

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

THE REGIONAL MUNICIPALITY OF WATERLOO

Applicant

and

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

Respondents

**FACTUM OF THE INTERVENOR
THE CANADIAN CIVIL LIBERTIES ASSOCIATION**

April 9, 2026

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PART I. OVERVIEW

1. These applications raise significant issues of public importance relating to municipal encampment responses and the rights of some of the most vulnerable members of society under section 7 and 15 of the *Charter of Rights and Freedoms* (“*Charter*”).
2. The CCLA submits that section 7 must be interpreted in a manner that fully recognizes the inherent dignity and autonomy of those experiencing homelessness. Such an approach is consistent with the *Charter’s* foundational values and Canada’s international human rights obligations which have been adopted into domestic law through the *National Housing Strategy Act* (“*NHSA*”).¹
3. The CCLA makes three specific submissions relating to the scope of section 7 and 15:
 - i. Canada’s international obligations, as adopted through the *NHSA*, establish a basic human right to adequate shelter centered in human dignity. These obligations require state actors to treat those experiencing homelessness as right-holders entitled to effective remedies, due process, and genuine and meaningful consultation in any encampment response. The By-laws’ failure to afford these rights to all who rely on the encampment as a shelter of last resort is relevant to assessing (i) the severity of the liberty infringement and (ii) whether the By-Laws² accord with the principles of fundamental justice (“PFJs”).
 - ii. Adopting a dignity-centric approach to section 7 requires evaluating whether alternative shelter space is truly “adequate”, “accessible”, or “safe” based on the needs of each

¹ *National Housing Strategy Act*, [SC 2019, c 29, s 313](#) [“*NHSA*”] at art. 4.

² For ease of reference, CCLA refers to the Site Specific By-Law and Amended By-Law and Transition Protocol collectively as the “By-Laws”, consistent with the terminology used by the Named Respondents.

individual. This requires engaging with their personal history, lived experience, and identification with one or multiple intersecting grounds.

- iii. The Supreme Court of Canada in *Kanyinda* affirmed that an intersectional approach must be adopted in interpreting equality rights under section 15(1) of the *Charter*. The Court should recognize the acute effects that flow from the interaction between the protected grounds and the social and economic realities of chronic homelessness.

PART II. FACTS

- 4. The CCLA accepts the record provided by the parties.

PART III AND IV. ISSUES, LAW, AND ARGUMENT

A. Section 7 and Canada’s International Human Rights Obligation

- 5. CCLA submits that Canada’s international and domestic obligations relating to the right to adequate housing and protections against forced evictions are persuasive and relevant considerations in interpreting the scope and content of section 7 of the *Charter*.³

i. Canada’s International Obligations Relating to Housing and Forced Evictions

a) Using International Obligations to Interpret Charter Rights

- 6. Canadian Courts possess a robust ability to rely upon international legal instruments to interpret the content or scope of any *Charter* right or principle.⁴ While the Supreme Court of Canada (“SCC”) in *Québec* clarified that courts must pay attention to whether a source of international law is binding or non-binding, both sources may be relevant and persuasive in

³ As a starting point, CCLA supports the Named Respondents’ position on horizontal *stare decisis* and the legal framework that applies under section 7 of the *Charter*. It argues that this framework is consistent with and supported by Canada’s international human rights obligations relating to adequate shelter and forced evictions. See *Quebec (Attorney General) v 9147-0732*, [2020 SCC 32](#) [*Quebec*] at para. [37](#).

⁴ *Quebec*, at paras. [31-34](#), [36](#).

Charter interpretation.⁵ On several occasions, Canadian courts have relied upon Canada's international obligations to interpret the s. 7 interests and the PFJs.⁶

7. The most powerful interpretive tool relating to international human rights obligations is the presumption of conformity. The presumption of conformity provides that *Charter* rights should be interpreted to provide *at least as broad* protection as that afforded by Canada's binding international legal obligations.⁷ The international instruments that Canada chooses to ratify are therefore important interpretive tools in understanding what the *Charter* protects.

b) Canada's International Obligations Relating to Deprivations of Shelter

8. Canada has ratified several binding international instruments that give rise to obligations where a state action deprives shelter,⁸ including the *International Covenant on Economic, Social and Cultural Rights* (the "ICESCR")⁹ and the *Universal Declaration of Human Rights* (the "UDHR").¹⁰ As Canada's ratification of the ICESCR and UDHR pre-date the *Charter*, these

⁵ Binding sources refer to international human rights obligations that Canada has ratified. They carry more interpretive weight. Non-binding sources include non-ratified declarations, covenants, conventions, judicial and quasi-judicial decisions of international tribunals and customary norms. Non-binding sources may be treated "as relevant and persuasive, but not determinative, interpretive tools." Courts drawing from a non-binding source should explain why they are drawing on a particular source and how it is being used. See *Quebec* at paras. [30-38](#).

⁶ In *Re B.C. Motor Vehicle Act*, [1985 CanLII 81 \(SCC\)](#) [*B.C. Motor*] at p. 512, Lamer J. expressly recognized that international law and opinion is of use to the courts in elucidating the scope of the PFJs. In *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002 SCC 1](#) at para [46](#), the SCC relied on both binding and non-binding international obligations and values to give shape to the PFJs under section 7. In *Victoria (City) v. Adams*, [2008 BCSC 1363](#) [*Adams BCSC*] at paras [85-100](#) the right to adequate housing as conceptualized in the UDHR and the ICESCR were relied upon by Ross J. to interpret the scope of section 7 and the PFJs. Ross J.'s reliance on these international legal commitments was endorsed by the British Columbia Court of Appeal: *Victoria (City) v. Adams*, [2009 BCCA 563](#) [*Adams BCCA*].

