

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)

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PART I. DECISION APPEALED FROM

1. The Regional Municipality of Waterloo (“**Region**”) appeals from the Judgment of Justice Gibson dated May 21, 2026, declaring that By-laws to implement a phased closing of a homeless encampment (the “**By-laws**”, defined below) infringed ss.7 and 15 of the *Charter* and were not saved by s.1.¹ Justice Gibson remained seized, to allow the Region to seek further direction following provision of either an alternative encampment site or a Safe Tenting Protocol.

PART II. OVERVIEW

2. The Region owns land at 100 Victoria Street North, Kitchener (“**Property**”) upon which a group of unhoused individuals have erected an encampment (“**Encampment**”). The Region and its contractual partner Metrolinx require the Property to facilitate the construction of the Kitchener Central Transit Hub (“**KCTH**”), a major public infrastructure project with benefits to all residents of the region.

3. As of April 2025, there were approximately 40 persons residing at the Encampment. The Region enacted a site-specific By-law (“**Original By-law**”), accompanied by a plan (“**Transition Plan**”) to ensure a phased closure in which all Encampment residents at the time of public notice of the By-law would be offered alternative accommodation, tailored to their specific needs, under individualized housing plans (“**IHPs**”) developed over a 7-month period. The Region allocated new resources to create additional capacity for approximately 40 persons in its housing stability system (a combination of rent supplements, supportive housing, and motel rooms), to match the number of Encampment residents who would be displaced. Those who transitioned from the

¹ [2026 ONSC 2971](#) (“**Decision**”).

Encampment would thereby benefit from indoor shelter in permanent structures with a roof over their heads.

4. The Region chose to provide alternative indoor accommodation options rather than a replacement encampment site or sites. The Region had a reasonable basis for preferring this policy option – Gibson J. accepted that encampments are “miserable and desperate place[s]”, and this Encampment was plagued by violence, drug use, and safety hazards including substantial fires.² In such a complex area as homelessness, the Region’s policy judgment is the kind of decision to which courts should defer.

5. What the Region did not do with the By-laws, and could never have done in the short term, is address the unmet needs of the substantial homeless population outside of the Encampment. Waterloo region, like many municipalities, has an acute overall shortage of facilities (emergency shelters, supportive housing, transitional housing, subsidized housing, tiny homes, motel rooms) for the rapidly increasing number of unhoused persons in the municipality. According to statutorily mandated ‘point in time’ (“**PIT**”) counts, the overall homeless population in Waterloo region increased from 1,085 in September 2021 to 2,371 in October 2024, despite the Region’s significant expenditures on homelessness programs, which tripled over roughly the same period. Overall capacity in the Region’s system falls well short of these numbers.

6. For these longer-term issues, the Region has a Plan to End Chronic Homelessness by 2030 (“**PECH**”) adopted in April 2024. However, the PECH is expressly contingent on increased involvement and resources from the federal and provincial governments and other stakeholders.

² Decision, paras. [4](#), [79](#), [250](#).

7. The Region sought a determination of the constitutionality of the Original By-law, or alternatively directions on what was required to close the Encampment in a *Charter*-compliant manner. Encampment residents obtained an interim injunction on August 20, 2025 against the By-law's enforcement,³ which prevented the Region from limiting occupancy to those who were already there ("**Injunction Decision**"). Thus, even though the Region's unsheltered support worker ("**USW**") team of licensed professionals worked with individual residents and transitioned many of them to indoor alternative accommodation, they were largely replaced by newer arrivals.

8. Following the Injunction Decision, the parties attended a 2-day mediation with Justice Sharpe. Though the mediation did not succeed, the Region amended the By-law on January 9, 2026 ("**Amended By-law**"; together with the Original By-law, the "**By-laws**") to respond to some criticisms, adding a Transition Protocol that guaranteed a written offer of alternative accommodation to all occupants who were residing at the Encampment on April 16, 2025 ("**Existing Residents**"), extending the deadline for vacant possession to April 1, 2026, and providing that more recent arrivals would be taken into the housing stability system and offered alternative accommodation as resources permitted. By mid-February 2026, no Existing Residents remained, 22 more recent arrivals had been transitioned to alternative accommodation, and only 10-15 occupants were left at the site.⁴ The Region reasonably expected that provided it could prevent further new arrivals, it could wind down the Encampment without any forced evictions.

9. The Application Judge ("**AJ**") did not analyze the By-laws and Transition Plan as a targeted response to the specific needs of the Encampment's occupants who would be displaced by the KCTH. Rather, he held that the Region must either address the needs of the entire homeless

³ *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, [2025 ONSC 4774](#).

⁴ Decision, para. [67](#).

population in the municipality before the Property could be used for the KCTH, or provide another encampment. In effect, he held that when shelter spaces are insufficient to accommodate the entire homeless population, one encampment can only be replaced by another – not by creating additional capacity in the housing stability system to compensate for the closure as the Region had done, thereby replacing the Region’s policy judgment with his own. This was not a proper exercise of the judicial function and amounted to an error of law.

10. The AJ further erred in concluding that he was bound as a matter of *stare decisis* by the 2023 decision of Justice Valente in *Persons Unknown*,⁵ which declared that a region-wide prohibition on encampments was invalid in relation to the Encampment as a violation of s.7. That decision considered a region-wide by-law with different scope and purposes, and consequently a different analysis of arbitrariness and gross disproportionality. Justice Gibson also incorporated into his gross disproportionality analysis non-binding international law sources in a manner that effectively gives a veto to each occupant against closure of an encampment.

11. Effectively, the AJ ruled that where the homeless population exceeds accessible shelter capacity, an encampment can only be closed if it is replaced by another encampment or “safe tenting” equivalent. Increasing indoor shelter capacity to replace an encampment is ruled out. That, with respect, is not a conclusion that meets the test for gross disproportionality. It is a policy preference for encampments.

12. Further, in holding that the By-laws infringe s.15, the AJ departed from existing caselaw on encampments rejecting discrimination claims by certain groups – women, gender-diverse individuals, Indigenous persons, and those with substance-use disorder and other mental and

⁵ *The Regional Municipality of Waterloo v. Persons Unknown*, [2023 ONSC 670](#) (“*Persons Unknown*”).

physical disabilities – based on their overrepresentation in the homeless population. In so doing, he failed to distinguish between disadvantage that exists independently of the By-laws, and the effects of the By-laws themselves. His Honour went further, recognizing homelessness as a new analogous ground under s.15. These holdings conflict with the weight of precedent and constitute further errors. They make it virtually impossible for municipalities to craft practical solutions that address the complex and diverse needs of the homeless.

PART III. FACTS

A. Homelessness in the Waterloo Region

13. The Region’s responsibilities and jurisdiction are generally set out in the *Municipal Act*.⁶ Like other municipalities in this province, the Region is prohibited from planning budget deficits,⁷ and it is heavily reliant on funding from the federal and provincial governments. The Region does not have jurisdiction beyond its territory, nor over many policy areas which affect homelessness.

14. Although the Region has no real power to address the root causes of homelessness, it has made significant investments in addressing this complex and “wicked”⁸ problem. The Region almost tripled its spending on homelessness programs between 2021 and 2025, from \$23 million to \$65 million per year.⁹ It directly operates various emergency shelters, transitional and supportive housing units, and is the primary funder of others. It is also implementing an ambitious plan to add over 2,500 new affordable housing units over 5 years.¹⁰

⁶ *Municipal Act, 2001*, [S.O. 2001, c. 25](#) [“**Municipal Act**”].

⁷ *Municipal Act*, s. [289](#).

⁸ Alton Cross, AB, Tab 9, Q104-105, pp. 188-189.

⁹ Decision, paras. [16](#), [69](#).

¹⁰ 1st Sweeney Cross, AB, Tab 10, Q98, p. 191.

15. The Region's team of licensed USWs¹¹ work in collaboration with unhoused individuals to develop and implement IHPs, personalized plans designed to match individuals with housing options reflecting their specific needs and preferences to the greatest extent possible.¹²

16. In April 2024 the Region adopted the PECH, with a goal of ending chronic homelessness by 2030.¹³ The PECH is a policy document that provides a general roadmap for strategies to end chronic homelessness in the Waterloo region over the longer term. It is expressly contingent on investment "from all sectors and all levels of government".¹⁴

17. Despite these efforts, however, the unhoused population in the Region continues to grow. As noted above, in September 2021, 1,085 people were counted as experiencing homelessness, with 75% classified as experiencing chronic homelessness.¹⁵ By October 2024, those numbers had increased to 2,371 and 78% respectively.¹⁶ This is consistent with provincial trends,¹⁷ which show significant growth in unhoused populations over the last few years attributed to a complicated confluence of national and international factors.¹⁸ This growth is projected to continue, with the province-wide unhoused population expected to double by 2035.¹⁹

18. The Region's efforts to address homelessness go well beyond provincial averages. Between 2021 and 2025, the overall homeless count in the province increased by 49.1%, with the average

¹¹ A registered nurse, social workers, and social support workers.

¹² 1st Sweeney, AB, Tab 11, paras. 13-14, p. 193.

¹³ Decision, para. [17](#).

¹⁴ Ex. "A", 1st Sweeney ["PECH"], AB, Tab 12, p. 196.

¹⁵ Decision, para. [2](#).

¹⁶ Decision, para. [2](#).

¹⁷ Ex. "C", 2nd Pin ["Municipalities Update"], AB, Tab 13, p. 198.

¹⁸ Municipalities Update, AB, Tab 14, p. 200.

¹⁹ Decision, para. [1](#). In 2025/early 2026, there were approximately 25 other encampments in the region, and approximately 57-115 people reported residing at these sites.: 3rd Sweeney Undertakings, AB, Tab 15, Q10, p. 202.

increase in municipal funding being 48.2%.²⁰ In the Waterloo region, however, the PIT Count increased by 118% over almost the same period, while the Region's operating budget for homelessness programs increased by 183%.²¹

19. There is no dispute that unhoused persons are vulnerable, that many suffer from addictions and/or mental and physical disabilities, or that Indigenous persons are overrepresented in this general population. The Region works constantly to ameliorate these challenges.

B. The Encampment and the Respondents

20. The Property is a lot devoid of permanent structures or buildings. It is not a public park, nor is it normally open for public use. Despite this, since approximately December 2021, the Property has been the site of the Encampment, comprised of unhoused individuals and the tents and other temporary structures they have erected.

21. The Named Respondents are all individuals who have recently experienced homelessness in the Region. Many (but not all) have previously resided at the Property. Some may be current occupants of the Encampment, or Existing Residents as defined above. Many attest to challenging personal and financial situations, and to addictions and/or mental and physical health difficulties.

