

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 *AMICUS CURIAE*

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

April 8, 2026

PEREZ PROCOPE LEINVEER LLP

Barristers & Solicitors
55 University Ave., Suite 1100
Toronto, ON M5J 2H7

Mercedes Perez (LSO # 48381L)

Tel: (416) 320-1914
Email: mperez@pbplawyers.com

Karen A. Steward (LSO # 58758O)

Barrister & Solicitor
Email: karenannesteward@yahoo.ca
Tel: (416) 270-0929

SWADRON ASSOCIATES

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

Jen Danch (LSO # 74520I)

Tel: (416) 362-1234
Email: jdanch@swadron.com

Amicus Curiae for Persons Unknown, The
Mental Health Legal Committee

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.clej.ca

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

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

Lawyers for the Respondents

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 St. W., Suite 1200
Toronto, Ontario M5V 3B1

Kristen Allen (LSO # 62789C)

Tel: 416.969.3502

Email: kallen@upfhlaw.ca

Simone Truemner-Caron (LSO # 82968M)

Tel: 416.642.4504

Email: struemnercaron@upfhlaw.ca

Lawyers for the Intervener,
Canadian Civil Liberties Association

AND TO: Professor *emerita* Martha Jackman
Faculty of Law, University of Ottawa
57 Louis Pasteur, Ottawa, ON K1N 6N5
Tel: 613.720.9233
Email: Martha.Jackman@uOttawa.ca

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

AND TO: 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

Table of Contents

| | |
|---|-----------|
| PART I – OVERVIEW | 1 |
| PART II – FACTS | 2 |
| PART III – ISSUES, LAW AND ARGUMENT | 2 |
| PRELIMINARY ISSUE #1: THE EXPERT EVIDENCE | 2 |
| <i>The Role of Expert Evidence in Charter Litigation</i> | 3 |
| <i>Application to this Case</i> | 5 |
| PRELIMINARY ISSUE #2: HORIZONTAL <i>STARE DECISIS</i> APPLIES TO THE RESPONDENTS’ SECTION 7 CLAIM | 8 |
| PRELIMINARY ISSUE #3: THE PROPER APPROACH TO <i>CHARTER</i> INTERPRETATION | 11 |
| <i>Charter Guarantees Must Be Given a Generous, Purposive, and Contextual Interpretation</i> | 11 |
| <i>The Social Context in Which the By-Laws Operate</i> | 12 |
| <i>The Legal Framework in Which the By-Laws Operate</i> | 15 |
| THE BY-LAWS INFRINGE SECTION 7 OF THE <i>CHARTER</i> | 16 |
| <i>The By-Laws Engage Life, Liberty, and Security of the Person of the Region’s Homeless</i> | 17 |
| The By-Laws Engage the Right to Life and Security of the Person | 21 |
| The By-Laws Engage the Right to Liberty | 23 |
| <i>The Deprivations to Life, Liberty, and Security of the Person are Not in Accordance with the Principles of Fundamental Justice</i> | 25 |
| The Objective of the By-Law | 26 |
| The By-Laws are Arbitrary | 27 |
| The By-Laws are Grossly Disproportionate | 30 |
| THE BY-LAWS VIOLATE S.15(1) OF THE <i>CHARTER</i> AND DISCRIMINATE ON THE BASIS OF DISABILITY | 32 |
| <i>The Purpose of s. 15 is Rooted in the Obligation of the State to Accommodate Disability</i> | 32 |
| <i>Step 1: Enforcement of the By-Laws Disproportionately Impact Persons with Disabilities</i> | 34 |
| The By-Laws Are Not Consistent with the PECH’s Comprehensive Accommodation Plan | 36 |
| <i>Step 2: Enforcement of the By-Laws Imposes Burdens and Perpetuates Disadvantages Experienced by Homeless Individuals with Disabilities</i> | 37 |
| THE BY-LAWS SHOULD BE QUASHED FOR ILLEGALITY UNDER SECTION 273 OF THE <i>MUNICIPAL ACT</i> | 39 |
| PART IV – ORDER REQUESTED | 41 |
| APPENDIX A: FOOTNOTE ABBREVIATION CHART | 42 |
| CERTIFICATE | 45 |
| SCHEDULE “A” | 46 |
| SCHEDULE “B” | 48 |
| SCHEDULE “C” | 54 |

PART I – OVERVIEW

1. In *Persons Unknown*¹, this Court declared that a Code of Use By-Law [“CUB”] preventing residents of a long-standing encampment located on a vacant lot in Kitchener [“the Encampment”] from living on and erecting temporary shelters without a permit violated s.7 *Charter* rights and was inoperable. The decision hinged on the Court’s determination that the number of homeless persons exceeded the number of available and accessible shelter beds in the Region of Waterloo [“Region”] such that the Encampment was a necessary sheltering option of last resort critical to the life and liberty of some of the Region’s most vulnerable residents.² This Court also ordered that the Region could apply to terminate the declaration once s.7 rights were no longer infringed; in other words, when there were sufficient accessible indoor shelter options to accommodate the needs of the Region’s homeless.³ This Court did not order that the Region could apply to terminate the declaration when it decided that the vacant lot was required for a specific use.

2. Having not appealed any of the questions of law decided by this Court in *Persons Unknown*, and by its own admission not having satisfied the condition precedent established to terminate this Court’s declaration, the Region now seeks to evade this Court’s prior ruling by enacting two new By-Laws [the “Site Specific” and “Amended Site-Specific” By-Laws, together “the By-Laws”] which seek to clear vulnerable homeless individuals from the only parcel of land in the Region protected from forced eviction. The By-Laws rely on a self-serving fiction rejected in *Persons Unknown*, namely that it is only the s.7 *Charter* rights of homeless persons who resided at the Encampment at a snapshot point in time, arbitrarily chosen by the Region, that should concern the Court. In contrast, and in keeping with the purposive and generous approach to *Charter* interpretation and s.7 jurisprudence, *Persons Unknown* applied a systemic lens to its *Charter*

¹ *The Regional Municipality of Waterloo v Persons Unknown and to be Ascertained*, [2023 ONSC 670](#) [“*Persons Unknown*”]

² *Persons Unknown*, paras. [157 and 158](#)

³ *Persons Unknown*, para. [159](#)

analysis capturing the practical reality that all “Persons Unknown” who reside, or may have no choice but to reside, at the Encampment are covered by this Court’s prior ruling.

3. The Region’s approach is also premised on a specific use of the vacant lot for a construction project that, as was the case in *Persons Unknown*, continues to have actual start times that are yet “to be determined”. The By-Laws sidestep the Region’s voluntary commitment to a human rights approach to end chronic homelessness. In circumstances where the Region cannot yet meet the obligations set out in the Plan to End Chronic Homelessness (the “PECH”)⁴, the Region has provided no accessible alternatives such as a tenting protocol or an alternative homeless encampment site. The Region’s assertion that it has “done more than any other Ontario municipality to address” homelessness⁵ is one that is unsupported by any evidence. Given all of the above, *Amicus Curiae*, on behalf of “Persons Unknown” who may lack capacity to retain counsel, agrees with the Respondents that the By-Laws continue to infringe s.7 of the *Charter* (either on the basis of horizontal *stare decisis* or, on a stand alone *Charter* analysis) and, in the context of new Supreme Court of Canada [“SCC”] jurisprudence on s.15(1), that the By-Laws also infringe the *Charter*’s substantive equality guarantee in ways that cannot be saved by s.1.

PART II – FACTS

4. *Amicus* adopts the facts as set out in the Respondents’ factum.⁶

PART III – ISSUES, LAW AND ARGUMENT

Preliminary Issue #1: The Expert Evidence

5. The Region asserts that the Respondents’ expert evidence is inadmissible or should be given little to no weight for various reasons, including that the evidence is general in nature and not specific to the Encampment nor to the By-Laws and that the experts are “advocates”, lack

⁴ PECH, Ex B to Alton Aff, RARV.2, p 47, **B-1-8083**

⁵ Region Factum, para 2, **A5195**

⁶ Respondents Factum, paras 10-66, **B-1-11020 to B-1-11037**

impartiality and provide what the Region characterizes as impermissible legal opinion.⁷ *Amicus* submits that the Region’s objections are both wrong in law and factually inaccurate, and further, are entirely unsupported by any citations to case law.

The Role of Expert Evidence in Charter Litigation

6. To be admissible, expert evidence must be (a) relevant; (b) necessary; (c) not subject to an exclusionary rule; and (d) proffered by a properly qualified expert.⁸ Where these threshold criteria are met, judges retain a discretionary gatekeeping role to ensure that the probative value of the expert evidence does not outweigh its risks.⁹

7. The necessity of expert evidence is not to be judged “by too strict a standard”; what is required is that the opinion is necessary because it provides information “which is likely to be outside the experience and knowledge of a judge or jury” and allows them to form an independent judgment.¹⁰ Expert witnesses provide the trier of fact with ready-made inferences and opinions typically based on second-hand evidence.¹¹ The most significant risks in admitting expert evidence are “the danger that a jury will be unable to make an effective and critical assessment of the evidence” and/or that experts might usurp the function of the trier of fact.¹² These concerns are lessened in judge-alone trials.¹³

8. Expert evidence is often especially necessary in *Charter* litigation to ensure that courts avoid deciding important systemic issues in a factual vacuum. The SCC has been “vigilant to ensure that a proper factual foundation exists before measuring legislation against the provisions of the

⁷ Region Factum, paras 49 to 60, **A5216 to A5223**

⁸ *Bruff-Murphy v Gunawardena*, [2017 ONCA 502](#), para 35 [“*Bruff-Murphy*”]

⁹ *Bruff-Murphy*, paras 36-37

¹⁰ *R v Mohan*, [1994] 2 SCR 9, p 23

¹¹ *R v Abbey*, [1982] 2 SCR 24, p 42 [“*R v Abbey*”]

¹² *R v Abbey*, [2009 ONCA 624](#), para 90; *White Burgess Langille Inman v Abbott and Haliburton Co*, [2015 SCC 23](#), paras 17, 18, 21-24; *R v Sekhon*, [2014 SCC 15](#), paras 46 to 48 per Moldaver J [“*Sekhon*”]

¹³ *Sekhon*, paras 46 to 48 per Moldaver J

Charter, particularly where the effects of impugned legislation are the subject of the attack.”¹⁴

9. There are two categories of facts in *Charter* litigation: “adjudicative facts” which are specific (“who did what, where, when, how and with what motive”); and “legislative facts” which establish the purpose and background of legislation, including the social, economic, cultural, political, and legal context in which legislation was enacted; the latter are more general in nature and therefore subject to less stringent admissibility requirements.¹⁵ “Social facts” are “cousins” of “legislative facts”, and are defined as “social science research that is used to construct a frame of reference or background context for deciding factual issues”; both social and legislative facts may involve policy considerations.¹⁶ Legislative and social fact evidence is best presented through expert witnesses so that it can be tested through cross-examination.¹⁷

10. In *Charter* challenges seeking remedies under s. 52(1) of the *Constitution Act, 1982*, legislative facts are often the most relevant, as illustrated by the SCC’s acceptance that reasonable hypotheticals or reasonable foreseeability can establish a *Charter* claim.¹⁸ Legislative and social facts are likely to be dispositive in some cases, even where these facts are of a general nature or “cannot be demonstrated with greater precision than the subject matter permits.”¹⁹

11. At its core, the present application implicates systemic challenges rather than the circumstances of any one claimant. Expert evidence on legislative and social facts is therefore indispensable to ensure that the court has a complete record. While the Named Respondents have

¹⁴ *Danson v Ontario (Attorney General)*, [1990] 2 SCR 1086, pp 1099 to 1101 [“Danson”] [emphasis added]

¹⁵ *Danson*, p 1099; *Mackay v Manitoba*, [1989] 2 SCR 357, p 361; *International Air Transport Association v Canada (Transportation Agency)*, 2024 SCC 30, paras 65, 68, 72-74

¹⁶ *R v Spence*, 2005 SCC 71, paras 57-58 [“Spence”]

¹⁷ *Canada (Attorney General) v Bedford*, 2013 SCC 72, para 53 [“Bedford”]; *R v Malmo-Levine*; *R v Caine*, 2003 SCC 74, paras 26 to 28 per Gonthier and Binnie JJ [“Malmo-Levine”]; *Spence*, paras 57 to 66, para 68. Other cases where the SCC relied heavily on expert social science evidence: *R v Lavallee*, [1990] 1 SCR 852; *R v Gladue*, [1999] 1 SCR 688; *R v Wells*, 2000 SCC 10; *Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44 [“PHS Community”]; *Bedford*; *Carter v Canada (Attorney General)*, 2015 SCC 5 [“Carter”]

¹⁸ *R v Nur*, 2015 SCC 15, paras 51-58, per McLachlin CJ [“Nur”]

¹⁹ *Spence*, para 64; *Hy and Zel's Inc. v Ontario (Attorney General)*; *Paul Magder Furs Ltd. v Ontario (Attorney General)*, [1993] 3 SCR 675, p 719 per Major J

counsel, many vulnerable homeless individuals who have resided, are residing, or may reside at the Encampment are unrepresented and some, due to mental health or cognitive challenges, may even lack capacity to instruct counsel. They do not have a direct voice in this litigation, yet they will all inevitably be impacted by this Court’s final ruling.²⁰ As highlighted in *Persons Unknown*, enforcement of the By-Laws will have “consequences [that] are more severe for those Encampment residents who suffer from mental illness or substance abuse to the extent that they lack capacity to understand the legal consequences of the By-Law’s enforcement.”²¹

12. In *Black*, an encampment case, the court rejected the city’s challenge to expert evidence from two physicians on the basis that they advocated for the homeless, relied on hearsay, and because the physicians had no direct knowledge of the encampment in Toronto:

I do not agree with the City's submissions. The expert evidence...meets the test for admissibility set out in *R. v. Mohan*. It is relevant and necessary evidence to assist the court in understanding the risks of COVID-19 and its impact on the homeless population, the particular risks and vulnerabilities of homeless people generally, the role of encampments, the medical risks of shelters, including the risk of contracting COVID-19 in shelters, and concerns about the loss of shelter and the medical and social effects of breaking up encampments, particularly during a pandemic. [...]

