for “guidance” regarding the “steps it must take in order to obtain vacant possession of the Property in a Charter-compliant manner”.⁶ The Application Judge (“AJ”) provided that guidance. He declared that it remained unconstitutional for the Region to prohibit outdoor sheltering entirely, but he directed that the Region may obtain vacant possession of the site by regulating outdoor sheltering through means other than a blanket ban. How the Region does so is up to the Region, which may develop its own safe tenting protocol or select another site where persons can shelter.

4. Neither the Region nor the Attorney General (“AG”) addresses the interaction between the By-Law and the CUB – an interaction that is central to this appeal. Instead, they rely on two fictions to challenge the AJ’s decision. First, that outdoor homelessness can be eradicated by a municipal policy choice to prohibit it,⁷ even when there is not enough indoor shelter available. Second, that the By-Law impacts only the 40 unnamed persons selected by the Region as “Residents”.⁸

5. The AG and Region also mischaracterize the decision, responding to straw man arguments that neither the Respondents nor *Amicus* ever made and that the AJ never accepted. These include that:

- The decision constitutionalizes a positive right for the homeless to appropriate property for permanent use.⁹ In fact, the AJ was clear that there was “no unconstrained right to live wherever one pleases”, but rather s. 7 is engaged where the state deprives persons “of the ability to erect the shelters they need to protect their own health and safety when they lack indoor alternatives”.¹⁰

⁶ Region Application Factum, Respondents’ Compendium Volume 2 (“RComVol2”), pp.471,474,516;¶1,7,102.

⁷ AG Factum,¶21; Region Factum,¶9,11.

⁸ Region Factum,¶50-53; AG Factum,¶58.

⁹ AG Factum,¶9; Region Factum,¶57.

¹⁰ [*Decision*](#),¶137.

- The decision blocks the Region from building transit,¹¹ and makes it “virtually impossible for municipalities” to address the needs of the homeless.¹² Instead the AJ directed that the Region *could* use the site, if it devised a protocol for regulating outdoor sheltering by means other than a blanket prohibition.¹³

6. The actual terms of the decision reflect the application of established Charter jurisprudence to the evidence on the record. This included evidence that “[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”¹⁴ and that forced evictions from outdoor sheltering locations “contribute to the declining health of homeless individuals by leaving them with little choice but to seek outdoor shelter in more remote public spaces”.¹⁵ It also included evidence that those impacts were particularly severe for those homeless who are women, gender-diverse, disabled, and/or Indigenous, given the particular dearth of accessible indoor sheltering options for members of these s. 15-protected groups.¹⁶

7. In this context, the AJ correctly found that “the extremity”¹⁷ of the Region’s refusal to permit outdoor sheltering *anywhere* rendered the By-Law unconstitutional, when considered in context with the CUB. He correctly recognized that “a law that prevents the homeless from

¹¹ AG Factum, ¶6.

¹² Region Factum, ¶12,70.

¹³ [Decision](#), ¶242,249,256,259.4.

¹⁴ [Decision](#), ¶186; Hwang Affidavit, RComVol1, pp.159-160, ¶9.

¹⁵ [Decision](#), ¶143; Hwang Affidavit, RComVol1, pp.159-61, ¶9-13; Gupta Affidavit, RComVol1, pp.169-70, ¶16,17; Pauly Affidavit, RComVol1, pp.184-90, ¶20-25; Sanguen Statement, Ex.I to Kubis Affidavit, RComVol1, p.299; Houle Affidavit, RComVol1, p.266, ¶35; 1stEscobar Affidavit, RComVol1, p.305, ¶19.

¹⁶ [Decision](#), ¶217-19,230,236; 1stEscobar Affidavit, RComVol1, p.303, ¶11; Schwan Affidavit, RComVol1, p.225, ¶8, p.230, ¶18; Gupta Affidavit, RComVol1, p.168-74, ¶13(d),17,20(c),21(a)(d); Hundt Affidavit, RComVol1, pp.326-27, ¶9-10; Final Report of National Inquiry into Missing and Murdered Indigenous Women and Girls, Ex.F to Kubis Affidavit, RComVol1, pp.287-89,291; Pauly Affidavit, RComVol1, pp.182-83, ¶16-17.

¹⁷ [Decision](#), ¶250.

avoiding a serious risk of injury or death by erecting shelter ... when there is nowhere else to go is a law that has lost sight of its purpose”.¹⁸

8. The AJ also correctly held that homelessness satisfies the elements for a s. 15 analogous ground – elements which are not restricted to immutability. In any event, the evidence before him established that homelessness *is* immutable while it lasts.¹⁹ Its transitory nature does not preclude immutability.

9. The AJ understood the question at the crux of this case: where are the Region’s chronically homeless expected to go when they cannot access indoor shelter? The Region’s current approach removes people’s last resort for shelter, and the AJ correctly found that this deprivation is unconstitutional. This Court ought to dismiss the appeal.

PART II: FACTS

Accepted and disputed facts

10. The Respondents dispute some of the Region and AG’s facts, as set out in the “Additional facts” below, and assert that the remaining facts must be understood in the context of the “Additional facts”.

Additional facts

The Encampment and its residents

11. The Respondents are 24 chronically homeless persons living in the Region. Most have been

¹⁸ [*Decision*](#), ¶243.

¹⁹ [*Decision*](#), ¶207.

homeless for years.²⁰ They have sheltered at the Encampment during periods when they had no place else to go.²¹

12. All of the Respondents have disabilities – 18 have mental health or cognitive disabilities, 17 have substance use disabilities, and at least four have mobility impairments.²² Six are Indigenous. 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. All live in extreme poverty – some have no income at all, and others survive on social assistance.

13. The Encampment is a Region-owned gravel lot located at 100 Victoria Street North in Kitchener. Homeless persons began erecting tents there in or around December 2021.²³ However, the number of persons sheltering at the Encampment is fluid.²⁴ Chronically homeless persons pitch and pack up temporary shelters as they lose and gain indoor shelter.²⁵ In the words of Respondent Jeremy Linton: “It makes me feel safe knowing the encampment is an option for me if I have no

²⁰ Price Affidavit, RComVol1,p.139,¶6; Hammond Affidavit, RComVol1,p.105,¶5; Linton Affidavit, RComVol1,p.48,¶7; Nichol Affidavit, Region’s EXHB.Vol2,p.856,¶7; Bradley Affidavit, RComVol1,p.150,¶9-11; Sadler Affidavit, RComVol1,p.135,¶12-14; Dugas Affidavit, RComVol1,p.71,¶9; York Affidavit, RComVol1,p.129,¶8; Lopes Affidavit, RComVol1,p.52,¶8; Helsby Affidavit, RComVol1,p.118,¶10; McMillan Affidavit, RComVol1,p.110,¶12; Weber Affidavit, RComVol1,p.84,¶16; Cole Affidavit, RComVol1,p.145-46,¶15-19; Camm Affidavit, RComVol1,p.78,¶8; Couto Affidavit, RComVol1,p.43,¶10; Harker Affidavit, RComVol1,p.101,¶9; Kocher Affidavit, RComVol1,p.89,¶11; Amended Davis Affidavit, Region’s EXHBVol4,pp.1698-99,¶11-14.

²¹ [Decision](#),¶165. See, e.g.: Couto Affidavit, RComVol1,p.44,¶14; Linton Affidavit, RComVol1,p.48,¶10; 2ndLopes Affidavit, RComVol1,p.57,¶12; Loppie Affidavit, RComVol1,pp.61-62,¶11-15; Ament Affidavit, RComVol1,pp.66-67,¶11-12; Camm Affidavit, RComVol1,pp.78-79,¶9-13; Kocher Affidavit, RComVol1,pp.89-90,¶11-13; A.Jeffery Affidavit, RComVol1,p.96,¶13-14; Cole Affidavit, RComVol1,p.146,¶22-25.

²² [Decision](#),¶155. The Respondents’ demographic characteristics are set out in **Appendix A**.

²³ [Decision](#),¶52.

²⁴ [Decision](#),¶52.

²⁵ [Decision](#),¶52,60,165.

where to go”.²⁶

14. There is a drop-in space across the street where residents can access meals, water, showers, laundry, and use the telephone. Health and harm reduction services are provided on-site by Sanguen Health. Community volunteers provide clothing, firewood, blankets, food, and water.²⁷

15. Circumstances that have caused the Respondents to rely on the Encampment vary. For instance:

- a. Charles Kocher is a 41-year-old Mi'kmaq man. He has had three heart attacks and a blood clot that travelled to his lungs, causing him to fall into a coma. He was discharged from the hospital into homelessness and went to the Encampment, having no place else to go. Mr. Kocher now wears a drainage tube that must be flushed every “couple of days”. He cannot afford transportation to attend those appointments, so he must hope the incision site does not become infected. He lives with “a lot of pain”. He has been homeless for 3-4 years, during which he has been evicted from other public spaces. Once, by-law staff threw out all of his belongings during eviction enforcement.²⁸
- b. Aline Jeffery is a 46-year-old Métis woman. She is married and shelters together with her husband. She was sexually and emotionally abused as a child, abused during her first marriage, and drugged and sexually assaulted in March of 2025. Ms. Jeffery has multiple disabilities, including Lupus, Fibromyalgia, PTSD, and Borderline Personality Disorder. She has also struggled with substance use since having been prescribed Oxycontin and Percocets for her Lupus and Fibromyalgia. She first became pregnant at the age of 14, and raised four children, supporting them first as a medical assistant and

²⁶ Linton Affidavit, RComVol1,p.48,¶10.

²⁷ [Decision](#),¶52.

²⁸ Kocher Affidavit, RComVol1,pp.88-92.

then as a law clerk. She now relies on Canada Pension Plan Disability benefits. Ms. Jeffery and her husband became homeless in September of 2025. They have stayed in motels when they could afford to, but have been banned from three of the Region's four shelter overflow motels due to a dispute with the motels' common operator. They have stayed in parks but have been repeatedly evicted under the CUB. Needing accommodation as a couple (which indoor shelters do not allow), being banned from the motels, and unable to shelter in parks, they began sheltering at the Encampment in December 2025 or January 2026.²⁹

- c. Jeffrey Couto is a 43-year-old man who has stayed at the Encampment on and off since 2021. He lives with significant trauma – he was sexually assaulted as a child and his father was murdered. Prior to becoming homeless, he had a career in renovations and roofing. He owned his own home and operated a business with 15 employees and five trucks. He was married and has three children. However, he had to close his business in 2021 after being unable to recover from pandemic-related losses. Without his livelihood, his mental health suffered and he began to use drugs. He separated from his wife due to his mental health challenges and slipped deeper into substance use. Mr. Couto has been through two detox programs, but has been unable to maintain sobriety.³⁰
- d. Megan Lopes is a 20-year-old woman with mental health disabilities that cause aggression. She has been homeless on and off since she was 14. Her monthly social assistance income is \$346. She has been evicted from two of the Region's shelters due to her behaviour, and she has been turned away from others, either because they were

²⁹ A. Jeffery Affidavit, RComVol1, pp.94-98. See also M. Jeffery Affidavit, Region's ExHBVol8, p.3488.

³⁰ Couto Affidavit, RComVol1, pp.42-45.

at capacity, or due to her conduct during previous stays. In September 2025, the Region offered her a motel room. She left her tent and mattress at the Encampment because the Region did not offer storage. Weeks later, the motel manager banned her from the motel. With no place to go, Ms. Lopes returned to the Encampment. Her tent and mattress had been destroyed.³¹

16. Contrary to the Region and AG’s assertions,³² there is no evidence that “[t]he Encampment has *caused* significant public health and safety concerns”³³ that do not exist in any event for homeless persons like the Respondents who must survive outdoors while living with serious mental and physical health issues. Outdoor homelessness is dangerous.³⁴ In particular, fire risk is inherent where homeless persons must rely on fires and propane tanks for winter warmth, and where, like the Region, a municipality chooses not to provide electrical hook-ups, fire extinguishers, or fire safety plans.³⁵ As the British Columbia Supreme Court put it, the homeless must choose between “freezing or burning”.³⁶

Region’s 2022 application is dismissed by Superior Court

17. This site was the subject of a previous application to the Superior Court in *Persons*

³¹ Lopes Affidavit, RComVol1, pp.51-53; 2nd Lopes Affidavit, RComVol1, pp.55-58.

³² Region Factum, ¶22[Emphasis added.]; AG Factum, ¶14.

³³ Other than a rodent infestation, which the Respondents acknowledge arose with the Encampment: Couto Affidavit, RComVol1, p.44, ¶14; Kocher Affidavit, RComVol1, p.91-92, ¶21.

³⁴ This is implicit in its official definition - Canada’s National Homelessness Strategy defines homelessness as an experience that is generally “negative, unpleasant, unhealthy, unsafe, stressful and distressing”: Gaetz Affidavit, RComVol1, pp.199-200, ¶6. See also: Canadian Human Rights Commission, “Upholding dignity and human rights: the Federal Housing Advocate’s review of homeless encampments: Final Report,” Ex.H to Houle Affidavit, RComVol1, p.340; [Persons Unknown 2023](#), ¶47-48; [British Columbia v. Adamson](#), [2016 BCSC 584](#), ¶116, 185.

³⁵ 3rd Sweeney Answers to Undertakings, RComVol1, pp.449-50, Qs.12-16, 19.

³⁶ [Maple Ridge \(City\) v. Scott](#), [2019 BCSC 157](#), ¶78.

Unknown 2023.³⁷ In January of 2023, the Court dismissed the Region’s application to close the Encampment under the CUB.

18. In contrast to the AG’s representation,³⁸ the purposes of the CUB are not limited to “prevent[ing] the disruption of the use and enjoyment of the [property] by other people”. The Court found that they included preventing “disruption of the Region’s operations”.³⁹ In 2022, as now, the Regional “operation” at issue was construction of a transit hub. The Region told the Court it intended to use the site initially as a “lay-down” area for equipment during the construction of a transit hub, and later as a parking lot for the hub.⁴⁰

19. Contrary to the Region’s assertion that it has “only recently required vacant possession” of the site “by a defined date”,⁴¹ it advised during the November 2022 hearing that construction would commence in the spring of 2023.⁴² While the Court observed that the Region had no “immediate” need for the property,⁴³ this was in the context of the Region’s then evidence that construction would not begin for approximately 5-6 months.

20. The Court found that prohibiting sheltering on the site deprived the Region’s homeless of life, liberty, and security of the person in a context where insufficient indoor shelter left them “with no alternative but to sleep outside”.⁴⁴ Then, as now, the Region offered assurances that it would find indoor space for the persons then sheltering at the Encampment,⁴⁵ but the Court rejected that

³⁷ [Persons Unknown 2023](#).

³⁸ AG Factum, ¶¶66-67.

³⁹ [Persons Unknown 2023](#), ¶¶9,114,119.

⁴⁰ *Ibid*, ¶15.

⁴¹ Region Factum, ¶31.

⁴² [Persons Unknown 2023](#), ¶15.

⁴³ *Ibid*, ¶114.

⁴⁴ *Ibid*, ¶92.

⁴⁵ *Ibid*, ¶64.

the Region need only find space for those persons, given the Region’s acknowledgement that it did not intend to permit outdoor sheltering anywhere else.⁴⁶

21. The Court found that the deprivations of life, liberty, and security of the person were not in accordance with the principles of fundamental justice because they were overbroad and grossly disproportionate in relation to the CUB’s objectives.⁴⁷ However, it rejected that applying the CUB to clear the encampment would violate s. 15 of the Charter because it found “homelessness” was not an analogous ground of discrimination.⁴⁸

22. As a remedy, the Court declared that the CUB was constitutionally 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”.⁴⁹ This left the Encampment as the only space where sheltering is not prohibited by the CUB.

23. The Court ordered that “the Region may apply to terminate” the declaration upon being able to satisfy the Court that the CUB no longer violated s. 7.⁵⁰ The Region did not do so, nor did it appeal the decision. Accordingly, the Court’s 2023 constitutional declaration remains in effect.

CUB continues to apply outside of the Encampment

24. The Region chose not to amend the CUB after *Persons Unknown 2023*. Due to the Encampment-specific scope of the 2023 declaration, the CUB therefore continues to restrict sheltering on all other Region-owned land. Therefore, while the Encampment is not the only

⁴⁶ [Persons Unknown 2023](#), ¶94.

⁴⁷ *Ibid.*, ¶9, 109-19.

⁴⁸ *Ibid.*, ¶125-26.

⁴⁹ *Ibid.*, ¶157.

⁵⁰ *Ibid.*, ¶159.

location in the Region where persons do shelter outside, it is the only location where they may do so without eviction.⁵¹ Since *Persons Unknown 2023*, other encampment sites in the Region have been cleared,⁵² including sites where the Respondents sheltered:

Xander Harker: “They promised to assist us with the move but did not. On the eviction date, they began to throw all of our belongings away I made a suicide attempt due to the stress I experienced from the eviction”.⁵³

Michael Jeffery: “We have had to move at least ten times since the end of September and were robbed of the few belongings we had left one night when we were staying in a park. When we were told to leave a different park we were so depressed.”⁵⁴

Noah Helsby: “... I was staying at 150 Main St. Cambridge encampment and my belongings got bulldozed.”⁵⁵

25. The AJ found as fact that the Region was not prepared to permit sheltering anywhere else after the Encampment site is cleared.⁵⁶ Accordingly, the Respondents anticipate having to shelter in remote locations to avoid eviction if the By-Law is enforced:

Jeremy Linton: “If I am unable to have the option to access the encampment, I would be hungry more often. I will have to continue sleeping alone at parks, wherever I can find a spot. It would be terrible. More people would be living on the street without the encampment.”⁵⁷

⁵¹ [Decision](#), ¶162; 2ndSweeney Cross Examination (“XE”), RComVol1, pp.435, Qs.89-90. See also Respondents’ evidence that they have personally been evicted from other encampments: Harker Affidavit, RComVol1, p.101, ¶12-15; A.Jeffery Affidavit, RComVol1, p.96, ¶12; Kocher Affidavit, RComVol1, p.90, ¶12; Hammond Affidavit, RComVol1, p.106, ¶12; 1stMcMillan Affidavit, RComVol1, p.110, ¶13.

