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

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 Intervener Charter Committee on Poverty Issues and the National Right to Housing Network

April 8, 2026

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

Counsel for CCPI/NRHN

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:

Waterloo Region Community Legal Services
450 Frederick Street, Unit 101
Kitchener, ON 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
Email: joanna.mullen@wrcls.clcj.ca

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

Lawyers for the Named Respondents/Cross-Applicants

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
15 Wellesley Street W., Suite 321
Toronto, ON M4Y 0G7

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

Karen A. Steward (LSO# 58758O)
Barrister & Solicitor
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 the Intervener,
Attorney General of Ontario

AND TO:

Ursel Phillips Fellows Hopkinson LLP
555 Richmond Street 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,
Canadian Civil Liberties Association

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

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

Lawyers for the Intervener,
Aboriginal Legal Services

Contents

PART I – OVERVIEW 1

PART II – ISSUES 3

PART III – ARGUMENT 4

i) S. 7 Imposes Obligations on the Region to Take Steps to Address Homelessness 4

ii) Homelessness as an Analogous Ground of Discrimination Requiring Positive Measures of Protection Under s. 15 10

iii) Judicially Discoverable and Manageable Standard for Assessing Whether the Measures Adopted to Address Homelessness are Compliant with ss. 7 and 15 15

IV – REMEDY 18

Schedule A: List of Authorities 21

PART I – OVERVIEW

1. This application raises issues not yet squarely addressed in encampment jurisprudence. To date, such cases have been confined to the narrow question of whether municipalities may evict encampment residents from public land in the absence of sufficient shelter space. Courts have effectively been presented with two options: either prohibit evictions and leave people to survive in tents or makeshift structures, or permit municipalities to dismantle those shelters and force residents into circumstances that may be even more precarious. Neither option, in CCPI/NRHN's submission, meets the demands of ss. 7 and 15 of the *Charter*.

2. In this case, the Region has asked the Court to move beyond this limiting framework. It has enacted a By-law that is, on its face, inconsistent with Justice Valente's prior decision in *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*.[1] Without remedying the acknowledged shortfall in shelter space in the Region, the new By-law would prevent temporary shelters at 100 Victoria. It is accompanied, however, by a Transition Protocol that guarantees a written offer of alternative accommodation prior to removing any existing residents and by the Region's Plan to End Chronic Homelessness (PECH). If the By-law is found unconstitutional, the Region asks the Court to provide "direction as to the steps that it needs to take to close the encampment" in a *Charter*-compliant manner.[2]

3. The Cross-Applicants also move beyond the limiting framework of prior cases. The Notice of Constitutional Question asks whether the By-law violates the *Charter* not only because of what it prohibits, but because of what it fails to include—namely, "rights-based

---

[1] *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2023 ONSC 670 [Valente J].
[2] Factum of the Applicant at para 7.

measures to ensure access to adequate housing and supports in accordance with the PECH."[3] The Cross-Applicants also raise the related question, left unsettled by the Ontario Court of Appeal, of whether homelessness should be recognized as an analogous ground under s. 15.[4]

4. Prior decisions, including Justice Valente's, have not ignored the systemic dimensions of homelessness. Justice Valente follows a line of "right to shelter" cases which have found "a constitutional right to shelter oneself when the number of homeless persons exceed the number of available and accessible indoor shelter spaces within a given jurisdiction."[5] Justice Valente declined to find that simply providing affected encampment residents with access to shelter would render the dismantling of the encampment at 100 Victoria constitutional, asking "how does this approach respond to the many other vulnerable homeless individuals in the Region?" and noting that such a finding would "create an immediate disadvantage for those who are homeless and living outside encampments."[6]

5. This systemic dimension—central to Justice Valente's decision —cannot be set aside by focusing only on the circumstances of a defined group of encampment residents at a particular moment in time. A by-law that addresses individual placements without remedying the broader absence of shelter or access to housing and necessary supports leaves the underlying ss. 7 and 15 violations intact. The question the Court must answer in this case is whether the *Charter* offers nothing more than a right to live in desperate circumstances in an encampment.

---

[3] Notice of Constitutional Question Feb 26, 2026 at para 7(b).
[4] Ibid at para 11 (h); *Tanudjaja v. Canada (Attorney General)*, 2014 ONCA 852 [*Tanudjaja ONCA*] at para 37.
[5] Valente J, at paras 81–82.
[6] Ibid at para 94.

6. The issues raised in this case are not simple. They require the Court to consider its institutional role in relation to municipal decision-making in a complex area of social policy, and to determine whether there are judicially manageable legal standards for assessing compliance with the Region's obligations to address homelessness not as a "freestanding right to housing" but pursuant to the *Charter*'s life, security of the person and equality guarantees.

7. CCPI/NHRN submit that existing Supreme Court and appellate jurisprudence, together with recent *Charter* developments in areas such as climate change, access to health care, and Indigenous housing, as well as the adoption of international human rights standards to eliminate homelessness in federal legislation and in the PECH, provide a principled basis for resolving these critical issues without overstepping the proper role of this Court.