In public interest litigation of this kind, it would be surprising not to have experts who have expressed points of view and advocated for particular outcomes. Often, because of their commitment to their field and the conclusions they have reached, experts become involved in advocacy. However, this does not disqualify experts; if it did it would risk denying courts important perspectives on many issues. Courts are not naïve and can, where necessary, discount or ignore testimony of experts if and when it becomes advocacy as opposed to evidence.²² [emphasis added, citations removed]

Application to this Case

13. *Amicus* adopts the Respondents’ submissions with respect to the expert evidence²³ with some additional comments. Generally, the Respondents’ expert evidence furnishes the court with

²⁰ Order of Justice Gibson Appointing *Amicus Curiae* (May 28, 2025)

²¹ *Persons Unknown*, para 117

²² *Black et al v City of Toronto*, 2020 ONSC 6398, paras 25-37 [“*Black*”]. See also: *The Corporation of the City of Kingston v Doe*, 2023 ONSC 6662, para 104 [“*Kingston*”]: “An expert need not attend a particular encampment to provide evidence on that issue. Nor does the fact that Dr. Sereda has been an advocate against the clearing of encampments necessarily disqualify her from giving expert evidence”; and *Affleck v The Attorney General of Ontario*, 2021 ONSC 1108, paras 27-37, where the court held that “prior advocacy is not only common but unsurprising in public interest litigation”.

²³ Respondents Factum, paras 70 to 77, B-1-110038 to B-1-11042

necessary contextual evidence on various issues relevant to the Respondents' ss. 7 and 15(1) *Charter* claims, including: the social, economic, health-related and other circumstances of homeless individuals; statistical demographic data, including the disproportionate representation of persons with disabilities amongst the homeless population; the consequences of coerced encampment evictions; the impacts of disability, gender, Indigenous status and addictions on housing options; medical and safety risks in the shelter and motel systems; accessibility barriers in the shelter system; what constitutes adequate and accessible shelter; and the benefits of encampments as a sheltering option of last resort. This evidence is necessary to establish the “full context of the claimant group’s situation” and “the outcomes that the impugned law or policy...has produced in practice.”²⁴ It is also relevant and necessary to any required s. 1 analysis, including with respect to assessing minimal impairment.

14. With respect to Dr. Gupta, while he agreed that living unsheltered or rough, including in encampments, can lead to negative health outcomes,²⁵ he nuanced his opinion by flagging the relative risk reduction of encampments for some individuals, which can include sheltering against the elements in a tent, stability in accessing health care and other supports, the benefits of autonomy to psychological well-being, decreased risk of mental health exacerbation and faster response to overdoses.²⁶ Further, although Dr. Gupta conceded that much of the academic literature does not differentiate between sheltering at an encampment and other forms of living rough outdoors,²⁷ he noted that in the absence of a body of academic literature, the generally accepted approach to understanding a problem is to rely on reputable qualitative “grey literature” (like the

²⁴ *R v Sharma*, 2022 SCC 39, para 49 per Brown and Rowe JJ [“Sharma”]

²⁵ Region Factum, para 51, A5217

²⁶ Gupta Aff, SupRARV.2, paras 16, 19 to 21, B-1-9173 to B-1-9178; Gupta XE, JTBV.4, Tab 18, A4325, A4368-A4370, A4371, A4378, A4379, A4416-A4417

²⁷ Region Factum, para 51, A5217

MARCO study) combined with clinical experience and expert consensus.²⁸

15. With respect to Dr. Pauly, it is inaccurate to claim that she provided the “completely untenable answer” that transitioning individuals from an encampment always requires permanent housing.²⁹ Her answers were nuanced, referencing suitable accommodation and acknowledging that for some people transitional housing is a viable option.³⁰ Further, Dr. Pauly did not assert a “right to housing” as a point of law.³¹ She simply explained that her research is informed by the recognition in both international law and federal law of “the right to adequate housing.”³²

16. Contrary to the Region’s assertion, Federal Housing Advocate Ms. Houle’s opinion evidence is not focused on the “right to housing” as a question of law.³³ While her work is situated within a specific national and international law framework, Ms. Houle’s evidence focuses on homelessness, the affordable housing crisis, encampments and forced evictions, the need for adequate and permanent housing, the role of different levels of government in addressing homelessness, and measures that can be adopted by municipalities to address homeless encampments.³⁴ This is contextual evidence against the back-drop of a specific legislative and policy approach to homelessness, not legal opinion on a question of law.³⁵

17. Further, Ms. Houle’s affidavit attaches a number of her annual and other reports which comprise legislative fact evidence that is both relevant and necessary to understanding the content of the *Charter* rights at stake, as well as any s. 1 analysis.³⁶ Courts often rely on government and

²⁸ Gupta XE, JTBV.4, Tab 18, **A4409-A4415**. In addition to the practical difficulties, it would be unethical to conduct a gold-standard, double blind study with placebo amongst a homeless population because it would mean depriving a group of vulnerable people of necessary services and supports

²⁹ Region Factum, para 53, **A5219**

³⁰ Pauly XE, JBTV.4, Tab 17, **A4269, A4279 to A4282**

³¹ Region Factum, para 52, **A5219**

³² *National Housing Strategy Act*, SC 2019, c 29, s 313, sec 4; Pauly XE, JBTV.4, Tab 17, **A4292-A4293**

³³ Region Factum, para 55, **A5220**

³⁴ Houle Aff, SupRARV.3, Tab 14, **B-1-10023 to B-1-20026, B-1-10039 to B-1-10041, B-1-10044 to B-1-10046**

³⁵ *St. Theresa Point First Nation v Canada*, 2025 FC 1926, paras 41, 59, 72 to 74; *International Air Transport Association v Canada (Transportation Agency)*, 2024 SCC 30, paras 65, 68 to 74

³⁶ Ex C to K to Houle Aff, SupRARV.3, Tab 14, **B-1-10070 to B-1-10439**

government-mandated reports as sources of legislative fact evidence on the effects of legislation.³⁷

Preliminary Issue #2: Horizontal *Stare Decisis* Applies to the Respondents’ Section 7 Claim

18. The Region submits that horizontal *stare decisis* does not bind this court on whether the By-Laws infringe s. 7 because *Persons Unknown* and this case concern different bylaws with different objectives.³⁸ This position is premised on an incorrect narrowing of the doctrine. *Amicus* agrees with the Respondents that the By-Laws are new in form but not in substance³⁹ and that it is the substance – the purpose and effect of legislation – that determines whether *stare decisis* applies.

19. In *R v Sullivan*, the SCC held that the ordinary principles of *stare decisis* should be followed by judges of coordinate jurisdiction in the same province as a matter of judicial comity.⁴⁰ In issuing a declaration that a law is inconsistent with the *Charter*, judges determine questions of law by focusing on the impugned rule, not the text of the written law that expresses the rule.⁴¹ Section 52(1) challenges require a court to decide whether an impugned law is inconsistent with the *Charter*, and if so to measure “the extent of this inconsistency” and decide whether, and to what extent, the law is of no force or effect.”⁴² *Stare decisis* “pertains to the to the reasons given by a court” and “[p]recedent requires judges to examine prior judicial decisions, examine the *ratio decidendi* in order to determine whether the *ratio* is binding or distinguishable and if binding whether the precedent must be followed or departed from.”⁴³

20. Horizontal *stare decisis* applies unless the *Spruce Mills* criteria are met and they do not apply

³⁷ See, e.g.: *R v Morgentaler*, [1988] 1 SCR 30 [“*Morgentaler*”], [Badgley and Powell Reports: whether the procedure in the *Criminal Code* for obtaining therapeutic abortions is operating equitably across Canada; as well as the health impacts of delayed access to abortion]; *Moge v. Moge*, 1992 CanLII 25 [Statistics Canada reports, government evaluation of the *Divorce Act* and other reports on the demographics of single mothers and the economic impact of divorce]; *Reference re Employment Insurance Act (Can.), ss.22 and 23*, 2005 SCC 56 [various reports respecting the systemic discrimination of women in unemployment insurance]

³⁸ Region Factum, para 64, A5224

³⁹ Respondents Factum, paras 78 and 79, B-1-11042 and B-1-11043

⁴⁰ *R v Sullivan*, 2022 SCC 19, para 57 and para 65 [“*Sullivan*”]

⁴¹ *Sullivan*, paras 44 and 45

⁴² *Sullivan*, para 47

⁴³ *Sullivan*, para 56, para 64 [emphasis added]

in this case.⁴⁴ Therefore, to uphold the underlying rationale for *stare decisis* – consistency, certainty, fairness, predictability and sound judicial administration⁴⁵– the following questions of law that were decided by this Court in *Persons Unknown* constitute binding precedent:

- (a) “choosing” to stay at an encampment due to its proximity to support services or due to accessibility barriers at shelters is not a positive rights claim to property ([para 77](#))
- (b) the ability to provide adequate shelter for oneself is a necessity of life that falls within the right to life protected by s. 7 ([para 96](#))
- (c) where a municipality does not “have enough accessible shelter beds”, “creating shelter to protect oneself is...a matter critical to any individual’s dignity and independence” and restrictions on this is a deprivation of liberty within the meaning of s. 7 ([para 101](#))
- (d) where there are insufficient “adequate accessible shelter spaces”, prohibiting the erection of temporary shelter exposes the homeless to significant health problems, both physical and psychological, amounting to a deprivation of security of the person pursuant to s. 7 ([para 104](#))
- (e) the constitutional right to shelter “is invoked when the number of homeless individuals exceed the number of available and truly accessible indoor shelter spaces” and further, the right of homeless persons to shelter “is not limited to the overnight hours” ([para 105](#))
- (f) personal “choice” does not negate a claim that s. 7 rights have been breached when the overriding context is not one of freedom in exercising autonomous choice but rather a context characterized by poverty, disability and insufficient accessible shelter alternatives ([para 106](#))
- (g) where the purpose of a by-law includes preventing disruption of municipal operations, a by-law restricting all persons from erecting shelter will be overbroad if there are no accessible shelter alternatives ([para 114](#))
- (h) where the purpose of a by-law includes preventing disruption of municipal operations, a by-law restricting all persons from erecting shelter will be grossly disproportionate to that objective where there are no accessible shelter alternatives ([paras 117 to 119](#))
- (i) where s. 7 rights are violated by prohibitions against homeless persons erecting shelter on municipal lands in circumstances where there are insufficient accessible shelter alternatives, such violations cannot be justified under s.1 except “in cases arising out of exceptional conditions, such as disasters, the outbreak of war, epidemics and the like” ([para 129](#))
- (j) a s.24(1) remedy in the form of constitutional exemptions is not appropriate to protect the s.7 rights of encampment residents; instead, the appropriate remedy is a s. 52(1) declaration that the impugned By-Law is inoperative “insofar as it applies to prevent the Encampment

⁴⁴ *Sullivan*, [para 75](#). The *Spruce Mills* criteria are: (a) the rationale of the earlier decision has been undermined by subsequent appellate decisions; (b) the earlier decision was reached through carelessness or inadvertence; or (c) the earlier decision was not fully considered for example in exigent circumstances.

⁴⁵ *Sullivan*, [para 64](#)

residents from living and erecting temporary shelters on the Property when the number of homeless individuals in the Region exceed the number of accessible shelter beds” ([para 152](#)).

21. The Region did not appeal the questions of law decided by this court in *Persons Unknown*. Further, the facts in *Persons Unknown* are also not distinguishable such that *stare decisis* does not apply. The Property at issue is the same, the affected group of individuals are the same (vulnerable unhoused persons), the core purpose of the By-Laws are the same (to prevent disruption of municipal operations), and the means chosen to achieve the By-Laws’ purposes are similar (moving affected individuals to other forms of indoor shelter (regardless of accommodation needs), failing which they will be evicted).

