

Court of Appeal Court File No.:
Superior Court of Justice Court File No.: CV-25-00000750-0000
CV-25-00001341-0000

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

THE REGIONAL MUNICIPALITY OF WATERLOO

Applicant
(Appellant)

and

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

Respondents
(Respondents in Appeal)

NOTICE OF APPEAL

THE APPELLANT, The Regional Municipality of Waterloo ("**Region**"), appeals to the Court of Appeal for Ontario from the Judgment of Justice Michael R. Gibson (the "**Application Judge**") dated May 21, 2026 (the "**Judgment**"), made in Kitchener, Ontario.

THE APPELLANT ASKS that the Judgment be set aside and orders be granted as follows:

- (a) a declaration that By-law Number 25-021 of the Region, *A By-law Respecting the Use of 100 Victoria Street North, Kitchener (as Owned by The Regional Municipality of Waterloo) to facilitate the Kitchener Central Transit Hub and other Transit Development* (the "**Site Specific By-law**"),

as amended January 9, 2026 by By-law Number 26-001 (the “**Amended By-law**”), complies with the *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 (“**Charter**”);

- (b) an order (“Injunction Order”), on such terms as this Court may deem just, that any persons having notice of the Injunction Order are restrained and enjoined from breaching the Amended By-law by remaining on and/or re-entering the property municipally known as 100 Victoria Street North, City of Kitchener (the “**Property**”) except as in accordance with the Amended By-law;
- (c) in the alternative, directions from this Court as to what steps must be taken by the Region to close the Encampment, as defined below, in a manner consistent with the *Charter*; and
- (d) Such further and other relief as counsel may advise and this Court deems just.

THE GROUNDS OF APPEAL are as follows:

1. On May 21, 2026, the Superior Court rendered the Judgment, issuing declarations that:
 - (a) The Site-Specific and the Amended By-Laws violate s.7 of the Canadian Charter of Rights and Freedoms, and are not justified under s.1 of the Charter;

- (b) The Site-Specific and the Amended By-Laws violate s.15(1) of the Canadian Charter of Rights and Freedoms, and are not justified under s.1 of the Charter; and,
 - (c) Pursuant to s.52(1) of the *Constitution Act, 1982*, the Site-Specific and the Amended By-Law are of no force and effect.
2. The Court further ordered that:
- (a) The application of the Region is dismissed;
 - (b) The cross-application of the Respondents is allowed in part;
 - (c) The Region is enjoined from enforcing or acting on any part of the Site-Specific By-Law or Amended By-Law;
 - (d) The Court shall remain seized of the matter; and
 - (e) Following its implementation of either a Safe Tenting Protocol, or the provision by the Region of an alternative Encampment site reasonably proximate to 100 Victoria Street, or both, the Region may seek further direction from the Court regarding its plan to clear the 100 Victoria Site for the purposes of the Kitchener Central Transit Hub.
3. The Site-Specific By-law and Amended By-law (collectively, the “**By-laws**”):
- (a) Provide for a phased closing of an encampment (the “**Encampment**”) located at 100 Victoria Street North, Kitchener (“**100 Vic**” or the “**Property**”) by preventing newcomers from residing at the Property following April 16,

2025 (“**Public Notice Date**”) and allowing those who were residing on the Property as of the Public Notice Date (“**Existing Residents**”) to remain onsite until April 1, 2026 (“**Closing Date**”);

- (b) Have the stated purpose of obtaining vacant possession of the Property by April 1, 2026, given the Region’s need to use the Property to facilitate the construction of the Kitchener Central Transit Hub (“**KCTH**”);
- (c) Was accompanied by a transition plan “**Transition Plan**” under which additional resources were allocated to provide capacity in indoor settings equivalent to the capacity that would be lost with the closing of the Encampment;
- (d) Establish the following in respect of Existing Residents, including through the Transition Protocol incorporated through the Amended By-law:
 - (i) Existing Residents cannot be removed from the Property before the Closing Date unless they have an offer in writing for alternative accommodation (with limited health and safety related exceptions). These “**Alternative Accommodations**” as defined in the Amended By-law include emergency shelters, transitional housing, affordable/supportive housing, motels, and other options;
 - (ii) In the event that an Existing Resident loses their Alternative Accommodation due to non-compliance with applicable rules, the Amended By-law provides that the Existing Resident will be referred

back to the Region's team of unsheltered support workers ("USWs") (who are all licenced professionals) and best efforts will be made to find a substitute option;

(iii) Existing Residents are guaranteed offers of social service supports of the same nature as provided at 100 Vic once they move into these Alternative Accommodations;

(iv) The Region will offer an Existing Resident transportation for themselves and their belongings, and coverage for up to 6 months of storage for additional belongings, at no cost to them.

(e) Further provide that the Region will offer to bring individuals who are not Existing Residents but are onsite at 100 Vic into the housing stability system and make efforts, subject to availability and cooperation, to provide those individuals with appropriate housing options.