22. The Encampment has caused significant public health and safety concerns, including overcrowding, improperly disposed of drug paraphernalia, fire hazards, violence between residents, significant garbage accumulation, rodent activity, human urine and feces, and construction of semi-permanent structures with no apparent adherence to building standards.²²

²⁰ Decision, para. [3](#); Municipalities Update, AB, Tab 16, p. 204.

²¹ Decision, para. [3](#).

²² Decision, para. [75](#).

Violence increased in the months before January 2026, and there were several major fires in February 2026.²³ There have been at least 5 deaths at the Encampment.²⁴

23. These challenges are consistent with experiences in other encampments. The Region's expert Dr. Sharon Koivu – a physician with over 40 years of experience in Ontario, including 13 years as an addiction physician²⁵ – opined that encampments “pose extensive health and safety risks to the people living [in them] as well as public health and safety risks to the community”.²⁶ These risks render encampments “not a safe alternative to housing or to a shelter”.²⁷

24. While Dr. Koivu recognizes that emergency shelters and motels are not perfect solutions to homelessness nor risk-free, her evidence is that encampment living carries far more risks to inhabitants than emergency shelters and motels, and that health and safety outcomes are better when individuals are staying indoors.²⁸ Emergency shelters typically implement safeguards to mitigate the risks associated with congregate living, including social distancing, mask wearing, cleaning of linens, and onsite medical support, such that the evidence demonstrates their ability to successfully contain outbreaks of diseases.²⁹ Such strategies, however, are not similarly available in encampments.³⁰ Shelters are also preferable because their staff have strategies for addressing and containing physical and/or sexual violence which are not available in lawless encampments.³¹

²³ 1st Sweeney, AB, Tab 17, paras. 94, 99-104, pp. 206-209; 1st Moss, AB, Tab 18, paras. 9-10, 29-32, pp. 211-213; 5th Sweeney, AB, Tab 19, paras. 3-7, pp. 215-216; Exs. A-E, 5th Sweeney, Tab 20, pp. 219-233.

²⁴ Decision, para. 74.

²⁵ Koivu, AB, Tab 21, paras. 1-2, p. 235.

²⁶ Koivu, AB, Tab 22, para. 17, p. 237.

²⁷ Koivu, AB, Tab 23, paras. 118, 126, pp. 239-241.

²⁸ Koivu Cross, AB, Tab 24, Q220-233, pp. 243-254.

²⁹ Koivu, AB, Tab 25, paras. 59-61, pp. 256-257.

³⁰ Koivu, AB, Tab 25, para. 61, p. 257.

³¹ Koivu, AB, Tab 26, paras. 70-73, 79-82, pp. 259-261.

25. The AJ accepted the evidence of Dr. Koivu.³² On the health risks of encampments vis-à-vis indoor shelter, she was not substantially contradicted by the Respondents' medical experts.

26. Recognizing both the dangers of encampment living and the practical reality of the situation, the Region has taken significant steps to ameliorate the living conditions on the site, including hiring on-site security and pest control, arranging for regular cleaning, adding proper waste-bins, and installing and servicing portable toilets.³³ Monthly maintenance costs are currently approximately \$66,200, exclusive of staffing costs for social supports, outreach facilities, or by-law staff who regularly attend the Property.³⁴

27. The Region's efforts are consistent with the recommendations for municipalities of the National Working Group on Homelessness. Those guidelines recognize that while "[h]omeless encampments will rarely satisfy the requirements of the human right to housing, and thus should not be understood as a solution to homelessness and should not be permanent", municipalities can promote health and safety in encampments while they exist.³⁵ Without the Region's efforts to minimize the risks of the Encampment, these substantial dangers and risks would be more acute.

C. The KCTH and the Property

28. The Region has consistently maintained the position that the Encampment will not be permitted to continue indefinitely, as vacant possession of the Property will eventually be needed for construction of the KCTH.³⁶ The KCTH is a landmark transit project that will combine numerous services, including expanded rail and bus GO Transit, VIA Rail, inter-city busy service,

³² Decision, para. [99](#).

³³ Decision, paras. [37](#), [57](#), [73](#).

³⁴ Decision, para. [79](#).

³⁵ Ex. 3, 1st Escobar Cross, AB, Tab 27, pp. 265-266.

³⁶ 3rd Sweeney, AB, Tab 28, para. 38, p. 272.

ION light rail transit, Grand River Transit, passenger vehicles and car shares, and cyclists and pedestrians, into one central and convenient transit hub in the heart of Waterloo region.³⁷

29. The Region led evidence of the substantial benefits of the KCTH, including the resulting economic and social growth for residents of the Waterloo region, reduction in commuter times, and expansion of public transportation options.³⁸

30. Metrolinx and the Region finalized an MOU for the KCTH in May 2025.³⁹ Metrolinx requires use of the Property for construction staging and laydown purposes for the KCTH.⁴⁰ Staging and laydown are critical preparation activities for the construction of a physical project.⁴¹ They involve positioning and organizing construction materials (such as steel and concrete), equipment and tools (including large construction machines and vehicles) and other items (such as temporary structures for access during a project), to ensure worker safety and maintain workflow.⁴² The proximity, size and grade of a staging and laydown site can increase the risk of injury to workers onsite and add significant additional time to a project.⁴³ The Property is the only space owned by the Region that is sufficiently proximate to the construction work to be conducted by Metrolinx, of an adequate size, and on-grade with the construction site.⁴⁴

31. As is typical in large public infrastructure projects, construction takes place in many phases over multiple years. The Region has made no secret of the intended use for the Property, but it has

³⁷ Spooner, AB, Tab 29, para. 18, p. 274.

³⁸ Spooner, AB, Tab 30, paras. 15-24, pp. 276-279.

³⁹ Spooner, AB, Tab 31, para. 32, p. 281.

⁴⁰ Decision, para. [49](#).

⁴¹ Decision, para. [49](#).

⁴² Decision, para. [49](#).

⁴³ Decision, para. [49](#).

⁴⁴ Spooner, AB, Tab 32, paras. 41-44, pp. 283-284.

only recently required vacant possession by a defined date. The Region's evidence was initially that Metrolinx required possession by March 2026, meaning that the Region required vacant possession by December 2025. More recently, Metrolinx advised that its date for vacant possession is late 2026,⁴⁵ which meant that the Region required possession by end of June 2026 to remediate and deliver the Property in a condition fit for use.⁴⁶

D. The By-laws

32. On April 23, 2025, the Region enacted the Original By-law to provide for vacant possession of the Property by December 1, 2025, based on Metrolinx's advice that it needed vacant possession by March 2026. After Metrolinx pushed this date back to late 2026, the Region engaged in mediation in November-December 2025, and enacted amendments on January 9, 2026 that came into force on February 1, 2026 (though enjoined), to add additional protections for individuals at the Encampment, and to adjust the Region's date for vacant possession to April 1, 2026. As a result, the By-laws provided for almost a year for the phased closure.

33. The By-laws distinguish between the approximately 40 individuals residing at the Encampment as of April 16, 2025, the date of public notice of the By-law (the Existing Residents), and those who have come to the Property more recently. Both the Amended and Original By-laws provided that no newcomers may join the Encampment or remain as occupants on the Property. This was intended to allow for a gradual closure of the Encampment, similar to how emergency shelters wind down their operations over time in the event of a planned closure,⁴⁷ to avoid a forced displacement of those at the site without adequate notice or supports. This benefits both the Region

⁴⁵ Decision, para. [37](#).

⁴⁶ Spooner, AB, Tab 33, paras. 45-46, p. 286.

⁴⁷ 1st Sweeney, AB, Tab 34, para. 117, p. 288.

(which assists in finding individuals alternative arrangements) and occupants (for whom greater notice of the Encampment's closure helps to avoid or mitigate potential harm).

34. This gradual closedown was effective in respect of the 40 Existing Residents: none of them remained at the Property by March 2026, a testament to the Region's gradual, individualized approach for relocating unhoused individuals from the Encampment.⁴⁸ The Encampment remained populated, however, because the Injunction Decision prevented the Region from barring newcomers. Despite this, the USWs have also successfully supported the transition of at least 22 more recent arrivals to alternative housing since May 2025.⁴⁹ The Region's USW team continues to support the Encampment occupants, including by developing IHPs with cooperative participants.

35. In the Transition Plan approved with the Original By-law, Council budgeted an additional \$814,333 in net new funding in 2025 to ensure that there would be additional capacity in the housing stability system for those who would need to transition to other accommodations because of the anticipated closure.⁵⁰ This was intended to ensure that other unhoused people in the Waterloo region would not be negatively affected (e.g., displaced or moved further down waiting lists) by the closure. Staff have the discretion to move funds between rent supplements, motel rooms, and supportive housing to meet the specific needs of occupants.⁵¹ Under the Region's procedures, ongoing funding would be determined for future years as part of the ongoing budget process.⁵²

⁴⁸ Decision, para. [67](#).

⁴⁹ Decision, para. [67](#).

⁵⁰ 1st Sweeney, AB, Tab 35, para. 41, p. 290.

⁵¹ 1st Sweeney, AB, Tab 36, para. 42, p. 292; 1st Sweeney Cross, AB, Tab 37, Q102-107, pp. 294-296.

⁵² 3rd Sweeney, AB, Tab 38, para. 10, p. 298; 1st Sweeney Cross, AB, Tab 37, Q104-108, pp. 295-296.

36. The January 2026 amendments to the Original By-law, including the Transition Protocol, provide greater protections for both Existing Residents and more recent arrivals. For example:

- (a) Existing Residents cannot be removed without a written offer for Alternative Accommodation, defined as including emergency shelters, transitional housing, affordable/supportive housing, motels, and other options, recognizing the Existing Residents' diverse needs;⁵³
- (b) If an Existing Resident loses their Alternative Accommodation due to non-compliance with applicable rules, the Existing Resident will be referred back to the USWs and best efforts will be made to find a substitute option;
- (c) Existing Residents are guaranteed offers of social service supports of the same nature as provided at the Property once they move to Alternative Accommodation;⁵⁴
- (d) The Region will offer Existing Residents transportation, and coverage for up to 6 months of storage for belongings, at no cost;⁵⁵
- (e) For others onsite at the Property who are not Existing Residents, the Region will take them into the housing stability system and make efforts, subject to availability and cooperation, to provide them with appropriate housing options.⁵⁶

E. Persons Unknown

37. The Encampment was the subject of legal proceedings in 2022-2023, when the Region sought to enforce its general, region-wide Code-of-Use By-law ("**CUB**") against individuals living at the Encampment. Unlike the By-laws, the CUB prohibits overnight camping without a permit

⁵³ "Regional Bylaw Number 26-001" ["**Amending By-law**"], Ex. A, Kang, AB, Tab 39, pp. 301-302. This is not time-limited; those in temporary accommodation are expected to move to longer term-options when available.