22. The Region claims that a key distinguishing fact is that unlike when the *Persons Unknown* decision was rendered, there is now a firm start date for construction of the KCTH.⁴⁶ The evidence, however, reveals ongoing shifting timelines and uncertainty. For example, the first By-Law required vacant possession for the Region by December 1, 2025 on the basis that Metrolinx required possession of the property in March 2026.⁴⁷ The Amended By-Law changed the Region’s vacant possession date to April 1, 2026 on the basis that Metrolinx required possession of the property by October 26, 2026; however, “this date might be subject to further change in the case of unforeseen issues or challenges with the pending [Metrolinx] approvals and the tender process.”⁴⁸ The forecasted construction start date has fluctuated by almost a year and half between January 2025 and December 2025: as of January 2025, the forecasted construction start date was July 2025 and by December 2025 it was November 2026. Importantly, quarterly reports between January to December 2025 continue to list the actual construction start date as “TBD.”⁴⁹

⁴⁶ Region Factum, para 31, **A5208**

⁴⁷ Spooner Aff, AR, para 7, **A2073**

⁴⁸ Email from Klaus Zeise to Doug Spooner (Jan. 12, 2026), Region’s Brief of Answers to UTs, **A4890**

⁴⁹ Quarterly Project Status Reports, Region’s Supp Brief of Answers to UTs, **A5015, A5021, A5028, A5029, A5035**

Preliminary Issue #3: The Proper Approach to Charter Interpretation

Charter Guarantees Must Be Given a Generous, Purposive, and Contextual Interpretation

23. *Charter* rights must be interpreted in a generous, purposive, and contextual manner to secure the full benefit of the *Charter*'s protections.⁵⁰ This means that the right at issue must be informed by the specific purposes of that right, the larger purposes that animate the *Charter* as a whole, and the social realities in which the alleged *Charter* breaches occurred.⁵¹ Further, courts are required to presume that the *Charter* provides protections at least as broad as those afforded by similar international human rights documents ratified by Canada; that is, they provide a constitutional floor, not a ceiling.⁵² Federal, provincial, territorial, and municipal governments are all equally bound by international human rights instruments ratified by Canada.⁵³

24. The presumption of conformity is an established interpretive principle in *Charter* litigation. The text of binding international instruments reflect Canada's international human rights obligations and are an "important indicia" of the meaning of "the full benefit of the *Charter*'s protection."⁵⁴ The presumption of conformity is an interpretive tool in delineating the "breadth and scope of *Charter* rights" and defining the principles of fundamental justice: "[o]ur *Charter* is the primary vehicle through which international human rights achieve domestic effect" and that in particular, ss. 7 and 15 "embody the notion of respect of human dignity and integrity."⁵⁵

25. Canada has voted in favour or ratified several international instruments that recognize adequate housing as a fundamental human right that is inextricably linked to other rights, including the rights to life, security of the person, and equality. In addition to the *Universal Declaration of*

⁵⁰ *Quebec (Attorney General) v 9147-0732 Québec inc.*, 2020 SCC 32, para 7 ["9147-0732 Québec"]

⁵¹ *Quebec (Attorney General) v Kanyinda*, 2026 SCC 7, para 120 ["Kanyinda"]; *New Brunswick (Minister of Health and Community Services) v G(J)*, [1999] 3 SCR 46, para 115, per L'Heureux-Dubé J ["G(J)"]

⁵² *Taylor v Newfoundland and Labrador*, 2026 SCC 5, paras 76 to 85

⁵³ *Nevsun Resources Ltd. v Araya*, 2020 SCC 5, para 303 per Cote and Moldaver JJ

⁵⁴ 9147-0732 *Quebec*, paras 31 to 34, per Brown and Rowe JJ

⁵⁵ *R v Ewanchuk*, [1999] 1 SCR 330, para 73, per L'Heureux-Dube and Gonthier JJ; *Health Services and Support - Facilities Subsector Bargaining Assn. v British Columbia*, 2007 SCC 27, paras 69-79, per McLachlin and LeBel JJ

*Human Rights*⁵⁶ and the *International Covenant on Economic, Social and Cultural Rights*,⁵⁷ Canada has ratified the *Convention on the Elimination of All Forms of Discrimination Against Women*,⁵⁸ the *International Convention on the Elimination of All Forms of Racial Discrimination*,⁵⁹ and the *Convention on the Rights of Persons with Disabilities*⁶⁰ (“CRPD”), all of which recognize housing as a fundamental human right.

26. The UN has further recognized that all individuals should possess “a degree of security of housing tenure that guarantees legal protection against forced eviction”, that security of tenure can include informal settlements such as occupations of land, and further that “forced eviction constitutes a gross violation of human rights.”⁶¹

The Social Context in Which the By-Laws Operate

27. The proliferation of homeless encampments is largely attributable to structural and systemic failures to ensure access to adequate affordable housing and support services, further compounded by systemic discrimination and colonialism.⁶² Further, shelter capacity in the Region remains profoundly insufficient, resulting in 43% of the Region’s homeless population living outdoors.⁶³

28. The Encampment is the largest in the Region.⁶⁴ Although the Region notes that there are 23 other encampments on municipal, private, and provincial lands, as of early 2026 there were only

⁵⁶ *Universal Declaration of Human Rights*, GA Res 217 A (III), UN Doc A/810, at 71 (1948), [Art 25\(1\)](#) (voted to adopt by Canada in 1948)

⁵⁷ *International Covenant on Economic, Social and Cultural Rights*, 993 UNTS 3, [Art 11](#) (ratified by Canada in 1976)

⁵⁸ *Convention on the Elimination of All Forms of Discrimination against Women*, Can TS1982 No 31, [Arts 14.2\(h\) and 15\(4\)](#), (ratified by Canada in 1981)

⁵⁹ *International Convention on the Elimination of All Forms of Racial Discrimination*, 660 UNTS 195, [Art 5\(e\)\(iii\)](#), (ratified by Canada in 1970)

⁶⁰ *Convention on the Rights of Persons with Disabilities*, [2010] Can TS No 8, [Arts 4\(2\) and 28](#), (ratified by Canada in 2010) [“CRPD”]

⁶¹ *Victoria (City) v Adams*, [2008 BCSC 1363](#) [“*Adams BCSC*”], [para 89](#); aff’d [2009 BCCA 563](#), [para 35](#) [“*Adams BCCA*”].

⁶² Pauly Aff, SupRARV.2, pp 210-211, paras 6-7, **B-1-9369**; Gaetz Aff, SupRARV.2, pp 49-51, paras 10-14, **B-1-9208-B-1-9210**; National Protocol, Ex D to Alton Aff, RARV.2, p 175, **B-1-8211**; Encampments Across Canada, Ex F to Houle Aff, Sup RARV.3, p 670, **B-1-10240**; PECH, Ex B to Alton Aff, RARV.2, p 69, **B-1-8105**

⁶³ Respondents Factum, paras 29-44, **B-1-11026 to B-1-11032**

⁶⁴ 1st Sweeney XE JTBV.2, pp 83, 95; Q/As 211, Q/As 274, **A3159, A3176**

approximately 44 people in those encampments (meaning an average of 2 people per encampment).⁶⁵ The Region's witness Peter Sweeney testified that he is not aware of another encampment in the Region of the size and scope of the Encampment.⁶⁶

29. Encampments, by their nature, are fluid and dynamic, meaning that the number of residents can fluctuate, often depending on the season.⁶⁷ This has been the case with the Encampment, as demonstrated by the Region's own data.⁶⁸ Further, Encampment residents are deeply vulnerable with often multiple intersecting grounds of marginalization. As was the case in *Persons Unknown*, the residents are individuals experiencing poverty, disability (including mental health, cognitive, physical, and addiction disabilities), members of the 2SLGBTQ+ community, Indigenous and racialized persons, as well as childhood physical, sexual, and domestic abuse survivors.⁶⁹

30. People struggling with mental health and addiction issues are vastly overrepresented in the Region's homeless population. According to the 2024 Point in Time (PIT) count, 72% of homeless people reported substance abuse, 70% reported mental health issues, and 27% reported acquired brain injuries.⁷⁰ This is consistent with the reports of the nearly 80% of the Named Respondents who identified as having mental health or cognitive challenges.⁷¹ In addition, there is a recognition that some persons who reside at the Encampment may lack capacity to instruct counsel.

31. Barriers to indoor shelter for those struggling with mental health/ addiction issues include:

- a. Discrimination and stigma⁷²

⁶⁵ 2nd Sweeney Answers to Undertakings, JTBV.5, #10, **A4872**

⁶⁶ 1st Sweeney XE JTBV.2, p 94, Q/As 271, **A3175**

⁶⁷ 2nd Sweeney XE JTBV.4, p 146, Q/As 411, **A4212**

⁶⁸ 1st Sweeney Aff. AR, p 20, para 25, **A1742**; 2nd Sweeney Aff, ReplyAR, p 20, para 34(a), **A2269**; 1st Sweeney XE JTBV.2, pp 12-13, 91, Q/As 36-39, 258-263, **A3093-A3094, A3172**; 2nd Sweeney Answers to Undertakings, JTBV.5, #10, **A4872**

⁶⁹ Respondents Factum, para 14, **B-1-11021 to B-1-11022**

⁷⁰ 2024 PIT Infographic, Ex A to 1st Escobar Affidavit, RARV.3, p 107, **B-1-8451**

⁷¹ Respondents Factum, para 14, **B-1-11021 to B-1-11022**; Appendix B, **B-1-11071 to B-1-11072**

⁷² Allt Aff, RARV.2, p 18, para 8(c), **B-1-8054**; PECH, Ex B to Alton Aff, RARV.2, p 63, **B-1-8099**; 2024 PIT Infographic, Ex A to 1st Escobar Aff, RARV.3, p 107, **B-1-8451**

- b. Lack of affordable supportive housing for high complexity mental health/addiction needs⁷³
- c. Inability to follow behavioural expectations (mental illness symptoms fluctuate with periods of crisis and dysregulation) which can lead to evictions and bans from shelters or motels⁷⁴
- d. Shelters can be too crowded, overstimulating, overwhelming, or otherwise unable to meet accommodation needs⁷⁵
- e. Disproportionate risk of harassment or violence in shelters⁷⁶
- f. Inability to follow restrictive rules in shelters (particularly respecting substance use). Restrictive shelter environments can have a triggering effect on mental health and prior experiences of trauma⁷⁷
- g. Motels are not suitable or safe for those who lack capacity, have serious cognitive, mental health, and/or substance use issues, and they lack access to required supports⁷⁸
- h. Unsupervised drug use in motels can lead to overdose with no one nearby to notice or assist (a risk that may be mitigated by the “buddy system” in the Encampment)⁷⁹
- i. Struggling to keep track of appointments, completing forms, accessing ODSP⁸⁰

32. For many, encampments are the only housing option available, or the only available option that meets their needs.⁸¹ The availability, accessibility, and adequacy of indoor shelter plays a significant role in determining whether a person “chooses” to reside in an encampment.⁸² For example, shelters and motels may not be wheelchair accessible, trans-inclusive, or safe for people experiencing complex trauma. People with mental health/addiction issues face the significant

⁷³ Allt Aff, RARV.2, p 18, para 8(a), **B-1-8054**; Pauly Aff, SupRARV.2, p 213, para 13, **B-1-9372**; PECH Ex B to Alton Aff., RARV.2, p 61 (B-1-8097)

⁷⁴ National Protocol, Ex D to Alton Aff, RARV.2, p 178, **B-1-8214**; 1st Escobar Aff, RARV.3, p 101, para 13, **B-1-8445**; Schwan Aff, SupRARV.3, pp 17-18, para 24, **B-1-9587 to B-1-9588**

⁷⁵ Allt Aff, RARV.2, pp 21-22, para 18, **B-1-8057-B-1-8058**; Gupta Aff, SupRARV.2 pp 12-13, para 13, **B-1-9171 to B-1-9172**; Pauly Aff, SupRARV.2, p 211, para 8, **B-1-9370**; Houle Aff, Sup RARV.3, p 467, para 47, **B-1-10037**; Fed Housing Advocate Report Encampments, Ex H to Houle Aff, Sup RARV.3, p 789, **B-1-10359**; National Protocol, Ex L, Sup RARV.3, p 879, **B-1-10449**

⁷⁶ Houle Aff, Sup RARV.3, p 467, para 47, **B-1-10037**

⁷⁷ Houle Aff, Sup RARV.3, pp 461-2, paras 23, 27, **B-1-10031 to B-1-10032**; Fed Housing Advocate Report Encampments, Ex H to Houle Aff., Sup RARV.3, p 789, **B-1-10359**; Allt Aff, RARV.2, p 22, para 19, **B-1-8058**; Pauly Aff, SupRARV.2, p 211, para 8, **B-1-9370**; Gupta Aff, SupRARV.2 pp 12-14, paras 13-14, **B-1-9171-B-1-9173**; Fed Housing Advocate Report Encampments, Ex H to Houle Aff, Sup RARV.3, p 789, **B-1-10359**

⁷⁸ Allt Aff, RARV.2, pp 19-21, paras 13-17, **B-1-8055 to B-1-8057**; 1st Escobar Aff, RARV.3, pp 103-104, paras 21-24, **B-1-8447-B-1-8448**

⁷⁹ Allt Aff, RARV.2, p 21, para 17, **B-1-8057**

⁸⁰ Allt Aff, RARV.2, p 18, para 8(c), **B-1-8054**

⁸¹ Pauly Aff, SupRARV.2, pp 210-211, paras 7-8, **B-1-9369 to B-1-9370**; National Protocol, Ex D to Alton Aff, RARV.2, p 178, **B-1-8214**; Human Rights-based Approach Encampments, Ex G to Houle Aff, SupRARV.3, p 738, **B-1-10308**; Fed Housing Advocate Report Encampments, Ex H to Houle Aff, SupRARV.3, p 779, **B-1-10349**

⁸² National Protocol, Ex D to Alton Aff, RARV.2, p 178, **B-1-8214**; Fed Housing Advocate Interim Encampment Report, Ex I to Houle Aff., Sup RARV.3, p 825, **B-1-10395**; National Protocol, Ex L to Houle Aff., Sup RARV.3, p 879, **B-1-10449**; Pauly Aff, SupRARV.2, p 211, para 8, **B-1-9370**; Schwan Aff, SupRARV.3, p 21, para 32, **B-1-9591**

accessibility barriers noted above. Under such conditions, encampments are a *necessity* or *the safest option available* for some of the most vulnerable in our society.⁸³ Accordingly, the “choice” to live in an encampment should not be trivialized as a “preference.”⁸⁴

33. In *Persons Unknown*, the court correctly held that choices are constrained or non-existent when made in the context of poverty, addiction, disability, and insufficient shelter alternatives.⁸⁵ Respecting the dignity and autonomy of homeless individuals means avoiding a paternalistic “best interests” approach and recognizing that they are experts of their own lives who can judge what is necessary for their own well-being. This is especially so for people with mental health/addictions issues who have long faced enduring discriminatory stereotypes about inherent unreliability, lack of credibility, incapacity to make basic decisions, and even dangerousness.⁸⁶