⁷ *Taylor v. Newfoundland and Labrador*, [2026 SCC 5](#) at para. [82](#); *Quebec* at paras. [31-32](#).

⁸ See the *International Convention on the Elimination of All Forms of Racial Discrimination* [[ICERD](#)], 21 December 1965, 660 UNTS 195 art. 5(e)(iii) (ratified in 1977), *Convention on the Elimination of All Forms of Discrimination against Women* [[CEDAW](#)], art. 14 (2) (ratified in 1981), *Convention on the Rights of the Child* [[CRC](#)], 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art. 27(3); *Convention on the Rights of Persons with Disabilities* [[CRPD](#)], 13 December 2006, 2515 UNTS 3 (ratified in 2010).

⁹ *International Covenant on Economic, Social and Cultural Rights* [[ICESCR](#)], 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art. 11.

¹⁰ [UDHR](#), UNGA, 3rd Sess, UN Doc A/810 (1948) art. 25.

obligations are also part. of the *Charter*'s historical context and therefore may carry additional interpretive weight.¹¹

The Right to Adequate Housing in International Law

9. Canada signed the UDHR when it was adopted by the United Nations General Assembly in 1948. The UDHR provides that Member States shall commit to progressive measures to help secure the universal and effective observance of its rights for all peoples under their jurisdiction.¹² Article 25(1) of UDHR provides that “everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including... housing”.¹³

10. Canada acceded to the ICESCR in 1976. Article 11(1) of the ICESCR also recognizes the right to adequate housing as a necessary component of an adequate standard of living.¹⁴ The rights contained in the ICESCR are subject to interpretation by the UN Committee on Economic, Social and Cultural Rights (CESCR), which is a body of independent experts tasked with monitoring implementation of the ICESCR by State Parties. In 1991, the CESCR issued *General Comment #4: The Right to Adequate Housing*¹⁵ to identify the principal issues important to the realization of the right to adequate housing under Article 11(1) of the ICESCR.¹⁶

11. *General Comment #4* articulates an enriched concept of the right to adequate housing, recognizing it “is of central importance for the enjoyment of all economic, social and cultural

¹¹ See *Québec* at paras. 41-42.

¹² See *Adams BCSC* at paras. 86, 88, aff'd *Adams BCCA* at paras. 33-35.

¹³ UDHR, UNGA, 3rd Sess, UN Doc A/810 (1948) art. 25.

¹⁴ Article 11 provides “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”

¹⁵ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), E/1992/23, 13 December 1991, [*General Comment #4*].

¹⁶ The *General Comments* are considered sources of non-binding international law, which CCLA submits should be treated as relevant and persuasive authority to the issues addressed in Section ii below.

rights.”¹⁷ The CESCR instructs that the right to adequate housing should not be narrowly construed as a right to a roof over one’s head, but rather as “the right to live somewhere in security, peace and dignity.”¹⁸ It is a right afforded to all persons “irrespective of income or access to economic resources”.

12. *General Comment #4* sets out several factors relevant to the actualization of the right to adequate housing under Article 11(1). These factors include, amongst others: (i) legal security of tenure (which encompasses legal protection against forced evictions from informal settlements), (ii) access to services and facilities (e.g. health-care, schools, food and water), (iii) habitability (e.g. adequate protection from cold, heat, rain, disease), and (iv) accessibility and cultural adequacy.¹⁹

Forced Evictions Violate the ICESCR

13. In 1991, the CESCR released *General Comment #7: The Right to Adequate Housing: Forced Evictions*.²⁰ *General Comment #7* provides guidance on why forced evictions violate international human rights obligations and outlines the very narrow circumstances in which a state-initiated eviction may be consistent with international human rights obligations.

14. The concept of ‘forced evictions’ articulated in *General Comment #7* is broad, applying to evictions from temporary informal settlements on public land, even where the individual being

¹⁷ [General Comment #4](#) at para. 1.

¹⁸ *Ibid* at para. 7.

¹⁹ *Ibid* at paras. 8-9.

²⁰ UN Committee on Economic, Social and Cultural Rights, *General Comment No 7: The Right to Adequate Housing (Art. 11(1) of the Covenant): Forced Evictions*, 16th Sess, UN Doc E/1998/22 (1997), [[General Comment #7](#)]. *General Comment #7* articulates the obligations of State Parties based on Article 11(1) of the ICESCR and other related obligations like Article 17.1 of the *International Covenant on Civil and Political Rights* [[ICCPR](#)], 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), which “recognizes, *inter alia*, the right to be protected against “arbitrary or unlawful interference” with one’s home.”

subject to eviction does not have a legal right to occupy the land.²¹ Like *General Comment #4*,²² *General Comment #7* unequivocally establishes that forced evictions are *prima facie* inconsistent with the rights contained in the ICESCR, including Article 11(1), and will only be justified in the most exceptional circumstances where “all legal resources and remedies are available to those affected.”²³ *General Comment #7* recognizes that forced evictions can compound other sources of inequality and particularly have a disproportionate impact on marginalized groups, like women:

10. Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction. Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless.²⁴

15. *General Comment #7* provides that at a minimum, prior to carrying out any eviction, State Parties are required to explore all feasible alternatives in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force.²⁵ An eviction cannot comply with the ICESCR without appropriate due process and procedural protections being provided to the affected persons, including an opportunity for genuine and meaningful consultation, a process for recourse, and the provision of remedies to those being evicted.²⁶ *General Comment #7* explicitly prohibits evictions that render those affected homeless or vulnerable to other human rights violations.²⁷

²¹ *General Comment #7* at para. 3 defines the term “forced evictions” as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”

²² *Ibid* at para. 18.