⁵⁴ Amending By-law, AB, Tab 39, p. 303.

⁵⁵ Amending By-law, AB, Tab 39, p. 303.

⁵⁶ Amending By-law, AB, Tab 39, pp. 301-302.

on any property owned by the Region.⁵⁷ In that application, the Region took the position that it would use the court's order as a precedent for other encampments across the Waterloo region.⁵⁸

38. In *Persons Unknown*, Justice Valente declined to enforce the CUB against residents of the Encampment, concluding that to do so would amount to a deprivation of their life, liberty, and security of the person contrary to the principles of fundamental justice, and thereby infringe s.7 of the *Charter*. He held that the CUB was overbroad and grossly disproportionate to the (generic) objectives relied upon by the Region.⁵⁹ He declared that insofar as the CUB prevented Encampment residents from living and erecting temporary shelters without a permit on the Property when the number of homeless persons in the Region exceeds the number of available accessible shelter beds in the Region, the CUB contravened s. 7 in a manner that was not saved under s. 1 and was to that limited extent inoperative.⁶⁰ Justice Valente found no s. 15 violation.⁶¹

39. *Persons Unknown* differs in many respects from this case. There was no plan to add capacity to the housing stability system to offset the closure of the Encampment. Key aspects of the Region's approach to homelessness – including the USW team, substantial increases in both operational and capital funding, and the PECH – have arisen since *Persons Unknown*. When *Persons Unknown* was argued in 2022, as Justice Valente noted, the Region intended to use the Property in connection with the KCTH only “at some undefined future date”.⁶² Justice Valente consequently makes very limited reference to the KCTH in his analysis. The CUB at issue in

⁵⁷ *Code-of-Use By-law*, Sched. B, s. 2(t), Ex. B, 2nd Sweeney, Tab 40, p. 305

⁵⁸ *Persons Unknown*, paras. [6](#), [11](#). The Region had also used the CUB in past to clear other encampments.

⁵⁹ *Persons Unknown*, paras. [114](#), [119](#).

⁶⁰ *Persons Unknown*, para. [158](#).

⁶¹ *Persons Unknown*, para. [127](#).

⁶² *Persons Unknown*, para. [105](#).

Persons Unknown is also distinct from the present By-laws. They differ in scope and purpose: the CUB applies generally across the region, while the By-laws are site-specific to the Property.

F. *The Injunction Decision and Mediation*

40. From the outset, the Region took a “light touch” approach to enforcement of the By-laws. No charges were laid and no persons were evicted under the Original By-law prior to the injunction, which was granted on August 20, 2025. The Original By-law remains unenforced, though the Region and USW team have continued to implement the Transition Plan.

41. After Metrolinx revised its date for vacant possession, a mediation was held before Justice Sharpe in November-December 2025. Though mediation was unsuccessful, on January 9, 2026 the Region amended the Original By-law, in part to address criticisms raised in the Injunction Decision. The Amended By-law remained enjoined, however.

G. *The AJ’s Merits Decision*

42. The AJ concluded that he was “bound by *Persons Unknown* 2023’s legal determinations with respect to s. 7”.⁶³ He further concluded that even if he was not strictly bound by *Persons Unknown*, that case was “persuasive authority” and that he “agree[d] with [Justice Valente’s] conclusions regarding the law concerning the application of s.7 of the *Charter* in this context”.⁶⁴ He then concluded that the Respondents were deprived of their s. 7 interests in life, liberty, and security of the person in a manner that was grossly disproportionate to the By-laws’ objectives. In so finding, he reasoned that *Persons Unknown*’s determination of gross disproportionality “continues

⁶³ Decision, para. [103](#).

⁶⁴ Decision, para. [102](#).

to apply” and that “the gross disproportionality analysis is not now fundamentally different from *Persons Unknown*”.⁶⁵

43. The AJ relied heavily on international law sources, including non-binding commentaries. He reasoned that “Canada’s decision to enact the [*National Housing Strategy Act*, (“**NHSA**”)] in 2019 necessarily strengthens the force that Canada’s international obligations should play in interpreting the scope and content of section 7”⁶⁶ and that “the PECH explicitly commits to take a human-rights based approach”.⁶⁷ He found that international law instruments – in particular the *International Covenant on Economic, Social and Cultural Rights* (“**ICESCR**”) – protect a “right to adequate housing”, and that this right was incorporated into the gross disproportionality analysis under the principle of conformity. He then incorporated standards set out by the UN Special Rapporteur on the Right to Adequate Housing into his gross disproportionality analysis.⁶⁸ He adopted the Special Rapporteur’s *National Protocol for Homeless Encampments in Canada: A Human Rights Approach* (“**National Protocol**”) and the Federal Housing Advocate’s 2025 *Guide to Meaningful Engagement and Integrating a Human-Rights Based Approach to Encampment Responses* (“**Guide**”).

44. The AJ further held that the By-laws infringed s. 15 on the basis of sex, disability, and race - the first encampment case in Canada to reach such a conclusion. His Honour also recognized homelessness as an analogous ground under s. 15 for the first time in Canadian law and held that the By-laws discriminated against homeless persons.

⁶⁵ Decision, para. [193](#), internal citations omitted.

⁶⁶ Decision, para. [126](#).

⁶⁷ Decision, para. [132](#).

⁶⁸ Decision, para. [134](#).

45. Finally, the AJ concluded that these infringements could not be justified under s. 1: the By-laws were not minimally impairing because the Region could obtain vacant possession of the Property by providing an alternate encampment site or enacting a safe tenting protocol;⁶⁹ and the salutary effects of the By-laws were outweighed by their deleterious effects because the effects of the By-laws on homeless individuals were significant, whereas the benefits of the KCTH were “speculative”.⁷⁰ He declared that the By-laws were of no force and effect under s. 52(1) of the *Constitution Act, 1982*, and granted an injunction against enforcing them. He remained seized, ordering that the Region could return to court to seek further direction following “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”.⁷¹

PART IV. ISSUES AND THE LAW

46. The issues raised on appeal are:

- (a) What is the standard of review;
- (b) Whether the AJ erred in finding that the By-laws infringed s. 7;
- (c) Whether the AJ erred in finding that the By-laws infringed s. 15; and
- (d) Whether the AJ erred in finding that any infringements were saved under s.1.

A. Standard of Review

47. On appeal, findings of law are reviewable on a correctness standard.⁷² Findings of fact are owed deference by appellate courts absent a palpable and overriding error.⁷³ Errors of mixed fact

⁶⁹ Decision, para. [242](#).

⁷⁰ Decision, para. [243](#).

⁷¹ Decision, para. [259](#).

⁷² *Housen v. Nikolaisen*, [2002 SCC 33](#), paras. [8-9](#) [*Housen*].

⁷³ *Housen*, para. [10](#).

and law related to a constitutional issue are reviewable on a standard of correctness,⁷⁴ given the importance of ensuring that constitutional questions are answered correctly. The Region adopts Ontario's submissions on this point.

B. Errors in the s. 7 Analysis

1. The AJ erred in determining that he was bound by *Persons Unknown* on s. 7

48. The AJ erroneously concluded that he was bound by *Persons Unknown* to find a breach of s.7, under horizontal *stare decisis*. With respect, *Persons Unknown* considered the constitutionality of a different by-law, with a distinct purpose and different effects. As such, it considered a different question of law. The s.7 analysis is purpose-driven and compares the object of an impugned law with its effects. *Stare decisis* applies narrowly to prior rulings on the same question of law, not similar but legally distinct issues arising from overlapping factual context.⁷⁵

49. While the AJ purportedly also conducted a fresh analysis of the s.7 issues, the errors in his analysis regarding *Persons Unknown* demonstrate that he failed to apply the s.7 test with the correct focus on the By-laws' specific purpose. He erred in equating the CUB's general purpose of "preventing disruption of the Region's operations" with the By-laws' specific purpose of obtaining vacant possession of the Property to facilitate the KCTH (because, he reasoned, the former purpose may include the latter) without addressing Justice Valente's finding that the Region had "no immediate need" for the Property at that time.⁷⁶ His Honour's fresh analysis on s.7 is incorrectly heavily influenced by *Persons Unknown* and is therefore similarly tainted.

⁷⁴ *Société des casinos du Québec inc v. Association des cadres de la Société des casinos du Québec*, [2024 SCC 13](#), paras. [45](#), [93-97](#); *Jacob v. Canda (Attorney General)*, [2024 ONCA 648](#), para. [53](#) (leave to appeal refused: [2025 CanLII 33146 \(SCC\)](#)); *R v. Pike*, [2024 ONCA 608](#), para. [31](#). *Animal Justice v. Ontario (Attorney General)*, [2026 ONCA 380](#), para. [41](#).

⁷⁵ *R. v. Sullivan*, [2022 SCC 19](#), para. [86](#) ["*Sullivan*"].

⁷⁶ Decision, para. [101](#).

2. The By-laws are site-specific, not Region-wide

50. The site-specific nature of the By-laws differentiates this case from appellate caselaw from British Columbia⁷⁷ and from every other Ontario case on encampments.⁷⁸ All these cases considered general prohibitions on tenting that applied to public lands at large. In some (notably excluding *Heegsma* and *Kingston*, which reject this approach), courts held that an encampment could be closed only where the number of homeless people does not exceed the number of accessible available shelter beds in the given municipality.

51. Whatever the merits may be for this approach on municipality-wide by-laws, which more naturally invites a municipality-wide analysis, it is inapposite for this case. Even if the By-laws engage life, liberty, or security of the person interests (discussed below), they only infringe s.7 if they do so in a manner that is contrary to the principles of fundamental justice. The principles found to be infringed in *Persons Unknown* were overbreadth and gross disproportionality – because the region-wide CUB could achieve their generic purpose of preventing damage to property on Region-owned or occupied lands, preventing disruption of the Region’s operations on such lands, and regulating use and enjoyment of such lands, while permitting tenting on the Property.⁷⁹ In particular, Justice Valente found that there was no incompatibility because the Region “has no immediate need for the Property”.⁸⁰ In the present case, the purpose of the By-laws is to obtain vacant possession of the Property to facilitate construction of the KCTH. That specific purpose cannot be achieved without closing the Encampment. This yields a different s.7

⁷⁷ *Victoria (City) v. Adams*, [2009 BCCA 563](#) [“*Adams*”].