34. Because there are no barriers to entry, the Encampment operates as a necessary and inclusive refuge available to all people experiencing homelessness in the Region, where accessible shelter spaces are insufficient to meet demand and outdoor sheltering is otherwise prohibited. As acknowledged by Peter Sweeney: “encampments are a reality in our current situation.”⁸⁷

The Legal Framework in Which the By-Laws Operate

35. The By-Laws do not operate in a legal vacuum and it is critical to consider the legal landscape in the Region as part of the constitutional analysis.⁸⁸ Contrary to the Region’s assertion that the Encampment is “lawless,”⁸⁹ all federal, provincial, and municipal laws continue to apply

⁸³ National Protocol, Ex L to Houle Aff., Sup RARV.3, p 879, **B-1-10449**

⁸⁴ Region factum, paras 42, 70, 76, **A5213, A5227, A5229-A5230**

⁸⁵ *Persons Unknown*, [para 106](#). Arguments about personal choices negating constitutional protection were rejected in *Bedford*, [paras 79-85](#), and *PHS Community*, [paras 97-106](#)

⁸⁶ Ontario Human Rights Commission, *Minds that Matter: Report on the Consultation on Human Rights, Mental Health and Addictions* (2012: Govt of Ont.), [Part B](#); *Ontario (Attorney General) v G*, [2020 SCC 38](#), [paras 1, 61 to 63](#) (*per* Karakatsanis J)

⁸⁷ 2nd Sweeney XE, JTBV.4, p 25, Q/As 46, **A4092**

⁸⁸ *Canadian Council for Refugees v Canada (Citizenship and Immigration)*, [2023 SCC 17](#), [para 69](#) [“CCR”]

⁸⁹ Region Factum, para 48, **A5216**; this type of language feeds harmful stereotypes about homeless people and people with mental health and addictions as being inherently criminal.

with the limited exception of certain provisions of the CUB, which are inoperative only as they apply to prevent Encampment residents from living on and erecting temporary shelters without a permit when the number of homeless persons exceeds the number of available accessible shelter beds in the Region.⁹⁰ All provisions of the CUB continue to apply to all other Region-owned land and similar by-law provisions restricting shelter exist at the lower-tier municipal levels.⁹¹ This means that the Encampment is currently the only place in the Region where it is not illegal for homeless people to set up a tent or structure. The Region has clearly stated that if the Encampment is cleared, it is not prepared to allow homeless people to shelter outdoors anywhere on Region property.⁹²

36. In addition, when Regional Council adopted the Plan to End Chronic Homelessness (“PECH”) as its official plan to “prevent, address, and end homelessness”, it voluntarily committed itself to a human rights approach to ending homelessness, imposing upon itself positive obligations to address the root causes of homelessness to achieve long-term sustainable change, with the acknowledgement that these would have cost consequences.⁹³ Remaining consistent with PECH was an explicitly stated objective when passing the By-Laws (pre and post amendment).⁹⁴

The By-Laws Infringe Section 7 of the Charter

37. To establish a violation of s. 7 of the *Charter*, a claimant must first prove that the impugned legislation deprives them of life, liberty, or security of the person. This analysis asks whether the legislation engages those interests by causing a limitation or negative impact on, an infringement of, or an interference with them. A risk of such a deprivation is sufficient. Second, challengers

⁹⁰ *Persons Unknown*, para 158

⁹¹ 2nd Sweeney Aff, ReplyAR, p 14, para 13, **A2263**; 2nd Sweeney XE JTbv.3, pp 31-32, Q/As 84, 86, **A4050-A4051**

⁹² Respondents Factum, para 27, **B-1-11025 to B-1-11026**

⁹³ PECH, Ex B to Alton Affidavit, RAR V.2, pp 63, 111, **B-1-8088; B-1-8147**

⁹⁴ 1st Sweeney Aff., AR, pp 29-30, paras 57-58, **A1751-A1752**; Region Report PDL-LEG-25-017, Ex C to 1st Sweeney Aff, AR, p 148, **A1870**; Further Amended Notice of Application, SupAR, pp 10-11, para 2(h), **A2350-A2351**; Region Factum, para 2, **A5195**

must show that the deprivation is not in accordance with the principles of fundamental justice.⁹⁵

38. The protection of equality is a fundamental lens that must be applied when engaging in *Charter* analysis.⁹⁶ In particular, a s. 7 analysis must take into account the purpose of the equality guarantee in promoting equal benefit of the law to *ensure the law responds to the realities and needs* of disadvantaged individuals and groups whose protection is at the heart of s. 15.⁹⁷ This requires the court to recognize that people living in encampments are some of the most marginalized in society and who frequently face prejudice linked to colonialism, racism, sexism, ableism, and other forms of discrimination, particularly when analysing the effects of a law. This equality-based analysis was utilized in *Persons Unknown* as illustrated by the following findings:

- a. to be of any real value, shelter spaces must be truly accessible to accommodate the varied needs of homeless people in the Region ([para 93](#))
- b. that the law at issue impacted marginalized people in the Region who were not named parties and that their rights deserved *Charter* protection ([para 94](#); [para 104](#))
- c. arguments about personal “choice” cannot negate a breach of s. 7 where choices are constrained by poverty, drug addiction, disability, and insufficient shelter alternatives ([para 106](#))
- d. people with mental illness, substance abuse, or capacity issues may feel the negative effects of a law more strongly ([para 117](#))

The By-Laws Engage Life, Liberty, and Security of the Person of the Region’s Homeless

39. Enforcement of the By-Laws will remove the only place it is not illegal for the Region’s homeless to erect rudimentary shelter outdoors in circumstances where there are vastly insufficient accessible shelter spaces. This risks impacting the rights to life, liberty, and security of the person of all of the Region’s chronically homeless, whether they are classified as Existing Residents, Non-Existing Residents, or Non-Residents.

40. “**Existing Residents**” are defined by the Region as those who resided at the Encampment

⁹⁵ *CCR*, [para 56](#)

⁹⁶ Peter W Hogg, “[Equality As a Charter Value in Constitutional Interpretation](#)” (2003) 20 *Sup Ct L Rev* (2d)

⁹⁷ *Andrews v Law Society of British Columbia*, [1989] 1 SCR 143, p 185, per McIntyre J [“Andrews”]; *Winnipeg Child and Family Services v KLW*, 2000 SCC 48, [para 72](#); *Canada (Attorney General) v Bedford*, 2012 ONCA 186, [para 356](#), per MacPherson JA dissenting in part, rev’d on other grounds, [2013 SCC 72](#)

on April 16, 2025.⁹⁸ According to the Region, 11 of the Existing Residents left the Encampment at some point after April 16, 2025, but there is no evidence as to why they left, whether they obtained indoor shelter, or if they plan to return.⁹⁹ The evidence is replete, however, with examples of people moving in and out of the Encampment when it was the safest available option or when they had nowhere else to go, which is consistent with the fluid nature of encampments and the reality of chronic homelessness.¹⁰⁰

41. Of the Existing Residents who accepted an offer of Alternative Accommodation, the majority received temporary and precarious shelter in motels,¹⁰¹ which the evidence demonstrates is fundamentally unsuitable for people with mental health and addiction disabilities.¹⁰² In addition, if they lose the accommodation due to a “non-compliance with rules”, which uniquely and predominantly impacts persons with mental health/addiction disabilities, there is only a requirement for USWs to make “best efforts” to resolve the issue or find different Alternative Accommodation.¹⁰³ The By-Laws are silent on how the loss of Alternative Accommodation would come to the Region’s attention, or how different Alternative Accommodation could be made available in the context of the current lack of shelter capacity.

42. If Existing Residents return to the Encampment prior to eviction, there is no guarantee they will not be subject to eviction for the following reasons:¹⁰⁴

⁹⁸ By-Laws, s 1(7) “Resident”, Ex B to Kang Aff, SupAR, p 110, **A2450**

⁹⁹ Region Factum, para 5, **A5197**. The Region makes the unfounded statement at para 72 (**A5228**) of its factum that all 40 Existing Residents are no longer at the Encampment *due to their efforts*; in fact, 11 left without accepting offers from the Region and their whereabouts are either unknown or they are incarcerated. Moss Undertakings, Brief of UTs, #2, **A4882**. It also bears noting that there is no way of corroborating this evidence, as the Region did not disclose the name of people who were counted as Existing Residents.

¹⁰⁰ Respondents Factum, para 31 (footnote 81), **B-1-11027**; Gaetz Aff, SupRARV.2, p 47, para 8, **B-1-9206**

¹⁰¹ Moss Undertakings, Brief of UTs, #2, **A4882**; Respondents Factum, paras 41-44, **B-1-11030 to B-1-11032**

¹⁰² See para 30, above

¹⁰³ By-Laws, Schedule C, s 2(e), Ex B to Kang Aff., SupAR, p 116, **A2456**

¹⁰⁴ Although as of February 2026 (according to the Region), there were no Existing Residents in the Encampment, the above examples are all reasonably foreseeable scenarios grounded in the evidence, and not “fanciful speculation”: *Quebec (Attorney General) v Senneville*, [2025 SCC 33](#), [para 48](#), [para 54](#) [“*Senneville*”]

- a. they can be removed involuntarily from the Encampment if they engage in a “Prohibited Activity” that creates or contributes to a serious risk to health or safety¹⁰⁵
- b. they can be removed involuntarily from the Encampment if, for any reason, they decline or fail to accept a written offer of “Alternative Accommodation” by March 31, 2026. There is no requirement in the By-Laws that the offer of Alternative Accommodation be safe or accommodate an individual’s needs (such as a disability-related accommodation).¹⁰⁶ According to the Federal Housing Advocate, this is referred to as eviction by coercion.¹⁰⁷

43. Accordingly, given the lack of guarantees to accessible indoor shelter at the time of enforcement, combined with the fluid nature of chronic homelessness, the By-Laws engage the rights life, liberty, and security of the person of the Existing Residents.

44. “**Non-Existing Residents**” (that is, persons who have resided at the Encampment after April 16, 2025) can be removed from the Encampment prior to the date it is cleared pursuant to the *Trespass to Property Act*, if they engage in Prohibited Activities,¹⁰⁸ which include:

- a. acts which are reasonably perceived as intimidating.¹⁰⁹ This provision would likely disproportionately impact people with mental health and addictions disabilities;
- b. erecting a shelter or other structure after April 16, 2025;¹¹⁰ or
- c. residing at the Encampment.¹¹¹

45. While the Region states it will offer to bring them into the housing stability system and endeavour to provide them with housing options (meaning adding them to long waitlists they are likely already on),¹¹² this is explicitly not required in order to enforce the By-Laws, and it is not a guarantee of accessible shelter by the time the Encampment is cleared.¹¹³ In the injunction motion, the Region acknowledged there is a “lower priority” for available resources for people who do not

¹⁰⁵ By-Laws, s 6(1)(a), Ex B to Kang Aff., SupAR, p 112, **A2452**

¹⁰⁶ By-Laws, s 6(1)(b), Ex B to Kang Aff, SupAR, p 112, **A2452**

¹⁰⁷ Human Rights-based Approach Encampments, Ex G to Houle Aff, SupRARV.3, p 746, **B-1-10316**

¹⁰⁸ By-Laws, s 2, s 5(10), Ex B to Kang Aff., SupAR, pp 110-111, **A2450-A2451**

¹⁰⁹ By-Laws, Schedule B, 1(b), Ex B to Kang Aff., SupAR, p 115, **A2455**

¹¹⁰ By-Laws, Schedule B, 1(d), Ex B to Kang Aff., SupAR, p 115, **A2455**

¹¹¹ By-Laws, Schedule B, 1(e), Ex B to Kang Aff., SupAR, p 115, **A2455**

¹¹² Respondents Factum, para 2, **B-1-11017**

¹¹³ By-Laws, s 6(2), Ex B to Kang Aff, SupAR, p 112, **A2452**

qualify as Existing Residents.¹¹⁴

46. In addition to the impact on the date of eviction, in circumstances where accessible shelter capacity is insufficient and outdoor sheltering is otherwise prohibited, removing the only legal place to shelter engages the rights to life, liberty, and security of the person.

47. **The Region’s Other Chronic Homeless Population:** As outlined above, the Encampment functions as a sheltering option of last resort for all homeless individuals in the Region; it is inherently dynamic, with people moving in and out over time when refuge is needed.¹¹⁵ Accordingly, any restriction on the Encampment’s existence or use engages the s. 7 rights of both current and prospective residents in circumstances where accessible shelter capacity is insufficient and outdoor sheltering is otherwise prohibited. If the Encampment is not available to these non-resident individuals, they risk suffering significant adverse effects.¹¹⁶

48. In the present case, the evidence shows that if current residents at the Encampment (either Existing or Non-Existing) are prioritized for limited shelter spaces by the Region due to the By-Laws, the wait time for other, equally marginalized people, will increase.¹¹⁷ In respect of anticipated harms to people not classified as “Existing Residents”, Dr. Hwang stated:

[W]hat is proposed [in the By-Laws] is that it creates two groups of people...one group who is provided with engagement and potentially options and another group that either will not or may not receive those same options ...those not provided options would be much more likely to experience adverse effects and harms when they are removed from the site.¹¹⁸

49. The Region’s application is not restricted to determining whether the By-Laws comply with

¹¹⁴ Region Factum (Injunction Motion), para 9

¹¹⁵ Gaetz Aff, SupRARV.2, p 47, para 8, **B-1-9206**. Also see, 1st Sweeney Aff, AR, pp 20-21, para 73, **A1756-A1757** Dr. Gaetz opined, that, “[f]or many people homelessness is not a static state but rather a fluid experience, where one’s shelter circumstances and options may shift and change quite dramatically and frequently.”

