Court File No. CV-25-00000750-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE REGIONAL MUNICIPALITY OF WATERLOO

Applicant

and

PERSONS UNKNOWN AND TO BE ASCERTAINED

Respondents

APPLICATION UNDER Rule 14.05 of the *Rules of Civil Procedure*

FACTUM OF THE APPLICANT

(Application Hearing, Returnable April 16, 17, 20, 2026)

March 13, 2026

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PART I. OVERVIEW

1. The Regional Municipality of Waterloo ("**Region**") seeks a declaration that its site-specific Bylaw No. 25-021, as amended on January 9, 2026 ("**Amended Bylaw**") complies with the *Canadian Charter of Rights and Freedoms* ("***Charter*"**), and an injunction to allow it to enforce the Amended Bylaw. Alternatively, if it does not comply or is otherwise defective, the Region seeks this court's direction as to the steps that it needs to take to close the encampment ("**Encampment**") at 100 Victoria Street North, Kitchener (the "**Property**" or "**100 Vic**"), so it can proceed with construction activities relating to the Kitchener Central Transit Hub ("**KCTH**").

2. The parties before this court agree on many things. All agree that there is a homelessness crisis in Ontario, that the number of unhoused individuals has risen sharply since the pandemic,[1] that unhoused individuals suffer from substantially worse health outcomes than the housed population, that homelessness is a complex and "wicked" problem to address, and that solutions to the homelessness crisis will require both increased resources from all levels of government and other stakeholders and time to implement the required strategies.[2] Indeed, in 2024 the Region adopted a "Plan to End Chronic Homelessness" ("**PECH**") by 2030,[3] and has arguably done more than any other Ontario municipality to address these issues – almost tripling its spending on

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[1] From 2021 to 2025, known homelessness increased by approximately 49.1% province-wide, to an estimated 84,973 individuals: Donaldson, J., Kandyba, L. Wang, D, *Municipalities Under Pressure One Year Later: An Update on the Human and Financial Cost of Ontario's Homelessness Crisis*, Jan, 2026, [***Municipalities Under Pressure Update***], p.8, Ex. "C" to the Aff of L. Pin, sworn February 20, 2026 ["**2nd Pin Aff**"], 2nd Supplementary Responding Application Record ["**2nd SRAR**"], Tab 12C, p. 132.

[2] As acknowledged by the Respondents' witness David Alton, "homelessness is a wicked problem meaning that it is highly complex": Cross-Ex of D. Alton ["**Alton Transcript**"], Joint Transcript Book ["**JTB**"], Vol. 1, Tab 3, pp. 111-113 (Q102-106).

[3] The Plan to End Chronic Homelessness ["**PECH**"], Ex. "A" to the Aff of P. Sweeney, affirmed June 6, 2025 ["**1st Sweeney Aff**"], Application Record ["**AR**"], Tab 2A, p. 52.

homelessness programs between 2021 and 2025,[4] as well as implementing an ambitious plan to create 2,500 affordable housing units over 5 years.[5] The Region remains committed to the PECH.

3. However, the issues raised by the Amended Bylaw are more limited and discrete. The Region cannot wait until 2030 for construction to commence on the KCTH. The Amended Bylaw deals only with 100 Vic – unlike the bylaw at issue in *Persons Unknown*, [6] it does not address homelessness policy throughout the municipality. Rather, the Region has created a more localized solution for this specific property. Under the Bylaw as originally passed in April 2025 ("**Original Bylaw**"), those residing at the Encampment as of the date public notice of the Bylaw was given ("**Existing Residents**") were able to stay until at least December 1, 2025. In addition, the Original Bylaw was accompanied by a plan ("**Transition Plan**") to transition the approximately 40 Existing Residents to alternative accommodation over a 7-month period, while adding equivalent capacity (i.e., approximately 40 spaces) to the Region's housing stability system.

4. From the outset, the Region took a "light touch" approach to enforcement. No charges were laid and no persons were evicted under the Original Bylaw. The Respondents moved for an interlocutory injunction in June 2025, which was granted on August 21, 2025 ("**Injunction Decision**"),[7] and the Original Bylaw remains unenforced. The parties held a mediation in November-December 2025. The mediation was unsuccessful, but on January 9, 2026, the Original Bylaw was amended, in part to address criticisms of the Original Bylaw in the Injunction Decision. The amendments added a transition protocol ("**Transition Protocol**"), that guarantees an offer of

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[4] 1st Sweeney Aff, Application Record, AR, Tab 2, para. 67, p. 32.
[5] Cross-Ex of P. Sweeney Sweeney, July 11, 2025 ["**1st Sweeney Transcript**"], JTB, Vol. 2, Tab 1, p. 45 (Q98).
[6] *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2023 ONSC 670 ["***Persons Unknown***"].
[7] *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2025 ONSC 4774 ["***Injunction Decision***"].

alternative accommodation to all Existing Residents who engage with the Region and provides for continuation of their social supports and storage of their personal effects. The amendments also removed fines for contravening the bylaw and made provision for occupants who are not Existing Residents to be brought into the housing stability system.

5. As of February 2026, no Existing Residents remain[8] – the Region has transitioned 29 Existing Residents to alternative accommodation, and a further 11 left the Encampment without accepting offers from the Region's team of Unsheltered Support Workers ("**USW**"s).[9] Because the injunction precluded the Region from preventing newcomers from taking up occupancy at the Encampment, there has continued to be an inflow of unhoused individuals, but the USWs have successfully placed a further 22 of those.[10] At last count, approximately 10-12 occupants remained at the Encampment, with 1-3 staying overnight.[11] This indicates that as long as the Region is permitted to prevent additional newcomers from establishing occupancy (i.e., the injunction is lifted), the Region may well be able to close the Encampment without any forced evictions.

6. The Respondents, however, argue that the Region's efforts are insufficient. The Respondents' approach, respectfully, is tantamount to saying that the Encampment cannot be closed for the foreseeable future, because the Region must essentially solve homelessness for the long term before it can regain possession of 100 Vic. The Respondents and their witnesses have argued variously that the Encampment must remain open to newcomers, that occupants (current or future) can only be moved to permanent housing, that no occupant can be removed from the Encampment against their will, and that the Encampment cannot be closed until the Region has

[8] Cross-Ex of A. Moss ["**Moss Transcript**"], JTB, Vol 4, Tab 21, p. 491.
[9] Answers to Undertakings of A. Moss, Answer #2.
[10] Moss Transcript, JTB, Vol 4, Tab 21, p. 492.
[11] Moss Transcript, JTB, Vol 4, Tab 21, p. 491.

sufficient shelter spaces for the diverse needs of the municipality's entire (and growing) unhoused and vulnerably housed population – despite arguing that shelter spaces are in fact worse than encampments. And that all these conditions must be met, no matter how long it takes.

7. The Region submits that the Amended Bylaw strikes an acceptable balance on the issues that arise from the need to use 100 Vic for construction purposes. It does not need to be perfect, or reflect the optimal approach, as long as it is *Charter*-compliant. However, if it is found to fall short, the Region seeks a realistic road map from the court as to any further steps it must take.

PART II. FACTS

A. The Parties and the Encampment

8. The Region is an upper-tier municipality under the *Municipal Act, 2001*[12] with jurisdiction over areas within Cambridge, Kitchener, Waterloo, and nearby townships. The Region's responsibilities are prescribed by statute, and include public health, community services, public transit, and waste management. The Region is designated under the *Housing Services Act, 2011* as a Service Manager responsible for delivery of housing and homelessness programming.[13] The Region does not have jurisdiction beyond its territory, nor over the overall provision of healthcare services, education, social assistance, interest rates/monetary policies, or many other policy areas which affect homelessness. The Region is also statutorily barred from planning budget deficits.[14]

9. As an upper-tier municipality, the Region encompasses geographic areas that are also represented by lower-tier municipalities, each with their own elected councils. These

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[12] *Municipal Act, 2001*, S.O. 2001, c. 25 ["**Municipal Act**"].
[13] *Ontario Regulation 367/11*, s.6; *Housing Services Act*, 2011 S.O. 2011, c.6, Sched. 1.
[14] Municipal Act, s. 289.

municipalities are distinct legal entities from the Region.[15] Lower-tier municipalities also own land (including public parks) over which the Region does not exercise control or have jurisdiction. While the Region makes efforts to cooperate with the governments of lower-tier municipalities, the Region cannot compel these municipalities to take policy action.

10. The Region owns the Property, which is a lot devoid of permanent structures or buildings. The Property is not a public park, nor a site that is normally open for public use. Despite this, however, since approximately December 2021, 100 Vic has been the site of the Encampment, comprised of unhoused individuals and the tents and other temporary structures they have erected.

11. The Respondents to the Application are all individuals who have recently experienced homelessness in the Region, many (but not all) of whom have previously resided at 100 Vic. Some, but not all, of the Respondents may be current occupants of the Encampment. Some, but not all, of the Respondents are Existing Residents within the meaning of the Amended Bylaw (detailed below). An *amicus curiae* has also been appointed to represent the interests of "those persons living in the encampment whose capacity may be in issue and who have not retained counsel".[16] The *amicus*' position on the Application is generally aligned with that of the Respondents.

B. The Encampment's Significant Health and Safety Risks

12. There have been significant public health and safety concerns arising from the Encampment throughout its existence. These include overcrowding, improperly disposed of drug paraphernalia, fire hazards, violence between residents, significant garbage accumulation, rodent

[15] While they are represented on Regional Council and often coordinate with the Region, the Region does not exercise control over the lower-tier municipalities.

[16] Order of Justice Gibson dated May 28, 2025, para. 1.

activity, the presence of human urine and feces, and construction of semi-permanent structures with no apparent adherence to building standards.[17]

13. 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,[18] including hiring on-site security and pest control,[19] arranging for regular cleaning of the Property,[20] adding proper waste-bins onsite, and installing and servicing onsite portable toilets.[21] The Region currently spends approximately $66,200 per month maintaining the Encampment, exclusive of staffing costs for social supports, outreach facilities, or bylaw staff who regularly attend the Property.[22] The Region's efforts in respect of the Encampment are consistent with the National Working Group on Homelessness' recommendations for municipalities. 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.[23]

14. The Region established a team of USWs in 2023, which is currently comprised of six licensed professionals. Their role is to assist unhoused residents of the Region, including those at the Encampment, by developing and implementing Individual Housing Plans ("**IHP**"s) in collaboration with unhoused persons.[24] IHPs are personalized plans designed to match individuals

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[17] 1st Sweeney Aff, AR, Tab 2, para. 94, p. 28.
[18] 1st Sweeney Aff, AR, Tab 2, para. 88, p. 40.
[19] 1st Sweeney Aff, AR, Tab 2, paras. 88-91, pp. 40-41.
[20] 1St Sweeney Aff, AR, Tab 2, para. 90, p. 41.
[21] 1St Sweeney Aff, AR, Tab 2, para. 91, p. 40.
[22] 1st Sweeney Aff, AR, Tab 2, para. 92, p. 41.
[23] "Homeless Encampments: Municipal Engagement Guide", Ex. 3 to the Cross-Ex of S. Escobar, July 11, 2025 ["**1st Escobar Transcript**"], JTB, Vol. 1, Tab 7, p. 449.
[24] 1st Sweeney Aff, AR, Tab 2, para. 13, p. 18.

with housing options reflecting their specific needs and preferences, to the greatest extent possible. The USW team has been successful in supporting many unhoused individuals in the Region in finding alternative arrangements. From April 2024 to April 2025 alone, the USW team successfully supported 43 individuals from the Encampment in obtaining referrals to housing.[25]

15. A complicating factor in the Region's attempts to assist those at the Encampment is that some individuals onsite have attempted to interfere with the Region's provision of services, such as by blocking access to waste bins on collection days[26] or have discouraged residents from accepting alternate shelter offers provided by USWs.[27] An activist group known as FightBack KW has maintained a continuous presence on the site since April 2025. The presence of activists who have come to 100 Vic since the Bylaw was passed has complicated the process of monitoring resident numbers and matching the needs of residents to available resources through IHPs.[28]

16. Despite the Region's significant efforts to improve conditions onsite, however, the Encampment continues to pose substantial health and safety challenges to its residents and the general public. Recently, there have been several major fires at the Encampment. On February 12, 2026 a large fire in the middle of the Property reportedly injured two individuals and caused significant damage to certain structures onsite.[29] This fire was potentially caused by a propane tank.[30] Another significant fire occurred on February 14th.[31]

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[25] 1st Sweeney Aff, AR, Tab 2, para. 92, p. 41.