⁷⁸ *The Corporation of the City of Kingston v. Doe*, [2023 ONSC 6662](#) [“*Kingston*”], *Heegsma v. Hamilton (City)*, [2024 ONSC 7154](#) (appeal pending) [“*Heegsma*”], *Persons Unknown*.

⁷⁹ *Persons Unknown*, paras. [9](#), [112-114](#).

⁸⁰ *Persons Unknown*, para. [114](#).

analysis - a point tacitly acknowledged by the Respondents and the AJ in that they did not even consider overbreadth, which was a major issue in *Persons Unknown*.

52. Relatively few cases consider a situation where an encampment is incompatible with a specific and immediate intended use for the property.⁸¹ Those that do have allowed the encampment to be closed.

53. Likewise, in analyzing gross disproportionality, the AJ's focus ought to have been on the Property and its occupants, not the region-wide homeless population. Since the Original By-law and Transition Plan added equivalent capacity to the housing stability system to offset the closure of the Encampment, the homeless population outside of the Encampment would not be affected. Contrary to the AJ's conclusion, there was nothing arbitrary about using the April 2025 date to determine eligibility for this added capacity. It was tailored precisely to ensure that no Encampment occupant faced a material risk of eviction with no place to go, and that unhoused persons outside the Encampment would not be affected by being displaced or moved further down on waiting lists. On a proper analysis, the By-laws do not themselves have effects that are grossly disproportionate to their purpose, as further explained below.

3. The By-laws do not engage life or security of the person of occupants

54. The Region's expert evidence was unequivocal: indoor shelter is less risky than the encampment environment. The Respondents' expert evidence did not rebut this – it largely addressed the health risks of homelessness generally, and to a lesser extent the comparison between encampments and sleeping rough without a tent. The AJ made no finding that encampments are

⁸¹ *Clinique juridique itinérante c. Procureur général du Québec*, [2023 QCCS 1949](#) (leave to appeal refused [2023 QCCA 855](#)) [*“Clinique juridique”*]; *Matsqui-Abbotsford Impact Society v Abbotsford (City)*, [2024 BCSC 1902](#) (leave to appeal granted [2025 BCCA 78](#), appeal not yet decided), para. [193](#) [*“Matsqui”*]; *Adams*, paras. [40](#), [116](#), contemplated “creating certain zones in sensitive park regions where sleeping was not permitted”.

less risky than the alternatives offered by the Region. Some affiants for the Respondents expressed a preference for encampment living, but others said they did not want to stay at the Encampment or preferred indoor shelter.⁸² That none of the Existing Residents remained after 11 months is itself evidence that the alternatives offered were, at a minimum, no worse than remaining at the Encampment.⁸³

55. The AJ's analysis was clouded by the Injunction Decision, because the Region was unable to prevent newcomers from replacing Existing Residents who were transitioned to alternative accommodation. With respect, the AJ thereby created the very situation that he relied upon to conclude that the By-laws created a risk of harm. Even so, on the balance of probabilities the Region would likely have been able to transition all occupants to alternative accommodation and close the Encampment, without any evictions at all (and certainly without evicting occupants who would have no place to go), as long as it could prevent further newcomers from replacing them. The combined effect of the AJ's rulings in the Injunction Decision and Merits Decision that the Region could never prevent newcomers from coming to the Property, and his holding that any eviction would violate occupants' *Charter* rights, entirely foreclosed any possible solution that relied upon creating additional capacity in any forms of indoor shelter, regardless of the mix.

56. Alternatively, to the extent that these subsequent occupants are relevant to the s.7 analysis, the AJ could have provided directions that the Region must provide additional funded capacity to its system to accommodate this second generation of Encampment occupants. This would have

⁸² Bradley, AB, Tab 41, para. 15, p. 307; Sharpe, AB, Tab 42, para. 10, p. 309; Helsby, AB, Tab 43, para. 18, p. 311; Stubbs, AB, Tab 44, paras. 22-23, p. 314.

⁸³ Of the 40 Existing Residents, 29 accepted alternative accommodation. The remainder left the Property on their own. The Region cannot force people to take accommodations offered to them or to say where they are going if they choose to leave. They may or may not have found alternative accommodation or left the Waterloo region: Moss Undertakings, AB, Tab 45, Q2, p. 316.

avoided any material risk of harm to any and all occupants arising from the closure, regardless of when they had arrived.

4. Liberty

57. Section 7 liberty interests encompass “inherently private choices” at the “core of what it means to enjoy individual dignity and independence”.⁸⁴ No case holds that “liberty” includes the right to reside on property owned by another. In this case, the By-laws apply only to a single property. In that circumstance, they do not engage liberty interests because they specify only one property on which individuals cannot reside; if this is a restriction on liberty then there must be a right to reside on this specific property. The AJ’s finding that there is a site-specific liberty interest is an error, as this goes beyond the scope of s. 7 and resembles or even exceeds the sort of proprietary right that the Respondents themselves claim to not seek. It is noteworthy that no holders of property rights, including those with fee simple ownership, have the sort of unrestricted right to prevent a public transit project that the AJ recognized for the Encampment occupants. Fee simple ownership is always subject to expropriation.

5. Gross disproportionality

58. Focusing on the Property itself and the interests of those encamping there, the Region has sufficiently mitigated potential effects of eviction such that any deprivation caused by the By-laws is not grossly disproportionate. By the time the AJ heard this matter on the merits, none of the 40 Existing Residents remained onsite at the Property. For those remaining onsite who were not Existing Residents under the By-laws (and, but for the Injunction Decision, would not have been permitted to become occupants of the Property), the By-laws still provide that the Region will take

⁸⁴ *Godbout v. Longueuil (City)*, [1997] 3 S.C.R. 844, para. 66; *Association of Justice Counsel v. Canada (Attorney General)*, 2017 SCC 55, para. 49.

them into the housing stability system and make efforts, subject to availability and cooperation, to provide those individuals with appropriate housing options.⁸⁵

59. The AJ's finding of gross disproportionality given the Region's substantial efforts is inconsistent with the Supreme Court's caution that a law will deprive an individual's s. 7 interests in a grossly disproportionate manner only in "extreme cases" where the seriousness of the deprivation is "totally out of sync with the objective of that measure".⁸⁶

60. The AJ, however, reasoned that gross disproportionality was made out because in his view the s.7 interests of homeless individuals not currently at the Property were engaged, because they may wish to relocate to the Property at some future time. With respect, this was an error. Non-occupants would not be any worse off after the Existing Residents were transitioned to the additional spaces created in the housing stability system under the Transition Plan. The logical corollary of the AJ's approach is that the Encampment could not be closed (unless replaced by another encampment) as long as there are any unhoused individuals in the region who do not have access to indoor shelter, regardless of what arrangements are made for the actual occupants.

61. The AJ explicitly based his analysis on the proposition that "other chronically homeless residents of the Region" would be affected by the closing of the Encampment because it would affect available shelter spaces and thereby create an "immediate disadvantage".⁸⁷ This was wrong – he ignored the Region's evidence that it created additional capacity in the housing stability system to account for Existing Residents.⁸⁸ In any event, this reasoning is also legally incorrect;

⁸⁵ Amending By-law, AB, Tab 39, pp. 301-302.

⁸⁶ *R. v. Kloubakov*, [2025 SCC 25](#), para. [140](#), citing *Canada (Attorney General) v. Bedford*, [2013 SCC 72](#), para. [120](#) [*"Bedford"*].

⁸⁷ Decision, para. [190](#).

⁸⁸ 2nd Sweeney Cross, AB, Tab 46, Q151-156, Q415-418, pp. 318-322.

this result is not a “deprivation” within the meaning of s. 7. By the AJ’s logic, the Region’s use of any municipal property for any purpose other than establishing an encampment would deprive homeless individuals of their s. 7 interests because it would prevent them from accessing it and lead to higher demand in the emergency shelter system. This would be an undue expansion of that constitutional right. It cannot be a s. 7 deprivation for the Region to fail to solve homelessness or to decide as a matter of policy not to designate every piece of land it owns as an encampment.⁸⁹

6. International law

62. The Application Judge erred in several ways in his treatment of international law sources.

63. First, he misapplied the principle of conformity in his treatment of non-binding international law sources.⁹⁰ The AJ treated these sources as more than merely “relevant and persuasive, but not determinative, interpretive tools”.⁹¹ He imported specific and detailed standards from non-binding instruments directly into the s.7 test. His reliance on these instruments incorrectly extended the role that international law plays in the constitutional analysis.

64. Further, s.7 is a legal right which protects the right to life, liberty, and security of the person. The commentaries upon which the AJ relied pertain to economic, social, and cultural rights, which extend beyond the ambit of s.7’s protections. Those rights are positive economic rights framed in aspirational terms – for example, the *ICESCR* commits Canada to “take steps... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means”, including “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and

⁸⁹ *Tanudjaja v. Canada (Attorney General)*, [2014 ONCA 852](#), paras. [33-34](#).

⁹⁰ *Quebec (Attorney General) v. 9147-0732 Québec inc.*, [2020 SCC 3](#), paras. [19-38](#) [“*Quebec*”].

⁹¹ *Quebec*, para. [35](#).

housing, and to the continuous improvement of living conditions”; state parties are required to “take appropriate steps to ensure the realization of this right”.⁹² These rights cannot be translated directly into s.7 negative rights limiting the ability of a government to “deprive” persons of their “life, liberty and security of the person”. If there is a right to adequate housing under s.7, there must also be a right to adequate food and clothing – a proposition that no court has endorsed. The AJ therefore erred in relying on international law sources that do not correspond to the *Charter* rights at issue.

65. Second, the AJ erred in holding that the NHSA necessarily strengthens the force that Canada’s international obligations should play in interpreting s.7. The NHSA is a federal statute which provides only that it is “the housing policy of the Government of Canada” to recognize the right to adequate housing as a right protected in international law, and to “further the progressive realization of the right to adequate housing as recognized in the [ICESCR]”; this is to be achieved by the federal government developing a national housing strategy.⁹³ It does not create a “right to housing” in Canadian law, nor does it purport to impose obligations on provinces or municipalities. Such legislation may bind the federal government to a particular interpretation of a right, but that interpretation is not binding on the courts or the provinces.⁹⁴ Canada’s federal structure does not allow federal legislation to define constitutional rights vis-à-vis provinces or municipalities. Moreover, the role of the Federal Housing Advocate is just that – it is an office created to advocate on issues related to housing, not to determine the content of “rights” and obligations purportedly

⁹² *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3, Articles [2](#) and [11](#).

⁹³ *National Housing Strategy Act*, [S.C. 2019, c. 29, s. 313](#), s. [4](#).