¹¹⁶ Hwang Aff, SupRARV.1, pp 71-72, paras 9-10, **B-1-8870-B-1-8871**; Respondents Factum, para 96, **B-1-11048**

¹¹⁷ 1st Escobar Aff, RARV.3, p 100, para 10, **B-1-8444**; 2nd Escobar Aff, RARV.3, p 128, para 13, **B-1-8472**; Escobar, XE, JTBV.1, pp 427-428, Q/As 171-172, **A2946-A2947**; Allt XE, JTBV.1.), p 67, Q/As 130-131, **B-1-5629**; 3rd Escobar Aff, 2ndSuppRAR, pp 76-77, para 26, **B-1-10570 to B-1-10571**

¹¹⁸ Hwang XE, JTBV.1, pp 500-501, Q/As.119, **A3019-A3020**

the *Charter* only with respect to Existing Residents or Non-Residents.¹¹⁹ The respondents include “Persons Unknown”, a recognition of the systemic impacts of the litigation beyond the Named Respondents and Existing or Non-Residents. This approach is consistent with the approach taken in both *Persons Unknown* and *Kingston*.¹²⁰

50. Finally, a challenge to legislation under s. 52 does not require that the impugned law breach (or only breach) the rights of the claimant – a declaration of invalidity can be sought on the grounds that a law has unconstitutional effects on the claimant’s rights or those of third parties. This reflects the principle that the Constitution belongs to all citizens.¹²¹

The By-Laws Engage the Right to Life and Security of the Person

51. The s. 7 right to life is engaged where “the law or state action imposes death or an increased risk of death on a person, either directly or indirectly.”¹²² Courts have consistently held that prohibiting homeless persons from taking measures to shelter themselves by erecting temporary structures in circumstances where there are no practical housing alternatives engages the right to life due to exposure to risks of serious harm including death.¹²³

52. The right to security of the person protects both the physical and psychological integrity of the individual. This right is engaged by “serious state-imposed psychological stress”, objectively measured, that need not rise to the level of nervous shock or psychiatric illness.¹²⁴ A combination of any of the following factors – stigma, loss of privacy, stress and anxiety, possible disruption of family and social life, uncertainty as to outcome and risk of sanction – is sufficient to constitute a

¹¹⁹ Further Amended Notice of Application, SupAR, p 11, para 2(i), **A2351**

¹²⁰ *Kingston*, [para 124](#); *Persons Unknown*, [para 94](#)

¹²¹ *Nur*, [para 51](#); *Senneville*, [paras 46-48](#)

¹²² *Carter*, [para 62](#); *PHS Community*, [para 93](#)

¹²³ *Black*, [paras 50-52](#); *Adams BCSC*, [paras 143-145](#); *aff’d Adams BCCA*; *Abbotsford (City) v Shantz*, [2015 BCSC 1909](#), [para 132](#) [“*Abbotsford*”]; *Kingston*, [paras 78-79](#); *Vandenberg v Vancouver (City) Fire and Rescue Services*, [2023 BCSC 2104](#), [paras 143-145](#) [“*Vandenberg*”]

¹²⁴ *G(J)*, [paras 58 to 67](#) (*per* Lamer CJ)

deprivation of security of the person.¹²⁵

53. The evidence is clear that life and security of the person are engaged by the By-Laws through forced eviction from the Encampment and the resultant removal of any legal outdoor sheltering options for the homeless in the Region when many have no choice but to live outdoors:

- a. Homeless individuals who are prohibited from erecting rudimentary shelter from the elements will suffer clear and direct adverse impacts on their health, such as a risk of hyperthermia (which can lead to death), serious skin and foot diseases, respiratory diseases, severe sunburn and heatstroke, and severe disturbed and fragmented sleep. As well, they are more likely to report victimization than people staying in emergency shelters.¹²⁶
- b. Forced evictions from encampments contribute to the declining health of homeless individuals due to loss of survival items and medication; increase to trauma and deterioration of mental health; loss of community and social connections; loss of connections to health and social support services available at the Encampment; increased risk of overdose and death; displacement to remote public spaces that are less safe and visible and that impede access to pharmacies, medical appointments, methadone clinics, and food sources.¹²⁷
- c. Negative interactions with law enforcement can cause emotional distress and build distrust, exacerbating social exclusion and increasing reluctance to seek health and social supports.¹²⁸
- d. Encampment evictions increase the stigmatization of homeless people¹²⁹

54. Moving people against their will from encampments, even with notice and engagement (such as preparing IHPs¹³⁰) can have adverse impacts.¹³¹ Forced evictions, or even the prospect of forced eviction, are traumatizing, as corroborated by one of the Region's own witnesses.¹³²

55. The Region asserts that living indoors, even if at shelters or motels, is associated with better

¹²⁵ *G(J)*, [paras 58 to 67](#) (per Lamer CJ)

¹²⁶ Hwang Aff, SupRARV.1, pp 71-71, paras 9-10 (B-1-8870-B-1-8871) Gupta Aff, SupRARV.2, pp11, 14-15, para 9(e)(iv), 16, **B-1-9170, B-1-9173 to B-1-9174**

¹²⁷ Pauly Aff, SupRARV.2, pp 216-222 paras 20-25, **B-1-9375-B-1-9381**; Hwang Aff, SupRARV.1, pp 72-73, paras 11-12, **B-1-8871 to B-1-8872**; Sanguen Health Centre Statement, Ex I to Kubis Aff, RARV.4, p 269, **B-1-8797**; Houle Aff., Sup RARV.3, p 464, para 35, **B-1-10034**; 1st Escobar Aff, RARV.3, p 102, para 19, **B-1-8446**

¹²⁸ Aff, SupRARV.1, pp 73, para 13, **B-1-8872**

¹²⁹ Houle Aff, Sup RARV.3, p 468, para 53, **B-1-10038**; Pauly Aff, SupRARV.2, p 217, para 20(c), **B-1-9376**; Schwan Aff, SupRARV.3, p 26, para 44, **B-1-9596**

¹³⁰ Individual Housing Plans

¹³¹ Sanguen Health Centre Statement, Ex I to Kubis Aff, RARV.4, p 269, **B-1-8797**

¹³² Houle Aff, Sup RARV.3, p 465, paras 38-39, **B-1-10035**; Encampments Across Canada, Ex F to Houle Aff., Sup RARV.3, p 700, **B-1-10270**; Fed Housing Advocate Report Encampments, Ex H to Houle Aff., Sup RARV.3, p 786, **B-1-10356**; Sweeney XE, JTBV.5, pp 34-35, Q/As.72, **A3110-A3111**

health outcomes than living outside. First, as noted above, the offer of indoor Alternative Accommodation is only available for a small percentage of the homeless in the Region; for most, however, there is no option but to live outdoors due to a lack of available and accessible indoor shelter. Secondly, this blanket assertion does not apply to persons with mental health/ addiction disabilities or persons who lack mental capacity. In fact, as noted above at para 31, the risk of harm to these individuals may be greater indoors. Contrary to the Region’s claim that “preferring” to live in the Encampment is the result of “subjective feelings”, the evidence shows that Encampment residents face *significant accessibility barriers* to indoor shelter based on disability, sex, creed, gender, or an intersection of these or other grounds of discrimination.

56. Accordingly, by removing the only currently legally permissible place in the Region for homeless individuals to erect shelter that is necessary to protect them from the risk of serious harm or death, in the context of inadequate accessible indoor shelter, the By-Laws engage the rights to life and security of the person.

The By-Laws Engage the Right to Liberty

57. Like the CUB, the By-Laws can be enforced through the *Trespass to Property Act* (“TPA”) to “move offending persons from the property.”¹³³ In addition, under the TPA, police, occupiers, or persons authorized by the occupier can make warrantless arrests against people they have reasonable and probable grounds to believe are trespassing.¹³⁴ Placing a person under arrest inherently infringes their liberty.¹³⁵ Accordingly, the risk of arrest authorized by enforcement of the By-Laws engages the claimants’ liberty interest.

58. In addition, the By-Laws engage liberty by affecting fundamental life choices inherent to

¹³³ *Persons Unknown*, [para 10](#); Region Report PDL-LEG-26-001, Ex B to 4th Sweeney Aff, SupAR, p 100, **A2440**; By-Laws, s 5(10), Ex B to Kang Aff, SupAR, p 111, **A2451**

¹³⁴ *Trespass to Property Act*, [RSO 1990, c T21, ss 9-10](#)

¹³⁵ *R v Penunsi*, [2019 SCC 39, para 73](#)

personal autonomy and dignity.¹³⁶ Several encampment decisions, including *Persons Unknown*, have held that prohibiting homeless people from taking simple measures to protect themselves using rudimentary forms of overhead protection, in circumstances where there is no practicable shelter alternative, is a significant interference with their dignity and independence.¹³⁷ The experts in the present case have stated that having access to a tent or similar shelter provides individuals with privacy, which in turn supports dignity and autonomy.¹³⁸

59. In this vein, a majority of the Ontario Court of Appeal recently held that the right to decide where to live falls within the sphere of protected interests in s. 7:

...the choice of where to live is a deeply personal, deeply consequential decision that affects an individual's life, opportunities, health, personal development and quality of life. It determines an individual's proximity to family members and friends; their access to groceries, employment opportunities, medical facilities, schools, religious, cultural and leisure amenities; the nature and extent of their immediate social circle; and their physical environment.¹³⁹

60. This finding is consistent with the Federal government's recognition in the *National Housing Strategy Act* that housing is essential to the inherent dignity and well-being of the person,¹⁴⁰ and the Federal Housing Advocate's observation that residents often view encampments as a home providing protection, comfort, privacy, and community and that without this recognition these protective and security aspects are revoked.¹⁴¹

61. The evidence from the Respondent Encampment residents is that the choice to live in the Encampment was a deeply personal and deeply consequential choice with impacts on opportunities, health, safety, and quality of life, made in the context of severely constrained

¹³⁶ *Malmo-Levine*, para 85 (per Gonthier and Binnie JJ); *Morgentaler*, 1988 CanLII 90 (SCC), p 163 (per Wilson J); *Drover v Canada (Attorney General)*, 2025 ONCA 468, paras 129-132 [“*Drover*”]

¹³⁷ *Adams BCCA*, para 109; *Vandenberg*, paras 144 to 147; *Persons Unknown*, para 98

¹³⁸ *Gupta Aff*, SupRARV.2 pp 14-15, para 16, B-1-9173 to B-1-9174

¹³⁹ *Drover*, paras 131, para 199, para 216, paras 220-221

¹⁴⁰ *National Housing Strategy Act*, SC 2019, c 29, s 313, preamble

¹⁴¹ *Encampments Across Canada*, Ex F to Houle Aff., Sup RARV.3, p 705, B-1-10275

choices. The Respondents noted the benefits of the Encampment as it relates to safety; autonomy; privacy; the proximity to essential services such as the drop-in centre where residents can access meals, coffee, water, showers, laundry, and use the telephone; the health and harm reduction services provided on-site; access to community donations to food, water, clothing, harm reduction supplies; the sense of community; and the ability to live with their partner.¹⁴²

62. There is no principled basis to argue that the court's general pronouncements about liberty would not equally apply to homeless people. To do otherwise would be to suggest that homeless people do not deserve the same level of dignity and autonomy afforded to others and would reinforce paternalistic and ableist stereotypes.¹⁴³ This does not mean that there is an unconstrained right to live wherever one pleases (just as there is no unconstrained right to be free from arrest or detention); it only means that the liberty interest, a component of the s. 7 inquiry, is engaged.

The Deprivations to Life, Liberty, and Security of the Person are Not in Accordance with the Principles of Fundamental Justice

63. Once it is determined that the right to life, liberty, or security is engaged by the By-Laws, the next step in the s. 7 analysis is to determine whether the deprivation is in accordance with the principles of fundamental justice which are the basic values that underpin our constitutional order.¹⁴⁴ The principles of arbitrariness, overbreadth, and gross disproportionality compare the effect of the rights infringement on the *Charter* claimant with the objective of the law; ancillary benefits to the general population are not considered. Further, the analysis is qualitative: a grossly disproportionate, overbroad, or arbitrary effect on one person is sufficient to establish a breach.¹⁴⁵

¹⁴² Respondent factum, paras 13-15, **B-1-11021 to B-1-11022**; Gupta Aff, SupRARV.2 pp 17-19, paras 20-21, **B-1-9177 to B-1-9178**; Houle Aff, Sup RARV.3, p 464, paras 32-34, **B-1-10034**

¹⁴³ Ontario Human Rights Commission, *Minds that Matter: Report on the Consultation on Human Rights, Mental Health and Addictions* (2012: Government of Ontario), Part B

¹⁴⁴ *Canada (Attorney General) v Bedford*, 2013 SCC 72, para 96

¹⁴⁵ *Bedford*, para 123

The Objective of the By-Law

64. To determine the objective of the law, courts look to statements of purpose in the legislation, if any; the text, context, and scheme of the legislation; and extrinsic evidence such as legislative history and evolution.¹⁴⁶ Although a preamble can be a useful tool in interpreting the purpose of a statute or a provision, it is not conclusive or determinative.¹⁴⁷

65. *Amicus* submits that the objective of the law is to obtain vacant possession of the Property to facilitate the construction of the KCTH *in a manner consistent with PECH*; that is, in a human rights-focused manner. This is supported by the language of the preamble, the incorporation of the Transition Protocol into the Amended By-Law, the stated purposes of the Region, the context in which the By-Laws were passed, and the principles of conformity with international law.

66. First, although the preamble does not explicitly mention PECH, it affirms that the Region "wishes to specifically provide for" current Encampment residents. After acknowledging the *Persons Unknown* decision, the preamble notes that the Region has "expanded the number of available and accessible shelter beds", signalling a recognition that accessibility is a critical component in assessing the adequacy of shelter capacity in the By-Laws.