PART II – ISSUES

8. We will address the following issues:

i) Whether s. 7 of the *Charter* imposes obligations on the Region to take steps to address homelessness;

ii) Whether homelessness should be recognized as an analogous ground of discrimination under s. 15 and whether, by failing to include measures to address homelessness, the By-law infringes s. 15;

iii) Whether there are judicially manageable standards available to assess compliance with the Region's *Charter* obligations to address homelessness; and

iv) Whether there are remedies available to effectively vindicate the *Charter* rights at issue in this case, while respecting the Court's proper institutional role vis-à-vis the Region.

PART III – ARGUMENT

i) S. 7 Imposes Obligations on the Region to Take Steps to Address Homelessness

9. There are two dimensions to the Region's request for guidance regarding the constitutionality of the By-law: first, its obligations toward encampment residents subject to removal and, second, its obligations toward other homeless people in the Region.

10. CCPI/NRHN agree with the Respondents that the Region has failed to meet its first obligation toward encampment residents in accordance with the PECH's international human rights-informed approach which requires, *inter alia*, consultation regarding any proposed displacement, an opportunity to explore all alternatives, and the identification of an alternative serviced site in an appropriate location to replace the existing encampment.[7]

11. CCPI/NRHN submit that the Region has also failed to meet its commitment in the PECH, to address the needs of the broader homeless population through a rights-based approach consistent with international human rights norms that have been incorporated in the *National Housing Strategy Act*.[8] The question in this case is whether failure to meet this second obligation, leaving homeless persons without access to the most basic requirements of life, security of the person or dignity, violates ss. 7 and 15, and what guidance the Court can provide as to how these rights violations can be remedied.

---

[7] UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions*, E/1998/22, 20 May 1997; *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, UNGAOR, 73rd Session A/73/310/Rev.1 (2018), at para 14, and paras 31–35.

[8] *National Housing Strategy Act* (S.C. 2019, c. 29, s. 313) [*NHSA*].

12. Canadian courts have considered whether the *Charter* requires governments to address homelessness only once, in *Tanudjaja v. Canada (Attorney General)*, in which a motion to strike was granted by Lederer J. and upheld in the result by the Ontario Court of Appeal.[9] Leave to appeal to the Supreme Court of Canada was denied, and the Court has not considered the application of the *Charter* to the homelessness crisis in any other decision. *Tanudjaja* has therefore been widely relied upon as authority on the question of *Charter* obligations toward those who are homeless. It has, unfortunately, also been widely misunderstood.

13. Most frequently cited, without reference to the results of the appeal, is Justice Lederer's surprisingly categorical declaration that "[n]o positive obligation has, in general, been recognized as having been imposed by the *Charter* requiring the state to act to protect the rights it provides for"[10] and therefore, that "there can be no positive obligation on Canada and Ontario to undertake measures that would reduce or eliminate homelessness."[11] While Justice Lederer found no s. 15 violation, he observed that he would not have recognized homelessness as an analogous ground of discrimination.[12] In addition, Justice Lederer held that the broad policy review of diffuse laws and policies, alleged by the applicants to have caused homelessness, was "misconceived" and was not justiciable.[13]

14. It was only Justice Lederer's finding on justiciability that was upheld by the Ontario Court of Appeal. A majority of the Court found the *Tanudjaja* claim to be non-justiciable because: it failed to identify any law or action that was being challenged, identifying only a

---

[9] *Tanudjaja v. Canada (Attorney General)*,2014 ONCA 852 [*Tanudjaja ONCA*]; *Tanudjaja v. Attorney General (Canada) (Application)*, 2013 ONSC 5410 [*Tanudjaja ONSC*].
[10] *Tanudjaja ONSC* at para 103.
[11] Ibid at para 82.
[12] Ibid at para 136–137.
[13] Ibid at paras 143–146.

diffuse range of laws and policies alleged to cause homelessness; the applicants claimed the *Charter* confers a "freestanding right to housing" and; there is no judicially discoverable and manageable standard for assessing whether housing policy is adequate, or whether insufficient priority has been given in general to the needs of the homeless, such that the claim lacked "a sufficient legal component to anchor the analysis."[14]

15. Importantly, the Court of Appeal did not endorse or uphold Justice Lederer's findings on positive obligations to address homelessness under s. 7, or on homelessness as an analogous ground of discrimination under s. 15. Justice Pardu, writing for the majority, stated that: "it is not necessary to explore the limits, in a justiciable context, of the extent to which positive obligations may be imposed on government to remedy violations of the *Charter*, a door left slightly ajar in *Gosselin v. Quebec (Attorney General)*." Nor was it necessary "to determine whether homelessness can be an analogous ground of discrimination under s. 15 of the *Charter* in some contexts."[15]

16. In her dissenting opinion, Justice Feldman found that Justice Lederer "erred by concluding that it is settled law that the government can have no positive obligation under s. 7 to address homelessness."[16] While there are a surprising number of lower court decisions citing Justice Lederer's finding on positive obligations, the door left "ajar" by the Supreme Court therefore remains open and subject to consideration by this Court in the present case.

