

**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

FACTUM OF THE RESPONDENTS

(Motion in Writing)

February 2, 2026

Waterloo Region Community Legal Services
450 Frederick Street, Unit 101
Kitchener, ON N2H 2P5

Ashley Schuitema (LSO# 68257G)
Tel: 519-743-0254 x. 17
ashley.schuitema@wrcls.clcj.ca

Joanna Mullen (LSO# 64535V)
Tel: 519-743-0254 x. 15
joanna.mullen@wrcls.clcj.ca

Shannon K. Down (LSO# 43894D)
Email: shannonkdown@gmail.com

Lawyers for the Respondents

TO: Paliare Roland Rosenberg Rothstein LLP
155 Wellington St. West, 35th Floor
Toronto, ON M5V 3H1

Gordon Capern (LSO # 32169H)
Tel: 416.646.4311
Email: gordon.capern@paliareroland.com

Andrew Lokan (LSO # 31629Q)
Tel: 416.646.4324
Email: andrew.lokan@paliareroland.com

Kartiga Thavaraj (LSO # 75291D)
Tel: 416.646.6317
Email: kartiga.thavaraj@paliareroland.com

Greta Hoaken (LSO # 87903I)
Tel: 416.646.6357
Email: greta.hoaken@paliareroland.com

Lawyers for the Applicant
The Regional Municipality of Waterloo

AND TO: Perez, Procope, Leinveer LLP
55 University Avenue, Suite 1100,
Toronto, ON M5J 2H7

Mercedes Perez (LSO # 48381L)
Tel: (416) 320-1914
Email: mperez@pbplawyers.com

Swadron Associates
Barristers & Solicitors
15 Wellesley St. W., Suite 321
Toronto, ON M4Y 0G7

Jen Danch (LSO # 74520I)
Tel: (416) 362-1234
Email: jdanch@swadron.com

Karen A. Steward (LSO # 58758O)
Tel: (416) 270-0929
Email: karenannesteward@yahoo.ca

Amicus Curiae for Persons Unknown,

The Mental Health Legal Committee

AND TO: Ministry of the Attorney General, Constitutional Law Branch
720 Bay Street, 4th Floor
Toronto, ON M7A 2S9

Andrea Bolieiro (LSO # 60034I)
Tel: 437-551-6263
Email: andrea.bolieiro@ontario.ca

Sara Badawi (LSO # 87480W)
Email: sara.badawi@ontario.ca

**Lawyers for Intervenor,
Attorney General of Ontario**

AND TO: Falconers LLP
10 Alcorn Avenue, Suite 204
Toronto, ON M4V 3A9

Asha James (LSO # 56817K)
Email: ashaj@falconers.ca

Erin McMurray (LSO # 90874H)
Email: erinm@falconers.ca

**Lawyers for Intervener,
Aboriginal Legal Services**

Aboriginal Legal Services
211 Yonge Street, Suite 500
Toronto, ON M5B 1M4

Emily Hill (LSO # 46899Q)
Email: emily.hill@als.clcj.ca

Christa Big Canoe (LSO # 53203N)
Email: christa.bigcanoe@als.clcj.ca

AND TO: Professor *emerita* Martha Jackman
Faculty of Law, University of Ottawa
57 Louis Pasteur
Ottawa, ON K1N 6N5

Tel: 613.720.9233
Email: martha.jackman@uottawa.ca

**Lawyers for the Intervener,
The Charter Committee on Poverty Issues /
The National Right to Housing Network**

AND TO:

Ursel Phillips Fellows Hopkinson LLP
555 Richmond St. W., Suite 1200
Toronto, Ontario M5V 3B1

Kristen Allen (LSO # 62789C)
Tel: 416.969.3502
Email: kallen@upfhlaw.ca

Simone Truemner-Caron (LSO # 82968M)
Tel: 416.642.4504
Email: struemnercaron@upfhlaw.ca