⁹⁴ *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, [2024 SCC 5](#), para. [60](#).

binding on the Region - when the federal government contributes only 8.4% of the Region's budget for providing homelessness programs.⁹⁵

66. Third, the AJ erred in finding that the PECH, the Region's long-term policy roadmap to ending chronic homelessness (contingent upon other levels of government contributing sufficient resources), had the effect of incorporating international law standards into s.7. Unlike in *Mathur*,⁹⁶ relied upon by the AJ, the PECH is an aspirational policy document, not a legislative commitment. Crucially, the PECH itself does not specifically reference encampment closures, let alone provide a roadmap that the Region has bound itself to. The AJ also erroneously relied on a companion document to the PECH (the Lived Experience Prototyping Report) that Council had expressly declined to commit to implement.⁹⁷ More fundamentally, a municipal policy document can neither expand nor detract from constitutional rights.

67. Fourth, the AJ's application of these purported rights to s.7 is novel and unsupported by principle. Starting from the non-binding commentaries' opinions that "forced evictions" could only be justified in exceptional circumstances,⁹⁸ he proceeded to adopt the Special Rapporteur's *National Protocol*, which provides *inter alia* that removal of occupants from encampments "without meaningfully engaging with them and identifying alternative places to live that are acceptable to them" is considered a "forced eviction" that is considered a "gross violation" of human rights.⁹⁹ He further adopted the *National Protocol*'s requirement that "all viable alternatives" be explored prior to eviction from an encampment, that "meaningful, robust, and

⁹⁵ 4th Sweeney, AB, Tab 47, para. 35, p. 324.

⁹⁶ *Mathur v. Ontario*, [2024 ONCA 762](#).

⁹⁷ Ex. A, Alton, AB, Tab 48, p. 326; Alton Cross, AB, Tab 49, Q38-45, pp. 328-331.

⁹⁸ Decision, paras. [119-121](#), citing *General Comment #7* of the UN Committee on Economic, Social and Cultural Rights.

⁹⁹ Decision, para. [122](#).

ongoing engagement” with encampment residents is required for relocation, and that “[a]dequate alternative housing, with all necessary amenities must be provided” prior to any eviction.¹⁰⁰ Finally, he relied upon the Federal Housing Advocate’s 2025 Guide, opining that a “human rights-based approach” requires “meaningful consultation that begins before a decision has already been made by a municipality”, and a process “which provides people with real choices and an opportunity to make informed decisions”.¹⁰¹ In short, he incorporates consultation and consent requirements into s.7 that amount to a veto by occupants over any plan to close an encampment.

68. The Region did in fact consult widely about closing the Encampment, including with its occupants. Since at least *Persons Unknown*, Encampment occupants and their advocates knew that the Property would eventually be needed for the KCTH. In March 2024, Region staff attended an *ad hoc* meeting to discuss the closure.¹⁰² The Encampment was regularly discussed at meetings of a working group established under the PECH.¹⁰³ The By-laws themselves were hotly debated and passed in public Council meetings in which occupants and their advocates participated; public comment was also specifically sought from occupants.¹⁰⁴ Individually, occupants were consulted over their options under the Transition Plan and Protocol. However, this was seemingly insufficient for the AJ, because they did not provide a veto over closure.

69. The AJ incorporates these consultation and consent obligations into s.7 by holding, without authority, that they “are relevant and persuasive criteria in assessing any mitigation of harm in the gross disproportionality analysis”.¹⁰⁵ In other words, rather than assessing whether a law and

¹⁰⁰ Decision, paras. [124-125](#).

¹⁰¹ Decision, para. [131](#).

¹⁰² 2nd Sweeney, AB, Tab 50, para. 42, pp. 333-334. This meeting featured accusations that Region staff were “Nazis”.

¹⁰³ 3rd Sweeney, AB, Tab 51, para. 28, p. 336.

¹⁰⁴ Ex. A, Alton Cross, AB, Tab 52, pp. 338-342; Ex. B, Kang, AB, Tab 53, pp. 344-346.

¹⁰⁵ Decision, para. [134](#).

transition plan that offer encampment residents indoor shelter alternatives (entailing less risk to their health) meets the threshold of being an “extreme case” that is “entirely outside the norms accepted in our free and democratic society”,¹⁰⁶ he assumes harmful evictions in order to find a risk to life, liberty, and security of the person, then interposes consultation and consent requirements to assess whether that risk is mitigated. This is illogical – the By-laws and Transition Plan do provide for alternative indoor shelter, and in any event, consultation does not necessarily decrease or increase risks of harm. Further, closing an encampment without adhering to the various steps of the *National Protocol* and *Guide* cannot be said to be “entirely outside the norms” of Canadian society, given the many cases that have allowed closures provided that appropriate arrangements are made for the occupants.¹⁰⁷

70. With respect, the obligations that the *National Protocol* and *Guide* purport to impose on municipalities, if incorporated into s.7, will make it practically impossible to close any encampments on any definite timeline. Further, the impact of incorporating these obligations is exacerbated if authorities are precluded from preventing newcomers from coming to a site that is slated for closure – their efforts to provide “alternatives acceptable to” existing occupants will simply create a revolving door at the encampment. Notably, none of the *General Comments*, *National Protocol*, or *Guide* address the issue of whether newcomers can be restricted from an encampment that authorities seek to close. However, the AJ’s approach that combines requiring

¹⁰⁶ *Bedford*, para. [120](#).

¹⁰⁷ *Black et al. v. City of Toronto*, [2020 ONSC 6398](#), *British Columbia v. Adamson*, [2016 BCSC 1245](#), *Church of Saint Stephen et al. v. Toronto*, [2023 ONSC 6566](#), *Clinique juridique, Heegsma, Maple Ridge (City) v Scott*, [2019 BCSC 157](#), *Matsqui, Nanaimo (City) v Courtoreille*, [2018 BCSC 1629](#), *Poff v. City of Hamilton*, [2021 ONSC 7224](#), *Prince George (City) v Johnny*, [2025 BCSC 1556](#), *Saanich (District) v Brett*, [2018 BCSC 1648](#), *Vancouver Board of Parks and Recreation v. Williams*, [2014 BCSC 1926](#), *Vancouver Fraser Port Authority v Brett*, [2020 BCSC 876](#).

consultation and consent to relocate existing occupants with an open door for newcomers, if upheld, will make closing an encampment impossible on any timeframe.

C. The By-laws Do Not Infringe s. 15

1. If *Persons Unknown* is binding, it bound the Application Judge on s. 15

71. The AJ relied on *Kanyinda* to conclude that he could disregard *Persons Unknown*'s holding that the CUB did not infringe s.15, reasoning that the intersectional approach *Kanyinda* sets out was a legal development that justified departing from precedent. By the *Kanyinda* majority's own description, however, the intersectional approach "is not novel in the s. 15(1) analysis".¹⁰⁸ That case therefore did not represent a subsequent decision in the s. 15 jurisprudence which affected the validity of past judgments.¹⁰⁹ It was consequently an error for the AJ to determine that while he was bound by *Person Unknown* on s.7, he was not bound by Justice Valente's s.15(1) analysis (which, unlike s.7, is not a purpose-driven inquiry). Almost identical arguments as those before the AJ were made in *Persons Unknown* and rejected by Justice Valente.¹¹⁰ Indeed, every Canadian court that has considered s.15 in an encampment context has found no infringement of the right to equality, including cases where intersectional arguments were made.¹¹¹

2. No discrimination based on sex, race, or disability

72. The AJ further erred in his conclusion that the By-law infringed s. 15 based on the protected characteristics of sex, race, and disability. He analyzed the By-laws with reference to the homeless population in the Region generally, not those who were actually at the Encampment (whether Existing Residents or not). There was no evidence as to the gender, race, or disabilities of those

¹⁰⁸ *Quebec (Attorney General) v. Kanyinda*, [2026 SCC 7](#), para. 40 [*"Kanyinda"*].

¹⁰⁹ *Sullivan*, para. 73.

¹¹⁰ *Persons Unknown*, paras. 123, 127.

¹¹¹ *Abbotsford (City) v. Shantz*, [2015 BCSC 1909](#), paras. 225, 229, 233-236 [*"Shantz"*]; *Heegsma* para. 80.

remaining at the Encampment by the hearing date. He then incorrectly equated general societal disadvantage faced by these groups that is separate and apart from the By-laws with distinctions that are created by the By-laws themselves, either on their face or in their impact.¹¹²

73. In finding sex-based discrimination, the AJ concluded that harms associated with being homeless – namely, inability to access indoor shelter and vulnerability to violence – disproportionately impacted women and gender diverse individuals. In finding that these groups are disproportionately unable to access emergency shelters in Waterloo region, the AJ accepted the Respondents’ submission that there were disproportionately more emergency shelter spaces reserved for men than for women and gender diverse individuals. He used the PIT count’s gender breakdown to conclude that the ratio of emergency shelter spaces for men compared to women/gender diverse individuals was disproportionate to the gender ratio in the homeless population at large.¹¹³

74. This analysis is flawed because the emergency shelter system is only one component of the broader housing stability system. This analysis did not consider whether women and gender diverse individuals were disproportionately able to access other options, such as transitional housing, supportive housing, motels, and other forms of indoor shelter. The Respondents led no evidence regarding the gender breakdown of individuals accessing those options. The AJ therefore did not have sufficient evidence to conclude that women and gender diverse individuals were disproportionately affected overall.

¹¹² *Fraser v. Canada (Attorney General)*, [2020 SCC 28](#), para. [27](#).

¹¹³ Decision, paras. [217-218](#).

75. Further, the Respondents did not demonstrate that spaces in the housing stability system were disproportionate to the actual population of the Encampment. A small specific population does not necessarily match the characteristics of a general population, so general population statistics were insufficient to establish a *prima facie* case that the By-laws created disparate impact discrimination.¹¹⁴ Those who were actually subject to displacement were provided IHPs tailored to their individual circumstances. There is no reason to believe that they experienced disparate impacts based on gender.

76. Even if they exist, the alleged distinctions upon which His Honour bases his s.15 analysis are also too remote to be “caused” by the By-laws. By His Honour’s logic, any time a shelter is closed, a social program is completed, or scarce resources are allocated differently amongst marginalized groups, s.15 is engaged. This would unduly expand the scope of s.15.