[26] Aff of P. Sweeney, affirmed July 2, 2025 ["**2nd Sweeney Aff**"], Reply Application Record ["**RAR**"], Tab 2, para. 41, p. 23; "Maintenance workers blocked from accessing garbage bins at Kitchener encampment", Ex. 5 to the Cross-Ex of J. Droog, ["**Droog Transcript**"], JTB, Vol. 1, Tab 5, p. 298.

[27] 2nd Sweeney Aff, RAR, Tab 2, para. 40, p. 23.

[28] 2nd Sweeney Aff, RAR, Tab 2, para. 12, 14.

[29] Aff of P. Sweeney, affirmed February 27, 2026 ["**5th Sweeney Aff**"], Supplementary Application Record ["**SAR**"], Tab 6, para. 5, p. 153.

[30] 5th Sweeney Aff, SAR, Tab 6, para. 5, p. 153.

[31] 5th Sweeney Aff, SAR, Tab 6, para. 7, p. 153.

17. The Region has also recently become concerned by heightened security risks at the Encampment. Given these concerns, in December 2025 the Region instructed the USW team to reduce its attendance at the Property from daily to once a week (although the team continued to be available at a nearby location).[32] The Region also reduced attendance of maintenance and other non-security staff/contractors to once a week (and only when police are present), resulting in a reduction in cleaning and pest control conducted at the Property.[33] Region staff passed on a warning that there were reports of weapons to Sanguen Health Centre – a healthcare services agency that provides services at the Encampment via a mobile treatment bus – after which Sanguen withdrew from providing on-site services from mid-December 2025 to mid-January 2026.[34]

C. *The* Persons Unknown *Decision and the Region's Subsequent Efforts*

18. The Encampment was also the subject of proceedings in 2022-2023, when the Region sought to enforce its general, region-wide Code-of-Use Bylaw against individuals living at the Encampment. The Code-of-Use Bylaw prohibits overnight camping without a permit on any property owned by the Region.[35] 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.[36]

19. In *Persons Unknown*, Justice Valente declined to enforce the Code-Of-Use Bylaw 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 their rights under s.7 of the *Charter.* He held that the Code-of-Use Bylaw was overbroad

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[32] Aff of A. Moss, affirmed January 16, 2026 ["**Moss Aff**"], SAR, Tab 5, paras. 28-29, p. 128.
[33] Moss Aff, SAR, Tab 5, para. 10, p. 124.
[34] Moss Aff, SAR, Tab 5, paras. 30-31, p. 128; Aff of J. Kalbfleisch, 2nd SAR, Tab 9, para. 6, p. 60.
[35] *Code-of-Use By-law*, Sched. B, s. 2(t), Ex. B to 2nd Sweeney Aff, RAR, p.11.
[36] *Persons Unknown*, para. 6, 11. The Region had also used the Code-of-Use Bylaw in past to clear other encampments.

and grossly disproportionate to the objectives relied upon by the Region.[37] He declared that insofar as the Code-Of-Use Bylaw prevented the 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 Bylaw contravened s. 7 of the *Charter* in a manner that was not saved under s. 1 and was to that limited extent inoperative.[38] Justice Valente found no s. 15 violation.[39]

20. Since *Persons Unknown*, the Region has made significant investments in its homelessness prevention and response efforts. Since 2022 (when *Persons Unknown* was argued), the Region has more than doubled its operating budget for homelessness programs and services, from $30.9 million to $65.5 million (and has approximately tripled its budget since 2021), with corresponding increases in capacity.[40] The USW team was established in 2023. In April 2024, the Region adopted the PECH with consultation from various stakeholder groups.[41]

21. The PECH lays out the Region's proposed approach to achieving functional zero chronic homelessness in Waterloo Region by 2030. The Region works to implement the PECH with various stakeholders and advisors, including advocates for Encampments. The PECH is co-authored by the Social Development Centre Waterloo Region ("**SDC**"), a Region-funded organization with a mandate to ensure that lived experience is the basis for collective action.[42] Two other groups, the Co-Creator's Group and the Lived Experts Prototyping Cohort, have provided

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[37] *Persons Unknown*, paras. 97, 101, 104, 114, 119.
[38] *Persons Unknown*, at para. 158.
[39] *Persons Unknown*, para. 120-127.
[40] 1st Sweeney Aff, AR, Tab 2, para. 67, p. 32.
[41] PECH, Ex. "A" to the 1st Sweeney Aff, AR, Tab 2A, p. 52.
[42] PECH, Ex. "A" to 1st Sweeney Aff, AR, Tab 2A, p. 52.

significant input on the PECH and represent the experiences of unhoused individuals and their allies, as well as service providers in the field.[43] The Co-Creator's Group meets monthly.[44]

22. Despite these efforts, however, the unhoused population in the Region continues to grow, and exceeds the number of available shelter beds and other housing options. While no one measure of homelessness is fully reliable, the Region is mandated to conduct periodic "point-in-time" counts ("**PIT Counts**"). In a September 2021 PIT count, 1,085 people were counted as experiencing homelessness in the region, with 75% classified as experiencing chronic homelessness.[45] By October 2024, those numbers had increased to 2,371 and 78% respectively.[46] This growth is consistent with provincial trends,[47] which show significant growth in unhoused populations attributed to a complicated confluence of both national and international factors.[48] The situation in the Waterloo region appears to be more acute than elsewhere in the province, but the Region's response has been significantly more robust. Between 2021 and 2025, the overall homeless count in the province increased by 49.1%, with the average increase in municipal funding being 48.2%.[49] In the Waterloo region, the PIT Count increased by 118% over almost the same period, while the Region's operating budget for homelessness programs increased by 183%.[50]

23. Despite the challenges, the Region has made important strides in addressing the homelessness crisis and remains committed to ending chronic homelessness. The Region's efforts

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[43] PECH, Ex. "A" to 1st Sweeney Aff, AR, Tab 2A, p. 52.
[44] PECH, Ex. "A" to 1st Sweeney Aff, AR, Tab 2A, p. 55.; 2nd Sweeney Aff, AR, Tab 2, para. 36 p. 24.
[45] 2021 Point in Time Count ["**2021 PITC**"], Ex. "D" to the 1st Sweeney Aff, AR, Tab 2D, p. 171.
[46] 2024 Point in Time Count ["**2024 PITC**"], Ex. "E" to the 1st Sweeney Aff, AR, Tab 2E, p. 174.
[47] Municipalities Under Pressure Update, Ex. "C", 2nd Pin Aff, 2nd SAR, Tab 12, pp. 132.
[48] Municipalities Under Pressure Update, Ex. "C", 2nd Pin Aff, 2nd SAR, Tab 12, p. 136.
[49] Municipalities Under Pressure Update, Ex. "C", 2nd Pin Aff, 2nd SAR, Tab 12, pp. 134.
[50] 1st Sweeney Aff, AR, Tab 2, paras. 61, 67, pp. 30,23.

have been crucial in curbing the growth of homelessness in the Waterloo Region.[51] The problem, unfortunately, is – as all parties agree – not entirely within the Region's control or ability to fix.[52] Province-wide, it is projected that the homeless population will more than double by 2035.[53]

D. The KCTH

24. The Region always taken the position that the Encampment would not be permitted to continue indefinitely. Since before *Persons Unknown*, the Region has indicated that the Property would eventually be needed in connection with the construction of the KCTH.[54] The KCTH is a landmark project that will create significant economic and social growth for residents of the Waterloo region and enable both a reduction in commuter times and greater public transportation options. The Region finalized an MOU with Metrolinx for the KCTH in May 2025.[55]

25. Once completed, the KCTH will act as a gateway to the Waterloo Region and surrounding area, serving current and future residents, as well as visitors. It is vital to the economic and social growth of the Region, and a key part of the Region's strategic priorities.[56] It will combine numerous services, including ION light rail transit, Grand River Transit, expanded rail and bus GO Transit, VIA Rail, inter-city busy service, passenger vehicles and car shares, and cyclists and pedestrians, into one central and convenient transit hub in the heart of the region.[57] A reduction in commuter times across the region will constitute a significant service to its residents. This is especially true

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[51] The Homeless Individuals and Families Information System (HIFIS) reflects that there were 462 and 470 living unsheltered in the Region in November and December 2025, respectively. HIFIS tracks individuals who interact with various homelessness services provided or funded by the Region: 2nd Undertakings of P. Sweeney, Answer #1.

[52] Ex. 1 to the Cross-ex of S. Hwang ["**Hwang Transcript**"], JTB, Vol. 1, Tab 8, pp. 465, 468 (Q22, 32); Cross-Ex of M.J. Houle ["**Houle Transcript**"], JTB, Vol. 4, Tab 19, pp. 428-429, (Q140-146); Cross-Ex of B. Pauly ["**Pauly Transcript**"], JTB, Vol 4, Tab 17, pp. 228-229 (Q152-155).

[53] Municipalities Under Pressure Update, Ex. "C", 2nd Pin Aff, 2nd SAR, Tab 12, pp. 135.

[54] Aff of D. Spooner, affirmed June 6, 2025 ["**Spooner Aff**"], AR, Tab 3, para. 18, p. 355.

[55] Spooner Aff, AR, Tab 3, para. 32, p. 359.

[56] Spooner Aff, AR, Tab 3, para. 16, p. 354.

[57] Spooner Aff, AR, Tab 3, para. 18, p. 355.

for those who rely on public transit daily, including those who commute for work, seniors, students, lower-income residents, and people with disabilities.

26. Metrolinx has advised the Region that it requires use of the Property for construction staging and laydown purposes for the KCTH.[58] Staging and laydown are critical preparation activities for the construction of a physical project.[59] They involve positioning and organizing construction materials (such as steel, concrete, bricks, wood), 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.[60]

27. The proximity, size and grade of a staging and laydown site are important factors to consider in choosing such a site.[61] Since large construction equipment and materials are transported from the laydown site to or from the construction site, a laydown site that is even a short distance away from can increase the chance of worker injury by increasing the distance materials or equipment need to travel. On similar rail construction projects, workers have been injured by equipment falling over while traversing a grade raising or on shaky ground.[62] This can also, on aggregate, add significant additional time to a project.

28. The Region must provide the Property to Metrolinx in a condition fit for use, which means the Region will require time to engage in remediation and preparation of the Property prior to turnover to Metrolinx.[63] This may include clean up, investigations, geotechnical testing, soil

[58] Spooner Aff, AR, Tab 3, para. 37, p. 361; Ex. "I" to the Spooner Aff, RMR, Tab 3I, p. 478.
[59] Spooner Aff, AR, Tab 3, para. 39, p. 361.
[60] Spooner Aff, AR, Tab 3, para. 39, p. 361.
[61] Spooner Aff, AR, Tab 3, paras. 39-40, pp. 361-362.
[62] Spooner Aff, AR, Tab 3, para. 40, p. 362.
[63] Spooner Aff, AR, Tab 3, paras. 45-46, p. 464.

testing and scraping, removal of hazardous materials, and/or groundwater monitoring. It will take the Region approximately three months to complete this work.[64]

29. 100 Vic is the only space owned by the Region that is proximate to the construction work to be conducted by Metrolinx, of an adequate size, and on-grade with the construction site.[65] The Region has considered whether it could provide Metrolinx with an alternative site, but has determined that no other site can be used.[66] All other properties owned by the Region within 1 kilometre of the work are either properties that are already being used for the KCTH site or the Region's other works, have active ongoing uses, or are not on-grade or large or proximate enough for Metrolinx's purposes.[67] The option of purchasing additional land is impractical because the cost of acquiring suitable land that is proximate to the construction site is prohibitively high and the types of land available in close proximity are not suitable for construction purposes.[68] Further, the time required to identify, purchase, and prepare new land would delay the project timeline.[69]

30. Given that construction work will be taking place on three sides of the Property, including rail work, road work, and (most critically) demolition work, the Region is also concerned with the health and safety risks to anyone residing nearby while construction work is ongoing.[70] The risks of heavy machinery or other fatal accidents must be taken into account.

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[64] Spooner Aff, AR, Tab 3, paras. 52-55. P. 366.
[65] Spooner Aff, AR, Tab 3, paras. 41-44, pp. 363-363.
[66] Spooner Aff, AR, Tab 3, para. 44, p. 363.
[67] Spooner Aff, AR, Tab 3, para. 41, p. 362.
[68] Spooner Aff, AR, Tab 3, para. 44, p. 363.
[69] Spooner Aff, AR, Tab 3, para. 44, p. 363.
[70] Spooner Aff, AR, Tab 3, paras. 52-55, p. 366.