**Lawyers for the Intervener,
The Canadian Civil Liberties Association**

TABLE OF CONTENTS

PART I: OVERVIEW	6
PART II: FACTS	6
PART III: ISSUES, LAW, AND ARGUMENT	7
PART IV: LAW & ARGUMENT	7
The Legal Test and Tension in the Case Law	7
Leave should be refused	10
i. Evidence is not responsive to issues raised in cross examination	10
ii. No satisfactory explanation for failure to include proposed additional evidence	11
iii. Prejudice to the Respondents	12
iv. Relevance	13
PART IV: ORDER REQUESTED	15
CERTIFICATE	16
SCHEDULE “A”	17
SCHEDULE “B”	18

PART I: OVERVIEW

1. The Regional Municipality of Waterloo (“the Region”) seeks to evict the Named Respondents and Persons Unknown from an Encampment Site in Kitchener (the “Encampment”) that is their shelter of last resort. The Region wishes to use the site as a “lay down” space for equipment and vehicles during construction of a transit hub on nearby land. The Named Respondents and Persons Unknown are among the Region’s most vulnerable.

2. On January 9, 2026, the Region amended Regional By-law 25-021 (the “By-law”) that is before this Court in the underlying application (“Application”), with By-law 26-001. Despite cross examinations commencing on December 2, 2025, the Region also has sought leave of the Court to file an additional affidavit of Aaron Moss (the “Moss Affidavit”) regarding safety concerns at the Encampment. Leave should be denied in this case as the evidence does not respond to something raised in cross-examination, there is no satisfactory explanation for not having included this evidence at the outset, it will cause prejudice to the Respondents, and it amounts to improper case-splitting. By amending the By-law and seeking to adduce this evidence, the Region is changing the goal posts of the litigation and violating the principles of fairness and economy that Rule 39.02 is designed to guard against.¹

PART II: FACTS

3. The facts underlying the Application and Cross-Application are well known to the Court. The Respondents dispute the Region’s characterization regarding a “flexible approach” to the evidence to date and note that each previous situation where the parties agreed to additional evidence was a *quid pro quo*. Importantly, each prior instance involving an exchange of additional evidence was well known to both parties prior to the start of cross examinations on December 2, 2025.

¹ *Rules of Civil Procedure*, RRO 1990, Reg 194, [s. 39.02](#).

4. These proceedings have been adjourned twice because of actions initiated by the Region, the first time so the parties could engage in mediation and the second time because the Region passed amendments to the By-law necessitating adjournments. Prior to engaging in mediation around September 2025, counsel for the Region suggested that amendments to the By-law may be required, yet the Respondents heard nothing further on this and did not receive the proposed amendments until December 18, 2025. Cross examinations commenced on December 2, 2025.

5. The Region's Factum was due on January 12, 2026. The proposed amendments were passed by Council on January 9, 2026, and the Region delivered a copy of the Moss Affidavit to the Respondents on the same day. Ninety (90) per cent of the security incidents documented in Exhibit A to the Moss Affidavit were available prior to the commencement of cross examinations on December 2, 2025. If the Region was seriously contemplating By-law Amendments and additional evidence, they should have alerted counsel and discussed the postponing of cross examinations.

6. Although the Respondents have been provided an opportunity to file further evidence to respond to the Amended By-law, that does not mean that the entire case is re-opened and any evidence unrelated to the Amended By-law can be introduced by the Region.

PART III: ISSUES, LAW, AND ARGUMENT

7. The only issue for the Court to determine on this motion is whether to grant the Region leave to adduce the Moss Affidavit under Rule 39.02(2).

PART IV: LAW & ARGUMENT

The Legal Test and Tension in the Case Law

8. Rule 39.02(2) limits parties' ability to rely on affidavits delivered following cross-

examination of an adverse party's affidavit without leave or consent.² The onus is on the moving party to establish that leave should be granted.³

9. The legal test for admission of further evidence after the commencement of cross-examination considers the following four criteria that should be weighed evenly, with no one criteria being determinative⁴:

1. Is the evidence relevant?
2. Is the evidence responsive to something raised in cross-examination?
3. Is there prejudice?
4. Is there a satisfactory explanation for not having included this evidence at the outset?