⁵² [Decision](#), ¶57.

⁵³ Harker Affidavit, RComVol1, p.101, ¶13-15.

⁵⁴ M.Jeffery Affidavit, Region’s ExHBVol8, p.3488, ¶11.

⁵⁵ Helsby Affidavit, RComVol1, p.118, ¶10.

⁵⁶ [Decision](#), ¶149, 250. See also: 1stSweeney Affidavit, RComVol1, p.384, ¶52; 2ndSweeney XE, RComVol1, p.435, Qs.89-90.

⁵⁷ Linton Affidavit, RComVol1, pp.49, ¶17.

Jordan Camm: “If the Encampment were closed down, it would impact me pretty badly. I'd have to go back to sleeping in alleyways.”⁵⁸

Terrance Cole: “If 100 Victoria were not available to me I would probably live in a stairwell.”⁵⁹

Region’s indoor shelter space is insufficient

26. Homelessness in the Region more than doubled in the time between *Persons Unknown 2023* and the Region’s 2025 application.⁶⁰ The Region’s housing stability system did not keep pace.⁶¹ Contrary to the Region’s bald assertion that its “efforts to address homelessness go well beyond provincial averages”,⁶² there is no evidence of how the Region’s homelessness expenditures compared to other municipalities.

27. What the evidence does establish is that indoor shelter is “vastly” insufficient in the Region, making outdoor sheltering a reality.⁶³

28. One measure of homelessness in a municipality is the “Point in Time” (“PiT”) Count, which is a count of persons experiencing homelessness on a single night.⁶⁴ Municipalities must conduct PiT Counts to receive federal funding under [Reaching Home: Canada’s Homelessness Strategy Directives](#).⁶⁵ However, the Association of Ontario Municipalities describes this measure as an

⁵⁸ Camm Affidavit, RComVol1,p.80,¶18.

⁵⁹ Cole Affidavit, RComVol1,p.147,¶27.

⁶⁰ [Decision](#),¶164.

⁶¹ *Ibid.*

⁶² Region Factum,¶18.

⁶³ [Decision](#),¶166; 1stSweeney XE, RComVol1,p.422,Qs.15-16; Aastha Shetty, “Advocates call for more shelter beds as cold weather sets in, region says it knows there aren’t enough,” Ex.1 to 1stSweeney XE, RComVol1,pp.428-29.

⁶⁴ [Decision](#),¶165; “2024 Point in Time Count for Regional Municipality of Waterloo” (“2024 PIT Findings”), Ex.C to Kubis Affidavit, RComVol1,p.278.

⁶⁵ For this reason, the Region measures homelessness according to the definition set out in that Directive. See “Final PECH Report 2024” (“PECH”), Ex.A to 1stSweeney Affidavit, RComVol1,p.400.

“undercount”.⁶⁶ The most recent PiT Count, taken in October 2024, showed 2,371 homeless in the Region, 1,009 of whom were “living rough” (outdoors),⁶⁷ 446 in emergency shelters, and 153 in motels.⁶⁸ In other words, 43% of the Region’s homeless were sheltering outdoors.⁶⁹

29. The majority of the Region’s homeless, like the Respondents, move in and out of homelessness.⁷⁰ Of the 2,371 homeless captured by the 2024 PiT, 78% were “chronically homeless”, defined as in “prolonged or *repeated* periods of homelessness”.⁷¹ This matches the experience of the Respondents, who move in and out of the Encampment as they lose and gain indoor shelter.

30. The Region’s indoor shelter system can accommodate only 15% of its homeless.⁷² The system data before the AJ indicated that on February 27, 2026, the Region’s emergency shelter system had 356 spaces⁷³ across eight shelters, all operating at or near capacity.⁷⁴

31. The Region also offered 60 “winter warming” spaces between December 2025 and March 2026, and an additional 100 warming spaces, partially funded by the Region, were available

⁶⁶ [Decision](#), ¶165.

⁶⁷ 1stSweeney XE, RComVol1,p.424,Q.238.

⁶⁸ [Decision](#), ¶164.

⁶⁹ *Ibid.*

⁷⁰ [Decision](#), ¶165.

⁷¹ [Decision](#), ¶165; 2024 PIT Findings, Ex.C to Kubis Affidavit, RComVol1,p.278; “AMO Report”, Ex.F to 1stSweeney Affidavit, RComVol1,p.390. See also the definition of “chronic homelessness” in PECH, Ex.A to 1stSweeney Affidavit, RComVol1,p.400.

⁷² [Decision](#), ¶164.

⁷³ The mismatch between the 446 persons sheltering indoors during the October 2024 PiT and the 356 shelter spaces likely arises because, until March 31, 2025, the Region operated an additional shelter, the King Street shelter, or “Schwaben Club”, with 100 spaces. Those spaces were lost when that shelter closed two weeks before the By-Law was introduced: 1stEscobar Affidavit, RComVol1,p.302,¶7; Ex.B to 1stEscobar Affidavit, RComVol1,p.310.

⁷⁴ [Decision](#), ¶166.

between January 26 and March 31, 2026.⁷⁵ All warming spaces were congregate areas with no beds. All operated over-capacity.⁷⁶

32. The Region operates transitional housing, but this is not available on an emergency basis to a person who requires immediate shelter at a given moment. Persons must qualify and it is subject to waitlists.⁷⁷

33. Many of the Respondents are on a waitlist for affordable housing,⁷⁸ but the anticipated wait is eight to ten years.⁷⁹ The average wait for supportive housing units is 13.5 months.⁸⁰

34. The Region funds motel stays for some homeless persons. However, these are subject to motel operator discretion, which means they are not reliable for persons with disabilities that cause challenging behaviours.⁸¹ Motel rooms are also typically funded for finite periods.⁸² For instance, the additional funding for motel spaces that the Region added to its budget when it passed the Original By-Law would “not extend beyond 2026”.⁸³

Region’s Plan to End Chronic Homelessness (“PECH”)

35. Approximately 15 months after *Persons Unknown 2023*, the Region passed a Plan to End Chronic Homelessness (“PECH”)⁸⁴ pursuant to its statutory obligation, under the *Housing Services*

⁷⁵ [Decision](#), ¶167.

⁷⁶ *Ibid.*

⁷⁷ [Decision](#), ¶168.

⁷⁸ See eg: Hammond Affidavit, RComVol1,p.105,¶5; Linton Affidavit, RComVol1,p.48,¶14; Young Affidavit, RComVol1,p.125,¶27; York Affidavit, RComVol1,p.130,¶19; Helsby Affidavit, RComVol1,p.118,¶8; Weber Affidavit, RComVol1,p.84,¶21.

⁷⁹ [Decision](#), ¶169.

⁸⁰ *Ibid.*

⁸¹ [Decision](#), ¶171; 2nd Lopes Affidavit, RComVol1,pp.55-57,¶3-14; Helwig Affidavit, RComVol1,pp.322-23,¶7-11; 1st Escobar Affidavit, RComVol1,pp.306-07,¶20-24.

⁸² [Decision](#), ¶171.

⁸³ PDL-LEG-25-017 (“Site Specific By-Law”), Ex.C to 1st Sweeney Affidavit, RComVol1,p.30.

⁸⁴ [Decision](#), ¶172; PECH, Ex.A to 1st Sweeney Affidavit, RComVol1,p.397.

Act, 2011, to “have a plan to address housing and homelessness”.⁸⁵ The PECH mandates four “interventions” for the Region’s housing and homelessness services: (1) Broadening our Current Housing/Prevention support continuum; (2) Community-Driven System Leadership; (3) Centring Lived Expertise and Equity-Owed Groups; and (4) Defining and Combining Housing First and Human Rights Approaches.⁸⁶

36. Contrary to the Region’s assertion, these interventions are not “expressly contingent on increased involvement and resources from the federal and provincial governments and other stakeholders”.⁸⁷ The PECH passage cited by the Region in support of that statement makes *solving chronic homelessness* contingent on resources from other levels of government, not the PECH interventions themselves.⁸⁸

37. The PECH defined its prescribed “human rights approach” 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.⁸⁹

By-Law, Transition Plan, and Individual Housing Plans

38. The Region introduced the Original By-Law on April 16, 2025, and passed it on April 23, 2025.⁹⁰ The By-Law prohibited anyone who did not meet the definition of “Resident” from

⁸⁵ *Housing Services Act, 2011*, [S.O.2011, c.6, Sched.1, s.6](#). Municipalities must also develop plans to reduce homelessness that are informed by community engagement to receive federal funds under [Reaching Home: Canada’s Homelessness Strategy Directives](#).

⁸⁶ [Decision](#), ¶172; PECH, Ex.A to 1stSweeney Affidavit, RComVol1, pp.398,403.

⁸⁷ Region Factum, ¶6,16.

⁸⁸ PECH, Ex.A to 1stSweeney Affidavit, RComVol1, pp.409-10.

⁸⁹ [Decision](#), ¶175; PECH, RComVol1, pp.408.

⁹⁰ Site-Specific By-Law, Ex.B to 1stSweeney Affidavit, RComVol1, pp.20-25.

sheltering at the site, effective immediately.⁹¹ It defined “Resident” to mean persons “residing at 100 Victoria Street” as of the April 16, 2025 notice date.⁹² The Region asserts there are approximately 40 “Residents”,⁹³ but the Region has not disclosed whom it has designated as a “Resident”. The Region does not deem at least 15 of the 24 Respondents to be Residents.⁹⁴

39. The By-Law provided that “[c]ommencing on December 1, 2025, no person shall enter onto, reside on, or occupy 100 Victoria Street”.⁹⁵ Persons contravening this provision would be guilty of an offence and liable for a fine of up to \$5,000,⁹⁶ but the By-Law also provided for enforcement through the *Trespass to Property Act*⁹⁷ (“TPA”), which makes violations a provincial offence, subject to a fine of up to \$10,000, and to arrest without warrant.⁹⁸ 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.⁹⁹

⁹¹ “Sch.B: Prohibited Activities” in By-Law 25-021, Ex.B to 1stSweeney Affidavit, RComVol1,p.25,s.1(e).

⁹² Site-Specific By-Law, Ex.B to 1stSweeney Affidavit, RComVol1,p.21,s.1(7).

⁹³ 3rdSweeney Affidavit, RComVol1,pp.418-19,¶17,20.

⁹⁴ 2ndSweeney Affidavit, RComVol1,p.414,¶15-16. At the time that Affidavit was affirmed, only 16 of the current 24 Respondents had retained counsel, and the Region deemed only four of those 16 to be “Residents”. These were: Josephina Dugas, Jeremy Nichol, Noah Helsby, and Joseph Bradley. The Region appears to also deem an additional affiant, Calvin Sharpe, to be a Resident, but he is not a Respondent. The Region did not accept the following Respondents as “Residents”: Terra-Lynn Weber, Aaron Price, James Hammond, Jeremy Linton, Stephanie McMillan, Jason Paul, Julie Young, Kyle York, James Davis, Megan Lopes, Avery Ament, and Jakob Stubbs. It is unclear whether the Region considers the remaining Respondents to be “Residents”, but Aline and Michael Jeffery and Jordan Camm would not be as they were not present at the site on April 16, 2025.

⁹⁵ Site-Specific By-Law, Ex.B to 1stSweeney Affidavit, RComVol1,p.21,s.3(1).

⁹⁶ Site-Specific By-Law, Ex.B to 1stSweeney Affidavit, RComVol1,p.21,s.4.

⁹⁷ *Trespass to Property Act*, [R.S.O.1990, c.T.21,s.2\(b\)](#).

⁹⁸ *Ibid*,ss.[2\(b\),9\(1\)](#); Site Specific By-Law, Ex.B to 1stSweeney Affidavit, RComVol1,p.22,s.5(10).

⁹⁹ Site Specific By-Law, Ex.B to 1stSweeney Affidavit, RComVol1,p.22,ss.5(8)-(10).

40. On the same day the Region passed the Original By-Law, it directed staff to add \$814,333 to its housing stability budget.¹⁰⁰ This was comprised of \$466,083 for “motels with social supports” and \$271,250 for new supportive housing units,¹⁰¹ with the remaining funds designated for site remediation. The funding for “motels with social supports” was only “temporary” and would “not extend beyond 2026”.¹⁰² It is unclear how these funds support the Region’s assertions that it added 40 new spaces. However, to the extent that these consisted of motel spaces, they are not funded beyond 2026. The assertion of new capacity must also be understood with the context that, approximately two weeks before the new funds were introduced, the Region lost 100 shelter spaces due to the March 31, 2025 closure of its King Street shelter.¹⁰³

41. The Respondents brought an injunction motion after the Region refused to forgo enforcement of the By-Law prior to the Court determining its constitutionality. On August 8, 2025, the Superior Court enjoined the Region from acting on the By-Law until the conclusion of the application hearing.¹⁰⁴ The Region did not appeal that decision, which is not before this Court.

42. The parties attempted mediation, but were unsuccessful.

43. The Region amended the By-Law on January 9, 2026. The Region has cited no evidence to support its submission that the By-Law was amended “to respond to some criticisms” raised in the mediation process.¹⁰⁵

44. The Amended By-Law extended the closure date to April 1, 2026. The amendments

¹⁰⁰ Report PDL-LEG-25-017, Ex.C to 1stSweeney Affidavit, RComVol1,pp.29-30.

¹⁰¹ *Ibid.*

¹⁰² *Ibid*,p.30, with respect to annualized funding.

¹⁰³ 1stEscobar Affidavit, RComVol1,p.302,¶7; Ex.B to 1stEscobar Affidavit, RComVol1,pp.309-13.

¹⁰⁴ *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, [2025 ONSC 4774](#),¶118.

¹⁰⁵ Region Factum,¶8.

removed the stand-alone \$5,000 fine, but they maintained *TPA* enforcement.¹⁰⁶

45. The amendments included a “Transition Protocol” outlining steps the Region would take in relation to “Residents”.¹⁰⁷ 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.¹⁰⁸ Contrary to the Region’s assertion,¹⁰⁹ the amendments did not provide that “[e]xisting Residents cannot be removed without a written offer for Alternative Accommodation”. Rather, s. 6(1) of the Amended By-Law offered that protection *only until April 1, 2026*, a period during which enforcement of the By-Law was enjoined in any event.¹¹⁰ Even that protection was not extended to most of the Respondents, whom the Region does not deem “Residents”.

46. The IHPs on the record indicate that, in contrast to the Region’s representations,¹¹¹ IHPs offered temporary indoor shelter: emergency shelter and motel spaces. The Region’s portrayal of the IHPs as “personalized plans designed to match individuals with housing options reflecting their specific needs and preferences to the greatest extent possible”,¹¹² is contradicted by the AJ’s finding of fact:

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,

¹⁰⁶ “Sch.C: Transition Protocol” to By-Law with Tracked Amendments, Ex.B to Kang Affidavit, RComVol1,p.34,s.5.

¹⁰⁷ *Ibid*,pp.39-40.

¹⁰⁸ *Ibid*,p.39.

¹⁰⁹ Region Factum,¶36.

¹¹⁰ “Appendix B: Consolidated version of By-Law #25-021 showing the tracked amendments”, Ex.B to Kang Affidavit, RComVol1,pp.34-35.

¹¹¹ Region Factum,¶15,75,82.

¹¹² *Ibid*; AG Factum,¶43.

consist of only a few lines, and offer no information as to what the unnamed recipient's "specific needs and preferences" are.¹¹³

Region's 2025 application and Decision under appeal

47. After passing the Original By-Law, the Region applied to the Superior Court for a declaration as to whether the By-Law complied with the Charter, and an injunction to enforce it. The Region also asked that, if the By-Law was not Charter-compliant, the Court provide "guidance" regarding the "steps it must take in order to obtain vacant possession of the Property in a Charter-compliant manner". The Region repeated this request throughout its written argument and emphasized it during oral argument.¹¹⁴ The Region continues to ask that this Court provide it with "direction" as to what is required to render the By-Law constitutional.¹¹⁵

48. The Respondents filed a Cross-Application asserting that the By-Law violated ss. 7 and 15 of the Charter.

49. The AJ found that the By-Law effected a blanket sheltering ban throughout the Region, when applied together with the CUB.¹¹⁶ In that context, he held that the By-Law engaged life interests because "[t]here is no question that the lack of shelter for people living outside causes severe adverse effects on their health".¹¹⁷ This was 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".¹¹⁸ The By-Law engaged security of the person both through its restriction on sheltering and its application to evict persons

¹¹³ [Decision](#), ¶181; Individual Housing Plans, Ex.4 to 2nd Sweeney XE, RComVol1, pp.444-46.

¹¹⁴ Region Application Factum, RComVol2, pp.474,516-7,520 ¶7,102,110; [Decision](#), ¶252.

¹¹⁵ Region Factum, ¶102.

¹¹⁶ [Decision](#), ¶149,162,185.

¹¹⁷ [Decision](#), ¶186.

