

**COURT OF APPEAL FOR ONTARIO**

**B E T W E E N:**

**THE REGIONAL MUNICIPALITY OF WATERLOO**

Appellant

-and-

**THE ATTORNEY GENERAL OF ONTARIO**

Appellant (Intervener)

-and-

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

Respondents

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**MOTION RECORD OF THE PROPOSED INTERVENER  
ONTARIO HUMAN RIGHTS COMMISSION**

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October 21, 2026

**ONTARIO HUMAN RIGHTS  
COMMISSION**

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The Mental Health Legal Committee**

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

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UNKNOWN**

Respondents

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**NOTICE OF MOTION FOR LEAVE TO INTERVENE  
ONTARIO HUMAN RIGHTS COMMISSION**

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**The Proposed Intervener**, the Ontario Human Rights Commission (OHRC) will make a motion to a single judge of the Court of Appeal for Ontario, pursuant to the Directions of the Case Management Judge, Huscroft J.A., dated July 23, 2026.

**PROPOSED METHOD OF HEARING:** In accordance with Justice Huscroft's Directions, the motion is to be heard in writing, if unopposed, or orally via Zoom.

**THE MOTION IS FOR:**

1. An order permitting the OHRC to intervene in this appeal as a friend of the Court for the purpose of assisting the Court by way of written and oral argument on the following terms:
  - a. The OHRC may file a factum of not more than 10 pages.
  - b. The OHRC may present oral argument of not more than 15 minutes at the hearing of the appeal.
  - c. The OHRC will not seek costs on the appeal nor shall costs be awarded against it; and
  - d. There will be no costs awarded to any party on this motion.
2. Such further and other orders as this Court may deem appropriate.

**THE GROUNDS FOR THE MOTION ARE:**

3. This appeal will address the effects of a municipality's sheltering restrictions on the section 7 and section 15 *Charter* rights of unhoused persons. It will provide appellate guidance on the analytical framework for constitutional challenges to municipal by-laws and their enforcement, which have the effect of preventing unhoused people from sheltering in public spaces.
4. The Court's decision is likely to affect the rights of many highly vulnerable and marginalized persons across Ontario. The OHRC is Ontario's statutory human rights

agency responsible for promoting and advancing the rights of all Ontarians and is well placed to represent these interests.

5. The OHRC was granted leave to intervene in *Heegsma v Hamilton (City)*. This Honourable Court recognized the OHRC's expertise in equality rights in the areas of homelessness, sex, race and disability and its unique perspective on the interpretation and application of sections 7 and 15 of the *Charter* in the context of homelessness.

6. In *Heegsma*, the Court ultimately declined to prescribe an analytical framework for cases involving *Charter* challenges to by-laws and municipal actions that affect unhoused people who shelter in municipal parks and on municipal lands. As this appeal presents an opportunity for the Court to do so, the OHRC once again seeks leave to intervene.

7. In constitutional cases, the threshold for intervention is more relaxed and the intervention criteria applied more flexibly. The OHRC's intervention meets all three of the intervention criteria.

8. The OHRC is a well-recognized statutory human rights body responsible for advancing, promoting and protecting human rights and the public interest in Ontario.

9. The OHRC's specialized expertise in rights under the *Charter* and Ontario *Human Rights Code* has been recognized by tribunals and all levels of courts. This expertise includes issues central to this appeal including substantive equality.

10. The OHRC has a real, substantial and identifiable interest in the subject matter of this proceeding and a history of involvement in *Charter* claims and other measures related to homeless encampments. This Honourable Court's decision will affect the

OHRC's efforts to promote and protect equality rights and advocate for municipalities to adopt a human rights-based approach to encampments.

11. The OHRC will provide a useful and distinct perspective and make a unique contribution. The OHRC's participation will assist the Court decide the legal issues raised in the appeal.

12. If permitted to intervene, the OHRC will make submissions on the proper analytical framework for evaluating *Charter* rights of homeless people that ensures their rights are not evasive of *Charter* scrutiny. Specifically, the OHRC will address the risk of allowing pre-existing disadvantage to obscure the unconstitutional effects of government action, by arguing that:

- i. The impugned government conduct must be framed in a holistic and contextual manner;
- ii. Dependence on public space is not a claim for government assistance; and
- iii. The ongoing need for shelter does not amount to a claim for permanent occupation or change the effects-based analysis.

13. In accordance with Justice Huscroft's Directions, the OHRC files a 10-page draft merits factum with this Notice of Motion setting out the OHRC's proposed arguments in detail.

14. The OHRC's participation will not cause prejudice to the parties and will not delay the proceeding. The OHRC will not expand the record, will not seek costs, and asks that it not be made subject to a costs order. The OHRC will avoid duplicating the submissions of any parties or interveners.

15. This motion is made pursuant to Rule 13.02 of the *Rules of Civil Procedure*.

16. Such further and other grounds as counsel may advise and this Honourable

Court may permit.

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

17. The Affidavit of Patricia DeGuire, sworn October 20, 2026 and the exhibits thereto;
18. The OHRC's proposed 10-page draft factum on the merits of the appeal if permitted to intervene;
19. Such further and other material as counsel may advise and this Court may permit.

October 21, 2026

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**AFFIDAVIT OF PATRICIA DEGUIRE**

Filed in support of the Ontario Human Rights Commission's  
Motion for Leave to Intervene  
(Sworn October 20, 2026)

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I, **Patricia DeGuire**, of the Regional Municipality of York, in the Province of Ontario,  
MAKE OATH AND SAY:

1. I am the Chief Commissioner of the Ontario Human Rights Commission (OHRC) and as such have knowledge of the matters to which I hereinafter depose.

2. The OHRC is constituted under the Ontario *Human Rights Code*, RSO 1990, c H 19 (*Code*), as the statutory human rights agency responsible for promoting and advancing respect for human rights and preventing discriminatory practices in Ontario. The OHRC was created in 1961 and was the first human rights commission established in Canada.

3. The OHRC has a broad mandate under section 29 of the *Code* including to protect human rights and the public interest in Ontario; promote understanding, acceptance of and compliance with the *Code*; undertake research into and make recommendations to eliminate discriminatory practices; and examine statutes, regulations, policies and programs for compliance with the *Code*.

4. The OHRC currently discharges its statutory obligations by developing policies, advancing law reform, initiating reviews and public inquiries, and engaging in strategic litigation.

5. As a result of 65 years of experience addressing equality rights in Ontario, the OHRC has substantial insight and expertise in responding to violations of the *Code* and the Canadian *Charter of Rights and Freedoms* (*Charter*).

**A. OHRC expertise in equality rights**

**i. OHRC expertise in *Code* and *Charter* litigation**

6. The OHRC is a leading statutory human rights body in Canada and has been at the forefront of developing rights jurisprudence in Canada.