31. At the time of *Persons Unknown*, the Region did not yet have a defined start date for the KCTH, nor a date by which the Property specifically would be needed.[71] The Region did not put forward the KCTH as the purpose of the Code-of-Use Bylaw in *Persons Unknown*, and instead relied on the general purposes of preventing physical damage to Region-owned lands, preventing disruption to the Region's operations, and regulating the use and enjoyment of designated areas by others.[72] By contrast, the evidence on this application is that Metrolinx (the Region's contractual partner in constructing the KCTH) has advised the Region that it requires vacant possession of the Property in October 2026 for construction staging and laydown purposes, which in turn means that the Region requires possession by end of June.[73] Separate from the use of the Property itself, as the KCTH project continues, there will be construction activity on three sides of the Property, rendering it unsafe for residents to remain onsite.

E. The Original and Amended Bylaws and the Injunction Decision

32. Given its contractual commitments to deliver the Property to Metrolinx, on April 23, 2025, the Region enacted the Original Bylaw to provide for vacant possession of 100 Vic by December 1, 2025. Amendments were made on January 9, 2026, to add additional protections for those at the Encampment. The Amended Bylaw came into force (though enjoined) on February 1, 2026.

33. As drafted, the Amended Bylaw provides for a phased closing of the Encampment by distinguishing between the approximately 40 individuals residing at the Encampment as of April 16, 2025, the date of public notice of the Bylaw (the Existing Residents), and those who have come to the Property since that date. Under the Original Bylaw, Existing Residents were permitted to

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[71] *Persons Unknown*, at paras. 15-16.
[72] *Persons Unknown*, at paras. 9, 114, 119.
[73] Cross-Ex of D. Spooner, JTB, Vol. 5, Tab 25, pp. 172-173 (Q142).

remain at the Property until December 1, 2026 – more than 7 months after the Bylaw was enacted – giving the Region time to work with them to transition them to alternative accommodation. The Amended Bylaw revised that date to April 1, 2026.

34. Under the Amended Bylaw, as with the Original Bylaw, no newcomers may join the Encampment or remain as occupants on the Property. This structure allows 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.[74] This gradual approach seeks to avoid a forced displacement of those at the site without adequate notice or supports, which benefits both the Region (which assists in finding individuals alternative arrangements) and individuals living at the Encampment (for whom greater notice of the Encampment's closure helps to mitigate harm). Indeed, as noted above, none of the 40 Existing Residents remain onsite at the Property, a testament to the Region's gradual, individualized approach for relocating unhoused individuals from the Encampment.[75]

35. To ensure that Existing Residents are adequately supported in this transitional period, the Regional Council also approved the accompanying Transition Plan to support the Existing Residents along with the Original Bylaw. This included budgeting an additional $814,333 in net new funding in 2025 to ensure that there is additional capacity in the housing stability system for the residents who will need to transition to other accommodations because of the anticipated closure.[76] This was intended to ensure that other unhoused people in the Waterloo region are not negatively affected (e.g., displaced or moved further down waiting lists) by the closure. While the $814,333 is nominally allocated specifically among additional rent supplements, motel rooms, and

[74] 1st Sweeney Aff, AR, Tab 2, para. 117, p. 35.
[75] Moss Transcript, JTB, Vol 4, Tab 21, p. 491.
[76] 1st Sweeney Aff, AR, Tab 2, para. 41, p. 25.

supportive housing, Region staff have the discretion to move funds between these categories to meet the specific needs of residents.[77] The Region recognizes that the needs of residents are diverse, and some may be more suited to one form of accommodation rather than another. The Region's USW team also continues to support the Encampment residents, including by developing IHPs with willing residents.[78]

36. Since this court's Injunction Decision in August 2025,[79] the Region has been enjoined from enforcing the Original Bylaw and Amended Bylaw until the hearing of this application on the merits. As the Region has not been able to prevent newcomers from joining the Encampment, the population has varied between approximately 40 individuals and the most recent count of 10-12 occupants as of February 2026. None of the original 40 Existing Residents remain on site, and the USWs have also successfully supported the transition of at least 22 more recent arrivals to alternative housing since May 2025.

37. The January 2026 amendments to the Bylaw, including the Transition Protocol, provide greater protections for both Existing Residents and more recent occupants. For example:

(a) Existing Residents cannot be removed from the Property unless they have an offer in writing for alternative accommodation (with limited health and safety related exceptions). These "Alternative Accommodations" as defined in the Amended Bylaw include emergency shelters, transitional housing, affordable/supportive

[77] 1st Sweeney Aff, RMR, Tab 2, para. 42, p. 25; 1st Sweeney Transcript, JTB, Vol. 2, Tab 1, pp. 46-48 (Q102-107).
[78] 1st Sweeney Aff, AR, Tab 2, para. 37, p. 24.
[79] *Injunction Decision*, 2025 ONSC 4774.

housing, motels, and other options, recognizing that Existing Residents have a diversity of needs which different types of solutions might address;[80]

(b) In the event that an Existing Resident loses their Alternative Accommodation due to non-compliance with applicable rules, the Amended Bylaw provides that the Existing Resident will be referred back to 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 100 Vic once they move to Alternative Accommodation;

(d) The Region will offer an Existing Resident transportation for themselves and their belongings, and coverage for up to 6 months of storage for additional belongings, at no cost to the Existing Resident;[81]

(e) For those who are not Existing Residents but are onsite at 100 Vic, the Region will take them into the housing stability system and make efforts, subject to availability and cooperation, to provide those individuals with appropriate housing options. [82]

F. Consultation Around the Original and Amended Bylaws

38. The Original and Amended Bylaws were developed in the broader context of years of engagement and consultation with stakeholders, advocates, and experts on the issue of addressing homelessness. Amongst other initiatives, the Region participates in the PECH Co-Creators Group (a group of system leaders, service staff and representatives from equity-owed groups that advise on the implementation of the PECH),[83] the Lived Experience Working Group (another information

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[80] "Regional Bylaw Number 26-001" ["**Amending Bylaw**"], Ex. A to the Aff of D. Kang, affirmed January 9, 2026 ["**Kang Aff**"], SAR, Tab 4, pp. 93-94.

[81] Amending Bylaw, Ex. A to the Kang Aff, SAR, Tab 4, p. 95.

[82] Amending Bylaw, Ex. A to the Kang Aff, SAR, Tab 4, pp. 93-94.

[83] Aff of P. Sweeney affirmed July 31, 2025 ["**3rd Sweeney Aff**"], RAR, Tab 3, para. 24, p. 73.

channel between community members and the Region on issues related to homelessness),[84] and other forums and groups. The Region also hires consultants to engage with the Region regarding its implementation of the PECH, including one of the Respondents' affiants, Dr. Laura Pin.[85]

39. On the ground, the Region's USW team is constantly receiving feedback through their interactions with unhoused individuals in the Region (at the Encampment and beyond), and often relays that feedback to more senior regional staff.[86] The Region, however, remains constrained by lack of resources, and by factors affecting homelessness outside of its control, in its ability to implement feedback obtained through these channels.

40. Public notice of the Original Bylaw was posted on April 16, 2025, and it was debated at an open Regional Council meeting on April 23, 2025, at which proponents and opponents could – and did – speak to it.[87] It was well known to Council that there was opposition to the closure of the Encampment. The Region has continued to seek input from the community on implementation of the Bylaw. For example, when the PECH Co-Creators Group met on May 15, 2025, the meeting was dedicated to discussing the Encampment and Bylaw,[88] and participants identified potential areas of focus for responding to and supporting people living at the Encampment.[89]

41. The Amended Bylaw's additional protections for Existing Residents and others present at the Encampment demonstrate the Region's responsiveness to concerns raised by community members, particularly regarding the Original Bylaw's lack of an express guarantee of alternative

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[84] 3rd Sweeney Aff, RAR, Tab 3, para. 26, p. 74.
[85] 3rd Sweeney Aff, RAR, Tab 3, para. 29, p. 75.
[86] 3rd Sweeney Aff, RAR, Tab 3, para. 32, p. 75.
[87] Droog Transcript, JTB, Vol. 1, Tab 5, p. 245 (Q152); Alton Transcript, JTB, Vol. 1, Tab 3, pp. 113-115 (Q107-112).
[88] 3rd Sweeney Aff, RAR, Tab 3, para. 25, p. 73.
[89] 3rd Sweeney Aff, RAR, Tab 3, para. 25, p. 73.

accommodation. Community members also had an opportunity to provide feedback on the Amended Bylaw in a manner that went beyond the Region's normal practices. Public notice of the Amened Bylaw was posted on December 18, 2025 and it was debated at an open Regional Council meeting on January 9, 2026, at which proponents and opponents alike provided comment. The Region also posted a notice of the intention to consider the proposed amendments and a copy of the proposed amendments at the Property.[90] Information sessions about the Amended Bylaw intended for people living at the Encampment were held on January 5 and 7, 2026 (and public notice of these sessions was also posted at the Encampment).[91]

G. Expert Evidence on the Application

42. The parties have each tendered expert evidence. At a high level, the parties' medical experts agree that being unhoused (including at encampments) is associated with significant risks and negative health outcomes as compared to being housed; they differ on the preferability of the Encampment as compared to indoor shelter options such as emergency shelters and hotel/motels. There is little or no empirical data on the risks of encampments compared to other outdoor settings.[92]

1. The Region's Expert Evidence: Dr. Koivu

43. The Region put forward Dr. Sharon Koviu – a physician with over 40 years of experience in Ontario, including 13 years as an addiction physician – as an expert witness.[93] Dr. Koivu also has past experience as an emergency room physician.[94] In her experience practicing as a physician

[90] Ex. "B" to the Kang Aff, SAR, Tab 4B, p. 102.
[91] Ex. "B" to the Kang Aff, SAR, Tab 4B, pp. 102-103.
[92] Cross-Ex of S. Gupta ["**Gupta Transcript**"], JTB, Vol. 4, Tab 18, pp. 272-274 (Q106-109).
[93] Aff of S. Koivu, affirmed September 11, 2025 ["**Koivu Aff**"], SAR, Tab 2, paras. 1-2, p. 16.
[94] Cross-Ex of S. Koivu ["**Koivu Transcript**"], JTB, Vol. 2, Tab 13, pp. 353-354 (Q74).

in London and St. Thomas, the majority of the patients Dr. Koivu has treated have been unhoused or vulnerably housed.[95] Dr. Koivu's expert evidence was accepted in *Heegsma*, where Justice Ramsay concluded that she "has expertise outside the knowledge of a trier of fact on the question of whether there are health advantages of an encampment over a shelter".[96]

44. In Dr. Koivu's expert opinion, encampments "pose extensive health and safety risks to the people living [in them] as well as public health and safety risks to the community".[97] These risks render encampments "not a safe alternative to housing or to a shelter".[98] In her expert opinion, the expert evidence tendered by the Respondents "does not support the conclusion that encampments pose lower health risks than shelters or other accommodation"[99] and some of the Respondents' evidence perpetuates "a developing false and even dangerous narrative…that encampments are safe and even desirable places to live".[100]

45. Citing the academic literature on the subject, Dr. Koivu explains that "unsheltered people experiencing homelessness have a 2.7-fold increased risk of mortality compared to those who are sheltered" and that there are various health and safety risks that are either only present or are more severe in an encampment as compared to an indoor shelter.[101] These risks include injuries and illnesses caused by poor living conditions specific to encampments rather than homelessness generally (such as hypothermia, frostbite, and heatstroke due to insufficient protection provided

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[95] Koivu Transcript, JTB, Vol. 2, Tab 13, pp. 345-347, 350-351 (Q44, Q49, Q60-61).
[96] *Heegsma v. Hamilton (City)*, 2024 ONSC 7154, para. 15 (appeal heard in February 2026 currently under reserve) ["***Heegsma***"].
[97] Koivu Aff, SAR, Tab 2, para. 17, p. 20.
[98] Koivu Aff, SAR, Tab 2, paras. 118, 126, pp. 41-42.
[99] Koivu Aff, SAR, Tab 2, para. 63, p. 28.
[100] Koivu Aff, SAR, Tab 2, para. 126, pp. 42-43.
[101] Koivu Aff, SAR, Tab 2, paras. 18-19, p. 20.

by tents from the elements),[102] fires[103], violence from other residents, [104] and increased drug use in an encampment setting.[105]