67. Second, the Region codified the Transition Protocol when it passed the Amended By-Law to "obtain vacant possession in a fair and compassionate manner."¹⁴⁸ The Transition Protocol states that the Region's intention is to "minimize the possible negative impacts" on Encampment Residents prior to enforcement of the By-Laws. When amending the original By-Law, the Region also removed an offence provision to avoid penalizing "marginalized persons on the property."¹⁴⁹

68. Third, the Regional Council report dated April 25, 2025 in respect of passing the original

¹⁴⁶ *Sharma*, [para 88](#)

¹⁴⁷ *References re Greenhouse Gas Pollution Pricing Act*, [2021 SCC 11](#), [para 59](#)

¹⁴⁸ Region Report PDL-LEG-26-001, Ex B to Kang Aff, SupAR, p 97, **A2437**

¹⁴⁹ Region Report PDL-LEG-26-001, Ex B to Kang Aff, SupAR, p 101, **A2441**

By-Law, in reference to the Transition Protocol plan, stated: “that this work [will] be accomplished with an approach consistent with the Plan to End Chronic Homelessness.”¹⁵⁰ In addition, in the Further Amended Notice of Application, the Region explicitly pleaded that the By-Laws are “intended to respect the *Charter* rights of the [Existing Residents]” and are “accompanied by a plan to provide accessible shelter facilities to Existing Residents, in a manner consistent with the Region’s Plan to End Chronic Homelessness.”¹⁵¹

69. Fourth, by voting to approve PECH as its official plan to end homelessness, Regional Council voted to voluntarily commit itself to take a human rights approach, which imposed upon the Region positive obligations to address the root causes of homelessness to achieve long-term, sustainable change.¹⁵² This commitment was not disavowed in the By-Laws; rather, the preamble, words of the By-Laws, and statements by the Region support that the purpose of the By-Laws was to obtain vacant possession in a manner consistent with PECH. This is also in line with the interpretive principle that the more a particular interpretation furthers systemic harmony of the overall legal terrain, the greater its interpretative resonance.¹⁵³

70. Finally, given the requirements of international law set out at paras 24-26, above, this interpretation complies with the presumption of conformity, that courts must interpret domestic law in ways that are consistent with international law obligations.

The By-Laws are Arbitrary

71. For a law to be arbitrary, there must be no rational connection between the law’s objectives and the limit it imposes on life, liberty, or security of the person.¹⁵⁴ Given the preceding discussion about the serious life-threatening effects the By-Law poses to unhoused people who

¹⁵⁰ Region Report PDL-LEG-25-021, Ex C to 1st Sweeney Aff, AR, p 148, **A1870**

¹⁵¹ Further Amended Notice of Application, SupAR, pp 10-11, para 2(h), **A2350-A2351** [Emphasis added]

¹⁵² Region Report CSD-HOU-24-006, Ex A to Alton Aff, RARV.2, pp 37-44, **B-1-8073 to B-1-8080**

¹⁵³ Cameron Hutchison, *The Fundamentals of Statutory Interpretation*, 2nd ed (Toronto: LexisNexis Canada Inc, 2022), §2.04

¹⁵⁴ *Carter*, [para 83](#)

overwhelmingly belong to marginalized groups, it cannot be said that there is any rational connection between obtaining vacant possession of the property in a human rights-compliant manner and the effects of the By-Law.¹⁵⁵

72. The human rights approach in PECH requires treating homeless individuals as rights holders whose agency is to be respected. Intersectionality is described as a core tenet of the Region's approach, recognizing that everyone's situation is unique and must be accommodated. The Housing First approach adopted in PECH is to be implemented within a human rights framework. This means prioritizing permanent and supportive housing solutions, flexible wrap-around supports, and integration of health supports, that is centred on the principle that homeless individuals are experts about themselves and whose choices must be respected.¹⁵⁶

73. The By-Laws' purpose bears no relation to its effect for the following reasons:

- a. the By-Laws can result in forced encampment evictions, which are gross violations of human rights and prohibited under international law. If governments fail to provide housing options that are suitable, residents must be permitted to remain or be provided with a satisfactory alternative location while adequate permanent housing is negotiated and put in place.¹⁵⁷
- b. The Transition Protocol only applies to a minority of arbitrarily selected homeless people in the Encampment who happened to reside there on April 16, 2025. Rather than provide a systemic response to homelessness, the effect of the By-Law is to push an already marginalized population away from vital sources of health and community support and access to basic forms of outdoor shelter crucial to survival given that there are no lawful outdoor tenting alternatives. By doing so, it increases segregation, exclusion, and stigmatization and puts the claimants at risk of serious harm or death. It is an assault on dignity, which is at the heart of human rights.
- c. Rather than promoting intersectionality, accommodation and respect for people's choice to know what's best for them, there is no requirement that the Alternative Accommodation offered

¹⁵⁵ *Amicus* also adopts the submissions of the Respondents that the Transition Protocol is not compliant with a human rights-based approach in PECH: Respondents Factum, paras 107-110, **B-1-11134 to B-1-11135**

¹⁵⁶ PECH, Ex B to Alton Aff, RARV.2, pp 63, 120, **B-1-8099, B-1-8156**

¹⁵⁷ National Protocol, Ex D to Alton Aff, RARV.2, pp 189-192, **B-1-8225 to B-1-8228**

be accessible and adequate.¹⁵⁸ Many of the shelter options included as Alternate Accommodation options are fundamentally unsuitable for people with mental health/addiction disabilities who comprise the vast majority of homeless in the Region. In fact, in some cases the Alternative Accommodation may be less safe than the Encampment.

- d. If an Existing Resident fails to respond to or rejects a written offer of Alternative Accommodation for any reason by March 31, 2026, they can be immediately evicted pursuant to the By-Laws; this is in direct opposition to the respect for individual choices and the duty to accommodate under PECH, as well as the *Human Rights Code* and the CPRD¹⁵⁹.
- e. Standards contained in the By-Laws such as “best efforts”, “offering”, and “endeavouring” to find indoor shelter are not sufficient to be considered human rights compliant. Rather, under human rights law, there is a duty to accommodate people with protected grounds such as sex, gender, race, disability, and family status to the point of undue hardship.¹⁶⁰
- f. The By-Law can be enforced with the TPA. Under the TPA, trespassers are guilty of an offence and liable to a fine up to \$10,000; an exorbitant and punitive amount for unhoused persons (which was raised as a concern about the By-Law during a public input session on January 7, 2026).¹⁶¹ Penalizing already oppressed individuals is not consistent with PECH and exacerbates marginalization and stigmatization.
- g. The distinction between an Existing Resident and Non-Existing Residents/Other Homeless in the Region is arbitrary. The nature of encampments is fluid and they are a refuge of last resort for all the homeless of the Region. The distinction is a self-serving fiction and ignores the reality of the Encampment and the needs of other equally marginalized people. The practical effect is that a person who resided at the Encampment on April 17, 2025 is accorded less access to the Region’s housing resources than a person who happened to reside there just one day earlier. The By-Law itself recognizes that the Encampment is not static and that people will

¹⁵⁸ “Adequate” housing is defined in PECH as “[h]ousing that meets the legal standards for security of tenure, affordability, habitability, accessibility, availability of services, location and cultural appropriateness. In the absence of such, the right to housing is not met”: PECH Ex B to Alton Aff., RARV.2, p 61, **B-1-8097**. Also see, Houle Aff, Sup RARV.3, p 466, para 43, **B-1-10036**

¹⁵⁹ *Human Rights Code*, [ss 1, 2\(1\)](#); CPRD, [Art 19](#) requires states to take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of the right to live in the community, with choices equal to others, by ensuring that they have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement

¹⁶⁰ *Human Rights Code*, [ss 1, 2\(1\)](#)

¹⁶¹ *Trespass to Property Act*, [RSO 1990, c T21, s 2\(b\)](#); Region Report PDL-LEG-26-001, Ex B to 4th Sweeney Aff, SupAR, pp 119-120, **A2459-A2460**

continue to seek refuge after April 16, 2025.¹⁶² This bears no relation to a human rights approach to housing and is an approach rejected in *Persons Unknown*: “[w]ere I to accede to the Region’s submission, it seems to me I would be helping to create an immediate disadvantage for those who are homeless and living outside encampments. I am not prepared to do that.”¹⁶³

74. Accordingly, given the By-Law’s serious, life-threatening impacts on unhoused individuals in the Region, who overwhelmingly come from marginalized groups, there is no rational connection to its objective of securing vacant possession in a human rights-compliant manner.

The By-Laws are Grossly Disproportionate

75. A law is grossly disproportionate if the seriousness of the s. 7 deprivation is totally out of sync with the objective of the measure. The analysis balances the negative effect on the individual against the purpose of the law; it does not consider the beneficial effects of the law for society.¹⁶⁴

Any societal benefits from the construction of the KCTH are not part of the analysis.

76. *Amicus* adopts the Respondents’ arguments on gross disproportionality.¹⁶⁵ *Amicus* further submits that the *Charter* requires that careful attention be paid to the diverse impacts that government action has on people with disabilities to give effect to the constitutional promise of human dignity to all.¹⁶⁶ This includes a recognition that the negative consequences of the By-Laws are more severe for those who have mental health or addiction disabilities, or who lack the mental capacity to understand the legal consequences of the By-Laws’ enforcement. This was accepted in *Persons Unknown*.¹⁶⁷

77. Evictions and displacements often cause significant deterioration in mental health or substance use. Mental health symptoms frequently escalate following displacement, with some

¹⁶² Indeed, this was a key concern of the Region during the injunction motion when it was warned of an influx of new residents if the injunction was not granted.

¹⁶³ *Persons Unknown*, para 94

¹⁶⁴ *Bedford*, paras 120-121

¹⁶⁵ Respondents Factum, paras 112-114, **B-1-11054 to B-1-11055**

¹⁶⁶ *Ontario (Attorney General) v G*, 2020 SCC 38, para 61

¹⁶⁷ *Persons Unknown*, para 117

individuals experiencing a complete collapse of previously stable health.¹⁶⁸ For people with a history of mental illness and trauma, forced displacement may result in violence, either physical or “social violence,” such as the violation of rights, personal space, or dignity. This can cause anxiety, distress, and long-lasting psychological harm (“secondary victimization”).¹⁶⁹

78. Displacement of those who struggle with addiction significantly increases their risk of overdose and death. In addition to loss of access to Naloxone, opioid agonist, or safer supply prescriptions and medications, encampment evictions disrupt communities of support that are vital to preventing overdose by ensuring people do not use drugs alone.¹⁷⁰

79. Finally, the Region suggests that the court should defer to the Region’s judgment when analysing gross disproportionality. This is explicitly not part of the s.7 inquiry, and instead belongs in the s.1 analysis.¹⁷¹ The court’s task when determining gross disproportionality is only to weigh the effects of the law on the individual and assess whether they are grossly disproportionate to the purpose of the law. No deference is owed to the government in this assessment.

80. As for the Region’s warning that the court must be “mindful of the limits of its institutional competence” when undertaking the s.7 analysis, the SCC has emphasized that constitutional oversight is the court’s duty even when faced with complex or contentious issues:

The fact that the matter is complex, contentious or laden with social values does not mean that the courts can abdicate the responsibility vested in them by our Constitution to review legislation for *Charter* compliance when citizens challenge it. As this Court has said on a number of occasions, “it is the high duty of this Court to ensure that the Legislatures do not transgress the limits of their constitutional mandate and engage in the illegal exercise of power”....¹⁷²

¹⁶⁸ Gupta Aff, SupRARV.2 pp 14-16, paras 16-17, **B-1-9173 to B-1-9175**; Pauly Aff, SupRARV.2, pp 216-217 para 20(b), **B-1-9375 to B-1-9376**; Houle Aff., Sup RARV.3, p 464, para 35, **B-1-10034**

¹⁶⁹ Gupta Aff, SupRARV.2 pp 14-15, para 16, **B-1-9173 to B-1-9174**; Sanguen Health Centre Statement, Ex I to Kubis Aff, RARV.4, p 269, **B-1-8797**; Houle Aff, Sup RARV.3, p 465, para 39, **B-1-10035**

¹⁷⁰ Pauly Aff, SupRARV.2, pp 219-219 para 20(e), **B-1-9377 to B-1-9378**

¹⁷¹ *Bedford*, [paras 120-121](#)

¹⁷² *Chaoulli v Quebec (Attorney General)*, [2005 SCC 35](#), [para 107](#) (per McLachlin CJ, Major, and Bastarache JJ)

The By-Laws Violate S.15(1) of the Charter and Discriminate on the Basis of Disability

81. *Amicus* acknowledges that *Persons Unknown* found no s. 15(1) violation¹⁷³ but agrees with the Respondents that the SCC’s recent ruling in *Kanyinda*¹⁷⁴ creates a *stare decisis* exception (if *stare decisis* applies), specifically that “[s]ubsequent decisions have affected the validity of the impugned judgment.¹⁷⁵

82. *Person Unknown* focused the s. 15(1) analysis on whether homelessness is an analogous ground and finding that it was not, rejected the s. 15(1) claims based on sex, gender-diversity and disability in one sentence.¹⁷⁶ *Kanyinda* mandates a different approach grounded in an intersectional analysis: claimants will satisfy step 1 of the s. 15(1) analysis even if they only belong to a subgroup experiencing adverse effects. The adverse effects may arise “from the nexus between a distinction that *may not* be rooted in an enumerated characteristic and a subgroup that *must* share an enumerated ground” [in *Kanyinda*, the claimant was a female refugee claimant; “refugee claimant status” is not an enumerated ground but “sex” is). Under this new framework, courts can consider how a claimant’s lived reality as a member of a subgroup creates a discriminatory impact.¹⁷⁷

83. While recognizing that other enumerated grounds such as sex and Indigeneity are also engaged in this case, *Amicus* will focus on the disproportionately adverse impact of the By-Laws on homeless individuals who also struggle with physical, mental health, cognitive and addiction-related disabilities.