17. In its early decision in *Irwin Toy Ltd v. Quebec (Attorney General)*, the Supreme Court recognized that the exclusion of property rights does not preclude the inclusion in s. 7 of

---

[14] *Tanudjaja ONCA* at para 35.
[15] *Tanudjaja ONCA* at para 37.
[16] *Tanudjaja ONCA* at para 62.

socio-economic rights recognized in international human rights law, such as the right to shelter.[17] In subsequent decisions considering positive obligations under s. 7, the Supreme Court has distinguished between general or "freestanding" obligations and positive obligations to provide access to programs or benefits required in particular contexts. For instance, in *New Brunswick (Minister of Health and Community Services) v. G.(J.)* the Court distinguished its previous finding in *R. v. Prosper*, that the *Charter* does not confer a right to state-funded counsel, from its finding in *G.J.*, that s. 7 may impose "a positive constitutional obligation to provide state-funded counsel" in particular circumstances, in that case where a mother's security of the person was at stake.[18] The Court further held that concerns about judicial interference with the allocation of government resources should be considered under s. 1.[19]

18. The Supreme Court's decision in *Gosselin v. Québec (Attorney General)* is frequently mischaracterized as having rejected positive obligations under s. 7. However, the majority decision in *Gosselin* turned on its findings of fact, leaving the issue of the positive scope of s. 7 open for consideration in subsequent cases. As Chief Justice McLachlin explained: "The question therefore is not whether s. 7 has ever been — or will ever be — recognized as creating positive rights. Rather, the question is whether the present circumstances warrant a novel application of s. 7 as the basis for a positive state obligation to guarantee adequate living standards." In her view: "The frail platform provided by the facts of this case cannot support the weight of a positive state obligation of citizen support."[20] But she cautioned that "It would

---

[17] *Irwin Toy Ltd. v. Quebec (Attorney General),* [1989] 1 S.C.R. 927 at 1003.
[18] *New Brunswick (Minister of Health and Community Services) v. G.(J.)* 1999 SCC 47 [*G(J)*] at paras 81, 91, and 107; *R. v. Prosper*, [1994] 3 S.C.R. 236 at 267.
[19] *G.(J.)* at para 108.
[20] *Gosselin v. Québec (Attorney General),* [2002] 2002 SCC 84 at paras 82–83.

be a mistake to regard s. 7 as frozen, or its content as having been exhaustively defined in previous cases," noting that "s.7 expresses some of the basic values of the *Charter*."[21]

19. Evolving understandings of s. 7 and other *Charter* rights are informed by international human rights jurisprudence regarding Canada's international treaty obligations, based on the presumption that "the *Charter* guarantees protections at least as broad as those afforded by similar international human rights documents that Canada has ratified."[22] In its *Concluding Observations* following a periodic review of Canada's implementation of the *International Covenant on Civil and Political Rights*,[23] the UN Human Rights Committee expressed concern that homelessness in Canada leads to risks of death, and it directed that "positive measures" are required for compliance with the right to life in article 6 in the *Covenant*.[24]

20. More recently, in its *General Comment 36*, the Committee clarified that the right to life requires appropriate measures to address "the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity," including extreme poverty and homelessness and environmental degradation, and may require shelter, social housing and strategic plans for advancing the right to life.[25] And, at its most recent review of Canada in 2026, the Committee expressed concern about the Canadian government's stance in litigation that the right to life does not create positive obligations.[26]

---

[21] Ibid at paras 82 and citing *Blencoe v. British Columbia (Human Rights Commission),* 2000 SCC 44 at para. 188.
[22] T*aylor v. Newfoundland and Labrador*, 2026 SCC 5 at para 82 and paras 124–126.
[23] *International Covenant on Civil and Political Rights*, 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976 [*ICCPR*].
[24] UN Human Rights Committee, *Concluding Observations, Canada* CCPR/C/79/Add.105 at para 12.
[25] UN Human Rights Committee, *General Comment No. 36* (3 September, 2019) CCPR/C/GC/36 at para 26.
[26] UN Human Rights Committee, Concluding Observations, Canada CCPR/C/CAN/CO/7 (23 March 2026) at para 31.