²³ *Ibid* at para. 7.

²⁴ *Ibid* at para. 10.

²⁵ *Ibid* at para. 13.

²⁶ *Ibid* at paras. 13-15.

²⁷ *Ibid* at para. 15.

16. On April 30, 2020, the UN Special Rapporteur on the Right to Housing released a *National Protocol for Homeless Encampments in Canada* (the “*Protocol*”). The *Protocol* summarizes the ICESCR obligations relating to forced evictions as follows:

International human rights law does not permit governments to destroy peoples’ homes, even if those homes are made of improvised materials and established without legal authority. Governments may not remove residents from encampments without meaningfully engaging with them and identifying alternative places to live that are acceptable to them. Any such removal from their homes or from the land which they occupy, without the provision of appropriate forms of legal protection, is defined as a ‘forced eviction’ and is considered a gross violation of human rights...²⁸

17. The *Protocol* outlines eight principles to guide Canadian governments on how to take a human rights-based approach to encampment responses. The human-rights based approach articulated in the *Protocol* is anchored in Canada’s international obligations relating to housing under the ICESCR, as interpreted through *General Comment #4* and *#7*. The first principle requires treating those living in an encampment as rights-holders. Per the UN Special Rapporteur, this means shifting away from an approach of “criminalizing, penalizing, or obstructing homeless encampments” to “an approach rooted in rights-based participation and accountability.”²⁹

18. Principle #4 requires state actors to explore all viable alternatives prior to eviction from an encampment, ensuring meaningful and effective participation of residents in discussions regarding the future of an encampment and their needs in sheltering alternatives.³⁰ The *Protocol* centers meaningful engagement and effective participation of encampment residents as key to respecting

²⁸UN Special Rapporteur on Adequate Housing, “A Human Rights Approach: A National Protocol for Homeless Encampments in Canada,” [“Protocol”] Ex L to Affidavit of Marie-Josée Houle, sworn Aug. 15, 2025 [“Houle Aff.”], SupRARV.3, at p. 874.

²⁹ *Ibid* at p. 873.

³⁰ *Ibid* at p. 874, Principle #4 provides that where “personal needs differ amongst residents of encampments such that a singular best alternative is not unanimous, governments will have to develop several solutions each of which is consistent with the principles outlined in this Protocol.”

dignity, agency and self-determination.³¹ In terms of what constitutes meaningful engagement, the *Protocol* provides:

... Engagement should begin early, be ongoing, and proceed under the principle that residents are experts in their own lives. The views expressed by residents of homeless encampments must be afforded adequate and due consideration in all decision-making processes. The right to participate requires that all residents be provided with information, resources, and opportunities to directly influence decisions that affect them...³²

19. Principle 5 specifically addresses relocation from an encampment. It provides that meaningful, robust, and ongoing engagement with encampment residents is required for relocation decision-making.³³ Relocation must not result in the continuation or exacerbation of homelessness or fracture families or partnerships. Adequate alternative housing, with all necessary amenities, must be provided to all residents prior to any eviction.³⁴

c) International Obligations Adopted by Canada and the Region

20. Canada's decision to enact the *NHSA* in 2019 necessarily strengthens the force that Canada's international obligations should play in interpreting the scope and content of section 7.

21. The *NHSA* codifies Canada's commitment to housing as a fundamental human right and recommitted Canada to the progressive realization of the right to adequate housing as defined in the ICESCR.³⁵ Section 4 of the *NHSA* explicitly recognizes that housing is essential to the inherent

³¹ *Ibid* at p. 874.

³² *Ibid* at p. 873.

³³ Considerations regarding relocation must be grounded in the principle that "the right to remain in one's home and community is central to the right to housing," *Ibid* at p. 874, citing UN General Assembly, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living*, UN Doc A/73/310/Rev.1 (2018) [*Report*] at para. 26.

³⁴ *Protocol*, SupRARV.3 at p. 874.

³⁵ *NHSA*, [s 4](#).

dignity and well-being of the person.³⁶ Section 13 of the *NHSA* establishes the Federal Housing Advocate as the housing rights accountability mechanism in Canada.³⁷

22. The Federal Housing Advocate’s 2024 Final Report called on all levels of government to commit to end forced evictions of encampments on public lands.³⁸ As explained by the Federal Housing Advocate in her Affidavit in these applications, some of the specific recommendations made to municipal stakeholders in the Final Report include (i) adopting human rights-based solutions to addressing the needs of encampment residents, (ii) ensuring the development of by-laws include meaningful engagement with people with lived experiences, and (iii) allowing encampment residents to play a meaningful role in decision-making processes that affect them.³⁹

23. In June 2025, the Federal Housing Advocate released a *Guide to Meaningful Engagement and Integrating a Human Rights-Based Approach to Encampment Responses* (the “*Guide*”), which “articulates eight key principles that are necessary to guide municipal decision-makers and staff in ensuring meaningful engagement is carried out and to implement a human-rights based approach to encampment responses.”⁴⁰ Each principle is accompanied by required actions. The *Guide* explains the human-rights based approach to encampment response as follows:

As the name suggests, a human rights-based approach requires a commitment to upholding and being accountable for all human rights for all people, without discrimination. It is also founded on the principles of participation, empowerment and accountability and requires the investment of time and resources in ensuring meaningful engagement with people living in encampments...