7. The Superior Court of Ontario, this Honourable Court, and the Supreme Court of Canada (SCC) have recognized the OHRC's expertise in *Code* and *Charter* rights by granting it leave to intervene in numerous matters. This includes claims related to poverty and homelessness and the

12. The OHRC has also been a party or intervener in numerous equality rights cases at the SCC, starting with the foundational human rights decisions of *Ont Human Rights Comm v Simpsons-Sears*, [1985] 2 SCR 536 and *Ontario (Human Rights Commission) v Etobicoke (Borough of)*, [1982] 1 SCR 202.

13. Since then, the OHRC has been a party or an intervener in the following SCC cases involving the *Code* or *Charter*:

- *Attorney General of Québec v Joseph-Christopher Luamba, et al* (Case #41605);
- *English Montreal School Board, et al v Attorney General of Québec, et al* (Case #41231);
- *British Columbia Human Rights Tribunal v Schrenk*, 2017 SCC 62;
- *McCormick v Fasken Martineau DuMoulin LLP*, 2014 SCC 39;
- *Saskatchewan (Human Rights Commission) v Whatcott*, 2013 SCC 11;
- *R v NS*, 2012 SCC 72;
- *Moore v British Columbia (Education)*, 2012 SCC 61;
- *Alberta v Hutterian Brethren of Wilson Colony*, 2009 SCC 37;
- *Honda Canada Inc v Keays*, 2008 SCC 39;
- *Council of Canadians with Disabilities v Via Rail Canada Inc*, 2007 SCC 15;
- *Tranchemontagne v Ontario (Director, Disability Support Program)*, 2006 SCC 14;
- *Multani v Commission Scolaire Marguerite-Bourgeoys*, 2006 SCC 6;
- *Reference re Same-Sex Marriage*, 2004 SCC 79;
- *Syndicat Northcrest v Amselem*, 2004 SCC 47;
- *Québec (Commission des droits de la personne et des droits de la jeunesse) v le Procureur général du Québec*, 2004 SCC 39;
- *District of Parry Sound Social Services Administration Board v Ontario Public Service Employees Union, Local 324*, 2003 SCC 42;
- *B v Ontario (Human Rights Commission)*, 2002 SCC 66;
- *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44;
- *M v H*, [1999] 2 SCR 3;
- *Gibbs v Battlefords and District Cooperative Ltd*, [1996] 3 SCR 566; and
- *Renaud v Central Okanagan School District*, [1992] 2 SCR 970.

14. This Honourable Court and the SCC have recognized the significant overlap between the discrimination analysis under the *Code* and the *Charter*: *Fraser v Canada (AG)*, 2020 SCC 28 [Fraser] at paras 37-40, *Tranchemontagne v Ontario (Director, Disability Support Program)*, 2006 SCC 14 at para 83 and *British Columbia (Public Service Employee Relations Commission) v BCGSEU*, [1999] 3 SCR 3 at para 48.

rights of women, Indigenous persons, racialized persons and persons with disabilities. The OHRC has also been given leave to intervene to make arguments about the relationship between equality and rights and freedoms under sections 2 and 7 of the *Charter*.

8. For example, the Superior Court of Justice granted the OHRC leave to intervene in:
  - *Fair Change v His Majesty the King in Right of Ontario*, 2024 ONSC 1895;
  - *R v S(N)* (2009), 95 OR (3d) 735;
  - *Farris v Staubach Ontario Inc* (2004), 129 ACWS (3d) 969; and
  - *Ontario Jockey Club v SEIU, Local 528* (2001), 109 ACWS (3d) 785.
  
9. The Superior Court of Justice (Divisional Court) granted the OHRC leave to intervene in:
  - *Bokhari v. Top Medical Transportation Services*, 2026 ONSC 1073;
  - *Green v. Ontario (Human Rights Tribunal)*, 2025 ONSC 6223;
  - *London District Catholic School Board v Weilgosh*, 2023 ONSC 3857;
  - *Ontario (Community Safety and Correctional Services) v De Lottinville*, 2015 ONSC 3085;
  - *Taylor-Baptiste v OPSEU*, 2014 ONSC 2169; and
  - *City of Toronto v The Dream Team*, 2012 ONSC 3904.
  
10. The OHRC has also been a party to matters before the Divisional Court in cases such as *Fulton v Guan*, 2026 ONSC 2757, *The Estate of Marie Helen Agnes Sutherland Inishinapay v. Timmins and District Hospital*, 2026 ONSC 2434, *Aiken v Ottawa Police Services Board*, 2015 ONSC 3793 and *Her Majesty the Queen v WB and S*, 2011 ONSC 288, among others.
  
11. This Honourable Court granted the OHRC leave to intervene in:
  - *Heegsma v Hamilton (City)*, 2026 ONCA 726 [*Heegsma*];
  - *Ontario Teacher Candidates' Council v. Ontario (Education)*, 2023 ONCA 788;
  - *Ontario (Health) v Association of Ontario Midwives*, 2022 ONCA 458;
  - *Francis v Ontario*, 2021 ONCA 197;
  - *Canadian Civil Liberties Association v Canada*, 2019 ONCA 243;
  - *Hamilton-Wentworth District School Board v Fair*, 2016 ONCA 421;
  - *Taylor-Baptiste v Ontario Public Service Employees Union*, 2015 ONCA 495;
  - *Sarnia (City) v River City Vineyard Christian Fellowship of Sarnia*, 2015 ONCA 494;
  - *Tanudjaja v Canada (AG)*, 2014 ONCA 852 [*Tanudjaja*];
  - *Peel Law Association v Pieters*, 2013 ONCA 396;
  - *Shaw v Phipps*, 2012 ONCA 155; and
  - *Ontario (Disability Support Program) v Tranchemontagne*, 2010 ONCA 593.

15. The OHRC's interventions before courts and tribunals have dealt with the discrimination analysis under both the *Code* and *Charter*. As such the OHRC's expertise is relevant to the equality issues in this appeal.

**ii. OHRC expertise in human rights policy**

16. Section 30 of the *Code* authorizes the OHRC to approve and publish human rights policies to provide guidance on interpreting the *Code*. Section 45.5 of the *Code* states that the HRTO may consider OHRC policies in a proceeding before it and, where a party or an intervener requests it, the HRTO shall do so. Under section 31 of the *Code*, the OHRC can conduct inquiries in the public interest. OHRC policies, inquiry and consultation reports have been considered by all levels of Canadian courts.

17. The OHRC has published more than 25 policies and guidelines and has conducted numerous public inquiries and consultations dealing with a variety of human rights issues, including issues engaged by this *Charter* challenge. This includes its *Policy on human rights and rental housing*, *In the zone: Housing, human rights and municipal planning* and its *Report on the inquiry into rental housing licensing in the City of Waterloo*.