21. While the Supreme Court has not had the opportunity to revisit the questions left open in *Gosselin*, Canadian courts have begun to take up the challenge of assessing positive obligations under s. 7 in some of the contexts identified in international human rights jurisprudence. For instance, in *St Theresa Point First Nation v. Canada*, housing and water conditions on reserve were found by the Federal Court to engage s. 7-related positive obligations.[27] In *La Rose v. Canada*, inadequate climate measures were recognized by the Federal Court of Appeal as potentially engaging s. 7.[28] In *Cambie Surgeries Corporation v. British Columbia (Attorney General)*, the British Columbia Court of Appeal found that excessive wait times in public health care were capable of engaging s. 7.[29]

22. In *Toussaint v. Canada,* Justice Perell, of this Court, dismissed a motion to strike a claim requiring access to publicly funded health care to protect the s. 7 right to life, and he was harshly critical of the Attorney General of Canada's mischaracterization of the claim as being one to "free healthcare" or to a socio-economic right that is not included in the *Charter*.[30] CCPI/NHRN have similar concerns about common mischaracterizations of right to life and security of the person claims of people who are homeless as demands for a freestanding right to housing beyond the scope of the *Charter*. CCPI/NHRN submit that, in the present case, the plan and measures to address and eliminate homelessness to which the Region has committed in the PECH, are necessary to safeguard the s. 7 rights of homeless persons. These are not merely social policy aspirations, but *Charter* obligations. In the absence of such measures, CCPI/NHRN submit that the By-law is unconstitutional.

---

[27] *St. Theresa Point First Nation v. Canada*, 2025 FC 1926 at para 81.
[28] *La Rose v. Canada*, 2023 FCA 241 at para 115–116.
[29] *Cambie Surgeries Corporation v. British Columbia (Attorney General)*, 2022 BCCA 245 at para 355.
[30] *Toussaint v. Canada (Attorney General)*, 2022 ONSC 4747 at paras 133-134.

ii) Homelessness as an Analogous Ground of Discrimination Requiring Positive Measures of Protection Under s. 15

23. The recent Supreme Court decision in *Quebec (Attorney General) v. Kanyinda*, that denying refugee claimants access to subsidized child care is a form of sex discrimination, underscores the need for an intersectional understanding of the adverse effects of homelessness for Indigenous persons, women and persons with disabilities.[31] However, in CCPI/NRHN's submission, Chief Justice Wagner's reasoning that refugee claimant status should itself be recognized as an analogous ground is particularly applicable in this case. His finding that refugee claimant status "is the analytical perspective that most naturally applies in light of the factual and legal context" is also true of homelessness in the present case.[32]

24. The scope of *Charter* obligations owed to homeless persons is the central issue in the present case. As the Supreme Court affirmed in *Vriend v. Alberta*, legal recognition of the systemic discrimination faced by particular groups is a critical component of the s. 15 equality guarantee, not simply for access to legal remedies but also to foster the recognition of the dignity of every individual.[33] The uncontested evidence of Kaitlin Schwann amply demonstrates that those who are homeless face extreme forms of stigmatization, social exclusion, and historical disadvantage which are deserving of, and overdue for, explicit recognition under s. 15, particularly in considering the treatment of homeless encampments.[34]

25. In striking down the "spouse in the house" rule in *Falkiner v. Ontario (Minister of Community and Social Services)*, the Court of Appeal revised the approach taken by the

---

[31] *Quebec (Attorney General) v. Kanyinda*, 2026 SCC 7, [Kanyinda] at paras 39 – 46.
[32] Ibid at paras 208–209
[33] *Vriend v. Alberta*, 1998 816 (SCC) para 69 and paras 94–104.
[34] Affidavit of Kaitlin Schwann affirmed August 15, 2025 Sup RAR V.3 [Schwann Affidavit].

Divisional Court, which had defined the affected group as "sole support parents on social assistance."[35] The Court instead recognized "receipt of public assistance" as an independent analogous ground of discrimination, intersecting in that case with sex and marital status.[36] The Court explained that recognizing this ground aligned with human rights legislation, reflected the historical disadvantage and negative stereotyping experienced by the group, and clarified and simplified the s. 15 analysis.[37] The same reasoning applies in the present case: recognizing homelessness, like receipt of social assistance, as giving rise to distinct forms of stereotyping and discrimination similarly aligns with human rights legislation and clarifies the analysis of the intersection of homelessness with enumerated grounds of sex, Indigeneity and disability.

26. In the application considered by Justice Valente, unlike in this case, homelessness was not alleged by the named respondents or the amicus to be an analogous ground. Justice Valente agreed with the Region's position and relied on Lederer J.'s analysis in *Tanudjaja* to find that homelessness is not a personal characteristic for the purposes of s. 15.[38] In the *Corporation of the City of Kingston v. Doe* the applicants argued that the equality rights of "chronically unhoused individuals" in encampments were violated. But, having decided the issue based on s.7, Justice Carter declined to rule on the s. 15 claim so as not to prejudice future cases.[39] In *Heegsma v. Hamilton (City)*, the parties agreed that homelessness was not an analogous ground and Justice Ramsay's finding on this issue was not appealed to

---

[35] *Falkiner v. Ontario (Minister of Community and Social Services)* (2002), 59 OR (3d) 481 (CA) at paras 92–93.
[36] Ibid at para 93.
[37] Ibid at paras 86–91.
[38] *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained* 2023 ONSC 5410 at paras 125–127.
[39] *The Corporation of the City of Kingston v. Doe,* 2023 ONSC 6662 at para 33 and paras 118.