46. Dr. Koivu also explains that tent-based living comes with various risks, as these structures "are largely ineffective at preventing significant injury from exposure, and should not be regarded as a safe alternative to indoor shelters".[106] Dr. Koivu recounts firsthand experience treating patients who developed serious frostbite while living in a tent within an encampment, leading to hypothermia,[107] gangrene,[108] loss of digits and, feet, and even legs.[109] Dr. Koivu also details the risk of trench foot that comes from prolonged exposure to damp and wet conditions, such as a poorly maintained tent, which in turn can lead to infections and other health challenges.[110] She also explains that attempts at staying warm in an encampment setting carry their own dangers, such as burn risk from fires within or near tents.[111] In summertime, occupants of tents are at risk of overheating, leading to heat strain and dehydration, amongst other conditions.[112] Dr. Koivu also recounts a patient she treated who reported severe damage to their face believed to be caused by a rodent attack while the patient was unconscious due to drug use.[113]

47. Dr. Koivu also explains that encampments are congregate settings which entail risks of communicable diseases, especially without proper disease risk management protocols. For

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[102] Koivu Aff, SAR, Tab 2, 20-25, 31-56, pp. 20-27.
[103] Koivu Aff, SAR, Tab 2, 27-29, p. 21.
[104] Koivu Aff, SAR, Tab 2, paras. 29, 71-73, pp. 21, 30-31.
[105] Koivu Aff, SAR, Tab 2, para. 92, pp. 34-35.
[106] Koivu Aff, SAR, Tab 2, para. 21, p. 20.
[107] Koivu Aff, SAR, Tab 2, 24-25, p. 21.
[108] Koivu Aff, SAR, Tab 2, para. 23, pp. 20-21.
[109] Koivu Aff, SAR, Tab 2, para. 23, pp. 20-21.
[110] Koivu Aff, SAR, Tab 2, paras. 30-32, p. 22.
[111] Koivu Aff, SAR, Tab 2, para. 24-29, p. 21.
[112] Koivu Aff, SAR, Tab 2, paras. 35-41, pp. 23-24.
[113] Koivu Aff, SAR, Tab 2, para. 43, p. 24.

example, she details the risk of viral, bacterial, and parasitic infection spread through feces in sites with inadequate sanitation,[114] the risks associated with needle sharing or improperly discarded needles (which often occurs in these settings),[115] the increased risk of typhus, tuberculosis, lice, amongst other health risks.[116]

48. While she recognizes that emergency shelters and motels are not perfect solutions to homelessness nor free from risks,[117] Dr. Koivu's 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.[118] Emergency shelters implement safeguards to mitigate the risks associated with congregate living, including social distancing, mask wearing, cleaning of linens, onsite medical support, such that the evidence demonstrates their ability to successfully contain outbreaks of diseases.[119] Such strategies are not available in encampments.[120] Shelters, she explains, also have strategies for addressing and containing physical and/or sexual violence which are not available in lawless encampments.[121]

2. Respondents' Medical Experts: Dr. Hwang, Dr. Gupta, and Bernadette Pauly

49. In contrast to Dr. Koivu's direct comparison of encampment living with shelters, the Respondents' medical expert evidence from Dr. Stephen Hwang is general in nature, and largely focused on the harms of homelessness itself, which are uncontested.[122] Dr. Hwang's evidence was

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[114] Koivu Aff, SAR, Tab 2, paras. 48-50, p. 25.
[115] Koivu Aff, SAR, Tab 2, paras. 52-53, p. 26.
[116] Koivu Aff, SAR, Tab 2, paras 57-58, p. 27.
[117] Koivu Transcript, JTB, Vol. 2, Tab 13, pp. 424-425 (Q228); Koivu Aff, SAR, Tab 2, paras 58, p. 27.
[118] Koivu Transcript, JTB, Vol. 2, Tab 13, p. 419-430 (Q220-233).
[119] Koivu Aff, SAR, Tab 2, paras 59-61, pp. 27-28.
[120] Koivu Aff, SAR, Tab 2, para. 61, p. 28.
[121] Koivu Aff, SAR, Tab 2, paras. 70-73, 79-82, pp. 30-32.
[122] Aff of S. Hwang, sworn May 6, 2025, Supplemental Responding Application Record ["**SRAR**"], Vol. 1, Tab 2, paras. 7-8, pp. 67-71.

largely confined to providing an opinion that homelessness is associated with negative health outcomes, and that homelessness itself (including encampments) "is the result of a complex interaction of factors" at both the individual and societal levels for which "the cooperation of all three levels of government" is required to address.[123] Dr. Hwang also conceded that he is "not an expert in the nature or the adequacy of the efforts that are being made on the ground" in respect of the Encampment and the Bylaw,[124] and that while he has published extensively on the issue of the negative health effects of being homeless, he has never conducted or participated in any research regarding the adverse effects of forced encampment evictions.[125]

50. Despite his acknowledged lack of direct expertise in this area, Dr. Hwang's affidavit attaches an article which he described on cross-examination as "the best and most representative article" on the harms of encampment evictions.[126] However, he conceded that the "encampment sweeps" that were the article's focus – forced evictions with no or minimal notice and without accompanying supports or offers of alternative shelter – are in many key ways distinct from what the Region was contemplating doing in respect of the Encampment.[127]

51. Dr. Gupta was similarly general in his evidence. Like Drs. Koivu and Hwang, Dr. Gupta agrees that there are negative health outcomes associated with living unsheltered or rough, including in an encampment.[128] He further conceded that much of the academic literature does not differentiate between encampment living and other forms of being unhoused,[129] including various

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[123] Ex. 1 to the Hwang Transcript, JTB, p. 509; Hwang Transcript, JTB, Vol. 1, Tab 8, pp. 465, 468 (Q22, 32).
[124] Hwang Transcript, JTB, Vol. 1, Tab 8, pp. 479 (Q69).
[125] Hwang Transcript, JTB, Vol. 1, Tab 8, p. 473 (Q51-52).
[126] Hwang Transcript, JTB, Vol. 1, Tab 8, p. 473 (Q53).
[127] Hwang Transcript, JTB, Vol. 1, Tab 8, pp. 477, 481, 482, 483 (Q64, 75, 76, 79).
[128] Aff of S. Gupta, sworn August 15, 2025, SRAR, Vol. 2, Tab 6, para. 9, pp. 9-11; Gupta Transcript, JTB, Vol. 4, Tab 18, pp. 254-259, (Q50-58).
[129] Gupta Transcript, JTB, Vol. 4, Tab 18, pp. 259-260, (Q58-60).

sources upon which he relies in his affidavit.[130] The sole study which Dr. Gupta attaches to his affidavit – the MARCO study – is based on a relatively small and non-representative sample size, pure self-reports of largely subjective factors (e.g., subjective worries regarding violence rather than actual experiences thereof), and was conduced in the specific context of the height of COVID-19 in 2021 in Toronto. It therefore is not particularly generalizable to the Encampment specifically.

52. Crucially, Dr. Gupta conceded that he was "not denying that…living in a permanent, physical structure provides more elements and more safety than living in an encampment".[131] He agreed with Dr. Koivu that harms such as hypothermia, frostbite, and trench foot can all occur when someone is sleeping in a tent rather than outside without a tent,[132] that any protection against the elements afforded by a tent may be lost when it is not properly maintained,[133] and that if an individual takes drugs in their tent alone they may not be found in the case of an overdose compared to being in a public space.[134] As was the case with Dr. Hwang, Dr. Gupta's brief evidence on the harms of encampment evictions is entirely untethered from the reality of the Region's approach. On cross, Dr. Gupta agreed that providing more notice of eviction and otherwise providing for the needs of evicted individuals being displaced would be better than not doing so.[135]

53. Bernadette Pauly is a registered nurse with a PhD in nursing. Dr. Pauly has faced the court's criticism when tendered as an expert witness in other encampment cases. In *Brett*, the BCSC held that "much of what was contained in [Dr. Pauly's] affidavit amounted more to argument than the

[130] Gupta Transcript, JTB, Vol. 4, Tab 18, pp. 260-266, 268-273 (Q64-84, Q90-96, Q101, Q106).
[131] Gupta Transcript, JTB, Vol. 4, Tab 18, pp. 301-302, (Q195).
[132] Gupta Transcript, JTB, Vol. 4, Tab 18, p. 304 (Q204).
[133] Gupta Transcript, JTB, Vol. 4, Tab 18, pp. 305-306 (Q213).
[134]Gupta Transcript, JTB, Vol. 4, Tab 18, pp. 313-314 (Q231-Q234).
[135] Gupta Transcript, JTB, Vol. 4, Tab 18, pp. 324-325, 330-331 (Q273, Q288-294).

assistance expected of an expert witness pursuant to [BC's Rules]".[136] The same can be said for much of what Dr. Pauly has put forward in her affidavit in this proceeding. For example, when asked on cross examination about what would be required to transition individuals from an encampment, Dr. Pauly offered the completely untenable answer that individuals would need to be offered options that meet the seven criteria for adequate housing as set out in the *National Housing Strategy Act*, which would exclude any non-permanent options such as shelters.[137] A portion of Dr. Pauly's affidavit itself also asserts a "right to housing", a point of law upon which expert evidence is improper.[138] Further, the academic literature Dr. Pauly does cite is distinguishable from the case at hand (for example, articles about encampment "sweeps" rather than staged approaches as offered by the Region).[139] The Region's position is therefore that Dr. Pauly should not be qualified as an expert witness and, if she is so qualified, that her evidence be given very little weight by the Court.

3. The Respondents' Purportedly "Expert" Non-Medical Evidence

54. The Respondents also seek to lead purportedly "expert" evidence from individuals outside the medical sphere. The Region objects to the qualification of Ms. Houle and Dr. Pin as experts. For Drs. Schwan and Gaetz, their expertise is limited to general trends regarding homelessness, and is not particularly relevant to the court's determination of the Application.

55. Ms. Houle holds the position of Federal Housing Advocate. She lacks the impartiality required of an expert witness. By her very title and the definition of her role, Ms. Houle is an

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[136] *Vancouver Fraser Port Authority v Brett*, 2020 BCSC 876, para. 75 ["***Brett 2***"].
[137] Pauly Transcript, JTB, Vol 4, Tab 17, pp. 211-213 (Q97-101).
[138] Aff of B. Pauly, sworn August 14, 2025 ["**Pauly Aff**"], SRAR, Vol. 2, Tab 10, para. 29, p. 224.
[139] Pauly Aff, SRAR, Vol. 2, Tab 10, Footnote 31, p. 218; Pauly Transcript, JTB, Vol 4, Tab 17, pp. 193-196 (Q54-61).

advocate on the issue of encampments. Ms. Houle has, by her own description, been "[a]ctively involved in advocacy work at a national, provincial and community level" for many years,[140] and she concedes that this work includes "urg[ing] municipalities to work with people living in encampments to find solutions…that meet their needs".[141] Further, despite her duties to the court as an expert, Ms. Houle failed to disclose past advocacy she has undertaken regarding the very Encampment at issue in this Application.[142] Moreover, Ms. Houle's affidavit is largely focused on the claimed "right to housing", a legal matter for the courts and not for any expert witness to opine on – especially one with absolutely no legal training.[143] In any event, Ms. Houle concedes that "municipalities are currently limited in their ability to address homelessness"[144], and that federal leadership is needed to address the housing and homelessness crisis.[145]

56. The Region also objects to Dr. Laura Pin's qualification as an expert. Dr. Pin was originally tendered as a lay witness, but the Respondents then put forward the same affidavit as expert evidence. She lacks the objectivity required of an expert, and her 1st affidavit is largely concerned with factual matters more suitable to a lay affidavit. She is a member of the Co-Creators table and has sat on a PECH sub-committee, she has been hired by the Region to do work regarding the PECH, and she has delegated before Regional Council to speak in opposition to the Bylaw.[146] She is a member of the National Encampment Litigation Strategy Working Group, a lawyer-focused group that meets to discuss strategies to assist homeless clients.[147] Much of her evidence is either

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[140]Houle Transcript, JTB, Vol. 4, Tab 19, pp. 398 (Q43).
[141] Houle Transcript, JTB, Vol. 4, Tab 19, pp. 399 (Q50).
[142] Houle Transcript, JTB, Vol. 4, Tab 19, pp. 433-437 (Q159-174).
[143] Aff of M.J. Houle, sworn August 15, 2025 ["**Houle Aff**"], SRAR, Tab 14, paras. 65-71, pp. 474-477.
[144] Houle Transcript, JTB, Vol. 4, Tab 19, p. 429 (Q145).
[145] Houle Transcript, JTB, Vol. 4, Tab 19, pp. 429-430 (Q147).
[146]Aff of L. Pin, sworn July 9, 2025 ["**1st Pin Aff**"], SRAR, Vol. 1, Tab 4, paras. 3, 7, 15-19, pp. 278-280, 283-285.
[147] Cross-Ex of L. Pin, February 20, 2026 ["**2nd Pin Transcript**"], JTB, Vol. 5, Tab 24, pp. 65-68 (Q21-34).

impermissibly argumentative or merely provides her recollection of events.[148] Further, whether, as she argues, the Bylaw is consistent with "a human rights approach" is not proper opinion.[149]

57. Dr. Pin's evidence also has serious reliability issues. Dr. Pin conceded that in her affidavit when she spoke to "the presence of police, bobcats and dumpsters" at the Encampment,[150] she was not speaking based on her first-hand observation, but rather based on accounts conveyed to her, and on this basis she "assumed that there was some sort of interaction [with the police] involved with folks at the encampment". She conceded that it was possible police were not event present.[151]

58. Dr. Pin's 1st affidavit also does not set out the scope of her expert evidence. When cross-examined on this, Dr. Pin answered that she was there to provide evidence on the very general categories of "municipal responses to encampments, housing and homelessness policy, [and] participatory democracy".[152] Her 2nd affidavit attempts to correct this, but in its substance she opines, among other things, on whether the Region's consultation before the Amended Bylaw was consistent with the PECH. She conceded that she has no legal training, and no mandate to speak on behalf of those involved with creating the PECH.[153]

59. Dr. Gaetz opines broadly on the causes of homelessness. Overall, Dr. Gaetz's evidence adds little to the Respondents' case given its general nature. Much of Dr. Gaetz evidence – both in his affidavit and on cross examination – involved broad policy considerations related to resource allocation, which are not relevant to this court and beyond this court's institutional capacity. [154] Dr.