18. The Superior Court of Justice considered OHRC policies and reports in:

- *R v. Bailey*, 2026 ONSC 3745;
- *Brown v Bramalea City Centre et al.*, 2026 ONSC 2398;
- *R v. Hussey*, 2026 ONSC 350;
- *Farah v. Toronto Police Services Board*, 2026 ONSC 41;
- *R v. Murray*, 2025 ONSC 4127;
- *Erhirhie, et al. v. Martino (SIU)*, 2025 ONSC 8;
- *Ahmad v. Peel Regional Police Services Board*, 2024 ONSC 247;
- *The Children's Aid Society of the Regional*, 2024 ONSC 155;
- *R. v. Hassan*, 2023 ONSC 5040;
- *R. v. Byfield*, 2023 ONSC 4308;
- *R. v. Shears-Singh and Patterson*, 2022 ONSC 4440;
- *R. v. Haj*, 2022 ONSC 1457;
- *R v Theriault*, 2020 ONSC 6768;
- *R v Morris*, 2018 ONSC 5186;

- *Bellehumeur v Windsor Factory Supply Ltd*, 2013 ONSC 4373;
- *Jaffer v York University* (2009), 182 ACWS (3d) 90 (ONSC);
- *Association of Justices of the Peace of Ontario v Ontario (AG)* (2008), 92 OR (3d) 16;
- *Wynberg v Ontario* (2005), 252 DLR (4th) 10; and
- *Kulyk v Toronto Board of Education* (1996), 139 DLR (4th) 114.

19. This Honourable Court considered OHRC policies and reports in:

- *Khorsand v Toronto Police Services Board*, 2024 ONCA 597;
- *R v Morris*, 2021 ONCA 680;
- *R v Sitladeen*, 2021 ONCA 303;
- *R v Hudson*, 2021 ONCA 76;
- *R v Sharma*, 2020 ONCA 478;
- *Entrop v Imperial Oil* (2000), 50 OR (3d) 18;
- *Bannister v General Motors of Canada Ltd* (1998), 40 OR (3d) 577;
- *Ontario (Human Rights Commission) v Ontario* (1994), 19 OR (3d) 387; and
- *McKinney v University of Guelph*, (1987), 63 OR (2d) 1.

20. The Supreme Court of Canada considered OHRC policies and reports in:

- *R v Singer*, 2026 SCC 8;
- *R v Sharma*, 2022 SCC 39;
- *Fraser*;
- *R v Le*, 2019 SCC 34;
- *R v Grant*, 2009 SCC 32; and
- *Québec (Commission des droits de la personne et des droits de la jeunesse) v Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39.

### iii. OHRC expertise and interest in the issues in this appeal

22. The OHRC has unique and well-established expertise in the prohibited grounds of discrimination identified in this appeal. Since its inception, the OHRC has engaged in public consultation, policy development, public interest inquiries, strategic litigation and other forms of advocacy about the rights of women, Indigenous persons, persons with physical, mental health and substance use disabilities. This includes work that addresses the intersection between discrimination against these individuals and poverty, homelessness and encampments.

23. Health and well-being, including access to housing, is a priority area in the OHRC's current Strategic Plan *Human Rights First: A plan for belonging in Ontario*. This includes

addressing systemic concerns that contribute to and exacerbate physical and mental health issues for persons with disabilities, Indigenous populations, women and people with addictions.

24. Through litigation and public inquiries, the OHRC has advocated to increase access to housing for people with low-income including: inquiries into potentially discriminatory effects of municipal regulations that restrict the size and location of rental housing; submissions in *Kitchener (City) Official Plan Amendment No 58*, [2010] OMBD No 666 which called on the Ontario Municipal Board to analyze municipal regulations on “single person, low income households” and “residential care facilities and social/supportive housing” for discrimination; intervention in *Tanudjaja* which challenged Canada and Ontario’s policies and programs on affordable housing; and ongoing participation in *Fulton v Guan*, a section 7 and 15 *Charter* challenge to a defence in section 21(1) of the *Code* which allows discrimination where a tenant shares a kitchen or bathroom with the landlord.

25. The OHRC regularly makes submissions to all levels of government to bring a human rights approach to issues of poverty and homelessness. For example, the OHRC made recommendations to the federal government on its National Housing Strategy calling on the government to progressively realize the right to housing with a special focus on the rights of Indigenous peoples. The OHRC also provided a submission to the UN Special Rapporteur on Adequate Housing, on the responsibilities of sub-national governments with respect to the right to adequate housing.

26. Since the issue of encampments has come to the forefront of the homelessness crisis, the OHRC has taken a direct and substantial interest in encouraging municipalities to adopt a human rights-based rather than enforcement approach to encampments and shelters. The OHRC’s most recent effort in this regard was its participation as an intervener before this Honourable Court in *Heegsma*. In granting leave to intervene, Justice Favreau acknowledged that the OHRC would

make a useful contribution, writing “the OHRC can provide a unique perspective on issues on appeal, namely the interpretation and application of ss 7 and 15 of the Charter in the context of homelessness” (*Heegsma v Hamilton (City)*, 2025 ONCA 904 at para 25). Justice Favreau’s decision also recognized the OHRC’s “experience as an intervener at different levels of court in cases of public importance addressing equality rights in the areas of homelessness, sex, race and disability” (para 22). The purpose of the OHRC’s intervention in *Heegsma* was to fulfil its statutory mandate to promote and advance respect for human rights in Ontario by assisting the court apply a human-rights based approach to municipal policies regulating homeless encampments. This is also the purpose of the OHRC’s request to intervene in the present case.

27. Other prior encampment-related initiatives by the OHRC include:

- Issuing a public *Statement on human rights and encampments and shelter closings*. The OHRC supported the Office of the Federal Housing Advocate’s five urgent recommendations for all levels of government when addressing encampments.
- Writing to the City of Kingston in May 2024 about its plans to begin enforcing a daytime ban on camping in parks. A copy of the letter is attached hereto as Exhibit “A”.
- Writing to the Mayor of the Town of Aurora in March 2025 about his decision to veto a motion to reconsider a proposal from the Regional Municipality of York to build an emergency and transitional housing facility within the Town’s limits. A copy of the letter is attached hereto as Exhibit “B”.
- Releasing a Human Rights-Based Approach framework to help municipal governments apply a human rights approach to support municipal by-laws, policy, program and service system planning and implementation in a way that mitigates discrimination and disproportionate adverse impacts on vulnerable persons protected under the *Code*.

28. The outcome of this appeal will have a direct impact on the OHRC’s future work on homelessness, encampments and human rights. This Honourable Court’s decision on equality rights could affect the adjudication of all discrimination claims in Ontario related to encampments and the OHRC’s efforts to promote a human-rights based approach to municipal responses to homelessness and encampments.

**B. The OHRC's proposed position in this appeal**

29. If permitted to intervene, the OHRC will make arguments relating to its expertise in equality law. The OHRC will make submissions on the proper approach to evaluating the *Charter* rights of homeless people and avoiding pitfalls that can make those rights evasive of *Charter* scrutiny.

**C. Proposed terms for intervention**

30. The OHRC is asking that it be granted leave to intervene in this appeal to assist the Court by way of written and oral argument. It seeks leave to file a factum of not more than 10 pages, in substantially the same form as the draft factum filed with this motion, and to make oral argument at the hearing of the appeal.

31. The OHRC does not seek to add to the record, will not seek costs, and asks that it not be exposed to a costs order. The OHRC will take no position on the disposition of the appeal and will avoid duplicating the submissions of any parties or interveners.