10. As noted by Jensen J. in the 2024 decision of *Brash v. Sims*, there is a tension in the case law regarding the application of Rule 39.02.⁵ On the one hand, it has been held that the rule should be applied in a flexible, contextual manner to ensure a just, timely resolution of the dispute.⁶ On the other hand, many cases reflect a stricter interpretation of the Rule stating that leave under Rule 39.02(2) should be granted sparingly.⁷

² *Rules of Civil Procedure*, RRO 1990, Reg 194, [s. 39.02\(2\)](#).

³ *Catalyst Fund Limited Partnership II v. IMAX Corporation*, 2008 CanLII 8778 (ON SC), at [para 14](#).

⁴ *1944949 Ontario Inc. (OMG ON THE PARK) v. 2513000 Ontario Ltd.*, 2019 ONCA 628, [para. 33](#) – citing *Lockridge v. Director, Ministry of the Environment*, 2013 ONSC 6935, 322 O.A.C. 345 (Div. Ct.), at [para. 24](#); *First Capital Realty Inc. v. Centrecorp Management Services Ltd.* (2009), 258 O.A.C. 76 (Div. Ct.), at para. 13, Abbreviated Book of Authorities, Tab 1, pp. 9-10; also *Knowles (c.o.b. Special Events Marketing) v. Arctic Glacier Inc.*, 2011 ONSC 682 at paras. 52-54, Abbreviated Book of Authorities, Tab 2, pp. 17-18.

⁵ *Brash v. Sims*, 2024 ONSC 6509 (CanLII) at [para. 29](#).

⁶ *Sewchand et al. v. Hurry-Goriah et al.*, 2024 ONSC 1597, at [para. 29](#); *First Capital Realty Inc.*, supra, at para. 14, Abbreviated Book of Authorities, Tab 1, p 10.

⁷ *Shah v. LG Chem, Ltd.*, 2015 ONSC 776, 124 O.R. (3d) 570, at [para. 23](#); The jurisprudence about rule 39.02(2) indicates that (1) leave should be "granted sparingly": *Catalyst Fund Limited Partnership II*, supra, at [para 14](#); *Skrobacky v. Frymer*, 2011 ONSC 3295 (CanLII), at [para. 27](#); *Sure Track v. Kaisersingh*, 2011 ONSC 7388 (CanLII), at [para. 51](#); (2) the moving party has "a very high threshold" to meet: *Catalyst Fund Limited Partnership II*, supra, at [para 14](#); *Skrobacky v. Frymer*, supra, at [para. 27](#); *Sure Track Courier Ltd.*, supra, at [para. 51](#); (3) the rule about the delivery of subsequent affidavits should not be used as "a mechanism for correcting deficiencies in the motion

11. The Respondents urge the Court to follow the jurisprudence that has favoured a high threshold for granting leave and to deny the Region's motion. These courts have stated that the rules are "designed to place finite limits on the evidentiary element of those proceedings, an element that is all-too frequently time-consuming, expensive and drawn-out."⁸ Courts have also noted the following:

Rule 39.02(1) and (2) are an important and integral part of the procedural code governing the conduct of motions and applications. These rules oblige the parties to consider the issues and to put all relevant evidence forward before embarking upon cross-examination of the opposite party's witnesses. This is the approach mandated by the rules to achieve the "just, most expeditious and least expensive determination" of motions and applications. Consistent with that approach, it is only in exceptional cases that resort should be had to rule 39.02(2).⁹