the Court of Appeal.[40] In light of the Court of Appeal's explicit decision not to uphold Justice Lederer's reasoning in *Tanudjaja*, CCPI/NRHN submit that this critical question should be considered and decided in the present case, based on appellate and Supreme Court of Canada jurisprudence and the evidence adduced by the Cross-Applicants.[41]

27. In *Kanyinda*, the Chief Justice summarized the criteria that can be used to identify an analogous ground and to "keep the focus on equality for groups that are disadvantaged in the larger social and economic context."[42] These include: distinctions based on stereotypes that undermine dignity; evidence of historical disadvantage or status as a discrete and insular minority; social vulnerability and marginalization; personal characteristics that are immutable or constructively immutable; and recognition in law that the ground is discriminatory.[43] The evidence in Kaitlin Schwann's affidavit along with the supporting research she adopts establish that all of the factors identified in *Kanyinda* and the Court's previous jurisprudence weigh in favour of recognizing homelessness as an analogous ground under s. 15.[44]

28. Schwann points out that responses to homeless persons are often informed by stereotypes characterizing them as morally suspect, as being homeless by choice, and as criminals or law-breakers.[45] "Laws, policies, business practices and media stories depict and treat homeless people as morally inferior, undeserving of assistance, authors of their own misfortune."[46] As the Supreme Court has noted, historically, "the essence of the offence of

---

[40] *Heegsma v. Hamilton (City)*, 2024 ONSC 7154 at para 81. *Heegsma v. Hamilton (City)*, 2025 ONCA 904 at para 29.
[41] *Tanudjaja ONCA* at para 62.
[42] Kanyinda, at para 217.
[43] Ibid.
[44] Ibid, *Miron v. Trudel*, 1995 SCC 97 at para. 147–149.
[45] Schwann Affidavit, at para. 46
[46] Ibid at para 52, citing Report of the Special Rapporteur on Adequate Housing, Exhibit D at para 19.

vagrancy was that of being a loose, idle or disorderly person or vagrant" and, even after reforms designed to address this concern, "it is significant that the acts prohibited were still primarily related to the status of the accused rather than the nature of the acts themselves."[47]

29. Homelessness is also characterized by social vulnerability and marginalization, which is directly linked to patterns of neglect of essential needs. Schwann explains that homeless people are extremely vulnerable to violence, yet they rarely report incidents of violence because of negative experiences with the justice system.[48] She notes that "Opposition from residents to the development of housing for individuals experiencing homelessness is common, and some municipalities deliberately withhold access to essential services—such as water and sanitation—as a means of displacing them."[49]

30. Homelessness also defines a personal characteristic that is immutable both because it is not within the individual's control and because it becomes deeply embedded in personal identity such that it is difficult to change.[50] As with many other enumerated and analogous grounds under s. 15, while homelessness may be defined in different ways, it is clearly subject to definition, as evident from multiple surveys and census data reporting on the number of homeless people, including the data provided by the Region in its evidence.[51] The national point in time count of homeless persons defines homelessness as "being without a permanent and secure place to live, and includes sleeping in shelters, on the streets, or living temporarily with others without having your own permanent housing (e.g., couch surfing)."[52]

---

[47] *R. v. Heywood*, 3 SCR 761 at p. 782.
[48] Schwann Affidavit at paras 39–40.
[49] Ibid at para 41
[50] Ibid at para 38.
[51] Factum of the Respondent (March 13, 2026) at para 22.
[52] 2024 PIT Survey, in Ex C to Kubis Aff., RARV.4, p. 35.

31. Finally, homelessness is a recognized ground of discrimination in both international and domestic law. Manitoba's *Human Rights Code*, prohibits discrimination because of "social disadvantage" expressly including homelessness.[53] New Brunswick, Quebec and the Northwest Territories, prohibit discrimination based on social condition which has been interpreted as including homelessness.[54]

32. Recognizing homelessness as an analogous ground of discrimination clarifies the obligation to take positive measures to address the effects of systemic discrimination and to accommodate the needs of those who are homeless. *Auton (Guardian ad litem of) v. British Columbia (Attorney General)* confirms that a legislative choice not to provide a particular benefit does not offend s. 15, "absent discriminatory purpose or effect." However, a failure to provide access to a program necessary to address systemic disadvantage or to accommodate the needs of protected groups may itself constitute such a discriminatory effect, requiring governments to ensure access to necessary programs or services.[55]

33. In *Vriend*, the Supreme Court clarified that a substantive equality analysis also applies to a failure to act, or to "the sounds of silence," in that case by considering the differential effect of a failure to provide protection from discrimination based on sexual orientation on gays and lesbians, who need the protection, as compared to heterosexuals, who do not.[56] In *Eldridge v. British Columbia (Attorney General),* the Supreme Court rejected the argument