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[148] 1st Pin Aff, SRAR, Vol. 1, Tab 4, paras. 18-21, pp. 285-286.
[149] 1st Pin Aff, SRAR, Vol. 1, Tab 4, para. 16, p. 284.
[150] 1st Pin Aff, SRAR, Vol. 1, Tab 4, para. 16, p. 284.
[151] Cross-Ex of L. Pin, December 3, 2025 ["**1st Pin Transcript**"], JTB, Vol. 2, Tab 11, pp. 231-238 (Q78-99).
[152] 1st Pin Transcript, JTB, Vol. 2, Tab 11, pp. 216-217 (Q36).
[153] 2nd Pin Transcript, JTB, Vol. 5, Tab 24, pp. 63, 114 (Q15-16, Q157).
[154] Cross-Ex of S. Gaetz ["**Gaetz Transcript**"], JTB, Vol. 2, Tab 10, p. 189-191 (Q70-75).

Gaetz explains that "what leads people to homelessness is usually a number of complex issue areas",[155] many of which are outside the control of the Region. Dr. Gaetz did concede, however, that "motel and hotel rooms may be suitable as emergency shelter alternatives"[156] and that individuals may choose to stay at an encampment as a personal choice, even where that choice puts them at risk of violence, illness, or other harms.[157]

60. Dr. Kaitlin Schwan's evidence speaks generally to the experiences of women and gender-diverse individuals experiencing homelessness. Dr. Schwan confirmed that she has no first-hand knowledge of the current demographics of the Encampment, that she has not visited the Encampment, and that she has not undertaken any quantitative work comparing rates of violence in specific Waterloo shelters against violence at the Encampment or regarding shelter availability in the Waterloo Region.[158] On cross examination, Dr. Schwan agreed that being able to control access to one's space is an important element of personal safety, including for unhoused women and gender diverse individuals,[159] and that the ability to have a locked door (such as would be present in a motel setting) would help mitigate risks of violence and is "critical to safety for all people".[160] She also agreed that being able to access housing where a violent intimate partner can be excluded can be an important part of escaping that violence, but that such couples might choose to stay at an encampment given that an encampment does not have restrictions on who can stay there.[161] She also agreed that, by contrast, many shelters have training regarding observing

[155] Gaetz Transcript, JTB, Vol. 2, Tab 10, p. 179 (Q27).
[156] Aff of S. Gaetz, affirmed August 14, 2025, SRAR, Vol. 2, Tab 8, para. 22, p. 55.
[157] Gaetz Transcript, JTB, Vol. 2, Tab 10, p. 197 (Q102).
[158] Cross-Ex of K. Schwan ["**Schwan Transcript**"], JTB, Vol. 4, Tab 20, pp. 468-469, 471 (Q6-8, Q14-15).
[159] Schwan Transcript, JTB, Vol. 4, Tab 20, p. 473 (Q23).
[160] Schwan Transcript, JTB, Vol. 4, Tab 20, p. 473-474 (Q24-25).
[161] Schwan Transcript, JTB, Vol. 4, Tab 20, p. 476-477 (Q33-39).

coercive or abusive patterns of behaviour and how to intervene where necessary, whereas this is not the case in an encampment setting.[162]

4. The Respondents' Lay Witnesses

61. The Respondents' witnesses Sara Escobar, Jacara Droog, David Alton, and Angela Allt speak to the difficulties in providing services and options to the unhoused population. Their evidence is sympathetic to the challenges the unhoused face, but is tainted by advocacy, and strays into impermissible argument or opinion. None of them offer any realistic solutions to the issues raised by the Region's need to obtain possession of 100 Vic for the KCTH. The Respondents also provide affidavits from current or former occupants of the Encampment, which underline the many dangers at 100 Vic – including widespread drug use, violence, pests, and unsanitary conditions.[163]

PART III. ISSUES

62. The issues before the court are as follows:

(a) Does the Amended Bylaw infringe s. 7 of the Charter?

(b) Does the Amended Bylaw infringe s. 15 of the Charter?

(c) If the answer to issues (a) or (b) is "Yes", is the infringement saved by s. 1?

(d) If there is an infringement that is not saved under s. 1, what should the remedy be?

(e) Should the Amended Bylaw be quashed under s. 273 of the *Municipal Act*?

(f) Should the Region be granted an injunction under s. 440 of the *Municipal Act*?

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[162] Schwan Transcript, JTB, Vol. 4, Tab 20, p. 479 (Q43-45).

[163] See e.g. Aff of C. Sharpe, Responding Application Record ["**RespAR**"], Vol. 1, Tab 3, para. 10, p. 2; Aff of J. Young, RespAR, Vol. 1, Tab 13, para. 31, p. 87; Aff of T. Cole, 2nd SAR, Tab 2, para. 22, p. 17.

PART IV. LAW & ARGUMENT

A. The Bylaw does not infringe s. 7 of the Charter

1. The applicable test

63. Under s. 7, the claimant must demonstrate that (1) they have been deprived of their interest in life, liberty, or security of the person; and (2) that this deprivation was not in accordance with the principles of fundamental justice – namely, that it was not arbitrary, overbroad, or grossly disproportionate to the law's objective.[164] The Respondents cannot meet either component of the test. The Amended Bylaw does not contravene s. 7 of the Charter given its specific purpose and the Region's substantial efforts to provide residents with alternative shelter arrangements.

2. Comments on *Persons Unknown* and other encampment cases

64. With respect to *Persons Unknown*, horizontal *stare decisis* does not bind this court on the issue of whether the Amended Bylaw infringes s. 7. The legal question at issue in *Persons Unknown* is distinct from that before this court. Section 7 requires a comparison between a law's effects on individuals and the law's objective. *Persons Unknown* and the case at bar concern different bylaws, with different objectives. As such, they cannot be said to involve the same *legal* issue, which is a requirement of *stare decisis*.[165] It would therefore be an error of law to hold that *Persons Unknown* is a complete answer to the s. 7 analysis in this case, though Valente J.'s reasons carry persuasive weight. Unlike the Code-of-Use Bylaw at issue in *Persons Unknown*, the Amended Bylaw is specific to 100 Vic and has the stated purpose of obtaining vacant possession of the site to allow the KCTH construction to proceed. It is also accompanied by the Transition

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[164] *Carter v. Canada (Attorney General)*, 2015 SCC 5, para. 55 ["**Carter**"].
[165] *R. v. Sullivan,* 2022 SCC 19, paras. 43, 45-48, 56-57, 65.

Plan and Transition Protocol to ensure that Existing Residents have guaranteed access to alternative shelter options. No such alternative arrangements were made in *Persons Unknown*.[166]

65. Looking beyond *Persons Unknown*, there is no Canadian caselaw on encampments which binds this Court – either vertically or horizontally – on the issue of whether a site-specific bylaw infringes s. 7. Canadian courts have been abundantly clear, however, that there is no freestanding right to housing, [167] nor an unfettered right to seek shelter on publicly owned land. No case has held that there is a right to receive supports and services at an encampment, though municipalities may provide them as a matter of policy.

66. There is also no appellate authority from Ontario or from the Supreme Court directly on this issue of encampment closures. Non-binding appellate caselaw from British Columbia has recognized only a tightly circumscribed right to shelter overnight in public parks where there is insufficient shelter capacity to accommodate the area's entire unhoused population.[168] Various subsequent cases from the BCSC have allowed the closure of encampments.[169]

67. There is also caselaw from lower courts in Ontario favourable to the Region's position on this Application. In *Kingston*,[170] the ONSC concluded that the *Charter* was not infringed by a city bylaw prohibiting camping in public parks during the daytime. That holding affords no

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[166] There are in fact over 20 other known encampments in the Waterloo region, on municipal, private, and provincial lands: Ex. 1 to the Cross-Ex of P. Sweeney, March 6, 2026, Vol. 5, Tab 26, p. 253.

[167] *Tanudjaja v. Canada (Attorney General)*, 2014 ONCA 852, at paras. 19, 30 ["***Tanudjaja ONCA***"].

[168] *Victoria (City) v. Adams*, 2009 BCCA 563 (appeal of 2008 BCSC 1363) ["***Adams***"], *Johnston v. Victoria (City)*, 2011 BCCA 400 (appeal of 2010 BCSC 1707) ["***Johnston***"].

[169] *Nanaimo (City) v Courtoreille*, 2018 BCSC 1629 ["***Nanaimo***"]; *Abbotsford (City) v Shantz*, 2013 BCSC 2612 ["***Shantz 2***"]; *Matsqui-Abbotsford Impact Society v Abbotsford (City)*, 2024 BCSC 1902 (leave to appeal has been granted but the appeal not yet decided: 2025 BCCA 78) ["***Matsqui***"]; *Maple Ridge (City) v Scott*, 2019 BCSC 157 ["***Maple Ridge***"]; *Saanich (District) v Brett*, 2018 BCSC 1648 ["***Brett 1***"]; *Brett 2*, 2020 BCSC 876; *British Columbia v. Adamson*, 2016 BCSC 1245 ["***Adamson 2***"].

[170] *The Corporation of the City of Kingston v. Doe*, 2023 ONSC 6662 ["***Kingston***"].

constitutional protection to semi-permanent, 24/7 encampments, like the one at 100 Vic. The ONSC came to a similar conclusion in *Heegsma*.[171] Unlike the BCCA decisions on this issue, however, the courts in both *Kingston* and *Heegsma* held that the overall shelter capacity in a geographic area is irrelevant to the constitutional analysis – a different conclusion than Justice Valente reached in *Persons Unknown*.[172]

68. In a series of injunction encampment cases in Ontario – including *Poff*,[173] *Black*,[174] and *Saint Stephen*[175] – the ONSC has allowed encampments to be closed. In all three cases, the Court recognized that encampments "raise serious health and safety concerns for an indefinite duration"[176] including a "risk of fire and danger to residents and passersby",[177] and that they unduly prevent the use of spaces that are "valuable public resources" by others.[178] The Encampment similarly poses public health and safety risks to its residents and the general public, and prevents the Region from using the Property in a manner that will provide a substantial public benefit.