³⁶ *NHSA*, s 4(b).

³⁷ *NHSA*, s 13.

³⁸ Canadian Human Rights Commission, “Upholding dignity and human rights: the Federal Housing Advocate’s review of homeless encampments: Final Report,” Ex H to Houle Aff. (“Upholding Dignity”), SupRARV.3, p. 771.

³⁹ Houle Aff., SupRARV.3, pp. 470-471 at para. 60.

⁴⁰ Office of the Federal Housing Advocate - Guide to Meaningful Engagement and Integrating a Human-Rights Approach into Encampment Responses (Feb 2024), Exhibit C to the 2nd Affidavit of Sara Escobar, sworn July 7, 2025 [“2nd Escobar Aff.”], RARV.3, at p. 138; Houle Aff., SupRARV.3, p. 471 at para. 62.

A human rights-based approach does not criminalize people experiencing homelessness. It takes care to ensure that responses do not inflict additional harm on people living in encampments. It respects autonomy and choice and attempts to meet people where they are and to support them in accessing adequate housing while respecting their dignity, autonomy and human rights.⁴¹

24. The *Guide* affirms that excluding people living in encampments from decision-making about encampment responses perpetuates their marginalization and undermines autonomy and trust.⁴² A human rights-based approach requires meaningful consultation that begins before a decision is already made by the municipality. It requires a process which provides people with real choices and an opportunity to make informed decisions.⁴³ In other words, engaging with affected groups only after decisions have been made does not constitute meaningful consultation, as it denies those groups a genuine opportunity to influence outcomes.

25. The Region's Plan to End Chronic Homeless ("PECH") states that the Region "will be compliant with national and international human rights law and ensure it is appropriately prioritized amidst other legal obligations such as those regarding property rights, privacy, and liability."⁴⁴ The PECH embraces many of the concepts set out in the *General Comments* as described by the UN Special Rapporteur and Federal Housing Advocate. Most fundamentally, the PECH explicitly commits to take a human-rights based approach, including by treating people experiencing homelessness as rights holders with agency.⁴⁵ The Lived Experience Prototyping Report, which was also adopted by Region Council along with the PECH, highlights many of same principles as *General Comment #4* and *7* including security of tenure.⁴⁶

⁴¹ *Ibid* at p. 150.

⁴² *Ibid* at p. 144.

⁴³ *Ibid* at p. 144.

⁴⁴ The Plan to End Chronic Homelessness ["PECH"], Exhibit B to Alton Affidavit, sworn June 23, 2025 ["Alton Aff."], RARV.2, p. 63.

⁴⁵ Lived Experience Prototyping Report ["Prototyping Report"], Exhibit C to Alton Aff., RAR V.2, p. 144.

⁴⁶ *Ibid*.

ii. **These Obligations Support Centering the Liberty Interest in Dignity and Autonomy**

26. The SCC has long-conceptualized human dignity as a core value underlying all rights in the *Charter*.⁴⁷ As explained by Wilson J. in *Morgentaler*:

The idea of human dignity finds expression in almost every right and freedom guaranteed in the *Charter*. Individuals are afforded the right to choose their own religion and their own philosophy of life, the right to choose with whom they will associate and how they will express themselves, the right to choose where they will live and what occupation they will pursue. These are all examples of the basic theory underlying the *Charter*, namely that the state will respect choices made by individuals and, to the greatest extent possible, will avoid subordinating these choices to any one conception of the good life.⁴⁸

27. In *Morgentaler*, Wilson J. held that the liberty interest under section 7 is particularly grounded in fundamental notions of human dignity, personal autonomy, and privacy.⁴⁹ The liberty interest therefore protects an individual’s right to “an irreducible, core sphere of personal autonomy” wherein every person has the right to make fundamental and inherently private choices “going to the core of what it means to enjoy individual dignity and independence.”⁵⁰

28. There can be no real question that where to live and how to shelter and protect oneself from the elements are deeply personal decisions of fundamental importance.⁵¹ Indeed, just last year, the Ontario Court of Appeal affirmed the s. 7 liberty interest is engaged by the right to decide where to live because that choice “is essential to maintain personal autonomy and dignity.”⁵²

29. The centrality of dignity to the s. 7 interests is also reflected in how the encampment eviction jurisprudence has progressed since *Adams*. Canadian Courts have increasingly recognized

⁴⁷ *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 [Blencoe] at para. 76.

⁴⁸ *R. v. Morgentaler*, 1988 CanLII 90 (SCC) [Morgentaler].

⁴⁹ *Morgentaler* at p. 164-166.

⁵⁰ *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2023 ONSC 670 [Persons Unknown] at para. 87.

⁵¹ *Ibid* at para. 87.

⁵² *Drover v. Canada (Attorney General)*, 2025 ONCA 468 at para. 131.

that preventing those experiencing homelessness from the ability to shelter in an encampment of last resort does not just seriously endanger their life and physical safety, but also takes away the modicum of privacy,⁵³ community,⁵⁴ and their freedom to make fundamental life choices (like who to cohabit with) without state interference.⁵⁵

30. In CCLA’s submission, this Court should recognize the immense loss of autonomy and agency associated with having the decision about how to shelter and protect oneself in very dangerous and difficult circumstances overridden by the State. The liberty infringement at issue in these applications is not just caused because the By-Laws seek to close the encampment, but also because they seek to do so without providing effective remedies, due process, meaningful engagement, or other procedural protections consistent with Canada’s international obligations.