---

[53] *The Human Rights Code*, C.C.S.M. c. H175, s.1.
[54] *Charter of human rights and freedoms*, CQLR c. C-12, s. 10; *Human Rights Act*, RSNB 2011, c. 171, ss. 2(1) and 3(1); *Human Rights Act*, SNWT 2002, c. 18, **s.** 5(1); *Commission des droits de la personne et des droits de la jeunesse (Levasseur) c. Ville de Montréal (SPVM),* 2025 QCTDP.
[55] *Auton (Guardian ad litem of) v. British Columbia (Attorney General)*, 2004 SCC 78 at para 41; *Fraser v. Canada (Attorney General),* 2020 SCC 28 at para 54; *Eldridge v. British Columbia (Attorney General)*, 1997 SCC 327 [*Eldridge*] at paras 72–74, 94; *Kanyinda* at paras 86 and 109–110.
[56] *Vriend*, at paras 82–83.

that governments are not obliged "to implement programs to alleviate disadvantages that exist independently of state action," describing such an approach as a "thin and impoverished vision of s. 15."[57] The Court held in that case that the failure to provide interpreter services created a discriminatory distinction between people who were Deaf, who required the benefit, and the hearing, who did not.[58] Most recently, as discussed above, the denial of access to subsidized childcare was found in *Kanyinda* to create a distinction between those who disproportionately require the benefit—predominantly women, and those who do not.[59]

34. These cases establish that s. 15 requires courts to examine the discriminatory impact of denying access to programs or benefits that are necessary to address the systemic inequality experienced by homeless people, particularly those who are Indigenous, people with disabilities and women, including accessible shelter, access to longer term housing options and to necessary support services. The dominant equality issue in the present case is the differential impact on homeless persons of a continued failure to apply and implement the rights-based approach affirmed in the PECH. It is by explicitly recognizing homelessness as an analogous ground of discrimination that the court can most directly and effectively recognize and address this serious *Charter* violation.

iii) Judicially Discoverable and Manageable Standard for Assessing Whether the Measures Adopted to Address Homelessness are Compliant with ss. 7 and 15

35. The central question raised by the Court of Appeal in *Tanudjaja* was whether, in the context of a justiciable claim such as the present one, governments can be held accountable for ensuring the *Charter* rights of those who are homeless based on "judicially discoverable and

---

[57] *Eldridge* at paras 72–73.
[58] Ibid.
[59] *Kanyinda* at para 72.

manageable standards."[60] As now Justice Lorne Sossin explains, the decision in *Tanudjaja* clarifies that justiciability turns on the existence of manageable standards with legal content that courts can apply, rather than on whether a claim involves a positive duty to act or engages with complex social policy issues.[61]

36. In *Chaoulli v. Quebec (Attorney General)*, in the context of health care wait times found to threaten the right to life, Justice Deschamps noted that the question is not whether the issues are complex, but whether the court "has the necessary tools to evaluate the government's measure." As she expressed it: "Governments have promised on numerous occasions to find a solution to the problem of waiting lists. Given the tendency to focus the debate on a sociopolitical philosophy, it seems that governments have lost sight of the urgency of taking concrete action. The courts are therefore the last line of defence for citizens."[62]

37. In *Mathur v. Ontario*, the province argued, relying on *Tanudjaja*, that requiring climate targets compliant with s. 7 would be "so devoid of content as to be meaningless."[63] The Court of Appeal rejected this argument, holding instead that Ontario's adoption of Paris Agreement-aligned targets provided intelligible standards against which *Charter* compliance could be assessed. As it explained: "If a breach … is declared, there are clear international standards… that can inform what a constitutionally compliant Target and Plan should look like."[64] Similarly, in *La Rose v. Canada*, the Federal Court of Appeal rejected the government's *Tanudjaja*-based non-justiciability argument, holding that the appellants had tied the alleged s.

---

[60] *Tanudjaja v. Canada (Attorney General)*, 2014 ONCA 852 [*Tanudjaja*] at para 33 (Pardu J.A.)
[61] Lorne Sossin and Gerard Kennedy, *Boundaries of Judicial Review: The Law of Justiciability in Canada*, 3rd ed (Toronto: Thomson Reuters, 2023) [Sossin Kennedy] Section 6.15 at 413–419.
[62] *Chaoulli v. Quebec (Attorney General)*, 2005 SCC 35 at para 96.
[63] *Mathur v. Ontario*, 2024 ONCA 762 [*Mathur*] at para 71.
[64] Ibid at para 70.