69. There is very limited caselaw involving a proposed alternative use of land for an important public infrastructure project, but it is favourable to the Region. In *Clinique juridique itinérante*, the QCCS denied an injunction to prevent the closure of an encampment on land owned by Quebec's Ministry of Transport. Central in the court's analysis was that a nearby highway repair project would pose health and safety risks to the encampment residents if they remained and that

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[171] *Heegsma*, 2024 ONSC 7154.
[172] *Kingston*, at paras. 129-133; *Heegsma* at paras. 14, 72-73.
[173] *Poff v. City of Hamilton*, 2021 ONSC 7224 ["***Poff***"].
[174] *Black et al. v. City of Toronto*, 2020 ONSC 6398 ["***Black***"].
[175] *Church of Saint Stephen et al. v. Toronto*, 2023 ONSC 6566 ["***Saint Stephen***"].
[176] *Black*, at para. 150.
[177] *Saint Stephen*, at para. 62.
[178] *Poff*, at para. 29; *Black*, at para. 150.

its postponement would have been against the public interest,[179] The QCCS balanced the interests of the unhoused individuals against the importance of this public infrastructure project and the harms of its delay, and declined to grant the injunction preventing the closure – even where there was no Ministry plan to relocate the occupants of the Encampment.[180] In the present case, construction on a project of substantial public interest will similarly pose such risks to those residing on the Property. Dicta in *Adams* also indicate that a targeted law "prohibiting sleeping in sensitive park regions" would have been upheld.[181]

70. There is also caselaw demonstrating that courts will order the eviction of unhoused persons at a site upon which there is an encampment where residents of that encampment have been adequately provided for, even if the options available do not align with their preferences. In *Matsqui*,[182] the BCSC allowed the closure of an encampment on city land provided that certain conditions were met by the city (such as offering to temporarily store residents' belongings and assisting encampment residents with their relocation). In *Johnny #2*,[183] the BCSC allowed the City of Prince George to close an encampment on city-owned land, finding that there was available, accessible housing for all encampment residents. In doing so, the BCSC acknowledged that what constitutes an "accessible" housing option must not be construed too narrowly, even if that means it lacks qualities that may be preferred by given individual residents. In *Maple Ridge*, the BCSC

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[179] *Clinique juridique itinérante c. Procureur général du Québec*, 2023 QCCS 1949 (leave to appeal dismissed 2023 QCCA 855), at paras. 67, 71-77, 85-86, 90-92 ["***Clinique 2***"].

[180] *Clinique 2*, paras 91-92.

[181] *Adams*, para. 116.

[182] *Matsqui*, paras. 214, 218.

[183] *Prince George (City) v Johnny*, 2025 BCSC 1556, at paras. 99-100, 127 ["***Johnny 2***"].

permitted individuals in an encampment to be removed where they did not identify themselves as seeking a transition to housing.[184]

71. *Matsqui*, *Johnny #2*, and *Maple Ridge* demonstrate that courts will not allow encampments to remain just because they are the preferred options of certain residents where municipalities come to the table with reasonable, alternative solutions and accommodations – such as the Region's Transition Plan and Transition Protocol in the present case.

3. There is no deprivation of life, liberty, or security of the person

72. The Bylaw does not deprive anyone of their life or security of the person. Unlike the Code-of-Use Bylaw at issue in *Persons Unknown*, the Amended Bylaw explicitly addresses what will happen to those at 100 Vic when the site is closed. For Existing Residents, the Region's Plan provides new resources to create additional options (in addition to the sizable budget already allocated by the Region) and the Amened Bylaw provides that no Existing Resident will be removed from the Property unless they have an offer in writing for Alternative Accommodation. In any event, as a result of the Region's efforts to support Encampment residents, none of the 40 Existing Residents actually remain onsite.

73. For more recent arrivals, the Amended Bylaw further provides for them to be brought into the Region's housing stability system, and that the Region will "endeavour to provide the person with appropriate housing options, subject to resources being available and such person cooperating with the Region's outreach staff".[185] The Region has successfully transitioned 22 individuals who do not qualify as Existing Residents from the Encampment to alternative accommodation.

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[184] *Maple Ridge*, paras. 8, 57-66.
[185] Amending Bylaw, Ex. A to the Kang Aff, SAR, Tab 4, p. pp.93-94.

74. Provided that the Region is able to prevent further inflows into the Encampment, it is reasonable to assume on the evidence that the remaining occupants can be transitioned to alternative accommodation, without undue risk to their health and safety. The Region has been able to place at least 51 unhoused persons from the Encampment (29 Existing Residents and 22 more recent arrivals) over a 10-month period. Placing the remaining 10-12 in the next 2-3 months would be a consistent rate. Conversely, the Respondents have not proved a deprivation.[186]

75. Given these facts, the choice is not between staying at the Encampment and "be[ing] forced to live in the rough or set up camp somewhere else", as it was in *Persons Unknown*.[187] The expert evidence tendered by both sides in this case supports the conclusion that living indoors – even if at shelters or motels – is associated with better health outcomes than living outside, and that the different options encompassed within the category of Alternative Accommodations are beneficial for many unhoused individuals.[188] By contrast, encampment living is associated with various health and safety risks, and the evidence regarding the Encampment at 100 Vic specifically demonstrates that many of these risks are present there. Transitioning Encampment occupants to alternative accommodation does not infringe their s.7 rights, as their risk of harm actually *decreases* as a result of leaving the Encampment.

76. While some individuals may prefer to remain at the Encampment, these subjective feelings are not legally cognizable interests under s. 7. Further, as the BCSC recognized in *Johnny #2*, the accessibility of alternative housing options "must be approached at a certain level of generality"

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[186] Possibly, more newcomers will have come to the site by the time of the hearing, with the arrival of spring. If so, their position would be somewhat distinct, though they would still be taken into the housing stability system.

[187] *Persons Unknown*, para 101.

[188] Koivu Transcript, JTB, Vol. 2, Tab 13, pp. 421-430 (Q220-233); Gupta Transcript, JTB, Vol. 4, Tab 18, pp. 301-302 (Q195).

and "not based on the individual needs or subjective impressions of every occupant of the Encampment".[189] In that case, the court found that the transitional housing option presented to encampment residents was generally "accessible" despite objections from encampment residents that it lacked sufficient private space, put restrictions on residents' conduct, had single-occupancy bedrooms, did not permit guests, and did not categorically allow pets.[190] The court held that rather than rule this option inaccessible as a whole, individual residents could apply to the court for an individual constitutional exemption in "exceptional circumstances"[191] where they could demonstrate that the option presented was truly not accessible to them specifically.

77. The Amened Bylaw also does not engage any liberty interests. The Amended Bylaw does not make it an offence to remain on the Property, nor does it impose any fines.[192] Residing at the Encampment is not an "inherently private choice" that goes to the "core of what it means to enjoy individual dignity and independence" and therefore warrants protection under s. 7.[193] Rather, "[t]he right to liberty in s. 7 does not prevent the state from restricting lifestyle choices, even if those choices may be subjectively important for some individuals",[194] nor does it guarantee "[dignity] and…freedom from stigma" as "self-standing rights".[195] The Amended Bylaw does not make being unhoused illegal, nor does it prohibit unhoused individuals from residing on all Region-owned

[189] *Johnny 2*, para 99.
[190] *Johnny 2*, paras. 107-128.
[191] *Johnny 2*, paras 19, 106.
[192] This is one of the differences between the Original Bylaw and the Amended Bylaw.
[193] *Godbout v. Longueuil (City)*, [1997] 3 S.C.R. 844, paragraph 66.
[194] *Drover v. Canada (Attorney General)*, 2025 ONCA 468, para. 128.
[195] *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44, para 80.

lands (as was the case in *Persons Unknown*). It simply provides that entry onto and residing on a single, specific, defined Property is not permitted.[196]

78. Finally, insofar as the Amended Bylaw prevents individuals who are not currently occupants at 100 Vic from moving there, it does not deprive them of any constitutionally protected interest. They will be in the same position after the closure of the Encampment as before, and they are not directly affected by the closure. The additional capacity added to the housing stability system by the Region ensures that the transition of Existing Residents to alternative accommodations will not affect the position of other unhoused persons, or the availability of alternative options for them.

4. The Bylaw does not contravene the principles of fundamental justice

79. The objective of the Amended Bylaw is stated clearly as being "to specifically regulate and govern [100 Vic] and to obtain vacant possession" because the Region requires vacant possession "to facilitate the construction of the KCTH".[197] The Region submits that any deprivation of s.7 interests is neither overbroad, nor grossly disproportionate to this objective.

(a) The Amended Bylaw is not overbroad

80. A law is overbroad where its scope includes some conduct that bears no relation to its purpose.[198] In *Persons Unknown*, Justice Valente found that the Code-of-Use Bylaw's purpose was

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[196] The Supreme Court has never recognized the right to liberty in s. 7 as protecting an individual's choice of place of residence. While the Ontario Court of Appeal did so recently in the specific and distinguishable context of constituency-based residency requirements for electoral officials under the *Elections Act*, that holding has no application to the present case. Striking down a requirement that an official live in a specified district does not imply that individuals have a positive right to live in a specific location that they do not own. See: *Drover*, para. 131.

[197] See the preambles to the Amended Bylaw; *R. v. Sharma*, 2022 SCC 39, para 88: "The most significant and reliable indicator of legislative purpose would, of course, be a statement of purpose within the subject law."

[198] *R. v. Kloubakov*, 2025 SCC 25 , at para. 139 ["***Kloubakov***"] citing *Canada (Attorney General) v. Bedford*, 2013 SCC 72 at para. 112 ["***Bedford***"].

to prevent physical damage to the Region's premises, disruption to the Region's operations, and disruption of the use and enjoyment of the Region's premises by other people.[199] He concluded that the Code-of-Use Bylaw was overbroad because these purposes could have been achieved "without punishing everyone who erects a shelter when there is no accessible shelter alternative".[200] By contrast, the Bylaw at issue in this case has a narrow, specific purpose which, by definition, cannot be achieved unless all individuals leave the site.

81. The Respondents argue that the Region should provide all individuals at the Encampment with permanent, affordable housing, as advocated for by some of their affiants.[201] This suggestion has no place in the overbreadth analysis, as s. 7 does not protect positive rights, including a claimed right to housing.[202] Rather, the overbreadth analysis considers whether the state's conduct goes "too far" because it is unnecessary to deprive some individuals of their s. 7 interests to achieve the impugned law's goal, not whether the state could take further positive actions to improve the situation for individuals.[203] This distinction recognizes that "developing solutions to address the growing homelessness issue involves policy and legislative choices that are within the purview of government, not the courts".[204]

(b) The Amended Bylaw is not grossly disproportionate

82. Gross disproportionately is found only in "extreme cases" where the seriousness of the deprivation is "totally out of sync with the objective of that measure".[205] The oft-repeated example

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[199] *Persons Unknown*, at para. 112.
[200] *Persons Unknown*, at para. 114.
[201] Houle Transcript, JTB, Vol 4, Tab 19, pp. 400-403 (Q56-66); Pauly Transcript, JTB, Vol. 4, Tab 17, pp. 223-224, 231 (Q130-134, Q162).
[202] *Tanudjaja ONCA*, para. 30.
[203] *Carter*, para. 85.
[204] *Nanaimo*, para 131.
[205] *Kloubakov*, para. 140, citing *Bedford*, para. 120 and *R. v. Malmo-Levine*; *R. v. Caine*, 2003 SCC 74, para. 143.

is "a law with the purpose of keeping streets clean that imposes a sentence of life imprisonment for spitting on the sidewalk".[206] The gross disproportionality analysis is fundamentally comparative: a law with significant impacts on an individual may nonetheless not be grossly disproportionate to its objective where law's object is sufficiently pressing. Consequently, demonstrating a significant impact on an individual is not in itself sufficient to establish a breach.

83. The gross disproportionality analysis in this case is fundamentally different from *Persons Unknown*, where Valente J. concluded that the Code-of-Use Bylaw's complete prohibition on erecting a temporary shelter on any Region-owned premises was grossly disproportionate to the generic purposes of the Code-of-Use Bylaw regarding the protection of Regional property. [207] Notably, the Region did not put any plan for the occupants of 100 Vic before Valente J.

84. In the case at bar, any risks of potential harmful effects of the Amended Bylaw are mitigated by the conditions on enforcement in the Amended Bylaw and Transition Protocol. Unlike in *Persons Unknown*, the Amended Bylaw's purpose is specific and tangible: it pertains to a major public infrastructure project of vital social and economic importance which requires that the Region obtain vacant possession of 100 Vic, not the generic purposes of the Code-of-Use Bylaw. When these mitigated risks are weighed against this specific and pressing public purpose, the Respondents do not meet the very high bar of gross disproportionality.

85. On this issue, the court should be mindful of the limits of its institutional competence. The Region, as the elected government responsible for housing policy, has exercised its best judgment in good faith in a complex and contested area in which there is no consensus, on the appropriate

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[206] *Kloubakov*, para. 140, citing *Bedford*, para. 120.
[207] *Persons Unknown*, para. 119.

accommodation options and prioritization to offer to occupants of the Encampment. In the Region's judgment, the mitigated risks do not outweigh the importance of the KCTH project. These are policy decisions to which the court should defer.

B. The Bylaw does not contravene s. 15 of the Charter

86. To establish a s. 15 infringement, a claimant must demonstrate (1) that either on its face or in its impact an impugned law creates a distinction based on enumerated or analogous grounds; and (2) that the impugned law imposes a burden or denies a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage.[208] While s. 15 infringements have been alleged in many encampment related cases, no case – including *Persons Unknown* – has found that such an infringement has been made out.[209] The Respondents in this case similarly fail to meet their burden under each component of the s. 15 analysis.