77. Regarding gender-based violence, His Honour accepted general, unspecific evidence tendered by the Respondents regarding women and gender diverse individuals’ experiences of violence - including a report by the YWCA Kitchener-Waterloo (the “**Willow Report**”), consisting of self-reported survey responses from an unrepresentative sample of women living unhoused in the Kitchener-Waterloo area. For example, His Honour relied on the Willow Report in noting that “83% of women and gender-diverse persons experiencing homelessness in the Region had previously stayed in abusive or violent situations to avoid homelessness”.¹¹⁵

78. The Willow Report, however, does not contain any empirical data comparing experiences of violence towards homeless men with those of women/gender diverse individuals, or directly

¹¹⁴ *Kahkewistahaw First Nation v. Taypotat*, [2015 SCC 30](#), paras. [30-34](#).

¹¹⁵ Decision, para. [218](#).

comparing encampments to indoor shelter – nor does any other document in the record. Without this sort of evidence, the AJ could not reasonably conclude that women and gender diverse individuals experience violence outside of encampments at a disproportionate rate, such that the By-laws caused a distinction in effect between those groups.¹¹⁶ There was therefore insufficient evidence for the AJ to determine that the By-law created any sort of distinction based on gender.

79. The AJ’s conclusion that the Encampment provided relative safety in comparison to the other available options for female and gender diverse residents was similarly unsupported by the record. The AJ relied on evidence of an expert witness tendered by the Respondents that women in the Encampment could “‘look out for each other,’ warn each other of dangerous or exploitative men, watch over each other’s tents and possessions, and remain with partners or pets (e.g., dogs) who provided physical safety”.¹¹⁷ However, the AJ did not address the Region’s submissions that during cross examination, the witness conceded that:

- (a) being able to control access to one’s space is an important element of personal safety, including for unhoused women and gender diverse individuals, that is not a feature of an encampment;¹¹⁸
- (b) having a locked door (such as would be present in a motel setting) is “critical to safety for all people”, and that this is a feature of motel rooms provided by the Region;¹¹⁹
- (c) being able to access housing where a violent intimate partner can be excluded is an important part of escaping that violence, and that while an encampment does not

¹¹⁶ *R. v. Sharma*, [2022 SCC 39](#), paras. [36](#), [42-50](#).

¹¹⁷ Decision, para. [219](#).

¹¹⁸ Schwan Cross, AB, Tab 54, Q23, p. 348.

¹¹⁹ Schwan Cross, AB, Tab 55, Q24-25, pp. 350-351.

have restrictions on who can stay there.¹²⁰ by contrast, many shelters train employees to identify and intervene in coercive or abusive conduct.¹²¹

80. These admissions significantly undermine the theory that encampments are preferable to emergency shelters for women and gender diverse individuals. His Honour also did not address the expert evidence of Dr. Koivu on this point that shelters have strategies for addressing and containing physical and/or sexual violence which are not available in lawless encampments.¹²² In failing to advert to or engage with this evidence, the AJ erred in a manner that undermines his conclusion that the Encampment was an environment in which women/gender diverse individuals were less exposed to risk of violence.

81. Regarding disability (framed as those with physical, mental health, and addiction disabilities), the AJ's analysis suffers from similar frailties. There was no evidence to support the contention that the Encampment was a preferable environment for individuals from these groups, such that its closure would adversely affect them. Indeed, the AJ put it no higher than "in some cases the Alternative Accommodation may be less safe than the Encampment [for those with disabilities]" (emphasis added).¹²³ Even that statement was unsupported by the record. This is insufficient to base a finding of discrimination.

82. The Encampment is not a physically accessible space (unlike some options in the housing stability system), nor does it provide a legal haven for those with substance use disorders to consume drugs, nor does it provide mental health supports. That some of the "shelter options

¹²⁰ Schwan Cross, AB, Tab 56, Q33-39, pp. 353-354.

¹²¹ Schwan Cross, AB, Tab 57, Q43-45, p. 356.

¹²² Koivu, AB, Tab 26, paras. 71, 79-82, pp. 259, 261.

¹²³ Decision, para. [231](#).

included as Alternative Accommodation options are fundamentally unsuitable for people with mental health/addiction disabilities”¹²⁴ – even if true – does not mean that the Encampment itself is fundamentally suited to individuals with such challenges. Further, the individualized nature of the USWs’ work with Encampment residents to create IHPs that reflect the unhoused individuals’ diverse needs also helps prevent individuals from being placed in unsuitable options. There is no evidence that any individual was placed in an unsuitable environment. There is therefore no evidence to support the AJ’s conclusion that the By-law creates a distinction in its effects on persons with disabilities.

83. Regarding race, the AJ erred in finding that the overrepresentation of Indigenous peoples in the homeless population was a distinction caused by the By-laws because “[m]erely proving overrepresentation is insufficient” to make out a distinction under s.15.¹²⁵

84. While the AJ also reasoned that “[u]pon eviction, Indigenous residents will be denied the benefit of culturally safe housing options and will face additional barriers due to shelter eligibility rules that disproportionately exclude them because of their Indigenous identities”, s.15 does not place positive obligations on the state to rectify disadvantage (including by, for instance, providing culturally sensitive programming). There was also no evidence that shelters in the Region are turning away individuals because they are Indigenous, or that, as compared to the general population of the Region, Indigenous persons are less likely to have access to different options in the housing stability system. There was no evidence that any individual Indigenous person objected to their placement or sought culturally specific options.

¹²⁴ Decision, para. [231](#).

¹²⁵ *Ontario Health Coalition and Advocacy Centre for the Elderly v. His Majesty the King in Right of Ontario*, [2025 ONSC 415](#), para. [317](#).

85. In fact, the Region devotes substantial resources to aligning available housing to the diverse needs of unhoused persons, including Indigenous persons. The Region previously partially funded an Indigenous-operated transitional housing program operated by an Indigenous-led organization, but the Board of that organization decided to discontinue operating the site, without any involvement from the Region, and requested instead that the Region transfer its funding to an affordable housing complex that organization owns and operates.¹²⁶ On the AJ's approach, it was those events, not the By-laws, that created the purported breach of s.15 by reducing the alignment between the needs and preferences of some Indigenous persons for a culturally specific environment and the available emergency shelter spaces. There is nothing in the Encampment that is culturally specific, and no evidence that the Encampment provided a better environment for Indigenous persons than alternative indoor shelter. The By-laws therefore do not cause any distinct adverse effects on Indigenous individuals.

86. Finally, even if the By-laws do create a distinction on an enumerated or analogous ground, it is not one that reinforces, perpetuates, or exacerbates disadvantage. The By-laws are not based on any stereotypical assumptions about the value, characteristics, and behaviours of a particular class of people. Instead, the By-laws were enacted given the practical reality that the Region requires vacant possession of the Property to allow for the KCTH construction, regardless of who the occupants of the Property are.

¹²⁶ 4th Sweeney, AB, Tab 58, paras. 8-20, pp. 358-360.

3. Homelessness is not an analogous ground

87. Courts rarely recognize a new analogous ground under s. 15; the Supreme Court of Canada has recognized only five such grounds: non-citizenship,¹²⁷ marital status,¹²⁸ sexual orientation,¹²⁹ Aboriginality-residence for members of an Indian Band living off the reserve,¹³⁰ and non-resident status in a self-governing Indigenous community.¹³¹

88. Courts have refused to recognize many proposed analogous grounds, such as professional status/occupational status,¹³² place or province of residence,¹³³ and “substance orientation” (with respect to using marijuana)¹³⁴. Lower courts, including in Ontario, have also rejected homelessness as an analogous ground under s. 15,¹³⁵ and this Court and others have determined that poverty is not an analogous ground.¹³⁶ This is consistent with the reasoning that “[e]conomic benefits or prejudices are relevant to s. 15, but are more accurately regarded as symptomatic of the types of distinctions that are at the heart of s. 15: those that offend inherent human dignity”.¹³⁷

89. In departing from this existing caselaw, the AJ offered only that “the time has now come for homelessness to be recognized as an analogous ground”.¹³⁸ He did not distinguish the case at hand from horizontally binding authorities that have come to the opposite conclusion, including

¹²⁷ *Andrews v. Law Society of British Columbia*, [\[1989\] 1 SCR 143](#).

¹²⁸ *Miron v. Trudel*, [\[1995\] 2 SCR 418](#).

¹²⁹ *Egan v. Canada*, [\[1995\] 2 SCR 513](#) [“*Egan*”].

¹³⁰ *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [\[1999\] 2 SCR 203](#) [“*Corbiere*”].

¹³¹ *Dickson v. Vuntut Gwitchin First Nation*, [2024 SCC 10](#).

¹³² *Delisle v. Canada (Deputy Attorney General)*, [\[1999\] 2 SCR 989](#).

¹³³ *Siemens v. Manitoba (Attorney General)*, [2003 SCC 3](#).

¹³⁴ *R. v. Malmo-Levine; R. v. Caine*, [2003 SCC 74](#).

¹³⁵ *Tanudjaja v. Attorney General (Canada) (Application)*, [2013 ONSC 5410](#), paras. [124-137](#) [“*Tanudjaja SCJ*”], *Shantz*, para. [231](#), *Persons Unknown*, para. [125](#).

¹³⁶ *Boulter v. Nova Scotia Power Incorporation*, [2009 NSCA 17](#), paras. [32-44](#); *Falkiner v. Ontario (Minister of Community and Social Services)*, [2002 CanLII 44902 \(ON CA\)](#), para. [88](#); *R. v. Banks*, [2007 ONCA 19](#), paras. [98-104](#); *Toussaint v. Canada (Minister of Citizenship and Immigration)*, [2009 FC 873](#), paras. [68-90](#) [“*Toussaint*”].

¹³⁷ *Egan*, p. [544](#) (L’Hereux-Dube, J., in dissent).

¹³⁸ *Decision*, para. [154](#).

Tanudjaja.¹³⁹ Instead, the AJ incorrectly applied the concurring opinion of the Chief Justice in *Kanyinda* (with which two other Supreme Court justices disagreed¹⁴⁰ and which the majority did not adopt) rather than the binding approach set out by the Supreme Court in *Corbiere*.

90. Applying the correct test from *Corbiere*, homelessness is not an analogous ground because it is not "a personal characteristic that is immutable or changeable only at unacceptable cost to personal identity".¹⁴¹ Put differently, homelessness is not a characteristic which "the government does not have a legitimate interest [in changing]".¹⁴² Rather, governments are encouraged – including by the Respondents – to implement policies to support individuals out of homelessness, and many homeless individuals themselves are actively working to change their circumstances. Homelessness is a socioeconomic fact that may change at any given time, not a core element of a person's identity that is integral to their human dignity.