7 deprivation to "legally defined, objective standards" derived from Canada's Paris Agreement commitments, which supplied the requisite judicially manageable standards.[65]

38. Commitments to eliminate homelessness and ensure access to adequate housing are similarly grounded in international obligations and domestic legislative frameworks, and provide the same kind of structured, reviewable standards as recognized in *Mathur* and *La Rose*. For example, the 2019 *National Housing Strategy Act (NHSA)* imposes clear, statutory obligations on the federal government to establish goals, timelines and participatory mechanisms consistent with the recognition "that housing is essential to the inherent dignity and well-being of the person and to building sustainable and inclusive communities" and that "the right to adequate housing is a fundamental human right affirmed in international law."[66]

39. In particular, the *NHSA* affirms the government's commitment to "the progressive realization of the right to adequate housing as recognized in the *International Covenant on Economic, Social and Cultural Rights*."[67] "Progressive realization" under article 2(1) of the *ICESCR* requires States to take steps, by all appropriate means, including legislation, and to the maximum of available resources, toward the full realization of Covenant rights.[68] With the adoption of a petition procedure for the *ICESCR* in 2008, the Committee was expressly directed to establish structured, reviewable standards for assessing "the reasonableness of the steps taken" by States.[69] In eviction cases, such as the present one, the Committee requires both immediate protections, including access to alternative accommodation, and systemic

---

[65] *La Rose v. Canada*, 2023 FCA 241 at paras 37–38.
[66] *National Housing Strategy Act* SC 2019, c. 29, s. 313.
[67] Ibid at s. 4(d).
[68] *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3, [ICESCR] art 2(1).
[69] *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, 10 December 2008, 2922 UNTS 27, art 8(4).

measures, including comprehensive plans with consultation, resource allocation, prioritization of those most in need, intergovernmental coordination, and the use of indicators, timelines, and monitoring mechanisms.[70] These constitute concrete, judicially cognizable criteria which the *NHSA* incorporates into legislation and the PECH draws on through the explicit commitment to a rights-based approach to ending homelessness in the Region.[71]

40. These standards mirror those accepted in climate litigation and other *Charter* contexts. International human rights norms, expressly incorporated into domestic frameworks such as the *NHSA* and reflected in regional strategies like the PECH, provide sufficiently clear legal benchmarks for assessing the implementation of measures required for compliance with ss. 7 and 15. Where governments commit to goals, such as the Region's commitment to eliminating chronic homelessness by 2030, but fail to implement the corresponding measures required to safeguard *Charter* rights, in this case to life, security of the person and equality of persons who are homeless, courts can competently and legitimately review that failure against these standards.[72]

IV – REMEDY

41. The Supreme Court has directed that courts must take a "purposive" approach to crafting appropriate and just remedies to "meaningfully vindicate" the rights of the claimants, employing means that invoke the function and powers of a court and remaining flexible and responsive to the needs of a given case.[73]

---

[70] *Ben Djazia and Bellili v. Spain*, UN CESCR, Communication No 5/2015, E/C.12/61/D/5/2015 (2017) at para 21(d); *Hamid Saydawi and Masir Farah v. Italy* E/C.12/75/D/226/2021 at para 13(d).
[71] NHSA ss. 4, 5, 13(h), 13.1(4);
[72] Sossin Kennedy at 413.
[73] *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, 2003 SCC 62 at paras 55–58.

42. In the present case, simply declaring the By-law unconstitutional, while necessary, is not sufficient. It is neither responsive to the application before the Court, requesting clarification of the Region's constitutional obligations, nor does it vindicate the *Charter* rights of the Respondents and other homeless persons in the Region.

43. The Ontario Court of Appeal recognized in *Mathur*, as Felman JA did in *Tanudjaja*, and the Supreme Court did in *Eldridge,* that the obligation to fashion just and effective *Charter* remedies requiring government action may be satisfied by declaratory relief.[74] In *Mathur*, the Court noted that a declaratory order avoids judicial intrusion into the policy domain:

> First, the appellants' requested relief includes declaratory relief, including a declaration that the Target violates their ss. 7 and 15 *Charter* rights, which may be ordered without the necessity of telling Ontario precisely what to do to make its Target *Charter* compliant. As the Supreme Court stated in *Canada (Prime Minister) v. Khadr*, 2010 SCC 3, [2010] 1 S.C.R. 44, at para. 47, a court can exercise its discretion to grant declaratory relief as a proper remedy and, "respectful of the responsibilities of the executive and the courts, … provide the legal framework for the executive to exercise its functions and to consider what actions to take … in conformity with the *Charter*."[75]

44. While it is the Applicant, in co-ordination with other levels of government, that must implement the rights-based approach affirmed in the PECH by adopting and implementing targets and timelines, it is a proper role for the Court to provide the direction the Applicant has requested as to what is required to effectively protect the *Charter* rights at issue in this case.

45. The Supreme Court has established that in appropriate cases, courts may also retain supervisory jurisdiction over the implementation of remedies – an approach employed in the *Charter* minority language rights context.[76] This remedial approach has also been adopted in

---

[74] *Tanudjaja* at para 85; *Eldridge* at para 96.
[75] *Mathur* at para 69.
[76] *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, 2003 SCC 62 at paras 87-88.

the housing context, under provincial human rights legislation, to ensure that persons with disabilities are able to live in the community with necessary supports.[77]

46. In light of the Region's request for direction and in the interests of judicial economy, to avoid the need for further applications, such a supervisory order would be an appropriate remedial response in this case – providing both greater legal certainty for the Region and more meaningful accountability for commitments to protect the *Charter* rights of the Respondents.