¹¹⁸ *Ibid.*

from their shelters.¹¹⁹ The AJ also found that the By-Law engaged the s. 7 liberty interest because it permitted persons to be arrested for sheltering and because shelter is a matter “critical to any individual’s dignity and independence”.¹²⁰

50. The AJ held that these infringements were grossly disproportionate to the By-Law’s objective because the facts that had rendered the CUB grossly disproportionate in 2023 had not changed. The By-Law continued to have “multiple and severe negative consequences” and remained “grossly disproportionate to [its] goal in a context where the Region has chosen not to permit outdoor sheltering anywhere else”.¹²¹

51. The AJ found the By-Law violated s. 15 not only with respect to the enumerated grounds of sex,¹²² disability,¹²³ and race,¹²⁴ but also with respect to a new analogous ground – homelessness.¹²⁵

52. The AJ held that these infringements were not justified under s. 1. He found that, after April 1, 2026, the By-Law was simply a “bare sheltering prohibition”,¹²⁶ rather than an attempt to balance competing interests. It was not minimally impairing because the Region had not taken steps to mitigate the impact of closing the Encampment on its chronically homeless, such as setting a protocol to regulate tenting or designating a different site for sheltering. Nor were the infringements proportional because the deleterious impacts were severe, while the anticipated benefits of the By-

¹¹⁹ [Decision](#), ¶188.

¹²⁰ [Decision](#), ¶187.

¹²¹ [Decision](#), ¶193.

¹²² [Decision](#), ¶223.

¹²³ [Decision](#), ¶230.

¹²⁴ [Decision](#), ¶237.

¹²⁵ [Decision](#), ¶211.

¹²⁶ [Decision](#), ¶242.

Law speculative.¹²⁷

[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.¹²⁸

53. As remedy, the AJ declared the By-Law of no force and effect, but he invited the Region to seek further direction following “implementation of either a Safe Tenting Protocol”, and/or the provision of “an alternative Encampment site reasonably proximate to 100 Victoria Street”.¹²⁹

PART III: ISSUES, LAW AND ARGUMENT

Standard of review

54. The standard of review is correctness for questions of law, but palpable and overriding error for questions of fact.¹³⁰ The Respondents will adopt *Amicus* submissions that the standard of review for constitutional questions of mixed fact and law is not settled for civil appeals,¹³¹ but proceed here on the basis that it is correctness.¹³²

55. The Supreme Court has emphasized that deference to an application judge's factual findings

¹²⁷ [Decision](#), ¶243.

¹²⁸ [Decision](#), ¶250.

¹²⁹ [Decision](#), ¶259.

¹³⁰ AG Factum, ¶47; Region Factum, ¶47; *Housen v. Nikolaisen*, 2002 SCC 33, ¶8, 26-27; *Canada (Director of Investigation and Research) v. Southam Inc.*, 1997 CanLII 385 (S.C.C.), ¶35; *Canada (Attorney General) v. Bedford*, 2013 SCC 72, ¶48-52; *Carter v. Canada (Attorney General)*, 2015 SCC 5, ¶108-09.

¹³¹ *Fair Voting BC v. Canada (Attorney General)*, 2025 ONCA 581, ¶82-85.

¹³² *Société des casinos du Québec inc. v. Association des cadres de la Société des casinos du Québec*, 2024 SCC 13, ¶94-97; *Animal Justice v. Ontario (Attorney General)*, 2026 ONCA 380, ¶41.

is “basic to our court system.”¹³³ “Pointing out conflicting evidence” is “not sufficient to establish a palpable and overriding error”.¹³⁴ The AJ’s factual findings are accordingly entitled to deference.¹³⁵ These include findings of:

- social facts, such as that many of the Region’s homeless must reside outside due to insufficient indoor shelter options, the risks associated with outdoor sheltering prohibitions and forced evictions; and how outdoor sheltering prohibitions impact homeless persons who are women, gender-diverse, Indigenous, and disabled;¹³⁶
- legislative facts defining the social, economic, cultural, and political context within which the By-Law was adopted; and
- adjudicative facts, such as how the Encampment is the shelter of last resort in the Region, the harms caused to the Region’s homeless by forced evictions, how the Region’s Transition Plan fails to mitigate risks, whether the anticipated benefits of the transit hub are speculative, and the credibility of affiants and experts.¹³⁷

No error in relation to s. 7

56. The Region and AG assert nine errors in relation to s. 7. They allege the AJ erred by:

- i. Considering the By-Law’s life and security of the person impact as it related to the Region’s chronically homeless at large, as opposed to only the 40 Region-deemed “Residents”;¹³⁸
- ii. Finding that the By-Law impacted the life and security of “Residents” who had been offered indoor shelter;¹³⁹
- iii. Finding the liberty interest to be engaged when the By-Law depends on the *Trespass to Property Act* for enforcement and does not contain a free-standing arrest power;¹⁴⁰

¹³³ [Bedford](#), ¶49.

¹³⁴ [Carter](#), ¶109; *Tsilhqot’in Nation v. British Columbia*, [2014 SCC 44](#), ¶60; Region Factum, ¶79-80,101; AG Factum, ¶16-18,29-33,57,118.

¹³⁵ [Bedford](#), ¶48-52; *R. v. Spence*, [2005 SCC 71](#), ¶57-58.

¹³⁶ *Ibid*; [Carter](#), ¶108-09.

¹³⁷ [Bedford](#), ¶52.

¹³⁸ AG Factum, ¶54,58-59,73-74; Region Factum ¶50-53,60-61.

¹³⁹ AG Factum, ¶55-57; Region Factum ¶54-56.

¹⁴⁰ AG Factum, ¶61-62.

- iv. Finding a “site-specific liberty interest”;¹⁴¹
- v. “Ignor[ing]” how the By-Law’s Transition Plan mitigated the potential harms of eviction;¹⁴²
- vi. Finding *stare decisis* applied in relation to s. 7, including in relation to gross disproportionality;¹⁴³
- vii. Erring in his analysis of gross disproportionality;¹⁴⁴
- viii. Considering the PECH in assessing the context of the s. 7 deprivations;¹⁴⁵
- ix. Using federal policy statements and international instruments to “read a ‘right to adequate housing’ into Charter s. 7”;¹⁴⁶

57. Many of these mischaracterize the decision or seek to challenge factual findings. All are unsubstantiated. The Respondents respond in full to issues i-vii. The Respondents provide a brief response to issues viii-ix, but will otherwise adopt the submissions of *Amicus* in response to those issues.

Section 7 framework in the context of sheltering restrictions

58. 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 deprivation suffices.¹⁴⁷ Second, the claimant

¹⁴¹ Region Factum, ¶57.

¹⁴² AG Factum, ¶75; Region Factum, ¶58-59.

¹⁴³ Region Factum, ¶48-49.

¹⁴⁴ AG Factum, ¶64-75.

¹⁴⁵ AG Factum, ¶60.

¹⁴⁶ AG Factum, ¶76-85; Region Factum, ¶62-70.

¹⁴⁷ *Canadian Council for Refugees v. Canada (Citizenship and Immigration)*, [2023 SCC 17](#) (“*CCR*”), ¶56; *Carter*, ¶62.

must show that this deprivation is not in accordance with the principles of fundamental justice.¹⁴⁸

59. While a s. 7 claimant must establish a “deprivation” by the state, the Supreme Court has clarified that enforcement of a negative right may require a government to take positive steps.¹⁴⁹ In this sense, as the AJ recognized, the distinction between positive and negative rights can be a “false dichotomy”¹⁵⁰ because “no right can exist without some form of corresponding obligation ... to do or not do something”.¹⁵¹ As the British Columbia Court of Appeal observed in *Adams* in relation to the constitutionality of sheltering restrictions, “the factual finding of insufficient shelter alternatives [...] does not transform [a claim] into a claim or right to shelter”. However, it may “from a practical point of view, require the City to take some action in response”.¹⁵²

60. The AJ’s decision is not an outlier, as the Appellants suggest. This application was the sixth where a court has considered whether outdoor sheltering restrictions comply with s. 7 in a context of insufficient indoor shelter.¹⁵³ Courts found s. 7 infringements in *all* previous cases but one – *Heegsma*.¹⁵⁴ Appeal of *Heegsma* is pending.¹⁵⁵

61. While courts have also determined numerous requests for injunctions to clear encampments, as set out in **Appendix B**, those cases did not make s. 7 determinations. Rather, they

¹⁴⁸ *R. v. Kloubakov*, [2025 SCC 25](#), ¶137; *Bedford*, ¶57-58, 75-76, 93-96, 123; *Carter*, ¶72; *CCR*, ¶56, 60.

¹⁴⁹ *Quebec (Attorney General) v. Kanyinda*, [2026 SCC 7](#), ¶122 (per Rowe J.); *Toronto (City) v. Ontario (Attorney General)*, [2021 SCC 34](#), ¶20.

¹⁵⁰ *La Rose v. Canada*, [2023 FCA 241](#), ¶103; *Toronto v. Ontario*, ¶20.

¹⁵¹ *La Rose*, ¶101-03.

¹⁵² *Victoria (City) v. Adams*, [2009 BCCA 563](#) (“*Adams BCCA*”), ¶95-96.

¹⁵³ Previous cases were: *Adams BCCA*; *Abbotsford (City) v. Shantz*, [2015 BCSC 1909](#); *Persons Unknown 2023*; *The Corporation of the City of Kingston v. Doe*, [2023 ONSC 6662](#); *Heegsma v. Hamilton (City)*, [2024 ONSC 7154](#), appeal pending in COA-25-CV-0166.

¹⁵⁴ *Heegsma*.

¹⁵⁵ COA-25-CV-0166.

turned on the application of the *RJR MacDonald* factors.¹⁵⁶ Further, some did not involve situations of insufficient indoor shelter capacity,¹⁵⁷ and in others, the encampments at issue were not the only spaces where persons could shelter themselves.¹⁵⁸

Issue i: AJ correctly considered the life and security of the person impact on the Region’s chronically homeless

62. The AJ did not err by considering the By-Law’s impact on the life and security of the person of the Region’s chronically homeless.¹⁵⁹ He was required to consider the impact of the By-Law in context with the CUB. Courts must consider the impact of impugned provisions in their entire legal context, “irrespective of how the parties frame their challenge”.¹⁶⁰ An impugned law “does not exist in a vacuum” and the Court must consider how it interacts with other laws.¹⁶¹ A failure to do so can “‘undermine the legitimacy’ of constitutional analysis”.¹⁶² The Supreme Court has recognized that the manner in which an impugned law interacts with other laws is a particularly important consideration for persons with mental illnesses, whose “lives are often regulated by ... a ‘complex web of statutes and regulations’”.¹⁶³ The same is true for the homeless,¹⁶⁴ many of whom also struggle with mental illness.

¹⁵⁶ *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994 CanLII 117](#)(S.C.C.).

¹⁵⁷ *Poff v. City of Hamilton*, [2021 ONSC 7224](#),¶236; *Black et al. v. City of Toronto*, [2020 ONSC 6398](#),¶5;

¹⁵⁸ *Church of Saint Stephen et al. v. Toronto*, [2023 ONSC 6566](#),¶32; *Prince George (City) v. Johnny*, [2025 BCSC 1556](#),¶22-24; *Matsqui-Abbotsford Impact Society v. Abbotsford (City)*, [2024 BCSC 1902](#)(leave to appeal granted [2025 BCCA 78](#)),¶31-32.

¹⁵⁹ AG Factum,¶54,58-59,73-74; Region Factum,¶50-53,60-61.

¹⁶⁰ [CCR](#),¶69.

¹⁶¹ *Ontario (Attorney General) v. G.*, [2020 SCC 38](#),¶51.

¹⁶² *Ibid.*

¹⁶³ *Ibid.*

¹⁶⁴ Schwan Affidavit, RComVol1,pp.242-43,¶47-49.

63. In assessing the impact of the By-Law in context with the CUB, the AJ correctly recognized that the By-Law need not be the “only or dominant cause of the prejudice” for a “sufficient causal connection to exist between the By-Law and a deprivation of life, liberty, and security of the person.”¹⁶⁵ Just as in *Bedford*,¹⁶⁶ where multiple factors contributed to safety risks faced by sex workers, additional factors contribute to the risks faced by the Region’s chronically homeless: the CUB, disability, poverty, violence, weather, discrimination. This does not alter the fact that state interference with their ability to protect themselves from those risks gives rise to a sufficient causal connection.¹⁶⁷ Keeping with the Supreme Court’s instructions, the AJ correctly found that the effect of the By-Law was that there would no longer be any “place of last resort” for the Region’s chronically homeless to shelter when they could not access indoor options.¹⁶⁸

64. Just as the AJ was required to address the impact of the By-Law in context with the CUB, he was also required to assess whether the By-Law could violate s. 7 in relation to any person, and not only the Region’s counted 40. The question for a court assessing a s. 7 deprivation is “whether *anyone’s* life, liberty, or security of the person has been denied by a law that is inherently bad; a grossly disproportionate, overbroad, or arbitrary effect on one person is sufficient to establish a breach of s. 7”.¹⁶⁹ The Court must determine whether the impugned *law* is unconstitutional, not simply whether it has breached the rights of the particular persons before the Court: “[a] claimant who otherwise has standing can generally seek a declaration of invalidity under s. 52 on the

¹⁶⁵ [Decision](#), ¶184; [Bedford](#), ¶76.

¹⁶⁶ [Bedford](#).

¹⁶⁷ [Decision](#), ¶184.

¹⁶⁸ [Decision](#), ¶185.

¹⁶⁹ [Bedford](#), ¶123 [Emphasis in original.].

grounds that a law has unconstitutional effects either in his own case or on third parties”.¹⁷⁰ That the Region brought its application against Persons Unknown, rather than the 40 “Residents” reflects this principle.

65. There was an abundance of evidence before the AJ, from Drs. Hwang, Gupta, and Pauly, and the Respondents themselves, that prohibiting the Region’s homeless from sheltering outdoors and subjecting them to repeated eviction puts their lives and security of the person at risk when they cannot access indoor shelter.¹⁷¹ The AJ did not err in relying on Dr. Hwang’s evidence that:

(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 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, 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.¹⁷²

66. This is consistent with courts’ previous acceptance that “sleep and shelter are necessary

¹⁷⁰ *R. v. Nur*, [2015 SCC 15](#), ¶51; *Quebec (Attorney General) v. Senneville*, [2025 SCC 33](#), ¶46-48. See also in s.7 context: *R. v. Heywood*, [\[1994\] 3 S.C.R. 761](#), p.799; *R. v. Appulonappa*, [2015 SCC 59](#), ¶28.

¹⁷¹ Hwang Affidavit, RComVol1, pp.159-61, ¶9-13; Gupta Affidavit, RComVol1, pp.169-75, ¶16-22; Pauly Affidavit, RComVol1, pp.183-90, ¶19-26.

¹⁷² [Decision](#), ¶143, 186.

preconditions to any kind of security, liberty or human flourishing”.¹⁷³

Issue ii: AJ correctly found that even “Residents” life and security of the Person interests were engaged

67. Even if the AJ had been required to restrict his consideration to the 40 persons selected by the Region, he correctly found that the By-Law deprived even them of their s. 7 interests: “when the temporary spaces the Region has offered to those it does deem “Residents” end ... they will be left with no space of last resort to catch their fall”.¹⁷⁴

68. His finding that the By-Law left chronically homeless “Residents” without a place of last resort when the temporary shelter offered by the Region ended is factual and entitled to deference. However, even if it were not, it is justified. The only IHPs on the record offered Residents only temporary shelter: motel rooms and emergency shelter spaces.¹⁷⁵ The evidence was that 78% of the Region’s homeless are, chronically, experiencing “repeated” homelessness.¹⁷⁶ The AJ observed that, while the Transition Protocol stated the Region would make “best efforts” to find “Alternative Accommodation” where a resident lost temporary shelter, “there is no provision for how such situations would come to the Region’s attention, nor how the Region would find “Alternative Accommodation” when its shelter system is at capacity and the waitlist for subsidized housing is eight to ten years.”¹⁷⁷

69. Given the AJ’s finding that the options offered to the “Residents” were temporary, leaving them to navigate outdoor homelessness once they ended,¹⁷⁸ Dr. Koivu’s evidence that indoor

¹⁷³ [Shantz](#), ¶139; *Victoria (City) v. Adams*, [2008 BCSC 1363](#), ¶5.

¹⁷⁴ [Decision](#), ¶185.

¹⁷⁵ Individual Housing Plans, Ex.4 to 2nd Sweeney XE, RComVol1, pp.444-46.

¹⁷⁶ “2024 PIT Infographic”, Ex.B to Kubis Affidavit, RComVol1, pp.278.

¹⁷⁷ [Decision](#), ¶182, 189-91.

¹⁷⁸ [Decision](#), ¶185.

shelter was safer than staying outside was irrelevant.¹⁷⁹ The Region’s chronically homeless rely on the Encampment when they cannot shelter indoors. Accordingly, the question informing whether the By-Law contributed to a deprivation of life and security of the person was whether persons restricted from sheltering themselves outdoors experienced worse outcomes than persons who could shelter themselves outdoors. The AJ appropriately relied on the evidence of Dr. Hwang to address that question and find that the By-Law contributed to a deprivation of life and security of the person.¹⁸⁰

Issues iii and iv: Liberty interest was engaged due to By-Law’s impact on dignity

70. The AJ correctly found the By-Law to engage liberty interests because it permitted persons to be arrested for sheltering on the site, and because shelter is a matter “critical to any individual’s dignity and independence”.¹⁸¹

71. Contrary to the AG’s submission,¹⁸² arrest inherently infringes liberty,¹⁸³ such that arrest must always be in accordance with the principles of fundamental justice. That the Respondents did not challenge the *TPA*¹⁸⁴ was of no matter.¹⁸⁵ Where a law relies on the *TPA* for enforcement, it is that law that “is the source of the limit” on a claimant’s rights.¹⁸⁶ The AJ was required to interpret the impact of the By-Law in context with the *TPA*.¹⁸⁷

72. *TPA* enforcement is not “too remote to conclude that the by-law deprives anyone of

¹⁷⁹ Koivu Affidavit, RComVol1, pp.346-7, ¶13; Region Factum, ¶23-25; AG Factum, ¶19.