91. The AJ notably did not define homelessness in his reasons. Homelessness lacks a clear definition, which demonstrates its unsuitability as an analogous ground. For example, the PIT count reflects those who are unhoused on a given night, whereas the definition in the PECH focuses on "chronic homelessness", which requires that an individual be unhoused for a certain amount of time to be included in the count. Views also differ on what constitutes "adequate" housing, and whether individuals without such housing are homeless. Some would include the "precariously housed" in the definition.¹⁴³

¹³⁹ *Tanudjaja SCJ*, paras. [124-137](#).

¹⁴⁰ *Kanyinda*, majority reasons para. [26](#), concurring reasons of Rowe, J. and dissenting reasons of Côté, J, paras. [119](#), [358](#).

¹⁴¹ *Corbiere*, para. [13](#).

¹⁴² *Toussaint*, paras. [73](#), [77](#), *Corbiere*, para. [13](#).

¹⁴³ PECH, AB, Tab 59, pp. 362-363.

92. The lack of a single, unifying definition for who is homeless demonstrates that homelessness is a fluid social status of contentious definition, and not a key component of who someone is as a person.

93. The consequences of recognizing homelessness as a new analogous ground are unpredictable and could even be counterproductive. If recognition of this new ground is upheld, it would be engaged every time a municipality closed a shelter. As the record in this case shows, municipalities routinely open and close facilities as needs evolve and buildings age. Closures directly and intentionally affect the client population. Courts would inevitably be asked to micromanage policy in this complex area, as affected clients challenge decisions that almost always leave some worse off, even if others benefit and overall capacity is maintained. Municipalities, in turn, may become paralyzed as they seek to determine their legal obligations. In the end, it is hard to see how service delivery would be improved by the constant threat of litigation that such recognition may entail. The Region also adopts Ontario's submissions on this issue.

D. Any Infringement of ss. 7 or 15 are Saved Under s. 1

94. The AJ accepted that facilitating construction of the KCTH was a pressing and substantial objective, and that the By-laws are rationally connected to the objective. However, he erroneously held that they were not minimally impairing, and that their deleterious effects outweighed their salutary effects. His brief treatment of s.1 gave short shrift to the complexity of the issues that the Region faces.

1. The By-laws are minimally impairing

95. In holding that the By-laws are not minimally impairing because the Region could have enacted a safe tenting policy or provided an alternative site, the AJ did not show the appropriate

level of deference to the Region’s policy choices. The Region “is not required to pursue the least drastic means of achieving its objective”, it must only “adopt a measure that falls within a range of reasonable alternatives”.¹⁴⁴ Courts will “def[er] to the legislature in instances where it is better situated to choose among a range of alternatives”.¹⁴⁵

96. A safe tenting protocol or an alternative site are not clearly superior alternatives to the Transition Plan and Transition Protocol included in the By-laws, whereby displaced Encampment residents are transitioned to alternative indoor shelter of matching capacity. Safe tenting or an alternative site deprive other citizens of the Region from the use of public land, and they entail significant costs if the Region is expected to maintain these other sites as it currently maintains the Encampment – thereby consuming resources that could be devoted to longer-term solutions. Further, a safe tenting protocol is a Region-wide remedy that goes far beyond what is reasonably equivalent to the Transition Plan, which is site-specific and (if the By-laws can be enforced to exclude newcomers) time-bound in its application.

97. The complexity of the “wicked” problem of homelessness also requires significant deference to the Region on this issue. In *Michaud*, this Court concluded that a s.7 infringement was minimally impairing because the impugned legislation (requiring commercial truck drivers to equip their vehicles with a speed limiter) was part of a broader, complex government response to the “social problem of motor vehicle highway safety”.¹⁴⁶ This Court noted the lack of cohesion between experts in the field and concluded that speed limiters were a reasonable choice along the

¹⁴⁴ *Mounted Police Association of Ontario v. Canada (Attorney General)*, [2015 SCC 1](#), para. [149](#).

¹⁴⁵ *R. v. Michaud*, [2015 ONCA 585](#), para. [122](#) (leave to appeal refused: [2016 CanLII 24866 \(SCC\)](#)) [*“Michaud”*], citing *Alberta v. Hutterian Brethren of Wilson Colony*, [2009 SCC 37](#), para. [53](#), *Carter v. Canada (Attorney General)*, [2015 SCC 5](#) para. [102](#).

¹⁴⁶ *Michaud*, para. [127](#).

spectrum of potential policy choices. This Court also reasoned that “[w]here there is debate about countervailing risks in a situation of uncertainty, the regulator must make the call.”¹⁴⁷

98. The same deference applies to the Region’s judgement calls in the complex area of housing policy. The alternative arrangements that the Region provides to those at the Encampment involve budgetary and policy decisions that are properly within the legislative sphere, not the purview of the courts. The Region, as the democratically elected government responsible for housing services, facing resource constraints and escalating needs that are not of its own making, should be given substantial leeway in balancing competing interests in this area.

2. The salutary effects of the By-laws outweigh any deleterious effects

99. The AJ’s comparison of the salutary and deleterious effects of the By-law was flawed on both sides of the ledger.

100. The AJ erroneously considered the interests of the Region’s entire chronically homeless population, rather than focusing on the interests of the far more limited population residing at the Property.¹⁴⁸ As the By-laws are site-specific, only the interests of the latter are germane to the s. 1 analysis. This error led the AJ to overvalue the deleterious effects of the By-law. Further, as noted above, he failed to consider that the By-laws and Transition Plan were neutral in their impact on the broader population.

101. The AJ also erred in assessing the salutary effects of the By-laws by concluding that the “anticipated benefits of the transit hub (greater connectivity, reduced transfer times, more efficient

¹⁴⁷ *Michaud*, para. [127](#).

¹⁴⁸ Decision, para. [243](#).

transit connections) are speculative”.¹⁴⁹ The Region led significant, uncontradicted evidence of the social and economic benefits for all residents of the Region that the KCTH will bring. This evidence is not “speculative” simply because it is not quantified, nor is quantification required to meet this branch of the s.1 test. The AJ’s conclusion on this issue also directly contradicts his pronouncement only a few paragraphs later that “[t]he potential benefit to the Region’s general population of the proposed KCTH constitutes a genuine public interest”.¹⁵⁰ In any event, that a major public infrastructure transit project’s construction will bring significant public benefits is precisely the sort of fact of which a court may take judicial notice.¹⁵¹

PART V. ORDERS SOUGHT

102. The Region requests that the appeal be allowed, that the AJ’s declarations be set aside, that the Court confirm the By-laws’ constitutional validity, and that an injunction be granted under s.440 of the *Municipal Act* allowing the By-laws to be enforced. Alternatively, to the extent that this Court may be of the view that the By-laws require amendment to be constitutionally valid, the Region seeks the direction of this Court as to what is required.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of August, 2026.



Andrew Lokan

¹⁴⁹ Decision, para. [243](#).

¹⁵⁰ Decision, para. [249](#).

¹⁵¹ *Taylor v. Hanley Hospitality Inc.*, [2022 ONCA 376](#), para. [30](#).

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CERTIFICATE

1. An order under subrule 61.09(2) is not required.
2. The Appellant estimates that they will require 2 hours for the oral argument, not including reply.
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 11,993.
5. I am satisfied as to the authenticity of every authority cited in this factum.



August 7, 2026

Andrew Lokan
Paliare Roland Rosenberg Rothstein LLP

SCHEDULE “A”

LIST OF AUTHORITIES

1. *Abbotsford (City) v. Shantz*, [2015 BCSC 1909](#).
2. *Alberta v. Hutterian Brethren of Wilson Colony*, [2009 SCC 37](#).
3. *Andrews v. Law Society of British Columbia*, [\[1989\] 1 SCR 143](#).
4. *Animal Justice v. Ontario (Attorney General)*, [2026 ONCA 380](#).
5. *Association of Justice Counsel v. Canada (Attorney General)*, [2017 SCC 55](#).
6. *Black et al. v. City of Toronto*, [2020 ONSC 6398](#).
7. *Boulter v. Nova Scotia Power Incorporation*, [2009 NSCA 17](#).
8. *British Columbia v. Adamson*, [2016 BCSC 1245](#).
9. *Canada (Attorney General) v. Bedford*, [2013 SCC 72](#).
10. *Carter v. Canada (Attorney General)*, [2015 SCC 5](#).
11. *Church of Saint Stephen et al. v. Toronto*, [2023 ONSC 6566](#).
12. *Clinique juridique itinérante c. Procureur général du Québec*, [2023 QCCS 1949](#).
13. *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [\[1999\] 2 SCR 203](#).
14. *The Corporation of the City of Kingston v. Doe*, [2023 ONSC 6662](#).
15. *Delisle v. Canada (Deputy Attorney General)*, [\[1999\] 2 SCR 989](#).
16. *Dickson v. Vuntut Gwitchin First Nation*, [2024 SCC 10](#).
17. *Egan v. Canada*, [\[1995\] 2 SCR 513](#).
18. *Falkiner v. Ontario (Minister of Community and Social Services)*, [2002 CanLII 44902 \(ON CA\)](#).
19. *Fraser v. Canada (Attorney General)*, [2020 SCC 28](#).
20. *Godbout v. Longueuil (City)*, [\[1997\] 3 S.C.R. 844](#).
21. *Heegsma v. Hamilton (City)*, [2024 ONSC 7154](#).
22. *Housen v. Nikolaisen*, [2002 SCC 33](#).

23. *Jacob v Canda (Attorney General)*, [2024 ONCA 648](#).
24. *Kahkewistahaw First Nation v. Taypotat*, [2015 SCC 30](#).
25. *Maple Ridge (City) v Scott*, [2019 BCSC 157](#).
26. *Mathur v. Ontario*, [2024 ONCA 762](#).
27. *Matsqui-Abbotsford Impact Society v Abbotsford (City)*, [2024 BCSC 1902](#).
28. *Miron v. Trudel*, [\[1995\] 2 SCR 418](#).
29. *Mounted Police Association of Ontario v. Canada (Attorney General)*, [2015 SCC 1](#).
30. *Nanaimo (City) v Courtoreille*, [2018 BCSC 1629](#).
31. *Ontario Health Coalition and Advocacy Centre for the Elderly v. His Majesty the King in Right of Ontario*, [2025 ONSC 415](#).
32. *Poff v. City of Hamilton*, [2021 ONSC 7224](#).
33. *Prince George (City) v Johnny*, [2025 BCSC 1556](#).
34. *Quebec (Attorney General) v. Kanyinda*, [2026 SCC 7](#).
35. *Quebec (Attorney General) v. 9147-0732 Québec inc.*, [2020 SCC 3](#).
36. *R. v. Banks*, [2007 ONCA 19](#).
37. *R. v. Kloubakov*, [2025 SCC 25](#).
38. *R. v. Malmo-Levine; R. v. Caine*, [2003 SCC 74](#).
39. *R. v. Michaud*, [2015 ONCA 585](#).
40. *R v Pike*, [2024 ONCA 608](#).
41. *R. v. Sharma*, [2022 SCC 39](#).
42. *R. v. Sullivan*, [2022 SCC 19](#).
43. *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, [2024 SCC 5](#).
44. *The Regional Municipality of Waterloo v. Persons Unknown*, [2023 ONSC 670](#).
45. *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, [2025 ONSC 4774](#).