12. Courts have articulated the policy reasons for the high threshold required by Rule 39.02, as follows:

[T]he litigation process in the Ontario courts has been repeatedly criticized by lawyers, stakeholders and jurists as time-consuming, fraught with delays, escalating procedural wrangling and ever-increasing costs. Rule 39.02 is one such rule designed to place finite limits on the evidentiary elements of litigation.¹⁰

13. Courts have denied leave to adduce additional evidence and have been critical about (1) attempts by the moving party to "clarify and amplify earlier evidence"¹¹, (2) where the evidence appears designed to "rehabilitate the evidence" given in cross examination¹², and (3) where the parties were "aware of the issue and had the means and opportunity to proffer its own evidence on

materials": *Lihou v. VIA Rail Canada Inc.*, 2006 CanLII 37520 (ON SC); (4) the rule is designed to place finite limits on the evidentiary element of motion and application proceedings and for parties to put all relevant evidence forward before embarking upon cross-examination of the opposite party's witnesses: *Brock Home Improvement Products Inc. v. Corcoran*, 2002 CanLII 49425 (ON SC), at [para. 8](#).

⁸ *Brock Home Improvement Products Inc.*, supra, at [para. 8](#).

⁹ *Ibid.*

¹⁰ *Sure Track v. Kaisersingh*, supra, at [para. 44](#).

¹¹ *Aniekwe v. Aniekwe*, 2025 ONSC 3258 (CanLII), at [para. 42](#).

¹² *Brash*, supra, at [para 34](#).

the point prior to embarking on cross-examinations”.¹³

Leave should be refused

i. Evidence is not responsive to issues raised in cross examination

14. The Moss Affidavit does not respond to issues raised in cross examination and it cannot be used to bolster, repair or supplement the Region’s original case. The Respondents’ evidence from the outset has been that the encampment is no more dangerous than shelters. Six of the Named Respondents attested to experiencing violence, sexual assault or assault in shelters or while sleeping rough outside of the encampment.¹⁴ At least three lay person affiants attested to the relative safety of the encampment compared to other forms of accommodation.¹⁵ These affidavits were all sworn in May and June of 2025. The Region’s assertion that the Moss evidence is necessary to respond to a suggestion put to witnesses in cross examination that "the encampment is no more dangerous than shelters" is simply incorrect. Additionally, the Region has not tendered evidence regarding the comparative safety of its shelters - evidence which is solely within the Region's control.

15. Moreover, during the first cross examination of Peter Sweeney for the injunction motion which took place on July 11, 2025, Mr. Sweeney was questioned about the comparisons between residing at the encampment vs. in the emergency shelter system, transitional housing system and motels funded by the Region.¹⁶ Mr. Sweeney was questioned about violence that occurs within the Region’s systems and admitted that there is an incident management system for emergency shelter

¹³ *News Datacom Ltd. et al. v. Love et al.*, 2004 MBCA 98 (CanLII), at [para. 19](#).

¹⁴ Affidavit of Aaron Price, Affirmed May 6, 2025, Responding Record (“RR”) Vol. 1, pdf 8, paras. 9-11; Affidavit of Calvin Sharpe, Affirmed May 30, 2025, RR Vol. 1, pdf 21, para. 10; Affidavit of Jeremy Linton, Affirmed May 6, 2025, RR Vol. 1, pdf 52, para. 13; Affidavit of Joseph Bradley, Affirmed May 9, 2025, RR Vol. 1, pdf 65, para. 13-14; Affidavit of Josephina Dugas, Affirmed May 7, 2025, RR Vol. 1, pdf 77, para. 13; Affidavit of Terra-Lynn Weber, Affirmed May 6, 2025, RR Vol. 1, pdf 128, paras. 23-24 & 27.

¹⁵ Affidavit of Jacara Droog, Sworn June 4, 2025, RR Vol. 2, pdf 294-296, paras. 24, 25 and 28; Affidavit of Angela Allt, Sworn June 20, 2024, RR Vol. 2, pdf 21-22, paras. 17 and 19; 2nd Affidavit of Eddy Grignon, Sworn July 7, 2025, RR Vol. 2, pdf 275, para. 13.