¹⁸⁰ [Decision](#), ¶143, 186.

¹⁸¹ [Decision](#), ¶187.

¹⁸² AG Factum, ¶61-62.

¹⁸³ *R. v. Penunsi*, [2019 SCC 39](#), ¶73.

¹⁸⁴ [Trespass to Property Act](#), s.9(1).

¹⁸⁵ AG Factum, ¶62.

¹⁸⁶ *Bracken v. Fort Erie (Town)*, [2017 ONCA 668](#), ¶70-71.

¹⁸⁷ [G.](#), ¶51.

liberty”.¹⁸⁸ Unlike the cases cited by the AG,¹⁸⁹ arrest under the *TPA* is a direct consequence for persons who remain on the site. It does not hinge on a series of other occurrences. However, even if it did, arrest need not be a certainty for a liberty infringement to be made out, where it is “reasonably likely”.¹⁹⁰

73. The Region mischaracterizes the decision in alleging that the AJ recognized a “site-specific liberty interest”.¹⁹¹ What the AJ actually found was 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”: [...] 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”.¹⁹²

74. This was in the context of evidence that Respondents who had attempted to access congregate shelters could not know where they could stay at any given time, due to being repeatedly turned away, and that congregate shelters did not allow for heterosexual couples, privacy, or personal belongings.¹⁹³

¹⁸⁸ AG Factum, ¶62.

¹⁸⁹ *R. v. Schmidt*, [2014 ONCA 188](#), ¶43-44; *London (City) v. Polewsky*, [2005 CanLII 38742](#) (Ont. C.A.), ¶4.

¹⁹⁰ See *R. v. Boudreault*, [2018 SCC 58](#), ¶69-73, where the fact that imprisonment was “reasonably likely” based on the appellants’ circumstances was sufficient to establish that punishment was grossly disproportionate.

¹⁹¹ Region Factum, ¶57.

¹⁹² [Decision](#), ¶187.

¹⁹³ Linton Affidavit, RComVol1,p.48,¶11; 1stLopes Affidavit, RComVol1,p.53,¶19; Loppie Affidavit, RComVol1,p.61,¶10; Dugas Affidavit, RComVol1,p.74,¶22; Camm Affidavit, RComVol1,p.79,¶12; Weber Affidavit, RComVol1,p.85,¶26-7; Kocher Affidavit, RComVol1,p.90,¶13-14; A.Jeffery Affidavit, RComVol1,p.97,¶19; Harker Affidavit, RComVol1,p.101-02,¶16,20-21; 2ndMcMillan Affidavit, RComVol1,p.115,¶8; Helsby Affidavit, RComVol1,p.118,¶12; Young Affidavit, RComVol1,p.124-25,¶19,25; Sadler Affidavit, RComVol1,p.137,¶16; Cole Affidavit, RComVol1,p.145-46,¶16,25; Bradley Affidavit, RComVol1,p.151,¶13.

Issue v: AJ’s factual findings regarding the Transition Plan were correct and are entitled to deference

75. The Region and AG both assert that the AJ erred by “[i]gnor[ing]” how the By-Law’s Transition Plan mitigated the potential harms of eviction.¹⁹⁴ The AJ’s finding that the Transition Plan did not adequately mitigate the deprivation of life, liberty, and security of the person was a factual one, entitled to deference. Further, as discussed above, it was justified on the record.

Issue vi: The AJ did not err with respect to *stare decisis*, but this issue is not material

76. The Region and AG each challenge the AJ’s application of *stare decisis* in relation to the s. 7 determinations, the Region broadly and the AG in relation to gross disproportionality specifically.¹⁹⁵ Yet, whether *stare decisis* applied to the case before the AJ is no longer material for two reasons.

77. First, the AJ went on to apply the law to the facts for himself. After he found that *stare decisis* applied, he stated that was “of little practical consequence”¹⁹⁶ and went on to determine the issues through 120 paragraphs of reasons. Therefore, even if he had erred with respect to *stare decisis*, this would not change the result. A ground of appeal should be dismissed where it has no real impact on a decision.¹⁹⁷

78. Second, whether or not the AJ was bound by *stare decisis*, this Court is not so bound. While this Court may not disturb the constitutional declaration issued in 2023, it may decide the legal issues before the AJ for itself.¹⁹⁸

¹⁹⁴ AG Factum, ¶75; Region Factum, ¶58-59.

¹⁹⁵ Region Factum, ¶48-49; AG Factum, ¶64-70.

¹⁹⁶ [Decision](#), ¶102.

¹⁹⁷ *Courts of Justice Act*, [R.S.O.1990, c.C.43, s.134](#)(6); *Papasotiriou-Lanteigne v. Tsitsos*, [2023 MBCA 66](#), ¶17; *Freeway Properties Inc. v. Genco Resources Ltd.*, [2012 BCCA 258](#), ¶46.

¹⁹⁸ *Essex (County) v. Enbridge Gas Inc.*, [2025 ONCA 268](#), ¶34.

Issue vii: The deprivation is grossly disproportionate to the By-Law's object

79. The AJ correctly found that the By-Law's purpose was not meaningfully different from the CUB's purpose in *Persons Unknown 2023*. *Persons Unknown 2023* remained persuasive because the facts that had rendered the CUB grossly disproportionate in 2023 continued to apply: the Region still sought to evict persons sheltering on the site so that it could be used for construction lay-down, the Region still asserted that it would reserve indoor shelter spaces for the persons it had counted on the site, and the serious impacts the Court had already found on life, liberty, and security of the person continued to exist.¹⁹⁹ In light of those extreme impacts, the By-Law is grossly disproportionate to its object of clearing the site for equipment lay-down because its impact is incompatible with human dignity.

80. The principle of gross disproportionality is engaged where “the seriousness of the deprivation is totally out of sync with the objective of the measure”.²⁰⁰ It is both a principle of fundamental justice under s. 7 of the Charter and a factor informing whether a treatment or punishment is “cruel and unusual” under s. 12. The standard is the same across both contexts.²⁰¹

81. Regardless of purpose, an impact will “always be grossly disproportionate” where it is “intrinsically incompatible with human dignity”.²⁰² A society's standards of decency are “not frozen in time” and what is and is not compatible with human dignity may change “to meet the

¹⁹⁹ [Decision](#), ¶192-93.

²⁰⁰ *Cycle Toronto v. Ontario (Attorney General)*, [2026 ONCA 582](#), ¶72.

²⁰¹ *R. v. Malmo-Levine*; *R. v. Caine*, [2003 SCC 74](#), ¶160-61; *R. v. Gill*, [2012 ONCA 607](#), ¶71-72; *Revell v. Canada (Citizenship and Immigration)*, [2019 FCA 262](#), ¶104; *R. v. Safarzadeh-Markhali*, [2016 SCC 14](#), ¶72; *R. v. Lloyd*, [2016 SCC 13](#), ¶41-42.

²⁰² *R. v. Bissonnette*, [2022 SCC 23](#), ¶64. See also *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002 SCC 1](#), ¶47; *Canada (Attorney General) v. PHS Community Services Society*, [2011 SCC 44](#), ¶133; *Cambie Surgeries Corporation v. British Columbia (Attorney General)*, [2022 BCCA 245](#) (leave to S.C.C. refused), ¶352; *Malmo-Levine*, ¶142-43.

new social, political and historical realities of the modern world”.²⁰³ International and comparative law informs courts’ interpretation of what is compatible with human dignity.²⁰⁴

82. Gross disproportionality must be assessed with regard to the particular context of the impugned law and the persons it impacts,²⁰⁵ taking “into account the principles and purposes of the equality guarantee in promoting the equal benefit of the law and ensuring that the law responds to the needs of those disadvantaged individuals and groups whose protection is at the heart of s. 15”.²⁰⁶ In *Boudreault*,²⁰⁷ the Supreme Court held that victim impact fines ranging from \$200 to \$1,400²⁰⁸ were grossly disproportionate in relation to their objective of “raising funds for victim support services” and “increasing offenders’ accountability to both individual victims of crime and to the community generally”.²⁰⁹ While these were valid purposes²¹⁰ and the sums insignificant for many Canadians,²¹¹ the appellants were “deeply impecunious”²¹² and the fines deprived them of “much of their livelihood”.²¹³ Fines that deprive vulnerable persons of much of their livelihood were “excessive to the point of being incompatible with human dignity” and could “only be

²⁰³ *Bissonnette*, ¶65, 68-69.

²⁰⁴ *Bissonnette*, ¶98.

²⁰⁵ *Boudreault*, ¶60-61, 110. See also *R. v. Hills*, 2023 SCC 2, ¶86, 89-90.

²⁰⁶ *New Brunswick (Minister of Health and Community Services) v. G.(J.)*, 1999 CanLII 653 (S.C.C.), ¶115 (per L’Heureux-Dubé J.). See also: *Société de l’Acadie du Nouveau-Brunswick v. Canada (Prime Minister)*, 2026 SCC 22, ¶52; *Taylor v. Newfoundland and Labrador*, 2026 SCC 5, ¶81; *Winnipeg Child and Family Services v. K.L.W.*, 2000 SCC 48, ¶72.

²⁰⁷ *Boudreault*.

²⁰⁸ *Boudreault*, ¶21-29, 50-52.

²⁰⁹ *Boudreault*, ¶110.

²¹⁰ *Ibid.*

²¹¹ *Boudreault*, ¶60.

²¹² *Boudreault*, ¶51.

²¹³ *Boudreault*, ¶67.

described as grossly disproportionate”.²¹⁴

83. Similarly, in *PHS*, a Ministerial refusal to permit safe injection sites had the effect of depriving vulnerable persons of life-saving medical treatments. This, too, was grossly disproportionate.²¹⁵ So, too, in *Bedford*, were *Criminal Code* provisions preventing street sex workers from “screening clients and setting terms for the use of condoms or safe houses”²¹⁶ when these would “materially decrease their risk”.²¹⁷

84. Just as a law that deprives the deeply impecunious of “much of their livelihood” is incompatible with human dignity, so is a law that prohibits homeless persons from sheltering from the elements when they cannot access indoor shelter. Both prevent vulnerable persons from meeting their most basic needs. Both “can only be described as grossly disproportionate”.²¹⁸

85. For this reason, *every* court that has considered gross disproportionality in the context of sheltering restrictions has found it to be established.²¹⁹ As the AJ observed: “a law that prevents the homeless from avoiding a serious risk of injury or death” has “lost sight of its purpose”.²²⁰ While gross disproportionality is a high standard,²²¹ that standard is met here.

²¹⁴ [Boudreault](#), ¶67.

²¹⁵ [PHS](#), ¶127, 133.

²¹⁶ [Bedford](#), ¶71, 156.

²¹⁷ [Bedford](#), ¶156.

²¹⁸ [Boudreault](#), ¶67.

²¹⁹ [Shantz](#), ¶204-24; [Kingston](#), ¶86-87; [Persons Unknown 2023](#), ¶115-19. The principle was not argued in [Adams BCCA](#), and the Court found no deprivation of s. 7 interests in [Heegsma](#), appeal pending in COA-25-CV-0166.

²²⁰ [Decision](#), ¶243.

²²¹ [Cycle Toronto](#), ¶72; [Bissonnette](#), ¶70.

Issues viii. and ix: AJ’s Charter analysis was correct in light of international law, the PECH, and the *NHSA*

86. The Respondents will adopt *Amicus*’ response to paras. 62-70 of the Region’s factum and paras. 76-85 of the AG’s factum.

87. However, the Respondents add that the AJ adhered to the Supreme Court’s instructions that international law is properly applied to provide context with respect to how s. 7 applied to the By-Law. He recognized that the presumption of conformity requires courts to presume that the Charter provides protections at least as broad as those afforded by similar international human rights documents ratified by Canada,²²² and that federal, provincial, territorial, and municipal governments are all equally bound by international human rights instruments ratified by Canada.²²³ He noted that non-binding sources may be treated as “relevant and persuasive, but not determinative, interpretive tools”.²²⁴ He recognized that ss. 7 and 15 must be interpreted to “embody the notion of respect of human dignity and integrity”,²²⁵ a principle that is particularly relevant in assessing whether an impact is grossly disproportionate.²²⁶

No error in relation to s. 15

88. The AJ correctly found that the By-Law was discriminatory because its enforcement would result in a disproportionate impact based on sex, disability, and race (Indigeneity) among the Region’s chronically homeless.

89. The AJ conducted his analysis in line with the Supreme Court’s direction in *Kanyinda*.

²²² [Decision](#), ¶104-05; [Taylor](#), ¶76-85; *Quebec (Attorney General) v. 9147-0732 Québec inc.*, [2020 SCC 32](#), ¶37.

²²³ [Decision](#), ¶104; *Nevsun Resources Ltd. v. Araya*, [2020 SCC 5](#), ¶303.

²²⁴ [Decision](#), ¶108; [9147-0732](#), ¶30-38.

²²⁵ [Decision](#), ¶105; *R. v. Ewanchuk*, [1999 CanLII 711](#) (S.C.C.), ¶73.

²²⁶ [Bissonnette](#), ¶59,64.

Importantly, he found that sex, disability, race, and homelessness do not operate independently from each other. One vulnerability can amplify others, or create unique discriminatory effects not experienced by any group in isolation.²²⁷

90. He correctly analyzed the By-Law with reference to the homeless population of the Region generally, rather than artificially limiting his equality analysis to the By-Law's effects on those the Region found to be "Residents" on an arbitrary date. This flows from his factual finding that the Encampment was the only legal place to shelter, and the Region was not prepared to permit sheltering anywhere else if the Encampment site is cleared.²²⁸

The AJ was not bound by *Persons Unknown 2023* on s. 15

91. The AJ was not bound by the s. 15(1) analysis in *Persons Unknown 2023* and was correct to conduct a fresh s. 15(1) analysis in this case. The Respondents will adopt the submissions of *Amicus* on this issue.

The AJ correctly found the By-Law contributed to a disproportionate impact based on sex

92. The AJ understood that this is a case of adverse effects discrimination. Though the By-Law does not discriminate on its face, when its impact is considered in context, it disproportionately disadvantages women and gender-diverse persons experiencing homelessness.

Step One: The By-Law contributes to a distinction based on sex

93. Under the first step of s. 15(1), the AJ found the By-Law contributes to a distinction based on sex in its impact on women and gender-diverse persons experiencing homelessness. 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; and (b) restrictions on outdoor sheltering pose unique safety

²²⁷ [Kanyinda](#), ¶40; [Decision](#), ¶197.

²²⁸ [Decision](#), ¶149, 185, 250. See also 1stSweeney Affidavit, RComVol1, p.384, ¶52; 2ndSweeney XE, RComVol1, pp.435-36, Qs.89-90.

risks for homeless persons who are women and gender-diverse when they cannot access indoor shelter.²²⁹

94. Two types of evidence can help a claimant establish impacts on them and the group to which they belong: (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.²³⁰ Neither form of evidence is required and the evidentiary burden cannot be too onerous to meet.²³¹

95. The AJ correctly relied on statistical evidence to show that women and gender-diverse persons who are homeless have access to fewer indoor shelter spaces than men. He found as a fact that women and gender-diverse persons accounted for 35% of the Region's homeless in the November 2024 PiT Count.²³² But only 12% of spaces (42 out of the total overnight shelter capacity of 356) are set aside for women or gender-diverse persons.²³³ The AJ therefore found that on any given night, shelter spaces reserved for women are likely to be at capacity.²³⁴ It was appropriate for him to consider the gender make-up of the Region's homeless population, not just of the Encampment, because the Encampment is the outdoor shelter of last resort. Closure of the Encampment impacts all the Region's homeless who are unable to access indoor shelter.

²²⁹ [Decision](#), ¶216.

²³⁰ [Kanyinda](#), ¶52; *R. v. Sharma*, [2022 SCC 39](#), ¶49; *Fraser v. Canada (Attorney General)*, [2020 SCC 28](#), ¶56.

²³¹ [Kanyinda](#), ¶52-55, 60, 73.

²³² [Decision](#), ¶217; "2024 PIT Infographic", Ex.B to Kubis Affidavit, RComVol1, p.278-79.

²³³ [Decision](#), ¶166, 217. The shelter capacity was 356 as of February 27, 2026. There were 210 spaces reserved for men, and the remainder of the Region's shelter spaces were reserved for youth, persons with complex medical needs, or persons who had gone through a lengthy referral process (i.e., non-emergency shelters).

²³⁴ For instance, on Feb. 13, 2026, the system had capacity for eight men, but no women: "Homeless Chronicity," Ex.A to 3rd Escobar Affidavit, RComVol1, p.318-19; 3rd Escobar Affidavit, RComVol1, p.316, ¶8. See also Weber Affidavit, RComVol1, p.85, ¶26.

96. This contributes to a distinction based on sex. Enforcement would force all homeless persons to sleep outdoors given the shelter shortage, but would disproportionately affect women and gender-diverse persons, who have a lower share of shelter beds relative to their proportion of the homeless population. This is one way that the By-Law leaves women and gender-diverse persons worse off than men.

97. The existence of transitional housing, supportive housing, or motels does not change this math, as the Region suggests.²³⁵ Motel occupancy is at the discretion of the motel operator, and the AJ found that the Region no longer places women or gender-diverse people at one of the four motels “due to reports of sexual coercion and exploitation by motel staff under threat of eviction.”²³⁶ The AJ also found that transitional and supportive housing are subject to long waitlists and are not available on an emergency basis when a woman or gender-diverse person needs a place to sleep each night.²³⁷

98. The second way that the By-Law leaves women and gender-diverse persons worse off than men is that restrictions on outdoor sheltering pose unique safety risks for homeless persons who are women and gender-diverse when they cannot access indoor shelter.²³⁸ This creates a distinction based on sex because women and gender-diverse persons are more likely to engage in risky survival strategies like returning to unsafe relationships, exchanging sex for shelter, or sheltering in remote locations to avoid detection.²³⁹

²³⁵ Region Factum, ¶74.