The Purpose of s. 15 is Rooted in the Obligation of the State to Accommodate Disability

84. The purpose of s. 15(1) “reflects a profound commitment to promote equality and prevent

¹⁷³ *Persons Unknown*, 2023 ONSC 670, paras 120-127

¹⁷⁴ *Kanyinda*, 2026 SCC 7

¹⁷⁵ Respondents Factum, paras 116-118, **B-I-11056**; *Re Hansard Spruce Mills*, [1954] 4 DLR 590 (BCSC)

¹⁷⁶ *Persons Unknown*, para 127

¹⁷⁷ *Kanyinda*, para 42

discrimination against disadvantaged groups.”¹⁷⁸ Proving a s. 15(1) violation requires a claimant to demonstrate that the impugned law or state action: (Step 1) on its face or in its impact, creates a distinction or disproportionate impact based on enumerated or analogous grounds; and (Step 2) imposes burdens or denies benefits in a manner that reinforces, perpetuates or exacerbates disadvantage.¹⁷⁹

85. Step 1 may be satisfied through evidence of adverse impact discrimination. A seemingly neutral law can have a disproportionate impact on a claimant group.¹⁸⁰ The claimant must establish a causal link between the impugned law and the discriminatory impact - that the adverse impact was caused or contributed to by the impugned law, albeit the law does not need to be the only or dominant cause of the disproportionate effect.¹⁸¹ A claimant does not need to establish exactly why the law being challenged has this impact.¹⁸²

86. To promote substantive equality and the purposive interpretation of s.15(1), the SCC has adopted a flexible approach to proving disproportionate impact such that the evidentiary onus is not onerous.¹⁸³ Adverse impact discrimination is “much more prevalent than the cruder brand of openly direct discrimination” and often poses greater risks to the equality aspirations of disadvantaged groups. Adverse impact discrimination is central to substantive equality, which is the “philosophical premise” and “animating norm” of s.15(1).¹⁸⁴

87. As noted by the SCC in *Eldridge*, “[a]dverse impact discrimination is especially relevant in the case of disability. The government will rarely single out disabled persons for discriminatory treatment. More common are laws of general application that have a disparate impact on the

¹⁷⁸ *Fraser v Canada (Attorney General)*, 2020 SCC 28, para 27, per Abella J [“Fraser”]

¹⁷⁹ *Sharma*, para 28; *Kanyinda*, para 60

¹⁸⁰ *Sharma*, paras 31, para 42

¹⁸¹ *Sharma*, para 44

¹⁸² *Sharma*, paras 45-46

¹⁸³ *Kanyinda*, para 60

¹⁸⁴ *Fraser*, paras 27-49, per Abella J

disabled.”¹⁸⁵ Sometimes, rather than a “headwind” built into a law, the adverse impact discrimination is created by the absence of disability-related accommodation.¹⁸⁶ The accommodation of differences is the true essence of equality and is consistent with obligations owed under the *CRPD*.¹⁸⁷

88. The duty to accommodate drives the obligations State actors have when interacting with, and providing services to, people with disabilities. The SCC has noted that “[t]he *Charter* is not a magic wand that can eliminate physical or mental impairments” but what s.15(1) does is “address the way in which the state responds to people with disabilities” ensuring that governments “may not, intentionally or through a failure of appropriate accommodation” stigmatize or attribute functional limitations to the disability “or fail to recognize the added burdens which persons with disabilities may encounter in achieving self-fulfilment in a world relentlessly oriented to the able-bodied.”¹⁸⁸

89. *Amicus* submits that the Region has failed to recognize the heightened burdens that clearing the Encampment will impose on homeless persons with disabilities and has not implemented adequate accommodations to address the disproportionate impact of the By-Laws on this subgroup of Encampment residents.

Step 1: Enforcement of the By-Laws Disproportionately Impact Persons with Disabilities

90. At Step 1, two types of evidence can assist in establishing adverse impacts: evidence about the claimant group’s situation and evidence about the impacts of the impugned law in practice.¹⁸⁹ With respect to the claimant group’s situation, 78% of the Region’s 2,371 homeless are chronically homeless; 72% report addiction disabilities; 70% report mental health disabilities; 44% report

¹⁸⁵ *Eldridge v British Columbia (Attorney General)*, [1997] 3 SCR 624, para 64 [“*Eldridge*”]

¹⁸⁶ *Fraser*, para 54

¹⁸⁷ *Andrews*, p 168

¹⁸⁸ *Granovsky v Canada (Minister of Employment and Immigration)*, 2000 SCC 28, para 33 [“*Granovsky*”]

¹⁸⁹ *Kanyinda*, para 52

illness/medical conditions while 29% report mobility restrictions/physical limitations; and 28% report acquired brain injuries (“ABI”).¹⁹⁰ The PECH indicates that up to 70% of homeless individuals in the Region screened positive for ABIs, which is consistent with high rates in other regions.¹⁹¹ Eighteen of the Named Respondents report a mental or cognitive disability, 17 have an addiction disability, and 6 have a physical disability/mobility impairment.¹⁹²

91. With respect to the By-Law’s impacts in practice, *Persons Unknown* recognized that the consequences of eviction would be more severe for Encampment residents with mental health and addiction disabilities, a holding that has significant persuasive weight.¹⁹³

92. In addition, the central location of the Encampment facilitates access to food, water, healthcare, and hygiene for Encampment residents with disabilities. The Respondents have indicated that, but for the donations of food, clothing, and other essentials that are brought to the Encampment, it would be difficult for them to avoid hunger and meet basic needs.¹⁹⁴ Respondents with serious mobility restrictions stated that if the Encampment is closed and they are pushed out to more remote areas to sleep rough, they will be unable to walk the distance to access food and healthcare.¹⁹⁵ This is an intersecting reality of enforcement of the By-Laws for homeless individuals with physical disabilities.

93. If the only place in the Region where individuals can shelter lawfully outdoors is taken away, individuals with serious mental health, cognitive and addiction disabilities will be disproportionately unable to access shelters and motels and disproportionately targeted by the *CUB*

¹⁹⁰ 2024 PIT Infographic, Ex A to 1st Escobar Affidavit, RARV.3, p 107, **B-1-8451**

¹⁹¹ PECH, Ex B to Alton Affidavit, RAR V.2, p 70, **B-1-8106**. ABIs are often undiagnosed due to testing and treatment barriers for the homeless population.

¹⁹² Respondents Factum, Appendix B, **B-1-11071 to B-1-11072**

¹⁹³ *Persons Unknown*, [para 117](#)

¹⁹⁴ Respondents Factum, para 13, **B-1-11021**

¹⁹⁵ Such as Named Respondent Aaron Price who has a torn meniscus (**B-1-7909**); Calvin Sharpe who has a bad back and leg from falling off a roof (**B-1-7919**); Jeremy Nichol who suffered a shattered pelvis and uses a mobility scooter (**B-1-7956**); and Joseph Bradley who has an artificial knee (**B-1-7962**), RARV.1, pp 10-63

and the *TPA* for sleeping outdoors.¹⁹⁶ The evidence shows that persons struggling with these types of disabilities are less likely to find accessible alternative accommodation and are more likely to be barred from motels and shelters.¹⁹⁷ Living rough, including in other unlawful encampments, is will be the only available option.

94. Further, enforcement of the By-Laws puts Encampment residents with addiction disabilities at greater risk of overdose and death.¹⁹⁸ Losing the stability of the Encampment, which receives health care and addiction recovery services, also creates barriers for individuals who want to access treatment for substance use. Eviction makes it more difficult to consistently attend pharmacies and medical appointments.¹⁹⁹

The By-Laws Are Not Consistent with the PECH's Comprehensive Accommodation Plan

95. The Region already has a sophisticated understanding of how to accommodate individuals who are homeless and have disability-related needs. The Region voluntarily committed to the PECH which sets out a comprehensive human rights-based approach to ensuring that people with complex mental health, addiction and other disabilities have the same access to housing as the rest of the homeless population.²⁰⁰ The Housing First approach in PECH requires integrated housing, healthcare and support services.²⁰¹ The PECH also provides for supportive housing units (“deeply therapeutic housing”) to address the highest complexity of substance use and concurrent mental health needs, as well as specialized brain injury supports.²⁰²

¹⁹⁶ See para 31, above

¹⁹⁷ For example, see the affidavits of Named Respondent Jeremy Nichol who has been barred from a hotel he previously stayed at (**B-1-9757**); Josephina Dugas who has been barred from the Salvation Army and Argentinia shelters and the Motel 6 a motel (**B-1-7976**); Kyle York who has “conduct disorder” and was barred from the University Transitional Housing Shelter (**B-1-7991 to B-1-7992**); Megan Lopes who has multiple mental health disabilities and has been barred from the Mary’s Place and Bridges shelters for aggressive behaviour (**B-1-8005**), RARV.1, pp 56-106

¹⁹⁸ Allt Aff, RARV.2, p 21, para 17 (**B-1-8057**); see paras 52(b) and 77, above

¹⁹⁹ Gupta Aff, SupRARV.2 pp 17-19, paras 20(c)-(d), **B-1-9177-B-1-9178**

²⁰⁰ PECH, Ex B to Alton Aff, RARV.2, p 63, **B-1-8099**

²⁰¹ PECH, Ex B to Alton Aff, RARV.2, pp 63, 120, **B-1-8099, B-1-8156**

²⁰² PECH, Ex B to Alton Aff., RARV.2, p 61, **B-1-8097**

96. The Transition Protocol in the By-Laws does not meet the human rights obligations set out in PECH (see paras 72-73, above). An accommodation plan that fulfils the Region's s.15(1) obligations would have to be developed in consultation with individuals who are chronically homeless and have disabilities. To address disproportionate impact and individualized accessibility needs, it would also need to include an alternative lawful encampment site of last resort or tenting protocol that facilitates access to essential services and healthcare on par with the current Encampment.²⁰³ The Region could look to the City of London or the City of Thunder Bay, both of which have created lawful designated encampment zones.²⁰⁴

Step 2: Enforcement of the By-Laws Imposes Burdens and Perpetuates Disadvantages Experienced by Homeless Individuals with Disabilities

97. The key question under step two is whether the law worsens or reinforces the disadvantage experienced by the protected group.²⁰⁵ What matters is not discriminatory attitude or intention, but impact. At this second step, in order for the Court to appreciate how the By-Laws impose burdens and perpetuates disadvantage, the lived intersectional realities of claimants in the subgroup must be recognized: "People experience discrimination as whole persons, not as an aggregate of separate characteristics."²⁰⁶ Lack of stability, difficulty accessing services, increased health problems, and risk of death are all burdens experienced disproportionately by people with serious mental health, cognitive, addiction, physical and other disabilities that are made worse by forced eviction.²⁰⁷ Enforcement of the By-Laws also undermines the community some Encampment residents have built, increasing isolation. These are all impacts that deepen pre-existing disadvantages.

98. Although it is not necessary to prove that the By-Laws advance discriminatory stereotypes, evidence of such can go to its impact. The way the Region characterizes some of the Encampment

²⁰³ Given the context of lack of accessible indoor shelter

²⁰⁴ 2nd Pin XE, JTBV.5, pp 98, 101, 110, **A4696, A699, A4708**

²⁰⁵ *Kanyinda*, [para 67](#)

²⁰⁶ *Kanyinda*, [para 63](#); Respondents' Factum, Appendix B and Appendix C, pp 55-62, **B-1-11071 to b-1-1178**

²⁰⁷ *Persons Unknown*, [para 117](#)

residents' disability-related barriers as them "choosing" or having a "preference" to live rough²⁰⁸ distracts from the systemic issues of insufficient accessible shelter alternatives and accommodation. It reinforces the discriminatory attitude that some people are to blame for their own homelessness, are "unhouseable" or too "difficult" to help.

The By-Laws Are Not Saved Under Section 1 of the Charter

99. *Amicus* agrees with the Respondents that the Region has not justified the infringements of ss. 7 and 15(1) *Charter* rights under s. 1.²⁰⁹ In addition, *Amicus* submits that the By-Laws also do not pass the first step of the *Oakes* test, which asks whether the means are rationally connected to the objective. For the reasons outlined above at paras 71-74, it cannot be said that the goal of obtaining vacant possession in a human rights-compliant manner is rationally connected to, or advanced by, denying the human rights of historically disadvantaged, marginalized individuals.²¹⁰

100. In respect of minimal impairment, financial considerations alone cannot justify *Charter* infringements.²¹¹ The Region stated that the cost of acquiring additional land is "impractical" (not impossible) because the cost is "prohibitively high" and the time required to identify, purchase, and prepare new land would delay the project timeline, without providing any specific details as to what the cost might be, why that would be prohibitive, what percentage of the Region budget, the KCTH budget,²¹² or the Affordable Housing and Homelessness budget²¹³ this might represent, or how long purchasing and preparing new land would take.²¹⁴ This is particularly so given the time it has taken to litigate this matter and the on-going delays to the start date of the project. Accordingly, the Region has not discharged its burden of proving that the limits

²⁰⁸ Region's Factum, paras 42, 70, 76, **A5213, A5227, A5229-A5230**

²⁰⁹ Respondents' Factum, paras 135-143, **B-1-11061 to B-1-11063**

²¹⁰ *Vriend v Alberta*, [1998] 1 SCR 493, para 119, per Iacobucci J

²¹¹ *Eldridge*, para 85

²¹² Spooner XE, JTBV.5, pp 127-128, Q/As 12, **A4725-A4726**

²¹³ PECH, Ex B to Alton Aff, RARV.2, p 111, **B-1-8147**

²¹⁴ Spooner Aff, AR, p 363, para 44, **A2085**

to the claimants' rights are demonstrably justified.