47. In CCPI/NRHN's submission, an "appropriate and just" remedy in the present case must ensure that the Region will establish and adhere to a reasonable timeline to:

i) Develop and support a sufficient number of adequate and accessible shelter spaces for those in the Region who need them and, in the interim, allow the encampment at 100 Victoria to remain open until a safe and secure alternative site is developed and maintained in accordance with the Encampment Protocol; and

ii) Follow through on its commitment to co-develop with stakeholders, civil society organizations and experts, and in co-ordination with provincial and federal governments, clear goals, timelines, targets and accountability mechanisms for the Region's Plan to End Chronic Homelessness, based on the rights-based approach and international human rights norms affirmed in the PECH.

All of which is respectfully submitted

Martha Jackman
Counsel for CCPI/NRHN

[77] *Disability Rights Coalition v. Nova Scotia Interim Consent Order*, Nova Scotia Human Rights Board of Inquiry, File No.51000-30-H14-0148 (June 28, 2023).

Schedule A: List of Authorities

Caselaw

1. *Auton (Guardian ad litem of) v. British Columbia (Attorney General)*, 2004 SCC 78.
2. *Cambie Surgeries Corporation v. British Columbia (Attorney General)*, 2022 BCCA 245.
3. *Chaoulli v. Quebec (Attorney General)*, 2005 SCC 35.
4. *Commission des droits de la personne et des droits de la jeunesse (Levasseur) c. Ville de Montréal (SPVM)*, 2025 QCTDP.
5. *Disability Rights Coalition v. Nova Scotia, Interim Consent Order, Nova Scotia Human Rights Board of Inquiry, File No. 51000-30-H14-0148* (28 June 2023).
6. *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, 2003 SCC 62.
7. *Eldridge v. British Columbia (Attorney General)*, 1997 SCC 327.
8. *Falkiner v. Ontario (Minister of Community and Social Services)* (2002), 59 OR (3d) 481 (CA)
9. *Fraser v. Canada (Attorney General)*, 2020 SCC 28.
10. *Gosselin v. Québec (Attorney General)*, 2002 SCC 84.
11. *Heegsma v. Hamilton (City)*, 2024 ONSC 7154.
12. *Heegsma v. Hamilton (City)*, 2025 ONCA 904.
13. *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927.
14. *Kanyinda v. Quebec (Attorney General)*, 2026 SCC 7.
15. *Kingston (Corporation of the City) v. Doe*, 2023 ONSC 6662.
16. *La Rose v. Canada*, 2023 FCA 241.
17. *Mathur v. Ontario*, 2024 ONCA 762.
18. *Miron v. Trudel*, 1995 SCC 97.
19. *New Brunswick (Minister of Health and Community Service) v. G(J)*, 1999 SCC 47.
20. *Quebec (Attorney General) v. 9147-0732 Québec inc.*, 2020 SCC 32.

21. *R. v. Heywood*, [1994] 3 S.C.R. 761.

22. *R. v. Prosper*, [1994] 3 S.C.R. 236.

23. *St. Theresa Point First Nation v. Canada*, 2025 FC 1926.

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

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

26. *Taylor v. Newfoundland and Labrador*, 2026 SCC 5.

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

28. *Toussaint v. Canada (Attorney General)*, 2022 ONSC 4747.

29. *Vriend v. Alberta*, 1998 SCC 816.

International Documents

30. UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 7: The Right to Adequate Housing (Art. 11.1): Forced Evictions*, E/1998/22 (20 May 1997).

31. *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context*, UNGAOR, 73rd Session, A/73/310/Rev.1 (2018).

32. *International Covenant on Civil and Political Rights*, 16 December 1966, 999 UNTS 171.

33. UN Human Rights Committee, *Concluding Observations, Canada*, CCPR/C/79/Add.105.

34. UN Human Rights Committee, *General Comment No. 36*, CCPR/C/GC/36 (3 September 2019).

35. UN Human Rights Committee, *Concluding Observations, Canada*, CCPR/C/CAN/CO/7 (23 March 2026).

36. *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3.

37. *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, 10 December 2008, 2922 UNTS 27.

38. *Ben Djazia and Bellili v. Spain*, UN CESCR, Communication No. 5/2015, E/C.12/61/D/5/2015 (2017).

39. *Hamid Saydawi and Masir Farah v. Italy*, UN CESCR, E/C.12/75/D/226/2021.

Legislation

40. *National Housing Strategy Act*, S.C. 2019, c. 29, s. 313.

41. *The Human Rights Code*, C.C.S.M. c. H175.

42. *Charter of Human Rights and Freedoms*, CQLR c. C-12.

43. *Human Rights Act*, RSNB 2011, c. 171.

44. *Human Rights Act*, S.N.W.T. 2002, c. 18.

Secondary Literature

45. Lorne Sossin and Gerard Kennedy, *Boundaries of Judicial Review: The Law of Justiciability in Canada*, 3rd ed. (Toronto: Thomson Reuters, 2023).