32. This Affidavit is made in support of this motion for leave to intervene and for no improper purpose.

Sworn before me in person )  
at the City of Toronto, in the Province of )  
Ontario, this 20<sup>th</sup> day of October, 2026 )

  
\_\_\_\_\_  
NIKOLAI MCLEOD  
a Commissioner, etc. Province of Ontario  
pursuant to O. Reg. 386/12  
Commissioners for Taking Affidavits Act, for  
Ontario Human Rights Commission

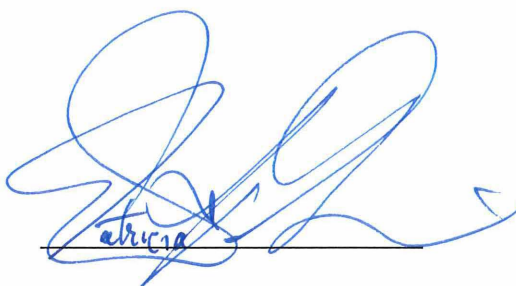
  
\_\_\_\_\_  
PATRICIA DeGUIRE

**Exhibit "A"**

OHRC letter to the City of Kingston  
May 1, 2024



This is Exhibit "A" to the Affidavit of Patricia DeGuire,  
sworn before me in person at the City of Toronto, in  
the Province of Ontario, on this 20<sup>th</sup> day of October, 2026



---

NIKOLAI MCLEOD

a Commissioner, etc. Province of Ontario  
pursuant to O. Reg. 386/12  
Commissioners for Taking Affidavits Act, for  
Ontario Human Rights Commission

Ontario  
Human Rights  
Commission

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Ontario

May 1, 2024

Mayor Bryan Paterson  
City Councillors  
City of Kingston  
216 Ontario Street  
Kingston, Ontario K7L 2Z3

Dear Mayor Paterson and Councillors:

The Ontario Human Rights Commission (OHRC) understands that the City of Kingston has announced plans to require unsheltered homeless persons at Belle Park to dismantle their shelters and pack up their belongings during the day. I am writing to urge Kingston instead to adopt a human rights-based approach to respond to the issue of encampments.

The growing reality of encampments and unsheltered homelessness raises issues of public importance squarely within the OHRC's expertise. The OHRC has been monitoring Ontario municipalities' response to the crisis of unsheltered homelessness. The OHRC recognizes the challenges municipalities face in addressing intersecting needs related to housing and homelessness, mental health and substance use issues, and poverty. All levels of government share responsibility, but municipalities are often on the front lines of addressing these systemic social problems.

There are almost 1400 encampments across the province and that municipalities are not adopting a consistent response to this growing concern. Some municipalities are seeking to implement a respectful and compassionate human rights-based approach. Others have emphasized enforcement which can involve municipal officials or police removing people, seizing, or disposing of possessions.

Some municipalities, including Kingston have applied to the courts for orders allowing them to enforce by-laws prohibiting encamping. Notably when municipalities have done so, courts have found that if there are not enough accessible shelter beds, the state cannot prevent homeless people from building their own shelter on public land without violating their Canadian Charter of Rights and Freedoms (*Charter*) right to life, liberty and security of the person. Courts have said that shelters are not truly accessible if they cannot accommodate couples, provide necessary services, accommodate mental and physical disability, or if they impose rules that cannot be followed due to addiction disabilities.

The OHRC is concerned that enforcing the daytime ban on camping could lead to breaches of the Ontario Human Rights Code and the *Charter*. Substantive equality means that municipalities must ensure their actions do not create or exacerbate disadvantage based on one or more prohibited grounds.

Demonstrating insufficient daytime shelter spaces is not the only way to establish discrimination. Adverse effects based on disability and sex, among other grounds, can result from having to take down shelters, pack up and store belongings or carry them around and then re-establish adequate shelter from the elements every night. Encampment residents, most of whom have physical, mental health and substance use disabilities, may suffer extreme hardship and increased risk of physical and psychological harm. If they cannot comply, they may be subjected to *Trespass to Property Act* notices, fines, and arrests.

Notably, enforcing the daytime ban may also make it very difficult for people to live in the encampment at all, effectively, resulting in forced evictions. Displacing persons to living conditions where they are more exposed to the elements or at increased risk because they cannot access healthcare, social and harm reduction services raises human rights concerns. Women and gender diverse persons experience challenges finding accessible and safe spaces and face heightened risks of gender-based harassment and violence if displaced from chosen communities where they feel safest.

Municipalities need to take extra measures to ensure that their response to homelessness reflects their duty to respect, protect and fulfill Indigenous peoples' distinct rights and a commitment to reconciliation. Indigenous peoples have rights under treaties, the Constitution and the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*. All encampments in Ontario are located on Indigenous peoples' traditional territories, engaging their distinct rights concerning land and self-determination. Also, Indigenous peoples are overrepresented among homeless people and more likely to be part of "outdoor" or "unsheltered" populations. Indigenous encampment residents and local Indigenous organizations, including those serving encampment residents or other unhoused residents in Kingston, must be meaningfully engaged in any measures regarding encampments. Actions that result in the forcible displacement of Indigenous persons in the absence of their free, prior, and informed consent violate *UNDRIP*.

In managing municipal parks and enforcing by-laws, municipalities are providing a service to the public. This public includes the unsheltered homeless population, as recognized in the *Kingston decision*. Any health and safety issues with encampments should be based on objective evidence, and not stereotypes. Steps to address legitimate health and safety concerns should be humane and tailored so that any adverse impact affects the rights of encampment residents as minimal as possible.

The OHRC encourages all levels of government to work cooperatively with each other and affected stakeholders, including encampment residents, community agencies and Indigenous organizations, to determine how best to fulfil the urgent need for housing

and shelter services while addressing legitimate health and safety concerns. This approach will help governments meet their legal obligations.

The OHRC's Human Rights Based Approach Framework (HRBA Framework) helps those designing policies and programs meet these standards. Further guidance on how a human rights-based approach applies in the context of encampments has been provided by the Federal Housing Advocate and the UN Special Rapporteur on the Right to Adequate Housing. The federal government has recently released Canada's Housing Plan and announced funds to support human rights-based community action plans that commit to a housing-first approach to ending encampments, and include supportive and transitional housing, housing-focused services, and rent supplements specifically dedicated to individuals living in encampments or experiencing homelessness.

The OHRC understands that Kingston and municipalities across the province want all their residents to have affordable, accessible, and dignified housing. However, requiring encampment residents to remove their shelter and belongings during the day exacerbates their marginalization and makes it more difficult to achieve this essential goal. Thus, the OHRC joins many other concerned citizens and organizations in calling on Kingston to adopt a human rights-based approach which focuses on the needs of the encampment residents and supports them to permanently transition out of homelessness.

The OHRC hopes that this letter is useful as the City of Kingston takes a decision in this complex, difficult societal challenge. The OHRC welcomes the opportunity to discuss and provide more information about the HRBA Framework and how it can be applied to the needs of Kingston's unsheltered homeless population.