²³⁶ [Decision](#), ¶157,221.

²³⁷ [Decision](#), ¶168.

²³⁸ [Decision](#), ¶218-20.

²³⁹ *Ibid*; Schwan Affidavit, RComVol1, pp.225-26,230, ¶8,11,18; “Pan-Canadian Survey”, Ex.B to Schwan Affidavit, RComVol1, pp. 248-52; Young Affidavit, RComVol1, p.123, ¶12-13; Weber Affidavit, RComVol1, pp.83-84, ¶12-14,17.

99. In making this finding, the AJ properly relied on evidence of the claimant group's situation.²⁴⁰ The Region takes issue with this evidence,²⁴¹ but there was no palpable and overriding error in those findings of fact,²⁴² nor any error in the way the AJ applied them.

100. The Region objects to the qualitative nature of the evidence and the “unrepresentative sample”²⁴³ of women experiencing homelessness in the area. But this is exactly the type of evidence the Supreme Court relied on in *Kanyinda* and other s. 15 cases.²⁴⁴

101. Evidence of a claimant group's situation may also include judicial notice. The AJ did not need evidence to demonstrate that women are more likely to experience gender-based violence than men.²⁴⁵ He was entitled to take judicial notice of that fact.²⁴⁶ That men who are homeless also experience disadvantage does not negate the finding that the By-Law affects women and gender-diverse persons more severely.

102. The AJ further relied on expert evidence from Dr. Schwan to find that the Encampment provided relative safety compared to unsheltered homelessness or returning to an abusive partner, a finding that is entitled to deference from this Court.²⁴⁷ The Appellants seek to undermine Dr. Schwan's evidence by making a different comparison: between the Encampment and access to

²⁴⁰ Schwan Affidavit, RComVol1, pp.225-26,230, ¶8,11,18; “Pan-Canadian Survey”, Ex.B to Schwan Affidavit, RComVol1, pp. 248-52; Young Affidavit, RComVol1, p.123, ¶12-13; Weber Affidavit, RComVol1, pp.83-84, ¶12-14,17; [Decision](#), ¶217-21.

²⁴¹ Region Factum, ¶77-80.

²⁴² [Bedford](#), ¶48-49.

²⁴³ Region Factum, ¶77-78.

²⁴⁴ [Kanyinda](#), ¶73-74,79, where the Court cites interviews, focus groups, and evidence of the claimant's own experience. See also *Eldridge v. British Columbia (Attorney General)*, [1997 CanLII 327](#) (S.C.C.), ¶5-7,69 in which the Court relied on the claimants' experiences as Deaf people accessing healthcare.

²⁴⁵ Region Factum, ¶78.

²⁴⁶ [Kanyinda](#), ¶55. See, e.g., *R. v. Barton*, [2019 SCC 33](#), ¶1.

²⁴⁷ [Decision](#), ¶219; [Bedford](#), ¶48-49.

housing with a door that locks or a shelter that can exclude people. Regardless of the relative merits of these options, the AJ found these options are unavailable to most women and gender-diverse persons experiencing homelessness because there are not nearly enough indoor shelter spaces for them.²⁴⁸ An unavailable sheltering option is no option at all.

Step Two: The By-Law worsens the disadvantage of homeless women and gender-diverse persons

103. The AJ correctly applied step two of the s. 15(1) test in finding that the By-Law imposes burdens and denies benefits in a way that reinforces, perpetuates, and exacerbates disadvantage. Taking away the outdoor shelter of last resort will make things worse for women and gender-diverse persons experiencing homelessness in the Region. Because there are not enough indoor sheltering options for them, shutting down the Encampment would force them to seek out less safe forms of shelter, as discussed above.²⁴⁹

104. The Appellants raise few objections to the AJ's analysis at the second step of the s. 15(1) test. Those they do raise are easily refuted. The Region protests that the By-Law is not based on stereotypical assumptions about any class of people.²⁵⁰ As *Kanyinda* confirms, "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*."²⁵¹

105. The AG's argument that no one is worse off because of the By-Law relies on twin fictions:

²⁴⁸ [Decision](#), ¶223.

²⁴⁹ [Decision](#), ¶222-23. See also Hwang Affidavit, RComVol1, pp.159-161, ¶9-12; Gupta Affidavit, RComVol1, pp.165-66, 169-70, ¶9(e)(iv), 16; Pauly Affidavit, RComVol1, pp.184-90, ¶20-25; Sanguen Statement, Ex.I to Kubis Affidavit, RComVol1, p.299; Houle Affidavit, RComVol1, p.266, ¶35; 1st Escobar Affidavit, RComVol1, p.305, ¶19.

²⁵⁰ Region Factum, ¶86.

²⁵¹ [Kanyinda](#), ¶67 [Emphasis in original.].

(a) that the By-Law impacts only the 40 unnamed persons selected by the Region as “Residents”; and (b) that there are other legal places to shelter outdoors once this Encampment is closed.²⁵² With respect to the first fiction, offers of accommodation for select Encampment “Residents” do not ameliorate the negative impact of the By-Law for the Region’s homeless inhabitants more generally. Even the offers to “Residents” may be temporary and land them back on the streets.²⁵³ Meanwhile, the second fiction ignores the combined effect of the By-Law and the CUB, confirmed by the Region’s admission that it will not allow people to legally shelter at any other outdoor location.²⁵⁴ The By-Law’s real-world impact is to put people at risk of repeated eviction or arrest when the Encampment is cleared, and they have insufficient indoor shelter options. This exacerbates disadvantage for all women and gender-diverse persons experiencing homelessness in the Region.

The AJ correctly found discrimination based on disability

106. The Respondents will adopt the submissions of *Amicus* on this issue.

The AJ correctly found discrimination based on race

107. Under step one of the s. 15(1) test, Indigenous people are overrepresented in unsheltered homelessness, making up 41% of those living unsheltered in Canada, including in encampments.²⁵⁵ The AJ found that 17% of the Region’s surveyed unhoused people in 2024 were Indigenous, though they make up only 1.7% of the population in the Region.²⁵⁶ Indigenous overrepresentation among unhoused people is only the starting point of the analysis. Overrepresentation matters because it

²⁵² AG Factum, ¶104-05.

²⁵³ [Decision](#), ¶150.

²⁵⁴ [Decision](#), ¶250; 1stSweeney Affidavit, RComVol1,p.384,¶52; 2ndSweeney XE, RComVol1,pp.439-442,Qs.7-14.

²⁵⁵ Pauly Affidavit, RComVol1,p.182,¶16; Hundt Affidavit, RComVol1,pp.326-8,¶9-12.

²⁵⁶ [Decision](#), ¶235.

means Indigenous people will be disproportionately impacted when the By-Law removes the last legal outdoor sheltering option in the Region.

108. The impact of the By-Law will be especially severe for Indigenous women, who face intersecting forms of discrimination. The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls explains that Indigenous women who are homeless face a heightened risk of interpersonal violence, including sexual violence and murder.²⁵⁷

109. At step two of the s. 15(1) test, the AJ found as a fact that Indigenous people experiencing homelessness face barriers to accessing shelters and are denied the benefit of culturally safe housing options.²⁵⁸ A blanket ban on outdoor encampments, piled onto these barriers, exacerbates the disadvantages Indigenous people already face at the nexus of race and homelessness.

110. Indigenous peoples' pre-existing disadvantage must not release the Region from accountability for actions that perpetuate that disadvantage. Rather, the pre-existing disadvantage forms the backdrop against which the Region's actions are scrutinized. In both *Kanyinda* and *Fraser*, women's pre-existing disproportionate share of childcare duties, when *combined* with the impact of government action, resulted in discrimination.²⁵⁹

The AJ correctly identified homelessness as a new analogous ground

The AJ followed the established approach to finding new analogous grounds

111. Immutability is not, and has never been, the sole factor in determining new analogous grounds.²⁶⁰ The AJ followed an approach grounded in Supreme Court jurisprudence to find

²⁵⁷ MMIW, Ex.F to Kubis Affidavit, RComVol1, pp.288-89,291.

²⁵⁸ [Decision](#), ¶236; Hundt Affidavit, Region's ExHBVol4, pp.1708-1715, ¶13-35.

²⁵⁹ [Kanyinda](#), ¶10-11; [Fraser](#), ¶98-106.

²⁶⁰ *Miron v. Trudel*, [1995 CanLII 97](#) (S.C.C.), ¶148-149; *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999 CanLII 687](#) (S.C.C.), ¶13,60.

homelessness was an analogous ground.

112. The Appellants argue that the test to recognize a new analogous ground of discrimination under s. 15 comes from a single sentence in *Corbiere* that highlights immutability as the “thrust of identification”.²⁶¹ The Appellants further take a narrow reading of constructive immutability: only applying to characteristics changeable at unacceptable cost to identity or that the government has no interest in expecting one to change. However, this narrow reading fails to situate the test within both the broader context of the s. 15 jurisprudence on recognizing analogous grounds and the animating purpose of s. 15 to promote substantive equality.²⁶² Applying the test in this narrow way creates an absurd result: the test would fail to recognize existing protected grounds.

113. Section 15 jurisprudence has historically taken a multi-factor approach to recognizing analogous grounds to promote the substantive equality guarantee. This approach, also present in *Corbiere*, adopts a wider set of non-exhaustive factors beyond immutability.²⁶³ In both *Miron*, recognizing marital status, and *Egan*, recognizing sexual orientation, the majority cites the relevance of historical disadvantage, whether the group is a discrete and insular minority, and recognition by legislators and jurists that the ground is discriminatory.²⁶⁴ Recently, in *Dickson*, recognizing non-resident status in a self-governing Indigenous community, the majority notes historical and continuing disadvantage.²⁶⁵ Crucially, in *Kanyinda*, as cited in the AJ’s reasons, Wagner CJ’s concurrence relies on a variety of factors first established in *Miron* to recognize

²⁶¹ [Corbiere](#), ¶13.

²⁶² [Kanyinda](#), ¶7,36.

²⁶³ [Corbiere](#), ¶60. The majority, at ¶13, does not explicitly reject factors such as vulnerability or historical disadvantage L’Heureux-Dubé J.’s relies on in her concurrence but, rather, regards them as “flow[ing] from the central concept of immutable or constructively immutable personal characteristics.”

²⁶⁴ [Miron](#), ¶148; *Egan v. Canada*, 1995 CanLII 98 (S.C.C.), pp.544,554-55,602-03.

²⁶⁵ *Dickson v. Vuntut Gwitchin First Nation*, 2024 SCC 10, ¶198.

refugee claimant status.²⁶⁶ The majority in *Kanyinda* affirmed the relevance of multiple factors in determining a new analogous ground and found that “the Chief Justice’s thoughtful reasons raise important issues”, but left the issue for another day.²⁶⁷

114. Applying this broader multi-factor approach, instead of the narrow reading of immutability proposed by the Appellants, also creates a test that properly captures the existing protected grounds. For example, non-citizenship, the first recognized analogous ground, would fail to meet the Appellants’ proposed test. Changing one’s citizenship to Canadian, especially for an individual who does not have to relinquish existing citizenship or who may possess no citizenship²⁶⁸, is not an unacceptable cost to their identity nor a change in which the government has no legitimate interest.²⁶⁹

115. This Court’s decision in *Falkiner* provides a useful Ontario analogue. The Court used a multi-factor analysis to recognize receipt of social assistance as an analogous ground. It found this new ground analogous because it aligned with human rights legislation, reflected historical disadvantage and negative stereotyping, and was the most coherent way to capture the intersection of poverty with sex and marital status for sole-support single mothers on social assistance.²⁷⁰

116. The AJ correctly found that homelessness is an analogous ground using the multi-factor approach.²⁷¹ He explains that homeless status may give rise to stereotypes. This finding draws on

²⁶⁶ *Kanyinda*, ¶217-18; *Decision*, ¶204,208-09.

²⁶⁷ *Kanyinda*, ¶26.

²⁶⁸ Individuals who possess no citizenship are stateless.

²⁶⁹ Notably, in *Andrews*, the Supreme Court understood that analogous grounds cannot be limited to purely immutable characteristics: *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143, pp.152-53(per Wilson J.), pp.182-83(per McIntyre J.).

²⁷⁰ *Falkiner v. Ontario (Minister of Community and Social Services)*, 2002 CanLII 44902(Ont. C.A.), ¶83-93.

²⁷¹ *Decision*, ¶205-10.

Dr. Schwan’s evidence that homelessness is associated with stereotypes that undermine dignity: that homeless persons are morally suspect, homeless by choice, dangerous, disorderly, criminal, or undeserving.²⁷²

117. The AJ also found that homelessness is characterized by social vulnerability and historic marginalization. Dr. Schwan explained that homeless people are extremely vulnerable to violence yet rarely report it because of negative experiences with the justice system. She also noted that opposition to housing for homeless persons is common and that some municipalities deliberately withhold essential services such as water and sanitation as a means of displacement.²⁷³ The historical treatment of vagrancy confirms that laws have long regulated homeless persons based on their homeless status.²⁷⁴

118. In the alternative, if this Court declines to adopt a multi-factor approach, the AJ also correctly found, based on the record,²⁷⁵ that homelessness *is* immutable because homelessness is “not [...] within the individual’s control; it is not readily alterable by conscious action by the individual”.²⁷⁶

The AJ’s finding that homelessness is an analogous ground was appropriate

119. The AJ was allowed to find homelessness as an analogous ground despite finding other *Charter* breaches. Judicial restraint “is not always determinative” of a court’s analysis.²⁷⁷ As the

²⁷² Schwan Affidavit, RComVol1, pp.242,245, ¶46,52, citing Report of the Special Rapporteur on Adequate Housing, Ex.D, REBVol6, p.2704, ¶19.

²⁷³ Schwan Affidavit, RComVol1, pp.238-40, ¶39-41.

²⁷⁴ [Heywood](#), pp.781-83.

²⁷⁵ Gaetz Affidavit, RComVol1, pp.202-04, ¶10-14; Schwan Affidavit, RComVol1, pp.238-43, ¶38-49; Houle Affidavit, RComVol1, pp.263-64, ¶22-26; Pauly Affidavit, RComVol1, pp.178-83, ¶7-18; “Forced to be a Community”, Ex.B to Pauly Affidavit, pp.193-95.

²⁷⁶ [Decision](#), ¶207. See also [Kanyinda](#), ¶222(per Wagner C.J.); [Falkiner](#), ¶89.

²⁷⁷ [CCR](#), ¶180-81.

Supreme Court explained in *Canadian Council for Refugees*, claims under s. 15 are not secondary issues, and judicial restraint must be weighed against the possibility of an appeal and fairness to the parties.²⁷⁸ Wagner CJ's concurrence in *Kanyinda* also provides persuasive support for recognizing a new analogous ground where that is the perspective that most naturally fits the factual and legal context.²⁷⁹

120. Homelessness is capable of definition. Governments, including the Region, regularly define and measure it.²⁸⁰ The AJ uses the PiT Count as a reference point for the number of homeless in the Region, in effect adopting the PiT Count's definition for the purposes of the decision.²⁸¹

121. A single, universally agreed definition is not a requirement for protected grounds. Disability, an enumerated ground, has numerous legal definitions and encapsulates a wide range of conditions and circumstances.²⁸² Its meaning is context-dependent.²⁸³ That has not stopped courts from determining, based on the record before them, whether a claimant falls within that protected group.²⁸⁴

122. The AJ was not bound by previous cases that came to the opposite conclusion about homelessness as an analogous ground²⁸⁵ because those cases were not binding authorities.

²⁷⁸ [CCR](#), ¶180-81. See also [Falkiner](#), ¶83-93.

²⁷⁹ [Kanyinda](#), ¶208-09 (per Wagner C.J.).

²⁸⁰ "Final PECH Report 2024", Ex.A to 1st Sweeney Affidavit, RComVol1, pp.400-02.

²⁸¹ [Decision](#), ¶58-60.

²⁸² See, e.g., *Human Rights Code*, [R.S.O.1990, c.H.19, s.10](#); *Accessible Canada Act*, [S.C.2019, c.10, s.2](#); *Ontario Disability Support Program Act, 1997*, [S.O.1997, c.25, Sch. B, s.4](#).

²⁸³ *Granovsky v. Canada (Minister of Employment and Immigration)*, [2000 SCC 28](#), ¶27; *Quebec v. Montréal (City)*; *Quebec v. Boisbriand (City)*, [2000 SCC 27](#), ¶79-81.

²⁸⁴ Similarly, religion has numerous definitions, causing the Supreme Court to split in *Syndicat Northcrest v. Amselem*, [2004 SCC 47](#) on whether it should be understood subjectively or objectively.

²⁸⁵ Region Factum, ¶88-89; AG Factum, ¶91-92.

Tanudjaja was a motion to strike, heard without an evidentiary record.²⁸⁶ As this Court noted on appeal, the motion judge could not decide whether homelessness was an analogous ground without the benefit of a full evidentiary record and argument.²⁸⁷

123. In none of the other cases the Appellants cite as binding authority on the AJ did the claimants plead homelessness as an analogous ground.²⁸⁸ In *Persons Unknown 2023*, Justice Valente, of his own accord and without the benefit of argument, conducted an analysis of whether homelessness ought to be recognized as an analogous ground. He did so to determine whether homeless women, people with disabilities, and Indigenous people faced discrimination.²⁸⁹ Based on the Supreme Court’s guidance on intersectional discrimination in *Kanyinda*, that analysis was misguided and unnecessary. The AJ was right to disregard it.