31. Through the By-Laws, the Region made the following choices unilaterally:

- i. That only “residents”,⁵⁶ which the By-Law defines as individuals who happened to have a tent at the encampment on April 16, 2025, could stay in the encampment until the vacant possession date, notwithstanding that *Persons Unknown* recognized that an individual’s reliance on the encampment for essential shelter would be fluid;⁵⁷

⁵³ *Persons Unknown* at para. [151](#).

⁵⁴ *Ibid* at para. [151](#). For evidence in these applications on this point, see Houle Aff. SupRARV.3 at paras. 32-35, where the Federal Housing Advocate explains how encampments can reduce the risk of isolation and provide a safety net for people experiencing homelessness. See also Gupta Affidavit, SupRARV.2, p. 14, para. 16.

⁵⁵ *Matsqui-Abbotsford Impact Society v Abbotsford (City)*, [2024 BCSC 1902](#) [*Matsqui*] at para. [218](#).

⁵⁶ For opinion on how this definition is inconsistent with the PECH, see 2nd Affidavit of Dr. Laura Pin, sworn Feb. 20, 2026 [“2nd Pin Aff.”], 2ndSupRAR, pp. 110-112, paras 21-25; for the impact of By-Law enforcement on individuals not deemed Residents, see e.g. Affidavit of Emily Gringon, sworn July 7, 2025, RARV.2, Tab 25, at paras. 7-10.

⁵⁷ *Persons Unknown* at para. [94](#).

- ii. That only “residents” would be subject to the Transition Protocol and its commitments, which itself were developed in the face of critiques from PECH stakeholders on the temporary shelter alternatives being offered;⁵⁸
- iii. To criminalize violations of the By-Law, with the original By-Law permitting \$5000 fines to be issued if, e.g., Residents moved their tents, and the Amended By-Law permitting enforcement through the *Trespass to Property Act*.⁵⁹

32. These actions may be contrasted with the promises made through the PECH. Through the PECH and its Appendixes, the Region committed to using a human-rights approach that is compliant with Canada’s international human rights obligations.⁶⁰ Through PECH, the Region committed to move away from a model where it “singularly” drove decisions, towards “Community-Driven System Leadership”, where a real and meaningful role in decision-making is provided to lived experience experts and those from equity-owed groups.⁶¹

iii. International Human Rights Should Inform the Principles of Fundamental Justice

33. Section 7 of the *Charter* requires that laws that interfere with life, liberty and security of the person conform with the PFJs — the basic principles that underlie our legal system.⁶² The PFJs can be both procedural and substantive. They find “their meaning in the cases and traditions that have long detailed the basic norms for how the state deals with its citizens.”⁶³

⁵⁸ 2nd Pin Aff., 2ndSupRAR at pp 113-114, at paras. 27-34. On the challenges with motel rooms as alternative housing, see Affidavit of Dr. Stephen Gaetz, sworn Aug. 15, 2025, SupRARV.2, at paras. 21-22.

⁵⁹ *Site-Specific By-Law*, AR, p.139, s. 4.

⁶⁰ Alton Aff., RARV.2 at paras. 3-8 and Prototyping Report, RAR V.2, at p. 142; Affidavit of Dr. Laura Pin, sworn July 9, 2025 [“1st Pin Aff.”], SupRARV.1, at paras. 3-5, 12-17.

⁶¹ PECH, RARV.2, p. 84.

⁶² *B.C. Motor* at paras. 62-67. In *R. v. Malmo-Levine*; *R. v. Caine*, [2003 SCC 74](#) (CanLII) at para. 113.

⁶³ *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, [2004 SCC 4](#) (CanLII) at para. 8.

34. CCLA submits that Canada’s international human rights obligations outlined above may help inform the relevant considerations in assessing the PFJs at issue in these applications.

a) Gross Disproportionality

35. Gross disproportionality is a recognized substantive PFJ. Gross disproportionality requires the Court to compare the law’s objective with its negative effect on the rights of the claimants. The gross disproportionality analysis asks if the s. 7 infringements at issue are “completely out of sync with the object of the law.”⁶⁴

36. CCLA submits that this Court can look to Canada’s international human rights obligations to develop standards to help assess how effectively the By-Laws and Transition Protocol mitigate the harms at issue as a part of the gross disproportionality analysis.⁶⁵

37. As set out above, Canada’s international human rights obligations under the ICESCR prohibit forced evictions from encampments on public lands. *General Comment #7* provides that a state-initiated eviction cannot be compliant with Canada’s human rights obligations unless eviction is a last resort and the State provides effective remedies, appropriate due process and procedural protections, like genuine consultation with those impacted by the eviction.⁶⁶

38. These standards have been used by the UN Rapporteur and Federal Housing Advocate to develop principles underlying a human-rights based approach to encampment responses, including robust and meaningful involvement of the chronically homeless in any decision-making around

⁶⁴ *Canada (Attorney General) v. Bedford*, [2013 SCC 72](#) (CanLII) at paras. [120-123](#); *Persons Unknown* at para. [115](#), citing *Carter v. Canada*, [2015 SCC 5](#) (CanLII) at para. [89](#).

⁶⁵ In its gross disproportionality analysis at para. 84 of its Factum, the Region suggests that the gravity of the negative effects of the s. 7 infringements at issue are “mitigated” because the Amended Bylaw places conditions on enforcement and includes the Transition Protocol. In this sense, the Region seems to accept that efforts taken to mitigate the harms of closing the encampment are a relevant to the gross disproportionality analysis.