Sincerely,



Patricia DeGuire  
Chief Commissioner  
Ontario Human Rights Commission

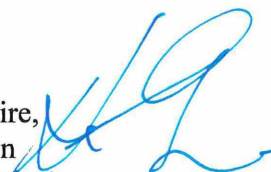
cc: President, Association of Municipalities of Ontario

**Exhibit "B"**

OHRC letter to the Town of Aurora,  
March 14, 2025



This is Exhibit "B" to the Affidavit of Patricia DeGuire,  
sworn before me in person at the City of Toronto, in  
the Province of Ontario, on this 20<sup>th</sup> day of October, 2026



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NIKOLAI MCLEOD  
a Commissioner, etc. Province of Ontario  
pursuant to O. Reg. 386/12  
Commissioners for Taking Affidavits Act, for  
Ontario Human Rights Commission

Ontario  
Human Rights  
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March 14, 2025

Mayor Tom Mrakas  
Town of Aurora  
Council of the Town of Aurora  
100 John West Way, Box 1000  
Aurora, Ontario L4G 6J1

Dear Mayor Mrakas and Members of Council,

**Re: Follow up to proposed emergency and transitional housing project at 14452 Yonge St.**

I am writing for the Ontario Human Rights Commission (Commission or OHRC) about the Town of Aurora's recent [Mayoral Decision #2025-006](#). That decision rejected a motion to reconsider the Regional Municipality of York's 2021 emergency and transitional housing proposal at 14452 Yonge Street.

The Commission first [wrote](#) to the Aurora Town Council on February 22, 2023, raising concerns that delaying or denying approval of this project may create barriers to establishing desperately needed emergency and transitional housing and may also be discriminatory under the Ontario *Human Rights Code* (*Code*).

Certain groups protected under the *Code* are disproportionately represented in the unhoused population. They are also more likely to require emergency and transitional housing and experience disproportionate harm when they do not have access to low-barrier, accessible housing options. This is particularly true for people receiving public assistance, Indigenous people, racialized people, and people living with disabilities including mental health disabilities, addictions, and complex trauma. A new [report](#) commissioned by the Association of Municipalities of Ontario provides more details on Ontario's homelessness crisis' human and financial costs.

A four-year delay in finding a suitable location while excluding viable options may result in a failure to meet the needs of vulnerable individuals protected under the *Code* and may be discriminatory. Under the Canadian *Charter of Rights and Freedoms*, a municipality's lack of sufficient low-barrier and accessible housing options for people

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experiencing homelessness can also limit its ability to prevent unhoused persons from sheltering in encampments on municipal property. This can be deemed as an administrative convenience which violates the *Charter* that can not be justified under it.

The Commission urges the Town of Aurora to consider all viable options, including the original proposed site at 14452 Yonge Street, and to expeditiously fulfil its obligation to provide transitional housing to meet the known needs of people experiencing homelessness in Aurora in accordance with sections 2.2.1, 6.1.3 and 8 of the Provincial Planning Statement 2024, issued under Ontario's *Planning Act*.

The Commission encourages the Town of Aurora to use a human rights-based approach to take advantage of funding available from the provincial and federal governments and find a solution to meet the emergency and transitional housing needs as soon as possible.

The OHRC welcomes the opportunity to discuss this matter further and provide more information about its Human Rights Based Approach (HRBA) Framework. In the meantime, the OHRC will continue to monitor the Town of Aurora's response and actions to address the urgent need for emergency and transitional housing in the community.

In keeping with the OHRC's commitment to public accountability and its duties in serving the people of Ontario, this letter and the responses received may be made public.

Sincerely,

Patricia DeGuire  
Chief Commissioner

cc: York Region Chair and CEO  
Housing York Inc.

**Court of Appeal File Nos. COA-26-CV-0836 and COA-26-CV-0897**

**THE REGIONAL  
MUNICIPALITY OF  
WATERLOO ET AL**

**-and-**

**DUGAS ET AL,  
PERSONS UNKNOWN/  
TO BE ASCERTAINED**

Appellants

Respondents

**COURT OF APPEAL FOR ONTARIO**

**AFFIDAVIT OF PATRICIA DEGUIRE  
(Affirmed on October 20, 2026)**

**ONTARIO HUMAN RIGHTS COMMISSION**  
180 Dundas Street West, 9<sup>th</sup> Floor  
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Court File Nos.: COA-26-CV-0836 and COA-26-CV-0897

**COURT OF APPEAL FOR ONTARIO**

**BETWEEN:**

**THE REGIONAL MUNICIPALITY OF WATERLOO**

Appellant

-and-

**THE ATTORNEY GENERAL FOR ONTARIO**

Appellant  
(Intervener)

-and-

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

Respondents

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**DRAFT FACTUM OF THE  
ONTARIO HUMAN RIGHTS COMMISSION**

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**ONTARIO HUMAN RIGHTS COMMISSION**  
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**Counsel for the Proposed Intervener,  
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**TO THIS HONOURABLE COURT**

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

## PART I – OVERVIEW

1. This appeal is being heard at a time when municipalities are grappling with how to address the growing reality of encampments and unsheltered homelessness in a constitutionally compliant manner. The outcome will impact the rights of many homeless and highly marginalized Ontarians and define the *Charter*<sup>1</sup> obligations of municipalities across the province.
2. This Honourable Court recently recognized the need for appellate guidance in cases involving *Charter* challenges to by-laws and their enforcement, which have the effect of preventing unhoused people from sheltering in public parks and other public spaces.<sup>2</sup> However, it found it should do so based on sound factual findings and a robust application of the s 7 and s 15 analysis by an Application Judge.<sup>3</sup> This case presents such an opportunity.
3. The Ontario Human Rights Commission (OHRC), Ontario’s statutory human rights agency, seeks leave to intervene to address key elements of the analytical framework that should be applied when assessing the constitutionality of sheltering restrictions. The framework should be guided by substantive equality and its animating principle, human dignity, and should address arguments that make state conduct that affects homeless people evasive of *Charter* scrutiny.
4. The OHRC takes no position on the outcome of the appeal.

## PART II – FACTS

5. The OHRC relies on the facts in the factums of the Respondents and *Amicus Curiae*.

## PART III – ARGUMENT

### **Pre-existing disadvantage must not obscure the unconstitutional effects of government action**

6. The OHRC supports the Respondents’ and *Amicus Curiae*’s arguments that substantive equality and its animating principle, human dignity, are central to ensuring a *Charter*-compliant

<sup>1</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* ([UK](#)), 1982, c 11 [*Charter*].

<sup>2</sup> *Heegsma v Hamilton (City)*, 2026 ONCA 726 at para 85 [*Heegsma ONCA*].