46. *The Regional Municipality of Waterloo v. Named Respondents and Persons Unknown*, [2026 ONSC 2971](#).
47. *Saanich (District) v Brett*, [2018 BCSC 1648](#).
48. *Siemens v. Manitoba (Attorney General)*, [2003 SCC 3](#).
49. *Société des casinos du Québec inc v Association des cadres de la Société des casinos du Québec*, [2024 SCC 13](#).
50. *Tanudjaja v. Attorney General (Canada) (Application)*, [2013 ONSC 5410](#).
51. *Tanudjaja v. Canada (Attorney General)*, [2014 ONCA 852](#).
52. *Taylor v. Hanley Hospitality Inc.*, [2022 ONCA 376](#).
53. *Toussaint v. Canada (Minister of Citizenship and Immigration)*, [2009 FC 873](#).
54. *Vancouver Board of Parks and Recreation v. Williams*, [2014 BCSC 1926](#).
55. *Vancouver Fraser Port Authority v Brett*, [2020 BCSC 876](#).
56. *Victoria (City) v. Adams*, [2009 BCCA 563](#).

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY-LAWS

Canadian Charter of Rights and Freedoms, 1983

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

5 . (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.

Municipal Act, 2001, [S.O. 2001, c. 25](#), s. [289](#)

Yearly budgets, upper-tier

289 (1) For each year, an upper-tier municipality shall, in the year or the immediately preceding year, prepare and adopt a budget including estimates of all sums required during the year for the purposes of the upper-tier municipality, including,

- (a) amounts sufficient to pay all debts of the upper-tier municipality falling due within the year;
- (b) amounts required to be raised for sinking funds or retirement funds;
- (c) amounts in respect of debenture debt of lower-tier municipalities for the payment of which the upper-tier municipality is liable; and
- (d) amounts required by law to be provided by the upper-tier municipality for any of its local boards, excluding school boards. 2001, c. 25, s. 289 (1); [2006, c. 32](#), Sched. A, s. 119 (1).

International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 UNTS 3, Articles [2](#) and [11](#).

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

* * *

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

- (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
- (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

National Housing Strategy Act, [S.C. 2019, c. 29, s. 313](#), s. [4](#).

Housing Policy Declaration

Declaration

4. It is declared to be the housing policy of the Government of Canada to

- (a) recognize that the right to adequate housing is a fundamental human right affirmed in international law;
- (b) recognize that housing is essential to the inherent dignity and well-being of the person and to building sustainable and inclusive communities;
- (c) support improved housing outcomes for the people of Canada; and
- (d) further the progressive realization of the right to adequate housing as recognized in the International Covenant on Economic, Social and Cultural Rights.

Appendix “A” – Summary Chart of Canadian Encampment Cases

	Style of Cause	Summary	Result	Arrangements Made for Encampment Occupants
	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
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
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
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
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

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 encamping 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. ¹
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. 7 of the <i>Charter</i>	Injunction to prevent encampment closure denied	None
8.	<i>Heegsma v. Hamilton (City)</i> , 2024 ONSC 7154 (appeal pending)	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>)	None

¹ These conditions include the following: 1. The City must continue to work with the Petitioner and support groups to ensure a smooth transition as well as the immediate availability of harm reduction and mental health services for displaced individuals. 2. The City must: i. Ensure any shelter offered to Encampment occupants provides harm reduction services, if required by the occupant. ii. Identify regular occupants of the Encampment; iii. Conduct individual needs assessments for each occupant of the Encampment to identify appropriate accommodations or needs tailored to their specific requirements; iv. Identify occupants from the Encampment who share strong community ties and make every effort to keep these individuals together during relocation. v. provide MAIS and the occupants of the Encampment regular updates on shelter availability and the adequacy of those options; vi. consult directly with the Encampment occupants prior to any relocation to address their concerns and any preferences for proximity to necessary services; vii. Assist residents during relocation and ensure they have access to necessary resources; viii. Ensure that medical care and accessible transport are arranged to facilitate a safe and supported transition; ix. Respectfully manage the residents' shelters and belongings during relocation; x. Avoid dismantling shelters when residents are absent, unless there is clear evidence of abandonment; xi. Ensure residents have adequate time and opportunity to collect their essential belongings; xii. Store belongings at no cost for a period of six months and ensure their protection, with clear procedures established for their retrieval by the occupants or their representatives; and xiii. Assign a City representative to liaise with community services and ensure post-relocation support through follow-up check-ins.

	(ONCA heard this appeal in February 2026; the decision is under reserve)		No <i>Charter</i> infringement in preventing individuals from camping in a public park during the daytime	
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
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 the encampment Claims under ss. 7 and 15 of the <i>Charter</i>	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
11.	<i>The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained</i> , 2025 ONSC 4774 [“ <i>Injunction Decision</i> ”]	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 <i>Charter</i>	Injunction sought on behalf of unhoused individuals granted (until conclusion of the merits hearing)	N/A

		Interim injunction sought on behalf of encampment residents		
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 No <i>Charter</i> challenge before the Court	Injunction to enforce part of the Fire Safety Orders granted (including the prevention of in-tent heaters) 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 as sought by the City, occupants removed only where they have not identified themselves as seeking transition to housing
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 <i>Charter</i> 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

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
15.	<i>Clinique juridique itinérante c. Procureur général du Québec - Ministère des Transports et de la Mobilité durable du Québec</i> , 2025 QCCS 2087	Injunction sought on behalf of unhoused individuals living on land in Montreal owned by the Ministry of Transport to prevent their eviction <i>Charter</i> rights arguments under s. 7 raised	Injunction to prevent encampment clearing granted (for 10 days)	N/A
Nanaimo, BC				
16.	<i>Nanaimo (City) v Courtoreille</i> , 2018 BCSC 1629	City sought statutory injunction to close 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 <i>Charter</i> rights	Injunction to clear encampment granted	None
Prince George, BC				
17.	<i>Prince George (City) v Stewart</i> , 2021 BCSC 2089	City sought an injunction to remove two encampments located on a vacant lot and a green space it owned Respondents raised s. 7 <i>Charter</i> rights Court recognized that encampment residents could go to another nearby encampment, most had already done so	Injunction to close one of the two encampments granted	Future closure of the encampment permitted where the City could demonstrate “available and accessible housing and daytime facilities for [the encampment’s] occupants”

18.	<i>Prince George (City) v Johnny</i> , 2022 BCSC 282 [“ <i>Johnny 1</i> ”]	City sought injunction to close an encampment (same as in <i>Stewart</i>) 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 Court rejected that there were sufficient, accessible places for all encampment residents to go to	Injunction to clear encampment denied – <i>Stewart</i> condition not satisfied	Conditions in <i>Stewart</i> still apply
19.	<i>Prince George (City) v Johnny</i> , 2025 BCSC 1556 [“ <i>Johnny 2</i> ”]	City sought an injunction to close the <i>Stewart / Johnny 1</i> encampment on basis that the <i>Stewart</i> conditions had been fulfilled Additional housing options opened since the original <i>Johnny</i> decision near the Encampment; rooms there were held for individuals at the Encampment	Injunction to close encampment granted; Order allows individuals to apply for constitutional exemptions where options are not truly accessible to them	Conditions in <i>Stewart</i> still apply (and were met)
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
Toronto, ON				
21.	<i>Black et al. v. City of Toronto</i> , 2020 ONSC 6398	Encampments in municipal parks	Injunction to prevent encampment closure denied	None

		Injunction to prevent encampment closure sought on behalf of unhoused individuals Underlying claims under ss. 7, 12, and 15 of the <i>Charter</i> and the <i>Human Rights Code</i>		
22.	<i>Church of Saint Stephen et al. v. Toronto</i> , 2023 ONSC 6566	Encampment on city land outside a church Injunction to prevent encampment closure sought on behalf of unhoused individuals Underlying claim under s. 7 of the <i>Charter</i>	Injunction to prevent encampment closure denied	None
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
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
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
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
27.	<i>Vancouver (City) v Wallstam</i> , 2017 BCSC 937	City sought an injunction to remove encampment from a property it owned S. 7 raised in encampment residents' underlying application	Injunction to clear encampment denied without prejudice to the City's ability to bring it again	N/A
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 Charter rights raised	Injunction sought to clear encampment granted	None
29.	<i>Bamberger v Vancouver (Board of Parks and Recreation)</i> , 2022 BCSC 49	Injunction sought by City to close encampment in a Vancouver park Charter rights raised 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 Board sought injunction to enforce Orders and a municipal parks bylaw Bylaw allows sheltering overnight only in city parks S. 7 Charter rights raised	Encampment residents' application for judicial review granted – breach of procedural fairness, Orders not reasonable Board's injunction adjourned pending reconsideration of the Orders	N/A

30.	<i>Vandenberg v Vancouver (City) Fire and Rescue Services</i> , 2023 BCSC 2104	Fire Order to clear tents/structures from city blocks issued in respect of an existing encampment Ss. 7 and 15 of <i>Charter</i> raised	Encampment residents' application for judicial review granted – breach of procedural fairness	N/A
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
32.	<i>Victoria (City) v. Adams</i> , 2009 BCCA 563 (appeal of 2008 BCSC 1363)	Same as 2008 BCSC 1363	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
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) <i>Charter</i> arguments raised by encampment residents	Injunction to clear encampment granted	None
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 <i>Charter</i> arguments	Conviction remains; <i>Charter</i> arguments rejected (upholds <i>Adams</i> : overnight sheltering only)	None
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
36.	<i>British Columbia v. Adamson</i> , 2016 BCSC 1245	Same encampment as in <i>Adamson I</i> , but 3 months later	Injunction to clear encampment granted	Residents to remove tents/belongings “as

	[“ <i>Adamson 2</i> ”]	Injunction sought by province for the second time		housing becomes available, and by not later than August 8, 2016” (order made July 5)
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THE REGIONAL MUNICIPALITY OF WATERLOO
Applicant (Appellant)

-and- JOSEPHINA DUGAS et al.
Respondents (Respondents in Appeal)

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT
TORONTO

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