4. In considering the Site-Specific and Amended By-laws, the Application Judge held that:

(a) He was bound by the doctrine of horizontal *stare decisis* to follow the Court's prior decision in *Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2023 ONSC 670 ("**Persons Unknown**") with respect to his analysis under s. 7 of the *Charter*, but not his analysis under s. 15;

(b) the Site-Specific and Amended By-laws infringed s. 7 of the *Charter* by depriving the respondents of their protected interests in life, liberty, and

security of the person in a manner that is grossly disproportionate to the Amended By-law's object;

(c) the Site-Specific and Amended By-laws infringed s. 15 of the Charter because:

(i) Homelessness should be recognized as an analogous ground of discrimination, and the Site-Specific and Amended By-laws discriminate against homeless individuals because they disproportionately impact homeless individuals in a manner that reinforces, perpetuates, and exacerbates disadvantage;

(ii) The Site-Specific and Amended By-laws disproportionately impact and discriminate against women and gender diverse persons, individuals with physical, mental health, and addiction disabilities, and Indigenous people, because they disproportionately impact these groups in a manner that reinforces, perpetuates, and exacerbates disadvantage.

(d) The infringements of ss. 7 and 15 could not be justified under s. 1 because the Site-Specific and Amended By-laws do not minimally impair the infringed *Charter* rights and because their deleterious effects are disproportionate to their salutary effects.

5. The Application Judge exceeded the court's proper constitutional role and made multiple errors of law and mixed fact and law, as set out below.

The Application Judge erred in finding that the By-laws infringe s. 7 of the Charter

6. The Application Judge erred in law, or mixed fact and law, as follows:

- (a) In concluding that he was bound by *stare decisis* to follow *Persons Unknown* with respect to s. 7 of the *Charter*. The Site Specific and Amended Bylaws had a different scope, purpose, and effects than the general Bylaw, applicable throughout the regional municipality, at issue in *Persons Unknown*;
- (b) In disregarding the different factual matrix, including the additional indoor sheltering capacity created through the Transition Plan, and the protections set out in the Transition Protocol;
- (c) In finding that the By-laws deprived individuals of their s.7 rights to life and security of the person, given the Transition Plan and Transition Protocol;
- (d) in finding that their s.7 right to liberty protected an individual's choice to reside on a specific property of which they are not an owner or tenant;
- (e) in finding that the By-laws failed to accord with the principles of fundamental justice, including in particular by finding gross disproportionality despite the narrow scope of this principle which applies only to extreme cases;
- (f) in concluding that s.7 incorporates a right to adequate housing, based upon non-binding commentaries on the *Universal Declaration of Human Rights* and the *International Covenant on Economic, Social, and Cultural Rights*;

- (g) in holding that the federal *National Housing Strategy Act*, SC 2019, c 29, s 313, necessarily strengthens the force that Canada's international obligations should play in interpreting the scope and content of section 7;
- (h) in finding that the Region's policy aspirations to end chronic homelessness in the long term, which are expressly contingent on receiving sufficient resources from other levels of government, as set out in the Region's *Plan to End Chronic Homelessness*, expands the interpretation of s.7;

The Application Judge erred in finding that the By-laws infringe s. 15(1) of the Charter

7. The Application Judge erred in law, or mixed fact and law, as follows:

- (a) in concluding, despite his holding on *stare decisis* with respect to s.7, that he was not bound by *Persons Unknown* with respect to s. 15 because *Quebec (Attorney General) v. Kanyinda*, 2026 SCC 7 ("**Kanyinda**"), was a subsequent decision that affected the validity of *Persons Unknown*'s analysis on that issue. This was an error, as *Kanyinda* does not alter the applicable test under s. 15;
- (b) in concluding that the By-laws infringe 15(1) on the basis of sex, race, and disability, when he did not identify a specific burden caused by the By-laws that particularly affects members of the affected groups;
- (c) in failing to consider the Region's evidence regarding the harms that members of affected groups experience when residing in encampments;

- (d) in that he incorrectly conflated overrepresentation of various protected groups in the homeless population with a distinction caused by the By-laws;
- (e) in finding that homelessness is a new analogous ground under s.15, ignoring precedent of the Superior Court that has rejected homelessness as an analogous ground;
- (f) in failing to apply the correct approach to establishing a new analogous ground as set out in *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203 (“**Corbiere**”);
- (g) in relying on the concurring decision of the Chief Justice of the Supreme Court of Canada in *Kanyinda* applying a modified approach to the recognition of analogous grounds under s. 15(1), despite the express rejection of the modified approach by two justices;

The Application Judge erred by finding that any violations of the *Charter* are not justified as “reasonable limits” under s. 1.

8. The Application Judge erred in law, or mixed fact as law, as follows:

- (a) in finding that the By-laws did not minimally impair the rights in issue. The Application Judge failed to apply deference to the Region’s policy choices in respect of complex issues of social policy;
- (b) in his balancing of the deleterious and salutary effects of the By-laws. In particular, the Application Judge erred in characterizing the anticipated benefits of the KCTH as “speculative”;

- (c) in going beyond the proper role of the court in his assessment of the policy options available to the Region; and
- (d) such further grounds as counsel may advise and this Court deems just

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

- (a) Sections 6(1)(b) of the *Courts of Justice Act*, RSO 1990, c C.43.
- (b) Rule 61 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.
- (c) The appeal is from a final order of a judge of the Superior Court of Justice from which no appeal lies to the Divisional Court.
- (d) Leave to Appeal is therefore not required for this appeal.

Dated this June 22, 2026

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