<sup>3</sup> *Ibid* at para 86.

response to encampments. This is consistent with the OHRC's and UN Special Rapporteur on the Right to Adequate Housing's call for a human rights-based approach to unsheltered homelessness.<sup>4</sup>

7. Substantive equality, or a human rights-based approach, focuses on effects on and outcomes for vulnerable and marginalized groups. It requires attention to the “full context of the claimant group’s situation”, the “actual impact of the law on that situation”, and the “persistent systemic disadvantages [that] have operated to limit the opportunities available” to that group’s members.<sup>5</sup>

8. Even without a s 15 claim, equality and human dignity inform the analysis of other *Charter* rights breaches, particularly under s 7.<sup>6</sup> This requires considering the social and legislative context in which impugned by-laws or enforcement actions operate,<sup>7</sup> and the actual effects of by-laws and their enforcement on life, liberty and security of the person.<sup>8</sup>

9. The Supreme Court of Canada (SCC) has cautioned against analytical approaches to substantive equality that “remove the challenged inequality from scrutiny, effectively taking it off the radar screen so as to circumvent examination of the equality issues at stake.”<sup>9</sup> It has

<sup>4</sup> Ontario Human Rights Commission, “[OHRC Statement on Human Rights and Encampments and Shelter Closings](#)” (15 December 2022); United Nations Human Rights Council, [Guidelines for the Implementation of the Right to Adequate Housing: Report of the Special Rapporteur on Adequate Housing](#), UNHRC, 43rd Sess, UN Doc A/HRC/43/43 (26 December 2019).

<sup>5</sup> *Withler v Canada (Attorney General)*, [2011 SCC 12](#) at para [43](#); *Kahkewistahaw First Nation v Taypotat*, [2015 SCC 30](#) at para [17](#).

<sup>6</sup> *New Brunswick (Minister of Health and Community Services) v G (J)*, [\[1999\] 3 SCR 46](#) at paras [112-115](#); *Inglis v British Columbia (Minister of Public Safety)*, [2013 BCSC 2309](#) at paras [375-378](#) [*Inglis*]; *Andrews v Law Society of British Columbia*, [\[1989\] 1 SCR 143](#) at [185](#); *R v Boudreault*, [2018 SCC 58](#) at paras [77, 83](#).

<sup>7</sup> *Winnipeg Child and Family Services v K LW*, [2000 SCC 48](#) at para [71](#).

<sup>8</sup> *Canada (AG) v Bedford*, [2013 SCC 72](#) at paras [70, 86](#) [*Bedford*]; *Canada (AG) v PHS Community Services Society*, [2011 SCC 44](#) at paras [4, 10, 93](#) [*PHS*]; *The Regional Municipality of Waterloo v Persons Unknown and to be Ascertained*, [2023 ONSC 670](#) at para [117](#) [*Waterloo #1*].

<sup>9</sup> *Fraser v Canada (AG)*, [2020 SCC 28](#) at para [92](#) [*Fraser*].

rejected arguments that people’s pre-existing marginalization is the sole cause of harmful effects saying that the risks associated with their circumstances do not absolve the state of responsibility for actions that make them more vulnerable to those harms.<sup>10</sup>

10. To make the *Charter* “responsive to new social, political, and historical realities”<sup>11</sup>, the thrust of the SCC’s jurisprudence has been to expand consideration of socioeconomic disadvantage as an intersectional and contextual factor that can bolster s 7<sup>12</sup> and s 15 claims.<sup>13</sup> Socioeconomic status, poverty, social exclusion, stigmatization and other sources of marginalization, can create or amplify discrimination connected to prohibited grounds.<sup>14</sup> Homelessness has been recognized as a life circumstance that can exacerbate a law’s effect on the right to life, liberty and security of the person.<sup>15</sup> It is also relevant to determining whether a s 7 breach is justified under *Charter* s 1.<sup>16</sup>

11. In contrast to this approach, the Appellants’ arguments rely on the Respondents’ homelessness and pre-existing disadvantage to shield the effects of the site-specific by-law and Code of Use By-Law (CUB) from constitutional scrutiny. This includes:

- i. Framing the impugned government conduct and claimant group in a formalistic, compartmentalized fashion that obscures the full effects of the legislative scheme on the claimants and groups to which they belong;
- ii. Characterizing unsheltered persons’ dependence on public space for survival as seeking to constitutionalize a right to state assistance; and
- iii. Treating the ongoing need for shelter as a claim for permanent occupation of land.

<sup>10</sup> *Quebec (AG) v Alliance du personnel professionnel et technique de la santé et des services sociaux*, 2018 SCC 17 at para 41. See also *Bedford*, *supra* note 8 at para 89.

<sup>11</sup> *Quebec (AG) v Kanyinda*, 2026 SCC 7 at para 33 [*Kanyinda*].

<sup>12</sup> *PHS*, *supra* note 8 at paras 4-10; *Bedford*, *supra* note 8 at paras 64, 70, 86.

<sup>13</sup> *Kanyinda*, *supra* note 11 at paras 39-40; *Fraser*, *supra* note 9 at para 57.

<sup>14</sup> *Ibid* at para 40.

<sup>15</sup> *R v Ndhlovu*, 2022 SCC 38 at paras 46, 56, 135.

<sup>16</sup> *Ibid* at para 135.

12. The circumstances that make unsheltered persons vulnerable cannot be used to deny them *Charter* protection. The focus must remain on actual effects and outcomes, not on the characterization the claims.

**i. The impugned government conduct must be framed in a holistic and contextual manner**

13. In *Jacob v Canada (AG)*, this Honourable Court affirmed the importance of correctly framing the impugned state action before undertaking the s 15 analysis.<sup>17</sup> It reaffirmed this principle in the context of encampment cases when it said “[i]n order to conduct a proper analysis of whether the City has breached the appellants’ *Charter* rights, the first step is to clearly define what is being challenged.”<sup>18</sup>

14. The Respondents challenge the combined effect of the site-specific by-law closing the Victoria Street encampment and the CUB, which prohibits sheltering on all other Region-owned property, on all homeless persons in the Region who need a place to shelter as an option of last resort. The Region argues that the *Charter* analysis should consider only the rights of specific persons living in the encampment on a certain date (“Existing Residents”). It argues it has not breached the *Charter* because they have been offered individualized housing plans. The Attorney General supports the Region’s characterization and bases its arguments on the premise that the alternative to the encampment is living indoors in temporary shelter, even though this is not an option for all homeless people in the Region.

15. Where, as in this case, the parties disagree on the framing, it is first necessary for the Court to determine what the impugned state action is and whose rights are impacted. Consistent with substantive equality, this must be done using a “holistic” and contextual approach which

<sup>17</sup> *Jacob v Canada (AG)*, [2024 ONCA 648](#) at paras [54–60](#) [*Jacob*].

<sup>18</sup> *Heegsma* ONCA *supra* note 2 at para [104](#).

considers the combined effect of and outcomes that result from a law's interaction with other statutes or circumstances.<sup>19</sup>

16. It must also be based on the “circumstances of both the individual bringing the *Charter* application and the group to which the individual belongs.”<sup>20</sup> The SCC has highlighted the evidence that is helpful: “(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.”<sup>21</sup> [Emphasis in original]

17. Compartmentalizing government conduct into discrete elements and arguing that each, in isolation, does not breach the rights of specific individuals is fundamentally at odds with substantive equality and the contextual approach required under s 7. It fails to consider that discrimination is often systemic and a product of the combined effect of legislation, regulations, policies, discretionary conduct and/or enforcement actions.<sup>22</sup> It reflects the kind of rigid formalism that has been repeatedly rejected by the SCC.<sup>23</sup>

18. *Charter* claims should not need to be litigated one affected individual at a time.