124. *Shantz* is a decision from a British Columbia first-instance court that relied on *Tanudjaja* for its finding that homelessness was not an analogous ground, and, in any event, is not binding on the Ontario Superior Court.²⁹⁰

125. Finally, the Appellants’ floodgate concerns are overblown.²⁹¹ Cities do not face s. 15(1) claims based on age each time a school or seniors’ program closes. Regardless, concern that governments may be held accountable for decisions that affect the most vulnerable is a poor reason to decline to recognize valid analogous grounds. Recognizing a new analogous ground “favours a more flexible and progressive approach in the application of s. 15, one that is capable of

²⁸⁶ *Tanudjaja v. Canada (Attorney General)*, [2013 ONSC 5410](#).

²⁸⁷ *Tanudjaja v. Canada (Attorney General)*, [2014 ONCA 852](#), ¶37(per Pardu J.A.), ¶73-74(per Feldman J.A.).

²⁸⁸ *R. v. Banks*, [2007 ONCA 19](#); *Heegsma*; *Persons Unknown 2023*.

²⁸⁹ *Persons Unknown 2023*, ¶122-25.

²⁹⁰ *Shantz*; Region Factum, ¶88.

²⁹¹ Region Factum, ¶93.

recognizing contemporary forms of discrimination, beyond only its historical manifestations”.²⁹²

No error in relation to s. 1

Section 1 requires attention to context

126. The application of the *Oakes*²⁹³ factors under s. 1 requires regard “to the specific factual and social context of each case”,²⁹⁴ including the vulnerability of the population at issue and the “nature of the activity which is infringed”.²⁹⁵ In applying the *Oakes* factors, courts must be “guided by the values and principles essential to a free and democratic society, including “respect for the inherent dignity of the human person” and “commitment to social justice and equality”.²⁹⁶ These “underlying values” are “the ultimate standard against which a limit on a right or freedom must be shown, despite its effect, to be reasonable and demonstrably justified”.²⁹⁷

127. The AJ correctly recognized that justifying a s. 7 violation is “difficult”.²⁹⁸ This high standard is appropriate due to the “significance of the fundamental rights”²⁹⁹ s. 7 protects and because it is “hard to justify a law that runs afoul of the principles of fundamental justice and is thus inherently flawed”.³⁰⁰ Accordingly, and unsurprisingly, there is only one case where a s. 7 breach has ever been found to be justified under s. 1: *Michaud*.³⁰¹

²⁹² [Kanyinda](#), ¶218(per Wagner C.J.); [Société de l’Acadie du Nouveau-Brunswick](#), ¶47.

²⁹³ *R. v. Oakes*, [1986 CanLII 46](#)(S.C.C.).

²⁹⁴ [Taylor](#), ¶194; [Eldridge](#), ¶85.

²⁹⁵ [Taylor](#), ¶194; *Thomson Newspapers Co. v. Canada (Attorney General)*, [1998 CanLII 829](#)(S.C.C.), ¶90-91.

²⁹⁶ [Oakes](#), ¶64.

²⁹⁷ *Ibid.*; [Taylor](#), ¶194.

²⁹⁸ [Decision](#), ¶241; [Carter](#), ¶95.

²⁹⁹ [Bedford](#), ¶129.

³⁰⁰ [Decision](#), ¶241; [Carter](#), ¶95.

³⁰¹ *R. v. Michaud*, [2015 ONCA 585](#).

The AJ correctly found no minimal impairment

128. The AJ correctly found that the By-Law was not minimally impairing due to the “extremity”³⁰² of its “bare sheltering prohibition”.³⁰³

129. The AJ was correct to find that, by effecting a bare sheltering prohibition, the By-Law was not a “complex regulatory response” to homelessness.³⁰⁴ Deference is not required at the minimal impairment stage merely on the basis that an issue is “social”,³⁰⁵ particularly if the impugned law is not truly a “complex regulatory response”³⁰⁶ to the social issue. An “absolute prohibition [cannot] be described as a ‘complex regulatory response’”.³⁰⁷ This is because a complete exclusion does not “reasonably [balance] the competing social demands which our society must address.”³⁰⁸

130. The AJ correctly found that the Region’s failure to make *any* provision for persons needing shelter outdoors after the encampment was closed prevented the By-Law from being minimally impairing. As the Supreme Court held in *G.*, where the impugned law, in context with the *Criminal Code*, prevented non-criminally responsible offenders from removing themselves from the sex-offender registry, “[t]he inclusion of *any* method of exempting and removing those found NCRMD ... would be less impairing of their s. 15(1) rights”.³⁰⁹ The Region’s failure to take *any* account of the needs of persons who could not access indoor shelter, including persons who faced particular barriers related to s. 15 grounds, was not within a range of reasonable outcomes.

³⁰² [Decision](#), ¶250.

³⁰³ [Decision](#), ¶242.

³⁰⁴ [Decision](#), ¶242; AG Factum, ¶106-07; Region Factum, ¶98.

³⁰⁵ [Eldridge](#), ¶85.

³⁰⁶ [Carter](#), ¶98; [Decision](#), ¶242.

³⁰⁷ [Carter](#), ¶98.

³⁰⁸ [Eldridge](#), ¶93.

³⁰⁹ [G.](#), ¶74.

The AJ correctly found a lack of proportionality

131. The AJ also correctly held that “the cost of achieving the By-Law’s objective was simply too great”, given the “significant” “risk of deprivation to the lives, liberty and security of the person of the Region’s chronically homeless”.³¹⁰ As the Supreme Court noted in *Bissonnette*, if a law has been found to be “grossly disproportionate”, “it would be difficult to show that” it is “proportionate as between the deleterious and salutary effects of the law under s. 1”.³¹¹

132. As in *Kanyinda*, this was a case where “the deleterious effects of the law are supported by the evidence” whereas “the beneficial effects are speculative”.³¹² The AJ’s finding that the benefits of the transit hub were speculative was a finding of fact that is entitled to deference.³¹³ Contrary to the Appellants’ submissions,³¹⁴ the Court could not have taken judicial notice that connecting existing routes through a hub would “dramatically” improve transit access, as this is not a fact that is “so notorious or uncontroversial that evidence of [its] existence is unnecessary”.³¹⁵ The threshold for judicial notice is “strict” and “stringent”.³¹⁶ The Supreme Court has warned that, as social and legislative facts are often dispositive in Charter litigation, courts must “keep judicial notice on a relatively short leash, while at the same time acknowledging that facts cannot be demonstrated with greater precision than the subject matter permits”.³¹⁷

133. It was the Region’s burden to establish the salutary effect of the By-Law. The AJ found it

³¹⁰ [Decision](#), ¶243; [Kanyinda](#), ¶202 (per Rowe J.).

³¹¹ [Bissonnette](#), ¶121; [Nur](#), ¶111.

³¹² [Kanyinda](#), ¶201 (per Rowe J.), ¶253 (per Wagner C.J.).

³¹³ [Bedford](#), ¶48-49.

³¹⁴ Region Factum, ¶101; AG Factum, ¶118.

³¹⁵ *Taylor v. Hanley Hospitality Inc.*, [2022 ONCA 376](#), ¶30.

³¹⁶ [Spence](#), ¶53; *R. v. Find*, [2001 SCC 32](#), ¶48.

³¹⁷ [Spence](#), ¶64-65.

failed to do so, in the absence of modeling or empirical data. This did not give rise to error in the context of evidence that the benefits projected by the Region’s witness *were* speculative,³¹⁸ and that what the Region described as a “dramatic” benefit consisted of commuters saving several minutes.³¹⁹

PART IV: ORDER REQUESTED

134. The Respondents request that the appeals be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9th day of October 2026.



**Ashley Schuitema, Joanna Mullen,
Shannon Down, Anna Rosenbluth, Robin
Nobleman, and Adrian Merdzan**

Lawyers for the Named Respondents

³¹⁸ Spooner XE, RComVol1, pp.453-55, Qs.121-26.

³¹⁹ Spooner XE, RComVol1, p.455, Qs.124-25.

APPENDIX A: SHARED RESPONDENT BACKGROUNDS

Background	Identifying Affiants	Foundation in Record
Mental/ cognitive disability	1. Josephina Dugas	Affidavit of Josephina Dugas, sworn May 7, 2025, RComVol1, p.71,¶6-7
	2. Terra-Lynn Weber	Affidavit of Terra-Lynn Weber, sworn May 6, 2025, RComVol1, pp.82-3, 84,¶4-7, 18
	3. Aaron Price	Affidavit of Aaron Price, sworn May 6, 2025, RComVol1, p.138,¶5
	4. Jeremy Nichol	Affidavit of Jeremy Nichol, sworn May 8, 2025, Region's ExHBVol2, p.858,¶19-20
	5. Noah Helsby	Affidavit of Noah Helsby, sworn May 15, 2025, RComVol1, p.118,¶6
	6. Stephanie McMillan	1st Affidavit of Stephanie McMillan, sworn May 13, 2025, RComVol1, pp.109-110,¶3, 6-8
	7. Julie Young	Affidavit of Julie Young, sworn June 13, 2025, RComVol1, p.122,¶5
	8. Kyle York	Affidavit of Kyle York, sworn June 17, 2025, RComVol1, p.128,¶6
	9. Megan Lopes	1st Affidavit of Megan Lopes, sworn June 18, 2025, RComVol1, pp.51-3,¶5-6, 18
	10. Avery Ament	Affidavit of Avery Ament, sworn June 23, 2025, RCoMVol1, p.65,¶3
	11. Jeffrey Couto	Affidavit of Jeffrey Couto, sworn October 15, 2025, RComVol1, p.43,¶8-9
	12. Jordan Camm	Affidavit of Jordan Camm, sworn October 15, 2025, RComVol1, p. 77,¶3-4;
	13. Terrance Cole	Affidavit of Terrence Cole, sworn October 10, 2025, RCoMVol1, p.144,¶8-9
	14. Xander Harker	Affidavit of Xander Harker, sworn October 15, 2025, RComVol1, p.100,¶4-5

	15. Charles Kocher	Affidavit of Charles Kocher, sworn January 13, 2026, RComVol1, p.89, ¶6
	16. Aline Jeffery	Affidavit of Aline Jeffery, sworn January 21, 2026, RComVol1, p.94, ¶4
	17. Michael Jeffery	Affidavit of Michael Jeffery, sworn January 21, 2026, Region's ExHBVol8, p.3487, ¶5, 7
	18. James Davis	Amended Affidavit of James Davis, sworn June 20, 2025, Region's ExHBVol4, p.1698, ¶8
Substance use disabilities	1. Josephina Dugas	Dugas Affidavit, RComVol1, p.71, ¶7
	2. Terra-Lynn Weber	Weber Affidavit, RComVol1, p.83, ¶7
	3. Aaron Price	Price Affidavit, RComVol1, pp.138-9, 141, ¶5-6, 19
	4. Noah Helsby	Helsby Affidavit, RComVol1, p.118, ¶6
	5. Stephanie McMillan	1st McMillan Affidavit, RComVol1, p.110, ¶8
	6. Kyle York	York Affidavit, RComVol1, p.129, ¶10-12
	7. Megan Lopes	1st Lopes Affidavit, RComVol1, p.52, ¶10
	8. Avery Ament	Ament Affidavit, RComVol1, pp.65-7, ¶3, 6-7, 14
	9. Jeffery Couto	Couto Affidavit, RComVol1, pp.43-44, ¶9-12
	10. Jordan Camm	Camm Affidavit, RComVol1, p. 78, ¶5, 8
	11. Terrance Cole	Cole Affidavit, RComVol1, pp.144-5, ¶11-13
	12. Xander Harker	Harker Affidavit, RComVol1, p.100, ¶4-5
	13. Charles Kocher	Kocher Affidavit, RComVol1, p.89, ¶6, 8-9
	14. Aline Jeffery	A. Jeffrey Affidavit, RComVol1, pp.94-5, ¶4-6
	15. Julie Young	Young Affidavit, RComVol1, p.123, ¶8-9
	16. Jason Paul	Affidavit of Jason Paul, sworn June 15, 2026, Region's ExHBVol2, p. 845, ¶8
	17. James Davis	Davis Affidavit, Region's ExHBVol4, p.1698, ¶9
Mobility impairment	1. Terra-Lynn Weber	Weber Affidavit, RComVol1, pp.82-3, 84, ¶5-6, 18
	2. Jeremy Nichol	Nichol Affidavit, Region's ExHBVol2, pp.856, 859, ¶8-10, 22, 24

	<p>3. Joseph Bradley</p> <p>4. Aaron Price</p> <p>5. Noah Helsby affirms to physical disabilities and that he cannot walk long distances</p> <p>6. Calvin Sharpe affirms to having a “bad back and leg”</p>	<p>Affidavit of Joseph Bradley, sworn May 9, 2025, RComVol1, pp. 149, 151, ¶3, 15</p> <p>Price Affidavit, RComVol1, p.141, ¶20</p> <p>Helsby Affidavit, RComVol1, pp.118-9, ¶6, 13</p> <p>Affidavit of Calvin Sharpe, sworn May 30, 2025, Region’s ExHBVol2, pp. 825, ¶5.</p>
Indigeneity	<p>1. Josephina Dugas</p> <p>2. Jeremy Nichol</p> <p>3. Noah Helsby</p> <p>4. Kyle York</p> <p>5. Calvin Sharpe</p> <p>6. Charles Kocher</p> <p>7. Aline Jeffery</p>	<p>Dugas Affidavit, RComVol1, p.70, ¶3</p> <p>Nichol Affidavit, Region’s ExHBVol2, p.855, ¶3</p> <p>Helsby Affidavit, RComVol1, p.117, ¶3</p> <p>York Affidavit, RComVol1, p.128, ¶3</p> <p>Sharpe Affidavit, Region’s ExHBVol2, p. 824, ¶3</p> <p>Kocher Affidavit, RComVol1, p.89, ¶6</p> <p>A. Jeffrey Affidavit, RComVol1, p.94, ¶3</p>
LGBTQ2S+	<p>1. Josephina Dugas</p> <p>2. Terra-Lynn Weber</p> <p>3. Aaron Price</p> <p>4. Stephanie McMillan</p>	<p>Dugas Affidavit, RComVol1, p.70, ¶3</p> <p>Weber Affidavit, RComVol1, p.82, ¶3</p> <p>Price Affidavit, RComVol1, p.138, ¶3</p> <p>1st McMillan Affidavit, RComVol1, p.109, ¶3</p>
Abuse survivors (childhood physical/sexual abuse, domestic violence, and/or sexual assault)	<p>1. Josephina Dugas</p> <p>2. Terra-Lynn Weber</p> <p>3. Aaron Price</p> <p>4. Jason Paul</p> <p>5. Julie Young</p> <p>6. Kyle York</p> <p>7. Terrance Cole</p>	<p>Dugas Affidavit, RComVol1, p.72, ¶13</p> <p>Weber Affidavit, RComVol1, pp.83-5, ¶12-14, 17, 22-23</p> <p>Price Affidavit, RComVol1, p.139, ¶9</p> <p>Paul Affidavit, Region’s ExHBVol2, p. 845, ¶6-7</p> <p>Young Affidavit, RComVol1, p.123, ¶12</p> <p>York Affidavit, RComVol1, p.128, ¶7</p> <p>Cole Affidavit, RComVol1, p.144, ¶7</p>

	<p>8. Jeff Couto</p> <p>9. Aline Jeffery</p>	<p>Couto Affidavit, RComVol1, p.44,¶17</p> <p>A. Jeffery Affidavit, RComVol1, pp.95, 97,¶5, 19</p>
Shelter together with partner	<p>1. Aline Jeffery</p> <p>2. Michael Jeffery</p> <p>3. James Davis</p> <p>4. Noah Helsby</p> <p>5. Terrance Cole</p> <p>6. Stephanie McMillan</p>	<p>A. Jeffery Affidavit, RComVol1, p. 95,¶10.</p> <p>M. Jeffery Affidavit, Region's ExHBVol8, pp. 3487-8,¶8-14</p> <p>Davis Affidavit, Region's ExHBVol4, pp.1697-1700,¶4, 11-13, 19, 22</p> <p>Helsby Affidavit, RComVol1, p.117,¶5</p> <p>Cole Affidavit, RComVol1, pp.143,146,¶4, 25;</p> <p>1st McMillan Affidavit, RComVol1, pp.110-11,¶14, 16, 22</p>
Women/gender diverse	<p>1. Josephina Dugas</p> <p>2. Terra-Lynn Weber</p> <p>3. Stephanie McMillan</p> <p>4. Julie Young</p> <p>5. Megan Lopes</p> <p>6. Avery Ament</p> <p>7. Aline Jeffery</p>	<p>Dugas Affidavit, RComVol1, p.70,¶2</p> <p>Weber Affidavit, RComVol1, p.82,¶3</p> <p>1st McMillan Affidavit, RComVol1, p.109,¶2</p> <p>Young Affidavit, RComVol11, p.122,¶2</p> <p>1st Lopes Affidavit, RComVol1, p.51,¶2</p> <p>Ament Affidavit, RComVol1, p.65,¶2</p> <p>A. Jeffrey Affidavit, RComVol1, p.94,¶2</p>

APPENDIX B: RESPONSE TO REGION'S SUMMARY CHART OF CANADIAN ENCAMPMENT CASES*

* Columns 1-5 are pasted from Region factum, with footnote omitted. Column 6 is Respondents' Response.