¹⁶ Joint Transcripts Brief Volume 2, Transcript of Peter Sweeney, pdf 128-129, lines 357-361.

providers and that he is generally made aware of critical incidents within that system.¹⁷ This cross-examination probed themes already squarely in issue and to allow the Region to repair gaps in their case is the definition of impermissible case-splitting.

16. In fact, Mr. Sweeney's first affidavit affirmed on June 6, 2025, expressly raises safety concerns at the Encampment and attaches multiple "Major Incident Notifications" dating from December 2023 to May 2025. Mr. Sweeney attested that "The Region has *become increasingly concerned* about potential risks to residents of the Encampment and the broader public" including specifically "security incidents on the site, including violent altercations between residents of the Encampment".¹⁸ The idea of safety at the Encampment is not new, and the idea of the Encampment being relatively safer than the emergency shelter system is also not new.

ii. No satisfactory explanation for failure to include proposed additional evidence

17. Most of this evidence was clearly available prior to cross examinations commencing. The Region has been tracking security data for months. The failure to produce it in a timely way is unexplained, and the law does not permit a party to sit on evidence and then deploy it tactically at a later stage. Exhibit A of the Moss Affidavit is a three-month security status report dated from September 16 to December 16, 2025. This report documents 71 incidents and only 7 incidents are dated in December (post-commencement of cross examinations).¹⁹ Ninety (90) per cent of the incidents documented were available prior to the commencement of cross examinations. The suggestion that the Region wants to update the Court on new developments is insincere. The Region had ample opportunity prior to cross examinations commencing to provide Mr. Moss' evidence to

¹⁷ Joint Transcripts Brief Volume 2, Transcript of Peter Sweeney, pdf 128-129, lines 357-361.

¹⁸ Affidavit of Peter Sweeney, Affirmed June 6, 2025, Application Record, Case Center p. A899, para. 94 (Emphasis added).

¹⁹ Affidavit of Aaron Moss ("Moss Affidavit"), Affirmed January 16, 2026, Exhibit A, pdf 11-25.

address the issue of safety at the encampment, which was a matter squarely raised in the litigation. The Region has provided no explanation as to why they did not seek to adduce this evidence prior to the commencement of cross examinations.

18. Additionally, there are numerous references in the Moss Affidavit where no time frame or dates are articulated including - complaints from business owners,²⁰ frustration from neighbours,²¹ or increases in rodent activity.²² The absence of dates in multiple paragraphs is critical, if the Region cannot establish when the impugned events occurred, it cannot meet its burden of showing the evidence was unavailable at the outset and should not be allowed in.

19. The suspicious timing of the Moss Affidavit coinciding with the By-Law Amendments, should be given considerable weight when considering the factors for leave as it amounts to case-splitting which is prejudicial to the Respondents and should be discouraged. Courts have cautioned as follows:

The court should scrutinize carefully the reasons for the omission and the evidence offered in support of that explanation. To approach the issue otherwise undermines the integrity of the evidentiary framework for motions and applications that is mandated by the Rules. Absent some reasonable explanation for the original omission, leave should be refused.²³

iii. Prejudice to the Respondents

20. Here the Court is to consider whether allowing the delivery of the affidavit would operate unfairly against the adverse party.²⁴ Once cross-examinations have commenced, the introduction of

²⁰ Moss Affidavit, pdf 8, para. 34.

²¹ Ibid, para. 33.

²² Ibid, para 35.

²³ *Catalyst Fund Limited Partnership II*, supra, at [para. 16](#).

²⁴ *Shah v. LG Chem, Ltd.*, supra, at [para. 22](#) – citing *Nolan v. Canada (Attorney General)*, [1997 CanLII 12213](#) (ON SC); and citing *Bloorview Childrens Hospital Foundation v. Bloorview MacMillan Centre*, [2001] O.J. No. 1701 (S.C.J.), Abbreviated Book of Authorities, Tab 3.

new evidence disrupts the orderly progression of the proceeding, forces re-preparation, and undermines finality.