Unhoused people face significant barriers to accessing justice. The Appellants' framing and arguments, if accepted, would prevent any encampment *Charter* claim from succeeding so long as claimants are offered alternative shelter, leaving all other homeless people in a region who do not have meaningful access to indoor shelter without recourse.

19. Access to indoor shelter should not be a zero-sum game. If a municipality can avoid a *Charter* violation by offering a person living in an encampment an existing shelter bed, that bed

<sup>19</sup> *Jacob*, *supra* note 17 at paras [59–60](#), [68](#); *Ontario v G*, [2020 SCC 38](#) at para [51](#) [*Ontario v G*].

<sup>20</sup> *Ontario v G*, *supra* note 19 at para [7](#).

<sup>21</sup> *Kanyinda*, *supra* note 11 at para [52](#).

<sup>22</sup> *Fraser*, *supra* note 9 at para [31](#).

<sup>23</sup> *Kanyinda*, *supra* note 11 at para [35](#); *Law v Canada (Minister of Employment and Immigration)*, [1999 CanLII 675](#) (SCC) at para [3](#).

may no longer be available to another homeless person. Constitutionalizing an approach that only considers the rights of existing encampment residents would mean that their *Charter* rights could be vindicated by potentially infringing the rights of others.

20. Even if a municipality commits some additional resources for Existing Residents before closing an encampment, it means people living in the encampment on a particular day are better off than people who happened to be sleeping rough. These individuals still do not have access to indoor shelter and, because of the encampment closure, cannot erect shelter without breaking the law. This risks creating an “immediate disadvantage” for those living outside encampments,<sup>24</sup> effectively creating a hierarchy of rights among the unhoused.

21. Justices Valente and Gibson properly recognized that the only way to avoid this result is having a broad understanding of the claimant group.

22. Courts have recognized that governments should not be able to circumvent previous findings of unconstitutionality by making minor alterations to legislation that leave their unconstitutional impacts in place.<sup>25</sup>

23. Therefore, this Honourable Court should adopt an analytical framework that requires municipalities to address the substance of any *Charter* violation, rather than seeking ways around it. The framework should make clear that the s 7 and s 15 analyses must be applied to the combined effect of government conduct (including any interaction between by-laws and any enforcement actions) on the rights of individual claimants and other unhoused persons in a

<sup>24</sup> *Waterloo #1* *supra* note 8 at para 94.

<sup>25</sup> *British Columbia Teachers' Federation v British Columbia*, [2016 SCC 49](#) (adopting the reasons of Justice Donald's dissent in *British Columbia Teachers' Federation v British Columbia*, [2015 BCCA 184](#)). The Court struck down a bill that was substantially similar to an earlier law that had been found unconstitutional because the effects remained the same.

region. In this case, the analysis should consider the impact of the closure of the encampment combined with the general prohibition on encamping on the Region's homeless population.

**ii. Dependence on public space is not a claim for government assistance**

24. The OHRC submits that an individual's dependence on public space to meet their most basic needs does not transform a challenge to government restrictions into a demand for government assistance. For unhoused individuals who have no private space in which to shelter, reliance on public property is a consequence of their pre-existing disadvantage. That disadvantage should inform the assessment of the restrictions' constitutional effects, rather than become a basis for shielding those restrictions from *Charter* scrutiny.

25. Ontario's argument illustrates this concern. Ontario submits that the application judge "effectively constitutionalized a positive right to appropriate 100 Victoria for use as a permanent encampment."<sup>26</sup> A challenge to government restrictions does not become a demand for state assistance simply because the claimants' pre-existing disadvantage makes them uniquely vulnerable to those restrictions.

26. The SCC has invoked the "aphoristic fallacy" of "the law forbidding the rich and poor alike from sleeping under bridges" to illustrate the limits of formal equality reasoning that disregards underlying power imbalances.<sup>27</sup> The Appellants' approach risks reproducing the same reasoning: treating individuals who have no private alternatives as though they stand in the same position as those who do. The lack of private alternatives for unhoused people should inform the constitutional analysis, not determine whether their claim is justiciable.

<sup>26</sup> Factum of the AG at para 59.

<sup>27</sup> *Saskatchewan Federation of Labour v Saskatchewan*, 2015 SCC 4 at para [56](#) (context of bargaining power of employers and employees). See also *R v Vinogradsky*, [2020 ONSC 5617](#), citing this decision in rejecting formal equality reasoning that disregarded an accused's heightened risk of harm).

27. In *Bedford*, Ontario argued that a challenge to restrictions on sex work amounted to a “veiled assertion of a positive right to vocational safety”.<sup>28</sup> The SCC disagreed.<sup>29</sup> The applicants were not seeking state assistance to make sex work safe; they challenged laws that prevented them from taking measures to protect themselves against existing risks. Similarly, the question here is whether restrictions on individuals taking steps to shelter themselves comply with the *Charter*; not whether the state is required to provide them with shelter.

28. In *Chaoulli*, the SCC Court considered restrictions on seeking private health insurance, despite the government's concern that permitting private alternatives would divert resources from the public healthcare system and reduce the quality of care.<sup>30</sup> Those concerns did not allow the government to evade constitutional scrutiny. Nor did the argument about consequences for public health care transform the claim into a demand for positive assistance.<sup>31</sup>

29. Notably, unlike the claimants in *Chaoulli*, unhoused individuals lack private resources to meet their basic needs. Their dependence on public space should not make their claim any less amenable to *Charter* scrutiny. Concerns about competing uses of public resources may be relevant at the justification stage, but do not, by themselves, determine whether a claim asserts a positive right.

**iii. The ongoing need for shelter does not amount to a claim for permanent occupation or change the effects-based analysis**

30. The ongoing nature of the need for shelter should not be conflated with a demand for permanent occupation of public property. In *Adams*, the British Columbia Court of Appeal

<sup>28</sup>*Bedford*, *supra* note 8 at para [88](#). See also *Inglis*, *supra* note 6. (rejecting the argument that a challenge to the cancellation of an existing mother-baby program amounted to a claim for positive assistance, notwithstanding that operating the program required the expenditure of public funds.

<sup>29</sup>*Bedford*, *supra* note 8 at para [88](#).

<sup>30</sup>*Chaoulli v Quebec (AG)*, [2005 SCC 35](#) at paras [105–108](#), [135–136](#), [152](#).

<sup>31</sup>*Ibid* at paras [104](#), [108](#).

rejected the argument that restrictions on self-sheltering engaged a positive right to shelter or a property right.<sup>32</sup> Although *Adams* concerned temporary overnight sheltering, that factual distinction does not resolve whether restrictions affecting people who require shelter on a continuing basis comply with the *Charter*.