	Style of Cause	Region's Summary	Result	Arrangements Made for Encampment Occupants	Respondents' Response
	Abbotsford, BC				
1.	<i>Abbotsford (City) v. Shantz</i> , 2013 BCSC 2426 [“ <i>Shantz 1</i> ”]	City sought injunction to remove wooden structure in an encampment on city land, prevent erection of further such structures	Order to remove unauthorized structure granted	None	The injunction ordered in this case was not to clear an encampment. It was for the removal of a 60 by 72 foot wooden structure (paras. 4, 25). This application was heard on an expedited basis. The occupants of the structure were given notice of the proceeding only the day before it was heard (paras. 6-7).
2.	<i>Abbotsford (City) v. Shantz</i> , 2013 BCSC 2612 [“ <i>Shantz 2</i> ”]	City sought injunction to clear encampment in city park and enjoin future camping in the park Encampment residents made a responding claim under s. 7 of the <i>Charter</i>	Injunction to clear encampment granted	None	First, it is unclear whether arrangements were made for encampment residents because the terms of the order are not included in the reasons. Second, this was an application for interlocutory injunction and it did not decide the Charter issues: [11] The fundamental social issue at hand is this: what provision, what accommodation, if any, is society prepared to make for these particular persons and others like them? [12] Ultimately the issues raised will be decided by others; a trial court with respect to this particular case; at some point one expects there will be some larger response that will arise in the realm of government. [13] It is essential to understand that at this particular phase of the litigation it is not this Court's function to try to make final determinations, or to try to decide complex questions of law that are engaged. The trial of the matter is the forum for those things to be done.
3.	<i>Abbotsford (City) v. Shantz</i> , 2014 BCSC 2385 [“ <i>Shantz 3</i> ”]	Order sought to dissolve injunction granted in <i>Shantz 2</i>	Dissolution of the <i>Shantz 2</i> injunction order as sought on behalf of unhoused individuals denied	None	This was a motion for reconsideration of the earlier injunction and the test to meet was “material change” in the facts or circumstances that gave rise to the previous order (para. 25). This threshold was not met.

4.	<i>Abbotsford (City) v. Shantz</i> , 2015 BCSC 1909 [“ <i>Shantz 4</i> ”]	Application hearing for a permanent injunction sought by the City and a related <i>Charter</i> application under ss. 2(c), 2(d), 7, and 15 sought on behalf of unhoused individuals	<i>Charter</i> application granted in part The portions of the City bylaw which prohibit sleeping or being in a park <u>overnight</u> / erecting a temporary shelter without permits infringe s. 7 S. 15 claim dismissed	N/A	None
5.	<i>Fraser Health Authority v. Evans</i> , 2016 BCSC 1708	Regional health authority sought an injunction to clear a closed, private lot it owned Occupants claimed infringement of s.2(b) <i>Charter</i> rights	Injunction to clear encampment granted <i>Charter</i> did not apply to the Fraser Health Authority	None	This was an injunction application and the Charter did not apply to the relationship between the parties.
6.	<i>Matsqui-Abbotsford Impact Society v Abbotsford (City)</i> , 2024 BCSC 1902 (leave to appeal has been granted but the appeal not yet decided: 2025 BCCA 78)	Injunction sought on behalf of unhoused individuals camping on land near City Hall Underlying claim under ss. 7 and 15 of the <i>Charter</i>	Injunction to prevent clearing of encampment denied, provided the City implement a phased approach to reduce and relocate encampment residents as per the terms of a court Order	Various conditions imposed on the City when enforcing the Bylaw.	This was an injunction application that did not determine Charter issues. The encampment site at issue was not the only sheltering location in the municipality ¶ 32, 36.
Hamilton, ON					
7.	<i>Poff v. City of Hamilton</i> , 2021 ONSC 7224	Injunction sought on behalf of unhoused individuals camping in city parks preventing their removal during the day; no removal occurring at night Underlying claim under s.	Injunction to prevent encampment closure denied	None	This was an injunction motion that did not determine Charter issues. The Court found the municipality did not have insufficient indoor shelter to meet the needs of its homeless at the time the motion was determined ¶ 236.

		7 of the <i>Charter</i>			
8.	<i>Heegsma v. Hamilton (City)</i> , 2024 ONSC 7154 (ONCA heard this appeal in February 2026; the decision is under reserve)	Underlying application in <i>Poff</i> – claims under ss. 7 and 15 of the <i>Charter</i>	<i>Charter</i> application on behalf of unhoused individuals dismissed (claim was limited to damages given decision in <i>Poff</i>) No infringement in preventing individuals from camping in a public park during the daytime	None	None
Kingston, ON					
9.	<i>The Corporation of the City of Kingston v. Doe</i> , 2023 ONSC 6662	Injunction brought by city seeking the removal of unhoused individuals camping in a city park Application on behalf of unhoused individuals preventing their removal, claim under ss. 7 and 15 of the <i>Charter</i>	Injunction to remove encampment entirely is denied <i>Charter</i> application granted under s. 7 in part (only insofar as the municipal bylaw prevented persons from camping <u>overnight</u> in public parks)	None	Application under s. 15 was not dealt with. The Court declined to determine s.15 because it had already found the By-Law to violate s. 7: ¶118.
Kitchener, ON					
10.	<i>The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained</i> , 2023 ONSC 670 [“ <i>Persons Unknown</i> ”]	Encampment established on Regional property Region sought to enforce its general Code-of-Use By-law to close encampment <i>Charter</i> arguments raised under ss. 7 and 15	Application sought by Region to enforce general Code-of-Use Bylaw not granted; By-law ruled inoperative due to s. 7 breach insofar as it applies to prevent the encampment residents from living / erecting temporary shelters on the Property when the number of homeless individuals in the Region exceed the number of accessible shelter beds S. 15 claims dismissed	N/A	Encampment site at issue is the site at issue in this appeal.

11.	<i>The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained</i> , 2025 ONSC4774	Same encampment/property as <i>Persons Unknown</i> Underlying application regarding Region's enforcement of a site-specific Bylaw – claims under ss. 7 and 15 of the Charter Interim injunction sought on behalf of encampment residents	Injunction sought on behalf of unhoused individuals granted (until conclusion of the merits hearing)	N/A	None
Maple Ridge, BC					
12.	<i>Maple Ridge (City) v Scott</i> , 2019 BCSC 157	Encampment established on two parcels of land owned by a third-party public authority. City sought an application permitting enforcement of two fire safety orders, which included a prohibition on in-tent heaters. Another order prohibited anyone from occupying the lands who is not seeking transition to housing City had previously sought an injunction to evict occupants, which it resolved in a Consent Order which set out various standards the encampment had to meet to ensure health and safety concerns were mitigated City did not seek a wholesale eviction from the lands in question	Injunction to enforce part of the Fire Safety Orders granted (including the prevention of in-tent heating, but not re: the prevention of improvised wood-framed structures) Injunction granted re: verification orders – occupants of the encampment who seek transition to housing to identify themselves to a representative of the City by producing government-issued photo identification, or by agreeing to be photographed, and providing a full legal name. Anyone who is not a “verified occupant” (i.e., has followed this protocol) is enjoined from occupying the subject lands	Under terms of order assented to by the City, occupants removed only where they have not identified themselves as seeking transition to housing	This decision concerned whether encampment residents had complied with the terms of a previous consent order under British Columbia's <i>Fire Services Act</i> . The Court ordered residents to comply with fire safety conditions, but refused the municipality's request for an order clearing shelter structures: ¶49-56.

		No <i>Charter</i> challenge before the Court			
Montreal, QC					
13.	<i>Clinique juridique itinérante c. Procureur général du Québec</i> , 2023 QCCS 1170	Injunction sought on behalf of unhoused individuals to delay their eviction Encampment located under a highway where major maintenance work was being carried out S. 7 Charter rights asserted; clinic also sought a positive remedy that individuals be provided with an action plan for housing homeless individuals	Injunction to prevent encampment clearing granted (for 10 days)	N/A	None
14.	<i>Clinique juridique itinérante c. Procureur général du Québec</i> , 2023 QCCS 1949 (leave to appeal dismissed 2023 QCCA 855)	Injunction sought on behalf of unhoused individuals (same facts as in 2023 QCCS 1170) – sought an extension of the order preventing eviction for a further month	Injunction to prevent encampment clearing denied	None	This was an injunction application that did not determine Charter issues.
15.	<i>Clinique juridique itinérante c. Procureur général du Québec - Ministère</i>	Injunction sought on behalf of unhoused individuals living on land in Montreal owned by the Ministry of Transport to prevent their eviction Charter rights arguments	Injunction to prevent encampment clearing granted (for 10 days)	N/A	None

	<i>des Transports et de la Mobilité durable du Québec, 2025 QCCS 2087</i>	under s. 7 raised			
15 A	Additional decision not listed by Region <i>Clinique juridique itinérante c. Ville de Montréal, 2026 QCCS 2069 (leave to appeal dismissed, 2026 QCCA 1195)</i>				Safeguard order granted enjoining City of Montreal from taking steps to remove an encampment near a skateboard park and basketball court. Order to remain in effect until hearing on the merits of application under Quebec and Canadian Charters (s.7).
Nanaimo, BC					
16.	<i>Nanaimo (City) v Courtoreille, 2018 BCSC 1629</i> <i>(City) v Courtoreille, 2018 BCSC 1629</i>	City sought statutory injunction to closedown a tent city The site of the encampment is a city-owned property in downtown Nanaimo Nanaimo permits temporary overnight camping in certain designated parks Respondents raised residents' s. 7 and 15 Charter rights	Injunction to clear encampment granted	None	This was an injunction application, not a Charter application. Other outdoor sheltering locations were available to the residents overnight (¶128).

	Prince George, BC				
17.	<i>Prince George (City) v Stewart</i> , 2021 BCSC 2089	<p>City sought an injunction to remove two encampments located on a vacant lot and a green space it owned</p> <p>Respondents raised s. 7 <i>Charter</i> rights</p> <p>Court recognized that encampment residents could go to another nearby encampment, most had already done so</p>	Injunction to close one of the two encampments granted	<p>Future closure of the encampment permitted where the City could demonstrate “available and accessible housing and daytime facilities for [the encampment’s] occupants”</p>	<p>There was no underlying challenge to the Zoning By-Law that the municipality was seeking to enforce. Accordingly, it proceeded according to the statutory injunction test. Only two of the respondents were represented and they did not raise <i>Charter</i> (¶27-33). Accordingly, issue was only the impact that enforcement of the By-Law would have on the persons occupying the two encampments.</p>
18.	<i>Prince George (City) v. Johnny I</i> ”, 2022 BCSC 282 [“ <i>Johnny I</i> ”]	<p>City sought injunction to close an encampment (same as in <i>Stewart</i>)</p> <p>City argued that as per <i>Stewart</i>, there were now “suitable housing and daytime facilities” in the area with the addition of a new facility</p> <p>Court rejected that there were sufficient, accessible places for all encampment residents to go to</p>	Injunction to clear encampment denied – <i>Stewart</i> condition not satisfied	Condition in <i>Stewart</i> remains	None
19.	<i>Prince George (City) v Johnny I</i> ”, 2025 BCSC 1556 [“ <i>Johnny 2</i> ”]	<p>City sought an injunction to close the <i>Stewart / Johnny I</i> encampment on basis that the <i>Stewart</i> conditions had been fulfilled</p> <p>Additional housing options opened since the original <i>Johnny</i> decision near the Encampment; rooms there were held for</p>	Injunction to close encampment granted; Order allows individuals to apply for constitutional exemptions on an individual basis where options are not truly accessible to them	Condition in <i>Stewart</i> still apply (and were met)	<p>Issue before the Court was not the constitutionality of clearing the encampment, but whether the municipality had complied with conditions set in <i>Prince George (City) v Stewart</i>, 2021 BCSC 2089.</p> <p>The encampments at issue were not the only spaces where persons could shelter ¶22-4, though sheltering was only permitted overnight in those locations.</p>

		people at the Encampment			
	Saanich, BC				
20.	<i>Saanich (District) v Brett</i> , 2018 BCSC 1648	Interim injunctions sought by the District and BC governments to evict an encampment on lands owned by these parties (parkland and land designated for highway use) <i>Charter</i> raised in defence Bylaw allowed sheltering in parks overnight, individuals to use the park during the day	Injunction to close encampment granted (for 10 months)	None	This was an interlocutory injunction application, not a Charter application. Court did not conduct a Charter analysis.
	Toronto, ON				
21.	<i>Black et al. v. City of Toronto</i> , 2020 ONSC 6398	Encampments in municipal parks Underlying claims under ss. 7, 12, and 15 of the <i>Charter</i> and the <i>Human Rights Code</i>	Injunction to prevent encampment closure denied	None	This was an injunction motion that did not determine the Charter issues. The Court found the municipality had sufficient indoor shelter: ¶5.
22.	<i>Church of Saint Stephen et al. v. Toronto</i> , 2023 ONSC 6566	Encampment on city land outside a church Underlying claim under s. 7 of the <i>Charter</i>	Injunction to prevent encampment closure sought on behalf of unhoused individuals Injunction to prevent encampment closure denied	None	This was an injunction motion that did not determine the Charter issues. There were other locations in the municipality, aside from the encampment, where persons were permitted to shelter outdoors: ¶32.
	Vancouver, BC				
23.	<i>Vancouver Parks Board v. Mickelson</i> , 2003 BCSC 1271	Parks Board sought injunction against individuals living/erecting tents in a park Defendants raised <i>Charter</i> ss. 2(b) / (d), 7, and 15	Injunction to clear encampment granted	None	This decision was pre- <i>Victoria (City) v. Adams</i> , 2009 BCCA 563.

24.	<i>Vancouver Board of Parks and Recreation v. Sterritt</i> , 2003 BCSC 1421	Parks Board sought injunction against individuals living/erecting tents in a park Defendants intend to raise <i>Charter</i> defences and Aboriginal rights	Injunction to clear encampment granted	None	This decision was pre- <i>Victoria (City) v. Adams</i> , 2009 BCCA 563 .
25.	<i>Vancouver Board of Parks and Recreation v. Williams</i> , 2014 BCSC 1871	Parks Board sought an injunction against individuals living/erecting tents in a park Encampment residents raised s.7 <i>Charter</i> issues	Matter adjourned to the following week to allow for full argument Interim order made regarding the conditions at the park to address health and safety issues	N/A	None
26.	<i>Vancouver Board of Parks and Recreation v. Williams</i> , 2014 BCSC 1926	Same as 2014 BCSC 1871	Injunction to clear encampment granted	Injunction to begin on date that the City indicated more housing would come online	This was an injunction application and there is no <i>Charter</i> analysis.
27.	<i>Vancouver (City) v Wallstam</i> , 2017 BCSC 937	City sought an injunction to remove encampment from a site owned by the City S. 7 raised in encampment residents' underlying application	Injunction to clear encampment denied <i>without prejudice to the City's ability to bring it again</i>	N/A	None
28.	<i>Vancouver Fraser Port Authority v Brett</i> , 2020 BCSC 876	Same encampment as in 2014 BCSC 1926 – individuals returned, now migrated/extended onto VFPA lands Encampment on VFPA lands are publicly owned and used for private commercial purposes S. 7 <i>Charter</i> rights raised	Injunction sought to clear encampment granted	None	This was an injunction case, but the Court also rejected that there could be any <i>Charter</i> argument here: [98] I reject the analogy of the VFPA lands to areas of parklands, airports, or Parliament Hill. The VFPA lands are private property and not intended for public use, other than by licence, and the use being made of them by the residents is not permitted under the Regulations .

29.	<i>Bamberger v Vancouver (Board of Parks and Recreation)</i> , 2022 BCSC 49	<p>Injunction sought by City to close encampment in a Vancouver park</p> <p>Charter rights raised</p> <p>Application for JR of two Orders of the Board: (1) prohibiting overnight sheltering at a park where there is an encampment; (2) closing an area in the park that was previously open for overnight sheltering</p> <p>Board sought injunction to enforce Orders and a municipal parks bylaw</p> <p>Bylaw allows sheltering overnight only in city parks</p> <p>S. 7 Charter rights raised</p>	<p>Encampment residents' application for judicial review granted – breach of procedural fairness, Orders not reasonable</p> <p>Board's injunction adjourned pending reconsideration of the Orders</p>	N/A	The reason the orders were “not reasonable” was that they did not achieve a proportionate balance between the petitioners' Charter rights and the objectives of the relevant By-Law (paras 149 -150).
30.	<i>Vandenberg v Vancouver (City) Fire and Rescue Services</i> , 2023 BCSC 2104	<p>Fire Order to clear tents/structures from city blocks issued in respect of an existing encampment</p> <p>Ss. 7 and 15 of Charter raised</p>	Encampment residents' application for judicial review granted – breach of procedural fairness	N/A	None
Victoria, BC					
31.	<i>Victoria (City) v. Adams</i> , 2008 BCSC 1363	Claim under ss. 7 and 12 to City bylaw prohibiting sleeping in parks overnight	Application granted – s. 7 infringed where the number of homeless people in the City exceeds the number of available shelter beds and sheltering overnight not permitted (prohibition is both arbitrary and overbroad)	N/A	None

32.	<i>Victoria (City) v. Adams</i> , 2009 BCCA 563 (appeal of 2008 BCSC 1363)	Claim under ss. 7 and 12 to City bylaw prohibiting sleeping in parks overnight	Application granted – s. 7 infringed where the number of homeless people in the City exceeds the number of available shelter beds and sheltering overnight not permitted (prohibition is overbroad)	N/A	Court did not consider gross disproportionality because it had not been argued in the decision below.
33.	<i>Victoria (City) v. Thompson</i> , 2011 BCSC 1810	Encampment in public square in Victoria; City sought injunction to clear encampment S. 2(b) Charter arguments raised by encampment residents	Injunction to clear encampment granted	None	This was a protest encampment, not a survival encampment (paras. 1-5).
34.	<i>Johnston v. Victoria (City)</i> , 2011 BCCA 400 (appeal of 2010 BCSC 1707)	Individual charged with violating City bylaw by sheltering in parks during the daytime; appealed convictions, made s. 7 Charter arguments	Conviction remains; Charter arguments rejected (upholds <i>Adams</i> re: overnight sheltering only)	None	The appellant was a self-represented unhoused person who did not file any evidence in support of his position (para. 5).
35.	<i>British Columbia v. Adamson</i> , 2016 BCSC 584 [“ <i>Adamson I</i> ”]	Interim injunction sought by province to evict encampment on green space at a courthouse property in Victoria	Injunction to clear encampment denied	N/A	None.
36.	<i>British Columbia v. Adamson</i> , 2016 BCSC 1245 [“ <i>Adamson 2</i> ”]	Same encampment as in <i>Adamson 1</i> , 3 months later Injunction sought by province for this second time	Injunction to clear encampment granted	Residents to remove tents/belongings “as housing becomes available, and by not later than August 8, 2016” (order made July 5)	This was an injunction application. Charter was not considered.