1. The Bylaw does not create a distinction

87. That the Bylaw affects members of enumerated and analogous groups – or even that most people the Bylaw affects are members of such groups – is irrelevant to the s. 15 analysis.[210] "All laws are expected to affect individuals, including members of protected group" and "[m]erely proving overrepresentation [of those affected] is insufficient" to make out a distinction under s. 15.[211] Instead, the issue is whether the Bylaw "created or contributed to a disproportionate impact on a protected group as compared to non-group members".[212]

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[208] *Quebec (Attorney General) v. Kanyinda*, 2026 SCC 7, para 48.
[209] *Persons Unknown* at paras. 126-127, *Heegsma*, at paras. 80-82, *Abbotsford (City) v. Shantz*, 2015 BCSC 1909 , paras. 234-236 ["***Shantz 4***"].
[210] *Ontario Health Coalition and Advocacy Centre for the Elderly v. His Majesty the King in Right of Ontario*, 2025 ONSC 415, para. 317 ["***Ontario Health Coalition***"].
[211] *Ontario Health Coalition*, paras. 313, 317.
[212] *Ontario Health Coalition*, paras. 313; *Sharma*, para. 44.

88. The Bylaw applies uniformly to all people. It does not create a disproportionate impact on a protected class of individuals because no individuals are permitted to remain at the Encampment following April 1, 2026 without authorization, and any unauthorized individual remaining on the Property necessarily makes obtaining vacant possession of the Property unachievable.[213]

89. The record does not establish that the Amended Bylaw affects those who are racialized/Indigenous, female or gender diverse, or married, in any particular way. The evidence in the record shows, at best, that while some racialized, women, gender diverse, or married individuals may have different experiences of homelessness, the Bylaw is not the cause of those different experiences, nor does it uniquely affect those protected groups. This evidence is therefore insufficient to meet the claimants' evidentiary burden under s. 15.

90. There is limited authority to support receipt of social assistance as an analogous ground under s.15.[214] In any event, as with the enumerated grounds set out above, there is no evidence that those in receipt of social assistance will be impacted by the Amended Bylaw in a manner that is fundamentally different from individuals who do not receive social assistance. The court should be careful to ensure that it does not inappropriately permit the use of receipt of social assistance as a proxy for "economic disadvantage, which alone does not justify protection under s. 15".[215]

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[213] *Sharma*, para. 53.

[214] See e.g. *Falkiner v. Ontario (Minister of Community and Social Services)*, 2002 CanLII 44902 (ON CA), para. 84 ["***Falkiner***"], in which this ground was one of three relied upon by the court to find a breach of s.15. This ground was previously rejected in *Masse v. Ontario (Minister of Community and Social Services)*, 1996 CanLII 12491 (ON SCDC), at paras. 82-84; see also *Guzman v. Canada (Minister of Citizenship and Immigration) (F.C.)*, [2007] 3 FCR 411, paras. 23-28.

[215] *Falkiner*, para. 88; *Tanudjaja v. Attorney General (Canada) (Application)*, 2013 ONSC 5410, (appeal dismissed: 2014 ONCA 852), para. 131 ["***Tanudjaja SCJ***"]; *Polewsky v. Home Hardware Stores Ltd.*, 2003 CanLII 48473 (ON SCDC), paras. 7, 24.

91. The Respondents also seek to rely on purported analogous ground of homelessness. Canadian caselaw is clear that homelessness and "being without adequate housing" are not analogous grounds under s. 15.[216] Indeed, given that the definition of adequate housing is so hotly disputed between the parties (and even amongst academics and policymakers in this area), it would be practically impossible to determine the boundaries of such a category. In any event, because s. 15(1) does not impose a general, positive obligation on the state to remedy social inequalities or enact remedial legislation,[217] the Region's inability to fully solve the issue of homelessness before implementing the Amended Bylaw cannot be an infringement of s. 15.

2. Any distinction does not reinforce, perpetuate, or exacerbate disadvantage

92. Even if the Bylaw does create a distinction on an enumerated or analogous ground, it is not one that reinforces, perpetuates, or exacerbates disadvantage. The Bylaw is not based on any stereotypical assumptions about the value, characteristics, and behaviours of a particular class of people. Instead, the Bylaw was 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. The KCTH is itself a major infrastructure project which will benefit all residents of the Region. The Bylaw therefore is entirely disconnected from any past disadvantage or stereotyping experienced by protected groups. Indeed, those receiving social assistance and unhoused individuals are among those who stand to gain from the expansion of affordable transportation within and beyond the Region.

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[216] *Persons Unknown*, para. 123; *Shantz 4*, para. 321 ["***Shantz***"]., *Tanudjaja SCJ*, paras. 124-137 (appeal dismissed on other grounds: 2014 ONCA 852, as per para. 37).

[217] *Sharma*, para. 63.

C. If the Bylaw infringes ss. 7 or 15 of the Charter, it is demonstrably justified under s. 1

93. If the Bylaw infringes ss. 7 and/or 15, such infringement(s) are reasonable limits justifiable under s. 1. Where the limits arise from "a complex regulatory response to the social problem", courts have shown greater deference to governmental policy choices under s.1.[218]

1. The limit is prescribed by a law which has a pressing and substantial objective

94. The Amended Bylaw clearly meets the "prescribed by law" requirement.[219] Its objective is set out in its text: [220] to enable the vacant possession of the Property by a defined date to allow for the construction of the KCTH. It is uncontested that the KCTH will bring significant economic and social benefits to the Region; in light of this, the Region submits that the Bylaw's objective is clearly pressing and substantial.

2. There is proportionality between the Bylaw's objectives and its means

(a) The limit is rationally connected to the objective

95. The rational connection test requires the Region to show a "connection between the infringement and the benefit sought on the basis of reason or logic"[221] The Region's objective of obtaining vacant possession of 100 Vic logically necessitates the transition of all individuals from the site, including the named Respondents. The Region therefore meets this low bar.

(b) The limit minimally impairs the Respondents' rights

96. 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".[222] Courts will

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[218] This is true even for s.7 breaches: *R. v. Michaud*, 2015 ONCA 585, para. 127 (leave to appeal denied: 2016 CanLII 24866 (SCC)) ["***Michaud***"].
[219] *R. v. Oakes*, [1986] 1 SCR 103, para. 62.
[220] *Sharma*, para. 88.
[221] *Carter*, para. 99.
[222] *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1, para. 149.

"def[er] to the legislature in instances where it is better situated to choose among a range of alternatives".[223] As the Supreme Court noted in *Hutterian Brethren*:

> Where a complex regulatory response to a social problem is challenged, courts will generally take a more deferential posture throughout the s. 1 analysis than they will when the impugned measure is a penal statute directly threatening the liberty of the accused... The bar of constitutionality must not be set so high that responsible, creative solutions to difficult problems would be threatened. A degree of deference is therefore appropriate.[224]

97. In *Michaud*, the Ontario Court of Appeal 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".[225] The Court noted the lack of cohesion between experts in the field, and concluded that speed limiters were a reasonable choice along the spectrum of potential policy choices. The Court reasoned that "[w]here there is debate about countervailing risks in a situation of uncertainty, the regulator must make the call and did so."[226] The same applies here to the Region's judgment calls in the complex area of housing policy.

98. As the Region's evidence demonstrates, the Region requires vacant possession of the Property, meaning nothing short of closing the Encampment would meet the pressing and substantial objective. Regarding alternative arrangements for those living at the Encampment, given the complexity of the social problem of homelessness – especially in light of the pronounced surge of homelessness across Canada during and following the COVID-19 pandemic[227] and the

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[223] *Michaud*, para 122, citing *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37, para. 53 ["***Hutterian***"], *Carter*, para. 102.
[224] *Hutterian*, para 37.
[225] *Michaud*, para. 127.
[226] *Michaud*, para. 127.
[227] Municipalities Under Pressure Update, Ex. "C", 2nd Pin Aff, 2nd SRAR, Tab 12, p. 142.

necessity of all three levels of government fulfilling their roles for any meaningful solution[228] – the Region's Transition Plan and Protocol should be afforced particular deference. The Amended Bylaw was enacted in the context of a wider Regional (and multi-governmental) response to homelessness which, on the Region's part alone, has involved billions of dollars and many years of investment in various forms of emergency shelter and permanent housing. The Region has provided a specific Transition Plan for those at the Encampment, which has already shown significant success at connecting Encampment residents with alternative accommodation options. These are budgetary and policy decisions that are properly within the legislative sphere.

99. The Respondents will likely argue that the Region could provide alternative encampment sites, with supports, or a range of additional shelter options that they argue are more appropriate. No case holds that a municipality must fund services and supports to an encampment, or must provide sanctioned encampment sites, although municipalities may choose to do so as a matter of policy. Nor should courts seek to micro-manage the precise mix of housing and shelter facilities. The Amended Bylaw therefore represents a minimal impairment of the rights of the Respondents.

(c) The salutary effects of the Bylaw outweigh its deleterious effects

100. At this step, the court must balance the potential risks of harm to the Respondents with the benefit of using the Property to construct the KCTH.[229] Given the mitigation of risks set out above, and the KCTH's substantial anticipated benefits for the entire Waterloo region – including the Respondents – the balance falls in favour of upholding the Amended Bylaw.

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[228] Hwang Transcript, JTB, Vol. 1, Tab 8, pp. 465, 468 (Q22, 32); Houle Transcript, JTB, Vol. 4, Tab 19, pp. 428-429, (Q140-146); Pauly Transcript, JTB, Vol 4, Tab 17, pp. 228-229 (Q152-156).

[229] *Michaud*, para. 137, citing *Hutterian*, paras. 77-78.

101. The Region's evidence is that the Property is needed in order to enable the construction of the KCTH, and that no suitable alternative property is available.[230] When constructed, the KCTH will represent a "landmark endeavor for the Region" that is "vital to the economic and social growth and wellbeing of its residents [231] Some of these benefits include improved public transit throughout the region,[232] greater connectivity to communities surrounding the Kitchener-Waterloo area (which in turn brings more economic opportunities),[233] a potential boost to the economic health of the region given the increased likelihood of companies expanding or relocating to the area (amongst other factors),[234] and reduced transfer times and more efficient transit connections.[235] These benefits will be shared by all residents of the Region.

D. Remedy - If a Breach is Found, the Court should provide guidance to the Region

102. In the alternative, if the Amended Bylaw does infringe the *Charter*, this court should provide guidance for the Region on what steps it must take in order to obtain vacant possession of the Property in a *Charter*-compliant manner. In *Matsqui*, the BCSC offered such guidance when it permitted an encampment to be closed provided that the City of Abbotsford took steps to "gradually relocate existing residents while at the same time preventing new arrivals or any efforts by any individuals or organizations to expand the encampment".[236] The court's order set out parameters on appropriate shelter offers and detailed processes that the City was required to follow in relocating the encampment residents.[237] Similarly, in *Stewart*, the BCSC permitted the future

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[230] Spooner Aff, AR, Tab 3, paras. 6, 41-44, pp. 351, 363-363.
[231] Spooner Aff, AR, Tab 3, para. 16, p. 354.
[232] Spooner Aff, AR, Tab 3, para. 19, p. 355.
[233] Spooner Aff, AR, Tab 3, paras. 20-21, p. 356.
[234] Spooner Aff, AR, Tab 3, para. 22, p. 356.
[235] Spooner Aff, AR, Tab 3, para. 19, p. 355.
[236] *Matsqui*, para. 217.
[237] *Matsqui*, para. 218.

closure of an encampment in Prince George only where available and accessible housing and daytime facilities were provided for all of the encampment residents, and provided subsequent guidance in *Johnny #1* and *Johnny #2* regarding whether the City had fulfilled those conditions.

E. The Bylaw was passed in good faith and should not be quashed under the Municipal Act

103. In considering whether to quash a Bylaw under s. 273 of the Municipal Act, "a number of factors may inform the court's exercise of discretion including, the nature of the bylaw in question, the seriousness of the illegality committed, its consequences, delay and mootness".[238] The standard for doing so is a high bar: courts are to apply "a generous, deferential standard of review" to "the decisions of elected municipal councils made pursuant to valid enabling legislation",[239] which "must be presumed to have been enacted in good faith unless the contrary can be proven".[240] Courts "should be reluctant to find bad faith on the part of democratically elected municipal councils unless the evidence leads to no other rational conclusion"[241] such that "[i]f there are lawful grounds upon which the municipal council can be found to have acted, the court should not presume that the council acted beyond its authority or that it intended to do so".[242] In rare cases, the courts have found on compelling evidence that a municipality acted in bad faith and for a collateral purpose.[243]

104. The evidence before this court does not meet the standard of "no other rational conclusion" than the Region having acted in bad faith by enacting the Bylaw. To the contrary, there are many

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[238] *Corporation of the City of London v. RSJ Holdings Inc.,* 2007 SCC 29, para. 39.