31. Although the constitutionality of daytime sheltering restrictions alone is not directly at issue in this appeal, Ontario’s argument concerning the permanence of encampments has broader implications. Other municipalities have sought to prevent unhoused persons from remaining in place by requiring shelters to be taken down and re-erected daily. In these *Charter* challenges, courts have either focused on the timing of encampment evictions or the sufficiency of daytime sheltering options.<sup>33</sup> However, this is not the proper focus.

32. A substantive equality analysis<sup>34</sup> cannot ignore the practical effects of restrictions that distinguish between temporary and ongoing sheltering. For some unhoused individuals, particularly people with disabilities, the ability to dismantle, move and safeguard possessions during the day and re-establish shelter at night cannot be assumed. Such requirements may be uniquely taxing and deprive them of the ability to shelter themselves at all.<sup>35</sup>

33. In *Matsqui-Abbotsford Impact Society v Abbotsford (City)*, the British Columbia Supreme Court recognized that while dismantling and re-erecting shelter daily “may be feasible for able-bodied unhoused individuals, it imposes a significant and distinct burden on those with

<sup>32</sup> *Victoria (City) v Adams*, [2009 BCCA 563](#) at paras [94–101](#) [*Adams*].

<sup>33</sup> *The Corporation of the City of Kingston v Doe*, 2023 ONSC 6662 at paras [57–58](#); *Heegsma v Hamilton (City)*, [2024 ONSC 7154](#) at para [14](#).

<sup>34</sup> *Kanyinda*, *supra* note 11 at paras [35–36](#).

<sup>35</sup> The burdens of complying with daytime bans for persons with disabilities may include: the effect of having to carry belongings during the day; the risk of loss of survival items; the inability to keep medication safe or administer it; an increased risk of overdose; increased barriers to accessing medical care; and increased risks associated with inclement weather. See *The Regional Municipality of Waterloo v Named Respondents and Persons Unknown*, [2025 ONSC 4774](#) at paras [89](#), [91](#) (for a discussion of these various impacts among others).

disabilities, making compliance challenging or even impossible for them.”<sup>36</sup> The Court further observed that such requirements could force persons with disabilities to choose between violating the law and foregoing shelter altogether.<sup>37</sup>

34. The unique burdens that restrictions on temporary sheltering impose on persons with disabilities demonstrate why a distinction between temporary and ongoing sheltering cannot, on its own, determine whether a claim seeks positive assistance or relief from government restrictions. For individuals who cannot dismantle and re-establish shelter each day, the opportunity to shelter may be illusory unless they can maintain shelter on an ongoing basis. The need for continuity may therefore reflect the practical effects of disability and pre-existing disadvantage, rather than a demand for a positive right to permanently occupy public property.

35. In addition to concerns about the duration of occupation, the Appellants rely on arguments about competing uses of public space and the interests of other members of the public. The SCC has repeatedly held that government objectives are not considered as part of the s 7 or 15 analysis but are properly addressed at the s 1 justification stage. They should not foreclose proper constitutional scrutiny at the outset.

#### **PART IV – ORDER SOUGHT**

36. The OHRC does not seek costs, and costs should not be awarded against it.

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

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Reema Khawja and Nika Farahani  
Counsel, Ontario Human Rights Commission

<sup>36</sup> *Matsqui-Abbotsford Impact Society v Abbotsford (City)*, [2024 BCSC 1902](#) at para [87](#).

<sup>37</sup> *Ibid* at para [198](#).

**CERTIFICATE OF AUTHENTICITY**

I, Reema Khawja, counsel for the proposed intervener, the Ontario Human Rights Commission, certify that I am satisfied as to the authenticity of every authority cited in this factum, pursuant to Rule 4.06.1(2.1) of the *Rules of Civil Procedure*.

October 21, 2026

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Reema Khawja  
Counsel, Ontario Human Rights Commission

## SCHEDULE “A” – List of Authorities

### Case Law

*Andrews v Law Society of British Columbia*, [\[1989\] 1 SCR 143](#)

*British Columbia Teachers' Federation v British Columbia*, [2016 SCC 49](#)

*British Columbia Teachers' Federation v British Columbia*, [2015 BCCA 184](#)

*Canada (AG) v Bedford*, [2013 SCC 72](#)

*Canada (AG) v PHS Community Services Society*, [2011 SCC 44](#)

*Chaoulli v Québec (AG)*, [2005 SCC 35](#)

*Fraser v Canada (AG)*, [2020 SCC 28](#)

*Heegsma v Hamilton (City)*, [2026 ONCA 726](#)

*Heegsma v Hamilton (City)*, [2024 ONSC 7154](#)

*Inglis v British Columbia (Minister of Public Safety)*, [2013 BCSC 2309](#)

*Jacob v Canada (AG)*, [2024 ONCA 648](#)

*Kahkewistahaw First Nation v Taypotat*, [2015 SCC 30](#)

*Law v Canada (Minister of Employment and Immigration)*, [1999 CanLII 675 \(SCC\)](#) *Matsqui-Abbotsford Impact Society v Abbotsford (City)*, [2024 BCSC 1902](#)

*New Brunswick (Minister of Health and Community Services) v G(J)*, [\[1999\] 3 SCR 46](#)

*Ontario (AG) v G*, [2020 SCC 38](#)

*Québec (AG) v Alliance du personnel professionnel et technique de la santé et des services sociaux*, [2018 SCC 17](#)

*Quebec (AG) v Kanyinda*, [2026 SCC 7](#)

*R v Boudreault*, [2018 SCC 58](#)

*R v Ndhlovu*, [2022 SCC 38](#)

*R v Vinogradsky*, [2020 ONSC 5617](#)

*Saskatchewan Federation of Labour v Saskatchewan*, [2015 SCC 4](#)

*The Corporation of the City of Kingston v Doe*, [2023 ONSC 6662](#)

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

*The Regional Municipality of Waterloo v Persons Unknown and to be Ascertained*, [2023 ONSC 670](#)

*Victoria (City) v Adams* [2009 BCCA 563](#)

*Withler v Canada (AG)*, [2011 SCC 12](#)

*Winnipeg Child and Family Services v K LW*, [2000 SCC 48](#)

## **Secondary Sources**

Ontario Human Rights Commission, [“OHRC Statement on Human Rights and Encampments and Shelter Closings](#) (December 15, 2022)

United Nations Human Rights Council, [Guidelines for the Implementation of the Right to Adequate Housing: Report of the Special Rapporteur on Adequate Housing](#), UNHRC, 43rd Sess, UN Doc A/HRC/43/43 (26 December 2019)

## **SCHEDULE “B” – LEGISLATION**

*Canadian Charter of Rights and Freedoms, s 1 and s 15(1), Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11*

### **Legal Rights**

#### **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 Rights**

#### **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.

**THE REGIONAL  
MUNICIPALITY OF  
WATERLOO et al**

Appellants

-and-

**DUGAS et al,  
PERSONS UNKNOWN/  
TO BE ASCERTAINED**

Respondents

**Court File Nos. COA-26-CV-0836 and COA-26-CV-0897**

**COURT OF APPEAL FOR ONTARIO**

**MOTION RECORD OF THE PROPOSED  
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