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

THE REGIONAL MUNICIPALITY OF WATERLOO

Appellant
(Applicant/Cross Respondent)

and

THE ATTORNEY GENERAL FOR ONTARIO

Appellant
(Intervener)

JOSEPHINA DUGAS, TERRA-LYNN WEBER, AVERY AMENT, AARON PRICE, JEREMY LINTON, JEREMY NICHOL, JAMES HAMMOND, JAKOB STUBBS, JAMES DAVIS, JASON PAUL, NOAH HELSBY, JOSEPH BRADLEY, JOSEPH SADLER, JULIE YOUNG, KYLE YORK, MEGAN LOPES, STEPHANIE MCMILLAN, JEFFREY COUTO, JORDAN CAMM, TERRANCE COLE, XANDER HARKER, CHARLES KOCHER, ALINE JEFFERY, MICHAEL JEFFERY, AND PERSONS UNKNOWN

Respondents
(Respondents/Cross-Applicants)

CERTIFICATE

1. An order under subrule 61.09(2) is not required.
2. The Respondents estimate that they will require 3 hours for the oral argument.
3. The factum complies with subrule 61.12(5.1).
4. The number of words contained in Parts I to V of this factum is 13,986.
5. I am satisfied as to the authenticity of every authority cited in the factum.

Dated this October 9, 2026.



**Ashley Schuitema, Joanna Mullen, Shannon Down, Anna Rosenbluth,
Robin Nobleman and Adrian Merdzan
Lawyers for the Respondents**

SCHEDULE “A”

List of Authorities in order of reference:

1. *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, [2023 ONSC 670](#).
2. *British Columbia v. Adamson*, [2016 BCSC 584](#).
3. *Maple Ridge (City) v. Scott*, [2019 BCSC 157](#).
4. *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, [2025 ONSC 4774](#).
5. *Housen v. Nikolaisen*, [2002 SCC 33](#).
6. *Canada (Director of Investigation and Research) v. Southam Inc.*, [1997 CanLII 385](#) (S.C.C.).
7. *Canada (Attorney General) v. Bedford*, [2013 SCC 72](#).
8. *Carter v. Canada (Attorney General)*, [2015 SCC 5](#).
9. *Fair Voting BC v. Canada (Attorney General)*, [2025 ONCA 581](#).
10. *Société des casinos du Québec inc. v. Association des cadres de la Société des casinos du Québec*, [2024 SCC 13](#).
11. *Animal Justice v. Ontario (Attorney General)*, [2026 ONCA 380](#).
12. *Tsilhqot'in Nation v. British Columbia*, [2014 SCC 44](#).
13. *R. v. Spence*, [2005 SCC 71](#).
14. *Canadian Council for Refugees v. Canada (Citizenship and Immigration)*, [2023 SCC 17](#).
15. *R. v. Kloubakov*, [2025 SCC 25](#).
16. *Quebec (Attorney General) v. Kanyinda*, [2026 SCC 7](#).
17. *Toronto (City) v. Ontario (Attorney General)*, [2021 SCC 34](#).
18. *La Rose v. Canada*, [2023 FCA 241](#).
19. *Victoria (City) v. Adams*, [2009 BCCA 563](#).
20. *Abbotsford (City) v. Shantz*, [2015 BCSC 1909](#).
21. *The Corporation of the City of Kingston v. Doe*, [2023 ONSC 6662](#).
22. *Heegsma v. Hamilton (City)*, [2024 ONSC 7154](#), appeal pending in COA-25-CV-0166.
23. *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994 CanLII 117](#) (S.C.C.).
24. *Poff v. City of Hamilton*, [2021 ONSC 7224](#).

25. *Black et al. v. City of Toronto*, [2020 ONSC 6398](#).
26. *Church of Saint Stephen et al. v. Toronto*, [2023 ONSC 6566](#).
27. *Prince George (City) v. Johnny*, [2025 BCSC 1556](#).
28. *Matsqui-Abbotsford Impact Society v. Abbotsford (City)*, [2024 BCSC 1902](#) (leave to appeal granted [2025 BCCA 78](#)).
29. *Ontario (Attorney General) v. G.*, [2020 SCC 38](#).
30. *R. v. Nur*, [2015 SCC 15](#).
31. *Quebec (Attorney General) v. Senneville*, [2025 SCC 33](#).
32. *R. v. Heywood*, [\[1994\] 3 S.C.R. 761](#).
33. *R. v. Appulonappa*, [2015 SCC 59](#).
34. *Victoria (City) v. Adams*, [2008 BCSC 1363](#).
35. *R. v. Penunsi*, [2019 SCC 39](#).
36. *Bracken v. Fort Erie (Town)*, [2017 ONCA 668](#).
37. *R. v. Schmidt*, [2014 ONCA 188](#).
38. *London (City) v. Polewsky*, [2005 CanLII 38742](#) (Ont. C.A.).
39. *R. v. Boudreault*, [2018 SCC 58](#).
40. *Papasotiriou-Lanteigne v. Tsitsos*, [2023 MBCA 66](#).
41. *Freeway Properties Inc. v. Genco Resources Ltd.*, [2012 BCCA 258](#).
42. *Essex (County) v. Enbridge Gas Inc.*, [2025 ONCA 268](#).
43. *Cycle Toronto v. Ontario (Attorney General)*, [2026 ONCA 582](#).
44. *R. v. Malmo-Levine; R. v. Caine*, [2003 SCC 74](#).
45. *R. v. Gill*, [2012 ONCA 607](#).
46. *Revell v. Canada (Citizenship and Immigration)*, [2019 FCA 262](#).
47. *R. v. Safarzadeh-Markhali*, [2016 SCC 14](#).
48. *R. v. Lloyd*, [2016 SCC 13](#).
49. *R. v. Bissonnette*, [2022 SCC 23](#).
50. *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002 SCC 1](#).
51. *Canada (Attorney General) v. PHS Community Services Society*, [2011 SCC 44](#).

52. *Cambie Surgeries Corporation v. British Columbia (Attorney General)*, [2022 BCCA 245](#) (leave to S.C.C. refused).
53. *R. v. Hills*, [2023 SCC 2](#).
54. *New Brunswick (Minister of Health and Community Services) v. G.(J.)*, [1999 CanLII 653](#) (S.C.C.).
55. *Société de l'Acadie du Nouveau-Brunswick v. Canada (Prime Minister)*, [2026 SCC 22](#).
56. *Taylor v. Newfoundland and Labrador*, [2026 SCC 5](#).
57. *Winnipeg Child and Family Services v. K.L.W.*, [2000 SCC 48](#).
58. *Quebec (Attorney General) v. 9147-0732 Québec inc.*, [2020 SCC 32](#).
59. *Nevsun Resources Ltd. v. Araya*, [2020 SCC 5](#).
60. *R. v. Ewanchuk*, [1999 CanLII 711](#) (S.C.C.).
61. *R. v. Sharma*, [2022 SCC 39](#).
62. *Fraser v. Canada (Attorney General)*, [2020 SCC 28](#).
63. *Eldridge v. British Columbia (Attorney General)*, [1997 CanLII 327](#) (S.C.C.).
64. *R. v. Barton*, [2019 SCC 33](#).
65. *Miron v. Trudel*, [1995 CanLII 97](#) (S.C.C.).
66. *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999 CanLII 687](#) (S.C.C.).
67. *Egan v. Canada*, [1995 CanLII 98](#) (S.C.C.).
68. *Dickson v. Vuntut Gwitchin First Nation*, [2024 SCC 10](#).
69. *Andrews v. Law Society of British Columbia*, [\[1989\] 1 S.C.R. 143](#).
70. *Falkiner v. Ontario (Minister of Community and Social Services)*, [2002 CanLII 44902](#) (Ont. C.A.).
71. *Granovsky v. Canada (Minister of Employment and Immigration)*, [2000 SCC 28](#).
72. *Quebec v. Montréal (City); Quebec v. Boisbriand (City)*, [2000 SCC 27](#).
73. *Syndicat Northcrest v. Amselem*, [2004 SCC 47](#).
74. *Tanudjaja v. Canada (Attorney General)*, [2013 ONSC 5410](#).
75. *Tanudjaja v. Canada (Attorney General)*, [2014 ONCA 852](#).
76. *R. v. Banks*, [2007 ONCA 19](#).
77. *R. v. Oakes*, [1986 CanLII 46](#) (S.C.C.).

78. *Thomson Newspapers Co. v. Canada (Attorney General)*, [1998 CanLII 829](#) (S.C.C.).
79. *R. v. Michaud*, [2015 ONCA 585](#).
80. *Taylor v. Hanley Hospitality Inc.*, [2022 ONCA 376](#).
81. *R. v. Find*, [2001 SCC 32](#).

SCHEDULE “B”

Statutes, Regulations and By-laws in alphabetical and numerical order:

[Accessible Canada Act, S.C. 2019, c. 10](#)

Definitions

2 The following definitions apply in this Act.

Accessibility Commissioner means the member of the Canadian Human Rights Commission that is appointed under [subsection 26\(1\)](#) of the [Canadian Human Rights Act](#) and that is referred to in that Act as the “Accessibility Commissioner”. (commissaire à l’accessibilité)

barrier means anything — including anything physical, architectural, technological or attitudinal, anything that is based on information or communications or anything that is the result of a policy or a practice — that hinders the full and equal participation in society of persons with an impairment, including a physical, mental, intellectual, cognitive, learning, communication or sensory impairment or a functional limitation. (obstacle)

broadcasting undertaking has the same meaning as in [subsection 2\(1\)](#) of the [Broadcasting Act](#). (entreprise de radiodiffusion)

Canadian carrier has the same meaning as in [subsection 2\(1\)](#) of the [Telecommunications Act](#). (entreprise canadienne)

disability means any impairment, including a physical, mental, intellectual, cognitive, learning, communication or sensory impairment — or a functional limitation — whether permanent, temporary or episodic in nature, or evident or not, that, in interaction with a barrier, hinders a person’s full and equal participation in society. (handicap)

Minister means the member of the Queen’s Privy Council for Canada designated under [section 4](#). (ministre)

personal information has the same meaning as in section 3 of the Privacy Act. (renseignements personnels)

regulated entity means an entity or person referred to in subsection 7(1). (entité réglementée)

Standards Organization means the Canadian Accessibility Standards Development Organization established under subsection 17(1). (organisation de normalisation)

telecommunications service provider has the same meaning as in [subsection 2\(1\)](#) of the [Telecommunications Act](#). (fournisseur de services de télécommunication)

[Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 \(U.K.\), 1982, c. 11](#)

Rights and freedoms in Canada

1 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.

Life, liberty and security of person

7 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.

Equality before and under law and equal protection and benefit of law

15 (1) Every individual is equal before and under the law and has the right to the 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.

Affirmative action programs

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability

Courts of Justice Act, [R.S.O. 1990, c. C.43](#)

New trial

134 (6) A court to which an appeal is taken shall not direct a new trial unless some substantial wrong or miscarriage of justice has occurred. R.S.O. 1990, c. C.43, s. 134 (6); 1994, c. 12, s. 46 (1).

Housing Services Act, 2011, [S.O. 2011, c. 6, Sched. 1](#)

Housing and homelessness plans

6 (1) Each service manager shall have a plan to address housing and homelessness. 2011, c. 6, Sched. 1, s. 6 (1).

What plan must include

(2) The plan must include,

- (a)** an assessment of current and future housing needs within the service manager's service area;
- (b)** objectives and targets relating to housing needs;
- (c)** a description of the measures proposed to meet the objectives and targets;
- (d)** a description of how progress towards meeting the objectives and targets will be measured; and
- (e)** such other matters as may be prescribed. 2011, c. 6, Sched. 1, s. 6 (2).

Requirements relating to provincial interest, policy statements

(3) The plan must,

(a) address the matters of provincial interest under section 4, including each aspect described in a clause of subsection 4 (1); and

(b) be consistent with the policy statements issued under section 5. 2011, c. 6, Sched. 1, s. 6 (3).

Prescribed requirements

(4) The plan must comply with the prescribed requirements. 2011, c. 6, Sched. 1, s. 6 (4).

Period of plan

(5) The period covered by the plan must extend for at least the minimum period described in subsection (6) after the plan was approved or, if the plan is reviewed under subsection 10 (1), after the review was completed. 2011, c. 6, Sched. 1, s. 6 (5).

Minimum period

(6) The minimum period referred to in subsection (5) is 10 years or such other period as may be prescribed. 2011, c. 6, Sched. 1, s. 6 (6).

Time for initial plan

(7) A service manager shall approve its initial plan on or before the prescribed date. 2011, c. 6, Sched. 1, s. 6 (7).

Human Rights Code, [R.S.O. 1990, c. H.19](#)

Definitions re: Parts I and II

10 (1) In Part I and in this Part,

“age” means an age that is 18 years or more; (“âge”)

“disability” means,

(a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,

(b) a condition of mental impairment or a developmental disability,

(c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,

(d) a mental disorder, or

(e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*; (“handicap”)

“equal” means subject to all requirements, qualifications and considerations that are not a prohibited ground of discrimination; (“égal”)

“family status” means the status of being in a parent and child relationship; (“état familial”)

“group insurance” means insurance whereby the lives or well-being or the lives and well-being of a number of persons are insured severally under a single contract between an insurer and an association or an employer or other person; (“assurance-groupe”)

“harassment” means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome; (“harcèlement”)

“marital status” means the status of being married, single, widowed, divorced or separated and includes the status of living with a person in a conjugal relationship outside marriage; (“état matrimonial”)

“record of offences” means a conviction for,

(a) an offence in respect of which a pardon has been granted under the *Criminal Records Act* (Canada) and has not been revoked, or

(b) an offence in respect of any provincial enactment; (“casier judiciaire”)

“services” does not include a levy, fee, tax or periodic payment imposed by law; (“services”)

“spouse” means the person to whom a person is married or with whom the person is living in a conjugal relationship outside marriage. (“conjoint”) R.S.O. 1990, c. H.19, s. 10 (1); 1993, c. 27, Sched.; 1997, c. 16, s. 8; 1999, c. 6, s. 28 (8); 2001, c. 13, s. 19; 2001, c. 32, s. 27 (2, 3); 2005, c. 5, s. 32 (8-10); 2005, c. 29, s. 1 (1).

Pregnancy

(2) The right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant. R.S.O. 1990, c. H.19, s. 10 (2).

Past and presumed disabilities

(3) The right to equal treatment without discrimination because of disability includes the right to equal treatment without discrimination because a person has or has had a disability or is believed to have or to have had a disability. 2001, c. 32, s. 27 (4).

Ontario Disability Support Program Act, 1997, S.O. 1997, c. 25, Sch. B

Person with a disability

4 (1) A person is a person with a disability for the purposes of this Part if,

(a) the person has a substantial physical or mental impairment that is continuous or recurrent and expected to last one year or more;

(b) the direct and cumulative effect of the impairment on the person’s ability to attend to his or her personal care, function in the community and function in a workplace, results in a substantial restriction in one or more of these activities of daily living; and

(c) the impairment and its likely duration and the restriction in the person's activities of daily living have been verified by a person with the prescribed qualifications. 1997, c. 25, Sched. B, s. 4 (1).

Determination

(2) A determination under this section shall be made by a person appointed by the Director. 1997, c. 25, Sched. B, s. 4 (2).

Trespass to Property Act, R.S.O. 1990, c. T.21

Definitions

1 (1) In this Act,

“occupier” includes,

(a) a person who is in physical possession of premises, or

(b) a person who has responsibility for and control over the condition of premises or the activities there carried on, or control over persons allowed to enter the premises,

even if there is more than one occupier of the same premises; (“occupant”)

“premises” means lands and structures, or either of them, and includes,

(a) water,

(b) ships and vessels,

(c) trailers and portable structures designed or used for residence, business or shelter,

(d) trains, railway cars, vehicles and aircraft, except while in operation. (“lieux”) R.S.O. 1990, c. T.21, s. 1 (1); 2025, c. 5, Sched. 2, s. 1.

Trespass an offence

2 (1) Every person who is not acting under a right or authority conferred by law and who,

(a) without the express permission of the occupier, the proof of which rests on the defendant,

(i) enters on premises when entry is prohibited under this Act, or

(ii) engages in an activity on premises when the activity is prohibited under this Act; or

(b) does not leave the premises immediately after he or she is directed to do so by the occupier of the premises or a person authorized by the occupier,

is guilty of an offence and on conviction is liable to a fine of not more than \$10,000. R.S.O. 1990, c. T.21, s. 2 (1); 2016, c. 8, Sched. 6, s. 1.

Arrest without warrant on premises

9 (1) A police officer, or the occupier of premises, or a person authorized by the occupier may arrest without warrant any person he or she believes on reasonable and probable grounds to be on the premises in contravention of section 2. R.S.O. 1990, c. T.21, s. 9 (1).

THE REGIONAL MUNICIPALITY OF WATERLOO ET AL. v.

Appellants

DUGAS ET AL, PERSONS UNKNOWN/TO BE ASCERTAINED

Respondents

**ONTARIO
COURT OF APPEAL**

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