21. Although the Respondents agree that given the adjournment, there could be time to cross examine Mr. Moss, this alone does not remedy the prejudice faced by the Respondents. The Respondents are represented by a community legal clinic that has finite resources and limits to their disbursement budget. The Respondents' limited resources amplify this prejudice. Cross examination is complete for all six of the Respondents' experts and the Region's one expert. The requirement to conduct additional cross-examinations, obtain further costly transcripts, and potentially respond with new evidence imposes disproportionate hardship. The Rules of Civil Procedure are designed precisely to prevent this kind of rolling, fragmented litigation.

22. Granting leave to adduce the Moss Affidavit will inevitably result in another round of cross-examinations, and possible additional Rule 39.02(2) motions. As noted by the Manitoba Court of Appeal, "that is precisely what rules 39.02(1) and rule 39.02(2) are designed to prevent."²⁵ Requiring the Respondents to prepare and respond to never ending fragments of the Region's case is unjust and ought to be discouraged. This is precisely the concerns noted by various judges requiring that leave be granted sparingly, including time-consuming delays, escalating procedural wrangling and ever-increasing costs. Allowing leave is "an open invitation to counsel and litigants in other cases to emasculate Queen's Bench Rule 39.02."²⁶

iv. Relevance

23. The Respondents agree with this Court that an update on the number of individuals present at the Encampment is relevant. Although the Respondents would not be opposed to the type of

²⁵ *News Datacom Ltd. et al. v. Love et al.*, supra, at [para. 19](#).

²⁶ *Ibid.*

evidence set out in paragraphs 37-39 of the Moss Affidavit regarding how many residents remain onsite, Mr. Moss is not the appropriate Region employee to provide this evidence. This evidence is not within Mr. Moss' direct knowledge, and he is relying on information provided to him from the Director of Housing Services, Mr. Ryan Pettipiere. This would make cross examination on these facts very difficult. Notably, that evidence was not included in the version of the Moss Affidavit that was originally delivered to the Respondents prior to the case management conference on January 12, 2026, and it is clear this was tacked onto Mr. Moss' affidavit to satisfy the interests identified by the Court. It highlights the true intent of the Region to case-split and supplement earlier evidence.

24. The Respondents concede that evidence of events arising after the start of cross examinations on December 2, 2025, is evidence that was not available at the outset. However, even assuming without conceding that some paragraphs contain relevant post-December 2025 developments, relevance alone is insufficient. Evidence presented at the eleventh hour violates fundamental procedural fairness principles and risks significant prejudice to the Respondents.

25. In the alternative, should the Court be inclined to grant the Region's Motion, the Respondents would request that only certain paragraphs be allowed, and that the Respondents be provided the opportunity to cross examine on these paragraphs and provide reply evidence, if necessary. The following paragraphs would have been genuinely unavailable prior to the commencement of cross examinations:

- a. Para 22 – On December 9, 2025, Mr. Moss instructed his team and external contractors hired by the Region not to attend the Property other than for a single weekly cleaning, and to be accompanied by police.

- b. Paras 28-30 – Mr. Moss has been informed by Mr. Pettipiere that as of December 17, 2025, the Region’s team of Unsheltered Support Workers are no longer attending every day and only attending on Wednesdays.
- c. Paras 31-32 – Mr. Moss has been informed by Mr. Pettipiere that Sanguen Health Centre, a third-party provider of health care has withdrawn from providing services at the Property on or around December 16, 2025.

26. Although the Respondents’ would express the same concerns noted above with evidence provided to Mr. Moss by Mr. Pettipiere. The remainder of the Moss Affidavit is either irrelevant or was available prior to cross examinations and there is no reasonable excuse for not including it. Leave should be denied for the remainder of the Moss Affidavit.