⁶⁶ *General Comment #7* at para. 15.

relocation.⁶⁷ CCLA submits this Court can treat these standards as persuasive and relevant criteria in assessing any mitigation of harm in the gross disproportionality analysis.

39. Even absent the positive commitments made through the PECH, it is not a radical leap to suggest effective remedies, due process, and basic procedural protections are relevant to the PFJ analysis. Indeed, where eviction is at stake in administrative contexts, procedural fairness is a well-established PFJ.⁶⁸ In *Matsqui*, albeit when addressing remedy, the BC Supreme Court recognized the importance of meaningful engagement and actual agency and direct involvement in those experiencing homelessness in relocation decision-making.⁶⁹

B. Evaluating the Accessibility of Shelter Alternatives under Section 7

40. Secondly, the CCLA submits that the s. 7 jurisprudence arising from encampment responses supports evaluating whether any proposed alternative shelter is truly “adequate”, “accessible” or “safe” based on the needs of each individual. This requires engaging with their personal history, lived experience, and identification with one or multiple intersecting groups that have been subject to disadvantage or marginalization.

41. Since *Adams*, courts in Ontario have recognized that it is not just the number of available shelter spaces that must be considered, but also whether those spaces are truly *available, suitable* and/or *accessible* to the those facing state-imposed deprivations of their ability to shelter.

⁶⁷ Protocol SupRARV.3, at p. 2-3.

⁶⁸ *Wright v Yukon (Government of)*, [2024 YKSC 41](#) at paras. [144-149](#). See *Matsqui* at para. [108](#).

⁶⁹ *Matsqui* at para. [218](#). The Court made the City’s injunction conditional upon the City taking numerous positive steps to continue harm reduction services and provide alternative shelter for encampment residents. This included requiring, amongst many other measures, the City to (i) conduct individual needs assessments for each occupant to identify appropriate accommodations or needs tailored to their specific requirements (ii) identify occupants who share strong community ties and making every effort to keep these individuals together in relocation and (iii) consulting directly with occupants to address their concerns and any preferences for proximity to necessary services.

42. This Court in *Persons Unknown* plainly observed that to be of any real value to the homeless population, the space at issue must meet the diverse needs of those experiencing homelessness. Justice Valente found that shelter spaces can be inaccessible for a number of reasons specific to the individual, including: (i) they do not provide required services, (ii) they do not accommodate couples, (iii) they impose rules that cannot be followed due to addiction, and/or (iv) they do not accommodate mental or physical disabilities.⁷⁰ Notwithstanding his observation that there is a subjective element in determining what is accessible, Justice Valente ultimately accepted accessibility as the standard upon which to base his constitutional declaration.⁷¹

43. In *Kingston*, Justice Carter agreed that “there is not one type of shelter that can be built that would be truly “accessible” to the entire homeless population.”⁷² While Justice Carter expressed concern about including the “accessibility” of alternative shelters in his remedial order, he explained this was in part because “it is far from clear based on the evidence before me that [creating more shelter beds] is the only, or even most appropriate, solution to the problem.”⁷³ *Kingston*, in other words, does not detract from the need to consider accessibility of sheltering alternatives at the individual level when assessing the rights infringement.

44. BC Courts have likewise discussed the following reasons that a shelter space might be unavailable or unsuitable for specific individuals:

- a. Not being able to shelter with one’s partner;⁷⁴
- b. Fear of or actual violence, theft or threats of violence, and general safety concerns;⁷⁵

⁷⁰ *Persons Unknown* at para. [93](#).

⁷¹ *Ibid* at para. [158](#).

⁷² *The Corporation of the City of Kingston v. Doe*, [2023 ONSC 6662](#) [*Kingston*] at para. [131](#).

⁷³ *Ibid* at para. [132](#).

⁷⁴ *Bamberger v Vancouver (Board of Parks and Recreation)*, [2022 BCSC 49](#) [*Bamberger*] at paras. [125-130](#); *Prince George (City) v Stewart*, [2021 BCSC 2089](#) [*Stewart*] at para. [77](#)(10); *Prince George (City) v Johnny*, [2022 BCSC 282](#) [*Johnny #1*] at para. [58](#), [64](#)(12); *Abbotsford (City) v. Shantz*, [2015 BCSC 1909](#) [*Shantz*] at paras. [70](#), [74](#), [82](#).

⁷⁵ *Bamberger* at paras. [127-129](#); *Adams BCSC* at paras. [51-53](#), [57](#); *Shantz* at para. [73](#); *Stewart* at para. [77](#)(10); *Johnny #1* at paras. [58](#), [64](#)(12).

- c. Not being able to obey shelter rules, or an overly restrictive environment;⁷⁶
- d. Health and safety hazards, including pests and vermin;⁷⁷
- e. Lack of sufficient space to store one's belongings;⁷⁸
- f. Lack of low-barrier shelters for individuals with disabilities or substance use disorders;⁷⁹ and
- g. Lack of shelter for specific groups, including youth, families, women, and persons who identify as 2SLGBTQIA+.⁸⁰

45. An individualized approach is particularly important to recognize that those experiencing homelessness are not a homogeneous group.⁸¹ Many marginalized and vulnerable groups are disproportionately represented in the unhoused population, including Indigenous peoples, racialized individuals, people who identify as 2SLGBTQIA+, and people with disabilities. While some individuals may have common needs based on shared experiences or identities, it is highly problematic to assume that these needs will be shared by all with similar identities. Individual needs may be shaped by the unique intersection of identities and lived experiences.⁸²

46. Many shelters—including low-barrier shelters—are inadequate for many individuals for a host of reasons, including historical, intergenerational, and/or personal trauma, disability, and various health issues.⁸³ This is also true about motels, which Justice Valente found were subject to the discretion of motel-owners.⁸⁴ The complexity of these barriers and how they interact underscores why individual involvement in decision-making is critical to a human-rights based approach.