[239] *2386240 Ontario Inc. v. The City of Mississauga*, 2018 ONSC 3162 (aff'd 2019 ONCA 413) para. 44 ["***2386240 Ontario***"], citing *Nanaimo (City) v. Rascal Trucking Ltd.,* 2000 SCC 13, paras. 35-36; *Grosvenor v. East Luther Grand Valley (Township),* 2007 ONCA 55, para. 31 ["***Grosvenor***"].

[240] *2386240 Ontario*, para. 48.

[241] *2386240 Ontario*, para. 47, internal quotations omitted, emphasis added.

[242] *2386240 Ontario*, para. 48, citing *McKay v. The Queen*, 1965 CanLII 3 (SCC), [1965] S.C.R. 798, at 803-804.

[243] See e.g. *Grosvernor*, 2007 ONCA 55, where a municipal bylaw designating a municipally owned land as a "highway" was enacted "for the sole purpose of evading the Township's obligation to fence [that land] under the *Land Fences Act*", rather than for the genuine purpose of serving as a highway.

indicia of good faith. The Bylaw was passed for a compelling public purpose, public notice of the Bylaw was posted as required, and the Bylaw was debated at an open council meeting on April 23, 2025 at which opponents of the Bylaw could – and did[244] – speak against it.[245] The Region did not enforce the Bylaw before proactively seeking the court's input.[246] In developing the Bylaw, the Region considered feedback obtained from stakeholders over years of consultation regarding homelessness.[247] The Region also finances its own critics – indeed, some of the Respondents' witnesses on this Application are individuals who have either been contracted to do work for the Region or whose employers are funded by the Region.[248] The Region sought mediation, albeit unsuccessfully. The Region also amended the Bylaw to respond to criticisms and to provide greater protections for those living at the Encampment, after further consultation. Whether or not the Region failed to follow "best practices" in its consultations as argued by the Respondents, there is no basis to find bad faith.[249]

F. The Region meets the test for an injunction under s. 440 of the Municipal Act

105. The injunction granted by Justice Gibson preventing the Region from enforcing the Bylaw expires at the hearing of this application on the merits. The Region now seeks a statutory injunction under s. 440 of the *Municipal Act*, permitting it to enforce the Bylaw as required. Enforcement will enable the Region to prevent newcomers from arriving at the Encampment, allowing for greater site management and a phased approach to its anticipated closure.

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[244] Droog Transcript, JTB, Vol. 1, Tab 5, p. 245 (Q152); Alton Transcript, JTB, Vol. 1, Tab 3, pp. 113-115 (Q107-112).

[245] This was a factor which supported a finding of good faith in *2386240 Ontario*, at para. 66.

[246] 2nd Sweeney Aff, RAR, Tab 2, para. 6, p. 12.

[247] 3rd Sweeney Aff, RAR, Tab 3, paras. 22-48, pp. 73-80.

[248] 3rd Sweeney Aff, RAR, Tab 3, para. 29, p. 75; Cross-Ex of S. Escobar, March 2, 2026 ["**2nd Escobar Transcript**"], JTB, Vol. 5, Tab 22, p. 9, (Q8-9); Alton Transcript, JTB, Vol. 1, Tab 3, p. 78 (Q10).

[249] Just because the Respondents "believe that the [Region] is wrong, that does not mean that the [Region] acted in bad faith". *Tiny Township Association v Township of Tiny*, 2025 ONSC 1578, at para. 36.

106. The test for an injunction under s. 440 differs from the common law *RJR-MacDonald* test: the Region does not need to establish inadequacy of damages or irreparable harm. The Region is presumed to be acting in the best interests of the public and a breach of the law is considered to be irreparable harm to the public interest.[250] The Region must only establish a strong *prima facie* case, on a balance of probabilities, that there is a breach of the applicable law. If so, the court may only exercise its residual discretion to not order an injunction in "exceptional circumstances".[251]

107. The Encampment is a clear violation of the Amended Bylaw, and there are no exceptional circumstances that would justify this court declining to grant an injunction. In *Persons Unknown,* Valente J. declined to order an injunction under s. 440 that would have allowed the Region to enforce the Code-of-Use Bylaw because he was "troubled by the lack of effort the Region made to connect with Encampment residents and the options provided to them prior to both the date of the Trespass Notice and the Eviction Date".[252] He further noted that the Region had not used "all reasonable outreach and support efforts to connect with the Encampment residents" to "address their individual needs on a case-by-case basis by providing access to services, supports and shelter", as was required by the Region's own Encampment Policy in place at the time.[253]

108. By contrast, here the Region has given ample notice to occupants of the Encampment through the lengthy notice period provided the Bylaw and has made significant efforts to provide for additional capacity in the system for Existing Residents through the accompanying Transition Plan and the Transition Protocol. The Region has also continued to work with other individuals on

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[250] *The Corporation of the City of Windsor v. Persons Unknown*, 2022 ONSC 1168, paras. 51-56 ["***City of Windsor***"].
[251] *City of Windsor,* at paras. 51-56; *City of Waterloo v. Persons Unknown*, 2025 ONSC 1572, para. 30.
[252] *Persons Unknown*, para. 142.
[253] *Persons Unknown*, para. 143.

site at 100 Vic to find them alternative arrangements. The USW team has provided the sort of individualized, needs-based, case-by-case analysis contemplated in *Persons Unknown* to all occupants of the Encampment who have been willing to engage. In light of this, there are no extraordinary circumstances as Valente J. concluded were present in *Persons Unknown*.

109. At the very least, the Region should be entitled to enforce the Amended Bylaw to prevent a further inflow of newcomers pending this Court's determinations on the merits of the Application, to ensure that the Region can conduct an orderly wind-down of the Encampment. The Region requires the ability to restrict newcomers to have any reasonable chance of closing the Encampment. This staged approach to closing the Encampment best serves the interests of all parties, and would allow the Region to focus its efforts on assisting the current occupants.

110. As noted above in the *Charter* analysis, if the court remains concerned by any aspect of the Amended Bylaw and Transition Protocol, the court could incorporate conditions into any injunction granted under s.440.[254]

PART V. ORDERS SOUGHT

111. The Region respectfully requests that this court:

(a) Declare that the Amended Bylaw complies with the *Charter*;

(b) Dismiss the Respondents' cross-application to declare the Bylaw invalid under the *Charter* and quash the Amended Bylaw under s. 273 of the *Municipal Act*; and

(c) Grant the Region an injunction under s. 440 of the *Municipal Act*.

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[254] Examples similar to or drawn from other cases include:

- Varying dates set out in the Amended By-law
- Requiring the Region to provide storage of personal effects
- Providing that residents can apply to the court for an individual constitutional exemption in "exceptional circumstances" if they can demonstrate that the option presented to them was truly not accessible to them specifically.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 13th day of March, 2026.

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CERTIFICATE

I, Andrew Lokan, lawyer for the Applicant, certify that I am satisfied as to the authenticity of every authority cited in this factum.

March 13, 2026

Andrew Lokan
Paliare Roland Rosenberg Rothstein LLP

SCHEDULE "A" - LIST OF AUTHORITIES

1. *Abbotsford (City) v Shantz*, 2013 BCSC 2612.
2. *Abbotsford (City) v. Shantz*, 2015 BCSC 1909 .
3. *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37.
4. *Black et al. v. City of Toronto*, 2020 ONSC 6398.
5. *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44.
6. *British Columbia v. Adamson, 2016 BCSC 1245*.
7. *Canada (Attorney General) v. Bedford*, 2013 SCC 72.
8. *Carter v. Canada (Attorney General)*, 2015 SCC 5.
9. *Church of Saint Stephen et al. v. Toronto*, 2023 ONSC 6566 .
10. *City of Waterloo v. Persons Unknown*, 2025 ONSC 1572.
11. *Clinique juridique itinérante c. Procureur général du Québec*, 2023 QCCS 1949 .
12. *Corporation of the City of London v. RSJ Holdings Inc.,* 2007 SCC 29.
13. *Drover v. Canada (Attorney General)*, 2025 ONCA 468.
14. *Falkiner v. Ontario (Minister of Community and Social Services)*, 2002 CanLII 44902 (ON CA).
15. *Godbout v. Longueuil (City)*, [1997] 3 S.C.R. 844.
16. *Grosvenor v. East Luther Grand Valley (Township),* 2007 ONCA 55.
17. *Heegsma v. Hamilton (City)*, 2024 ONSC 7154.
18. *Johnston v. Victoria (City)*, 2011 BCCA 400.
19. *Malmo-Levine*; *R. v. Caine*, 2003 SCC 74.
20. *Maple Ridge (City) v Scott*, 2019 BCSC 157.
21. *Matsqui-Abbotsford Impact Society v Abbotsford (City)*, 2024 BCSC 1902.
22. *McKay v. The Queen*, 1965 CanLII 3 (SCC).

23. *Nanaimo (City) v Courtoreille*, 2018 BCSC 1629.

24. *Nanaimo (City) v. Rascal Trucking Ltd.,* 2000 SCC 13.

25. *Ontario Health Coalition and Advocacy Centre for the Elderly v. His Majesty the King in Right of Ontario*, 2025 ONSC 415.

26. *Poff v. City of Hamilton*, 2021 ONSC 7224.

27. *Polewsky v. Home Hardware Stores Ltd.*, 2003 CanLII 48473 (ON SCDC).

28. *Prince George (City) v Johnny*, 2025 BCSC 1556.

29. *Quebec (Attorney General) v. Kanyinda*, 2026 SCC 7.

30. *R. v. Kloubakov*, 2025 SCC 25 .

31. *R. v. Michaud*, 2015 ONCA 585.

32. *R. v. Sharma*, 2022 SCC 39.

33. *R. v. Sullivan,* 2022 SCC 19.

34. *Saanich (District) v Brett*, 2018 BCSC 1648.

35. *Tanudjaja v. Attorney General (Canada) (Application)*, 2013 ONSC 5410.

36. *Tanudjaja v. Canada (Attorney General)*, 2014 ONCA 852.

37. *The Corporation of the City of Windsor v. Persons Unknown*, 2022 ONSC 1168.

38. *Tiny Township Association v Township of Tiny*, 2025 ONSC 1578.

39. *The Corporation of the City of Kingston v. Doe*, 2023 ONSC 6662.

40. *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2023 ONSC 670.

41. *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2025 ONSC 4774.

42. *Vancouver Fraser Port Authority v Brett*, 2020 BCSC 876.

43. *Victoria (City) v. Adams*, 2009 BCCA 563.

44. *2386240 Ontario Inc. v. The City of Mississauga*, 2018 ONSC 3162 .

SCHEDULE "B" - TEXT OF STATUTES, REGULATIONS & BY-LAWS

***The Constitution Act, 1982*, Schedule B to the Canada Act 1982 (UK), 1982, c 11, ss. 1, 7 and 15**

Rights and freedoms in Canada

1 The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Life, liberty and security of person

7 Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

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

15 (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Affirmative action programs

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

***Municipal Act, 2001*, SO 2001, c 25. ss. 272, 273, 289(1)**

Restriction on quashing by-law

272 A by-law passed in good faith under any Act shall not be quashed or open to review in whole or in part by any court because of the unreasonableness or supposed unreasonableness of the by-law. 2001, c. 25, s. 272.

Application to quash by-law

273 (1) Upon the application of any person, the Superior Court of Justice may quash a by-law of a municipality in whole or in part for illegality. 2001, c. 25, s. 273 (1).

Definition

(2) In this section,

"by-law" includes an order or resolution. 2001, c. 25, s. 273 (2).

Inquiry

(3) If an application to quash alleges a contravention of subsection 90 (3) of the *Municipal Elections Act, 1996*, the Superior Court of Justice may direct an inquiry into the alleged contravention to be held before an official examiner or a judge of the court, and the evidence of the witnesses in the inquiry shall be given under oath and shall form part of the evidence in the application to quash. 2001, c. 25, s. 273 (3).

Other cases

(4) The court may direct that nothing shall be done under the by-law until the application is disposed of. 2001, c. 25, s. 273 (4).

Timing

(5) An application to quash a by-law in whole or in part, subject to section 415, shall be made within one year after the passing of the by-law. 2001, c. 25, s. 273 (5).

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).

Court File No. CV-25-00000750-0000

THE REGIONAL MUNICIPALITY OF WATERLOO Applicant	-and-	PERSONS UNKNOWN AND TO BE ASCERTAINED Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
WATERLOO REGION

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