PART IV: ORDER REQUESTED

27. The Respondents respectfully requests that this Court deny the Region’s motion seeking leave to adduce the Moss Affidavit under Rule 39.02(2).

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 2nd day of February 2026.



**Ashley Schuitema, Joanna Mullen, and
Shannon Down**

Lawyers for the Respondents (Moving Parties)

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

THE REGIONAL MUNICIPALITY OF WATERLOO

Applicant/Responding Party

and

PERSONS UNKNOWN AND TO BE ASCERTAINED

Respondents/Moving Parties

CERTIFICATE

1. I, Ashley Schuitema, certify that I am satisfied as to the authenticity of every authority cited in the factum.

Dated this February 2nd, 2026.



Ashley Schuitema, Joanna Mullen, and Shannon Down

Lawyers for the Respondents (Moving Parties)

SCHEDULE “A”

List of Authorities in order of reference:

1. *Catalyst Fund Limited Partnership II v. IMAX Corporation*, [2008 CanLII 8778](#) (ON SC).
2. *1944949 Ontario Inc. (OMG ON THE PARK) v. 2513000 Ontario Ltd.*, [2019 ONCA 628](#).
3. *Lockridge v. Director, Ministry of the Environment*, [2013 ONSC 6935](#), 322 O.A.C. 345 (Div. Ct.).
4. *First Capital Realty Inc. v. Centrecorp Management Services Ltd.* (2009), 258 O.A.C. 76 (Div. Ct.), Abbreviated Book of Authorities, Tab 1.
5. *Knowles (c.o.b. Special Events Marketing) v. Arctic Glacier Inc.*, 2011 ONSC 682, Abbreviated Book of Authorities, Tab 2.
6. *Brash v. Sims*, [2024 ONSC 6509](#) (CanLII).
7. *Sewchand et al. v. Hurry-Goriah et al.*, [2024 ONSC 1597](#).
8. *Shah v. LG Chem, Ltd.*, [2015 ONSC 776](#), 124 O.R. (3d) 570.
9. *Skrobacky v. Frymer*, [2011 ONSC 3295](#) (CanLII).
10. *Sure Track v. Kaisersingh*, [2011 ONSC 7388](#) (CanLII).
11. *Lihou v. VIA Rail Canada Inc.*, [2006 CanLII 37520](#) (ON SC).
12. *Brock Home Improvement Products Inc. v. Corcoran*, [2002 CanLII 49425](#) (ON SC).
13. *Aniekwe v. Aniekwe*, [2025 ONSC 3258](#) (CanLII).
14. *News Datacom Ltd. et al. v. Love et al.*, [2004 MBCA 98](#) (CanLII).
15. *Nolan v. Canada (Attorney General)*, [1997 CanLII 12213](#) (ON SC).
16. *Bloorview Childrens Hospital Foundation v. Bloorview MacMillan Centre*, [2001] O.J. No. 1701 (S.C.J.), Abbreviated Book of Authorities, Tab 3.

SCHEDULE “B”

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

Rules of Civil Procedure, [RRO 1990, Reg 194](#).

**THE REGIONAL MUNICIPALITY OF
WATERLOO**
Applicant

and

**PERSONS UNKNOWN/TO BE
ASCERTAINED**
Respondents

Court File No.: CV-25-00000750-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at KITCHENER

FACTUM OF THE RESPONDENTS

WATERLOO REGION COMMUNITY LEGAL SERVICES
450 Frederick Street, Unit 101
Kitchener, Ontario N2H 2P5

Ashley Schuitema LSO #68257G
Tel: 519.743.0254 x 17
Email: ashley.schuitema@wrcls.clcj.ca

Joanna Mullen LSO# 64535V
Tel: 519-743-0254 x. 15
joanna.mullen@wrcls.clcj.ca

Shannon K. Down LSO #43894D
Email: shannonkdown@gmail.com

Lawyers for the Respondents