⁷⁶ See *Bamberger* at para. [125](#); *Adams BCSC* at paras. [50](#), [52](#); *Shantz* at paras. [74](#), [82](#); *Stewart* at paras. [67-68](#), [77](#)(10); *Johnny #1*, at para. [64](#)(12).

⁷⁷ See *Bamberger* at para. [127](#); *Johnny #1* at para. [58](#).

⁷⁸ *Bamberger* at para. [129](#).

⁷⁹ *Shantz* at para. [74](#); *Stewart* at paras. [67-68](#), [77](#)(10); *Johnny #1* at para. [64](#)(12).

⁸⁰ *Adams BCSC* at para. [56](#).

⁸¹ See, e.g., *Shantz* at para. [42](#).

⁸² See *Quebec (Attorney General) v. Kanyinda*, [2026 SCC 7](#) [*Kanyinda*] at para. [41](#), discussing how the intersection between identities and realities can lead to more acute disadvantage, albeit in the context of the section 15 analysis.

⁸³ See, e.g. *Stewart* at paras. [67-71](#); *Shantz* at paras. [42](#), [49](#), [74-75](#), [82](#); *Adams BCSC* at paras. [50-53](#), [56-57](#); *Johnny #1* at para. [79](#); *Bamberger* at paras. [115](#), [118](#)

⁸⁴ *Persons Unknown* at para. [92](#).

47. In the wake of *Persons Unknown*, the Region argues for a different approach, where the accessibility of alternative shelter is approached “at a certain level of generality” and not based on individual needs.⁸⁵ It relies on *Johnny #2*, which is not binding on this Court. *Johnny #2* arises in a different context where the City claimed there were adequate accessible shelters following earlier constitutional orders.⁸⁶ In contrast, *Persons Unknown* recognized the Region’s chronically homeless rely on the encampment on a fluid basis. The Region concedes there is nowhere close to adequate shelter space for its chronically homeless.⁸⁷

48. For all these reasons, CCLA submits it would be a regression away from the dignity-centric approach adopted in *Persons Unknown* to endorse a “general” approach to evaluating the accessibility of alternative shelter offered through the Transition Protocol or available to the chronically homeless more generally.

C. Intersectionality and the Test under Section 15(1) of the Charter

49. Finally, the CCLA submits that *Kanyinda* requires adopting an intersectional approach under section 15, which recognizes the acute effects that can flow from the interrelationship between protected grounds⁸⁸ and the social and economic realities of chronic homelessness.

50. It has long been recognized that substantive equality is “the animating norm” of section 15 of the *Charter*.⁸⁹ In *Kanyinda*, the SCC further aligned the section 15(1) test with this animating norm by underscoring the importance of accounting for the intersections between a claimant’s identifies and realities to the section 15(1) analysis.

⁸⁵ Region’s factum at para. 76.

⁸⁶ *Prince George (City) v Johnny*, [2025 BCSC 1556](#) [*Johnny #2*] at para. 79.

⁸⁷ *Persons Unknown* at para. 94; Region’s factum at para. 22.

⁸⁸ E.g. sex, disability, Indigeneity, race, sexual orientation and gender identify, etc

⁸⁹ *Kanyinda* at para. 36.

51. CCLA submits *Kanyinda* provides the following clarity on the test for discrimination under section 15(1) of the *Charter*:

- i. The intersection of identities and realities is relevant at both steps of the test;⁹⁰
- ii. In some cases, it is necessary⁹¹ for a court to consider the intersections between a claimant’s identities and realities to properly apply the test; and
- iii. While a section 15(1) claim must be anchored in a recognized ground, the intersecting identifies and realities need not be enumerated or analogous grounds themselves. These characteristic or realities can relate to the physical, social, cultural, economic or other barriers which provide the ‘full context of the claimant group’s situation’.⁹²

52. Further, the SCC in *Kanyinda* made clear that *Sharma*⁹³ should not be interpreted to have the effect of changing the causation requirement under the first step of the section 15(1) test.⁹⁴ The Court reaffirmed that “a s. 15(1) claimant need not show that the challenged law is the sole or dominant cause of the disproportionate impact; it is sufficient for it to be *a cause*.”⁹⁵

i. Intersectionality at Each Step of the Section 15(1) Test

53. The first step of the section 15(1) test requires identifying a distinction based on an enumerated or analogous ground.⁹⁶ *Kanyinda* makes clear a contextual appreciation of intersecting

⁹⁰ *Ibid* at para. 40.

⁹¹ *Ibid* at para. 41 and at para. 51, “...Where discrimination affects only a subgroup, as in this case, the failure to account for intersecting identities in step one of the s. 15(1) inquiry could effectively obscure the specific adverse effects experienced by that subgroup.”

⁹² *Kanyinda* at para. 51, quoting *Withler v. Canada (Attorney General)*, 2011 SCC 12, at para. 43.

⁹³ *R. v. Sharma*, 2022 SCC 39 (CanLII), [2022] 3 SCR 147.

⁹⁴ *Kanyinda* at para. 57-59.

⁹⁵ *Kanyinda* at para. 59. The Court further affirmed that two forms of evidence that *may* be lead: (a) evidence about the *claimant group’s situation*, including physical, social, cultural, or other barriers faced by the claimant group; and (b) evidence about the results produced by the challenged law in practice. However, “neither form is required and the evidentiary burden cannot be too difficult to meet. See *Kanyinda* at paras. 53-54, 73.

⁹⁶ *Kanyinda* at para. 41.

identifies and realities can help courts assess the adverse impacts of the impugned law.⁹⁷ While “there is no rigid template” on how disproportionate impacts may be established, the “analysis must be attentive to the situation and complexity of the claimant group, acknowledging that a challenged provision may operate within a context of intersecting realities.”⁹⁸

54. The second step of the section 15(1) test requires a claimant to establish that a law imposes burdens or denies a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage.⁹⁹ *Kanyinda* clarifies an intersectional approach may play “a key role at this stage by allowing a more nuanced understanding of the nature and intensity of the disadvantage experienced.”¹⁰⁰ An intersectional approach “grounds the analysis in the concrete lived realities of marginalized individuals” because discrimination cannot be “neatly packaged into a single ground” and a person lives with other circumstances, realities, or identities that may enhance or exacerbate their disadvantage.¹⁰¹

55. CCLA submits that it is crucial in these present applications to center intersectionality in the s. 15(1) analysis, given the disadvantage perpetuated by the complex interaction between sex, sexual orientation, gender or gender identity, race, Indigenous identity, and/or disability and the social and economic realities faced by those experiencing chronic homelessness.¹⁰²

PART V. ORDERS SOUGHT

56. The CCLA seeks no order for costs and asks that no order for costs be made against it.

⁹⁷ *Ibid* at para. [46](#).

⁹⁸ *Ibid* at para. [51](#).

⁹⁹ *Ibid* at para. [61](#).

¹⁰⁰ *Ibid* at para. [63](#).

¹⁰¹ *Ibid* at para. [63](#).

¹⁰² Respondents Factum at para. 14, citing Appendix B: Shared backgrounds of named respondents.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9th day of April 2026.

Kristen Allen / Simone Truemner-Caron
Ursel Phillips Fellows Hopkinson LLP

Lawyer for the Intervenor, the CCLA

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

CERTIFICATE

I, Kristen Allen, lawyer for the Intervenor, the Canadian Civil Liberties Association, certify that:

1. I am satisfied as to the authenticity of the authorities cited in this factum.

DATE: April 9, 2026

Kristen Allen

Ursel Phillips Fellows Hopkinson LLP

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *Quebec (Attorney General) v 9147-0732*, [2020 SCC 32](#).
2. *Re B.C. Motor Vehicle Act*, [1985 CanLII 81 \(SCC\)](#).
3. *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002 SCC 1](#).
4. *Victoria (City) v. Adams*, [2008 BCSC 1363](#).
5. *Victoria (City) v. Adams*, [2009 BCCA 563](#).
6. *Taylor v. Newfoundland and Labrador*, [2026 SCC 5](#).
7. *Blencoe v British Columbia (Human Rights Commission)*, [2000 SCC 44](#).
8. *R. v. Morgentaler*, [1988 CanLII 90](#) (SCC).
9. *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, [2023 ONSC 670](#).
10. *Drover v. Canada (Attorney General)*, [2025 ONCA 468](#).
11. *Matsqui-Abbotsford Impact Society v Abbotsford (City)*, [2024 BCSC 1902](#).
12. *R. v. Malmö-Levine; R. v. Caine*, [2003 SCC 74](#) (CanLII).
13. *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, [2004 SCC 4](#) (CanLII).
14. *Canada (Attorney General) v. Bedford*, [2013 SCC 72](#) (CanLII).
15. *Carter v. Canada*, [2015 SCC 5](#) (CanLII).
16. *Wright v Yukon (Government of)*, [2024 YKSC 41](#).
17. *The Corporation of the City of Kingston v. Doe*, [2023 ONSC 6662](#).
18. *Bamberger v Vancouver (Board of Parks and Recreation)*, [2022 BCSC 49](#).
19. *Prince George (City) v Stewart*, [2021 BCSC 2089](#).
20. *Prince George (City) v Johnny*, [2022 BCSC 282](#).
21. *Abbotsford (City) v. Shantz*, [2015 BCSC 1909](#).
22. *Quebec (Attorney General) v. Kanyinda*, [2026 SCC 7](#).
23. *Prince George (City) v Johnny*, [2025 BCSC 1556](#).
24. *Withler v. Canada (Attorney General)*, [2011 SCC 12](#).

SCHEDULE “B”
STATUTES, REGULATIONS, AND BY-LAWS IN ALPHABETICAL AND
NUMERICAL ORDER:

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.

International Covenant on Economic, Social and Cultural Rights, [993 UNTS 3](#), (ratified by Canada in 1976)

Article 11

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

National Housing Strategy Act, [SC 2019, c 29, s 313](#)

Housing Policy Declaration

Declaration

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

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

Universal Declaration of Human Rights, [GA Res 217 A \(III\), UN Doc A/810 \(1948\)](#) (voted to adopt by Canada in 1948)

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

**THE REGIONAL MUNICIPALITY OF
WATERLOO**
Applicant

and

**PERSONS UNKNOWN AND TO BE
ASCERTAINED**
Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at KITCHENER

**FACTUM OF THE INTERVENOR
THE CANADIAN CIVIL LIBERTIES
ASSOCIATION
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