The By-Laws Should Be Quashed for Illegality Under Section 273 of the *Municipal Act*

101. *Amicus* adopts the submissions of the Respondents that the By-Laws should be quashed for illegality under s. 273 of the *Municipal Act*.²¹⁵ Bad faith in the municipal law context does not require proof of malice, wrongdoing, or desire for personal advantage; rather, bad faith connotes a lack of candor, frankness, and impartiality.²¹⁶ Indicators of bad faith include questionable timing; decisions made under false pretences; improper motives; lack of notice; the usual practices and procedures are set aside; the parties most affected are kept in the dark; or the law targets one individual or property.²¹⁷

102. *Amicus* adds some additional context to the factor respecting lack of meaningful and effective notice/most affected parties kept in the dark. Individuals impacted by the By-Laws are vulnerable, chronically homeless individuals who the Region knows overwhelmingly struggle with debilitating mental health and/or addiction and/or cognitive challenges. Given this context of vulnerability, meaningful and effective engagement with Encampment residents was required, including providing notice of the By-Laws in a way that accommodated their various needs, abilities, and disabilities.

103. The SCC has recognized an “unfortunate truth” that the history of disabled people in Canada is “largely one of exclusion and marginalization.”²¹⁸ Service providers have a duty to design their services, policies and processes with the needs of people with mental health/cognitive/addiction disabilities in mind to ensure their full integration into all aspects of society.²¹⁹ The duty to take positive action to ensure that members of disadvantaged groups benefit equally and are not

²¹⁵ Respondents Factum, paras 144-145, **B-1-11064**

²¹⁶ *Bertrand v Ramara (Township)*, [2024 ONSC 7291](#), [para 170](#) [“*Bertrand*”]

²¹⁷ *Tiny Township Assn of Responsible Str Owners v Tiny (Township)*, [2025 ONSC 1578](#), [para 35](#) [“*Tiny*”]

²¹⁸ *Eldridge*, [para 56](#) [*Eldridge*]

²¹⁹ Ontario Human Rights Commission, “[Human rights and mental health \(fact sheet\)](#)”

harmed by discriminatory exclusion requires reasonable accommodation.²²⁰ Notice of the original By-Law to residents required not only posting it at the Encampment, but also ensuring that it was effectively and meaningfully communicated; for example, by directly explaining its contents.

104. Instead of engaging with the Encampment residents and other homeless individuals who would be most profoundly impacted by the original By-Laws, the Region passed the original By-Law one week after it was posted online. Many Encampment residents do not have regular or any access to the internet, nor would they have known that they should be monitoring the Region's website for notices that might apply to them. A physical copy of the original By-Law was not even posted at the Encampment.²²¹

105. A day prior to the passage of the original By-law, 27 Encampment residents were surveyed about their knowledge of the By-Law.²²² None of the residents received any information from the Region or were consulted in a meaningful and accessible way, as required by the PECH.²²³ Cases where illegality was rejected by courts were ones in which there was evidence of diligent and thorough levels of consultation, research, and inquiry by the municipality, which is virtually absent in the present case.²²⁴ The passage of the Amended By-Law suffered from a similar lack of engagement of the encampment residents and failure to make the notice or consultation meaningful or accessible; rather, efforts by the Region appear to have been a formality rather than genuine engagement with the people most impacted.²²⁵

²²⁰ *Eldridge*, [paras 69 and 79](#); *Council of Canadians with Disabilities v VIA Rail Canada Inc.*, [2007 SCC 15](#), [para 110](#)

²²¹ Alton Aff, RARV.2, paras 14-18, **B-1-8067 to B-1-8068**; Community Impact Consultation Report, Ex H to Alton Aff, RARV.2, **B-1-8261 to B-1-8264**

²²² *Ibid.*

²²³ *Ibid.*

²²⁴ See, e.g., *Tiny*, [para 36](#); *2386240 Ontario Inc (cob Al-Onda Lounge) v Mississauga (City)*, [2019 ONCA 413](#), [para 6](#); *Unifor, Local 1688 v Ottawa (City)*, [2018 ONSC 3377](#), [paras 92, 97-98, 117, 173, 176-177](#); *Bertrand*, [para 163](#)

²²⁵ 2nd Pin Aff, 2ndSupRAR, pp 105-10, paras 8-19, **B-1-10599 to B-10604**

PART IV – ORDER REQUESTED

106. *Amicus* requests the same relief as the Respondents, with the exception of an order for *Amicus*' costs.²²⁶

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of April 2026.



Mercedes Perez, Karen A. Steward, and Jen Danch
Amicus Curiae

²²⁶ Respondents Factum, para 150, **B-1-11065 to B-1-11066**

APPENDIX A: FOOTNOTE ABBREVIATION CHART

| Abbreviation | Document Title & Location (If Applicable) |
|--------------------------------------|--|
| Respondents' Factum Documents | |
| Respondents Factum | Factum of the Named Respondents/Cross-Applicants dated April 2, 2026 |
| Appendix B | Appendix B: Shared Backgrounds of Named Respondents |
| Appendix C | Appendix C: Select Named Respondent Narratives |
| Appendix E | Appendix E: Evidence of Security of the Person Impact of Sheltering Restrictions and Forced Displacement from Named Respondent Affidavits |
| Respondents' Record | |
| RARV.1 | Responding Application Record, Volume 1 |
| RARV.2 | Responding Application Record, Volume 2 |
| RARV.3 | Responding Application Record, Volume 3 |
| RARV.4 | Responding Application Record, Volume 4 |
| SupRARV.1 | Supplemental Responding Application Record, Volume 1 |
| SupRARV.2 | Supplemental Responding Application Record, Volume 2 |
| SupRARV.3 | Supplemental Responding Application Record, Volume 3 |
| 2 nd SupRAR | 2 nd Supplemental Responding Application Record |
| National Protocol | UN Special Rapporteur on Adequate Housing, "A Human Rights Approach: National Protocol for Homeless Encampments in Canada," Ex D to Alton Aff., RARV.2 |
| Allt Aff. | Affidavit of Angela Allt, sworn June 20, 2025, RARV.2 |
| Alton Aff. | Affidavit of David Alton, sworn June 23, 2025, RARV.2 |
| 1 st Escobar Aff. | Affidavit of Sara Escobar, sworn June 23, 2025, RARV.3 |
| 2 nd Escobar Aff. | 2 nd Affidavit of Sara Escobar, sworn July 7, 2025, RARV.3 |
| 3 rd Escobar Aff. | 3 rd Affidavit of Sara Escobar, sworn February 20, 2026, 2 nd SupRAR |
| Gaetz Aff. | Affidavit of Dr. Stephen Gaetz, sworn August 15, 2025, SupRARV.2 |
| Gupta Aff. | Affidavit of Sahil Gupta, sworn August 15, 2025, SupRARV.2 |
| Houle Aff. | Affidavit of Marie-Josée Houle, sworn August 15, 2025, Sup RARV.3 |
| Hwang Aff. | Affidavit of Dr. Stephen Hwang, sworn May 6, 2025, SupRARV.1 |
| Kubis Aff. | Affidavit of Lynn Kubis, sworn July 7, 2025, RARV.4 |
| Pauly Aff. | Affidavit of Dr. Bernadette Pauly, Sup RARV.2 |
| PECH | Waterloo Region, "The Plan to End Chronic Homelessness: Navigating Complexity Together: A Roadmap to Functional Zero by 2030," Ex B to Alton, Aff RARV.2 |
| 1 st Pin Aff. | Affidavit of Dr. Laura Pin, sworn July 9, 2025, SupRARV.1 |
| 2 nd Pin Aff. | 2 nd Affidavit of Laura Pin, sworn February 20, 2026, 2 nd SupRAR |
| Schwan Aff. | Affidavit of Kaitlyn Schwan, sworn August 15, 2025, SupRARV.3 |
| Community Impact | Social Development Centre, "Community Impact Consultation – Preliminary Report: 100 Victoria, dated April 22, 2025," Ex H to Alton Aff., RARV.2 |

| | |
|---|---|
| Consultation Report | |
| Fed Housing Advocate Report Encampments | 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., Sup RARV.3 |
| Encampments Across Canada | Overview of Encampments Across Canada: A Right to Housing Approach (Canadian Human Rights Commission, Ottawa: 2022), Ex F to Houle Aff, Sup RARV.3 |
| Sanguen Health Centre Statement | Sanguen Health Centre Statement on the Impact of Encampment Evictions, Ex I to Kubis Aff, RARV.4 |
| “2024 PIT Findings” | 2024 Point in Time Count for Regional Municipality of Waterloo in Ex C to Kubis Aff., RARV.4 |
| Region Report CSD-HOU-24-006 | Region Report: CSD-HOU-24-006, Ex A to Alton Aff, RARV.2 |
| Applicant’s Record | |
| AR | Application Record |
| ReplyAR | Reply Application Record |
| SupAR | Supplementary Application Record |
| Region Factum | Factum of the Applicant, dated March 13, 2026 |
| Region’s Brief of Answers to UTs | Applicant’s Brief of Answers to Undertakings |
| Region’s Supp Brief of Answers to UTs | Applicant’s Supplementary Brief of Answers to Undertakings |
| Amended By-Law; By-Laws | “Appendix B: Consolidated version of By-law #25-021 showing the tracked amendments” to PDL-LEG-26-001, Ex B to Kang Aff., SupAR |
| Kang Aff. | Affidavit of Dilupreet Kang, affirmed January 9, 2026, SupAR |
| Koivu Aff. | Expert Affidavit of Dr. Sharon Koivu, affirmed September 11, 2025, SupAR |
| Moss Aff. | Affidavit of Aaron Moss, affirmed January 16, 2026, SupAR |
| Region Report PDL-LEG-25-017 | PDL-LEG-25-017 - 100 Victoria Street, North, Kitchener – Site Specific By-law, Ex C to 1 st Sweeney Aff., AR |
| Region Report PDL-LEG-26-001 | Report to Council: PDL-LEG-26-001, Ex B to Kang Aff., SupAR |
| Region Report PDL-LEG-25-021 | Report to Council: PDL-LEG-25-021, Ex C to 1 st Sweeney Aff, AR |
| Site-Specific By-Law | By-Law 25-021, Ex B to 1 st Sweeney Aff., AR |
| Spooner Aff. | Affidavit of Douglas John Spooner, affirmed June 6, 2025, AR |
| 1 st Sweeney Aff. | Affidavit of Peter Sweeney, affirmed June 6, 2025, AR |
| 2 nd Sweeney Aff. | 2 nd Affidavit of Peter Sweeney, affirmed July 2, 2025, ReplyAR |
| 5 th Sweeney Aff. | 5 th Affidavit of Peter Sweeney, affirmed February 27, 2026, SupAR |

| | |
|---|---|
| “2024 PIT Infographic” | 2024 PIT-Count-Infographic, Ex E to 1st Sweeney Aff., AR |
| Cross-Examinations Documents | |
| JTBV.1 | Joint Transcripts Brief, Volume 1 |
| JTBV.2 | Joint Transcripts Brief, Volume 2 |
| JTBV.3 | Joint Transcripts Brief, Volume 3 |
| JTBV.4 | Joint Transcripts Brief, Volume 4 |
| JTBV.5 | Joint Transcripts Brief, Volume 5 |
| 1 st Escobar XE | Transcript of the Cross-Examination of Sara Escobar, held on July 11, 2025, JTBV.1 |
| 2 nd Escobar XE | Transcript of the 2 nd Cross-Examination of Sara Escobar, held on Mar. 2, 2026, JTBV.5 |
| Hwang XE | Transcript of the Cross-Examination of Dr. Stephen Hwang, held on July 11, 2025, JTBV.1 |
| Gupta XE | Transcript of the Cross-Examination of Dr. Sahil Gupta, held on January 7, 2026, JTBV.4 |
| Koivu XE | Transcript of the Cross Examination of Dr. Sharon Koivu, held on December 11, 2025, JTBV.2 |
| Moss XE | Transcript of the Cross-Examination of Aaron Moss, held on February 13, 2026, JTBV.4 |
| Pauly XE | Transcript of the Cross Examination of Dr. Bernie Pauly, held December 15, 2025, JBTV.4 |
| Spooner XE | Transcript of the Cross-Examination of Doug Spooner, held on March 6, 2026, JTBV.5 |
| 1 st Sweeney Answers to Undertakings | Answers to Undertakings from the Cross-Examination of Peter Sweeney on July 11, 2025, App. Undertakings Brief |
| 2 nd Sweeney Answers to Undertakings | Answers to Undertakings from the 2 nd and 3 rd Cross-Examinations of Peter Sweeney on December 11 and 12, 2025 and March 6, 2026, App. Undertakings Brief |
| 1 st Sweeney XE | Transcript of the Cross-Examination of Peter Sweeney, held on July 11, 2025, JTBV.2 |
| 2 nd Sweeney XE | Transcript of the 2 nd Cross-Examination of Peter Sweeney, held on December 11, 2025, JTBV.3 |
| Cont. 2 nd Sweeney XE | Transcript of the Continued 2 nd Cross-Examination of Peter Sweeney, held on December 12, 2025, JTBV.4 |
| 3 rd Sweeney XE | Transcript of the 3 rd Cross-Examination of Peter Sweeney, held on March 6, 2026, JTBV.5 |
| Transition Protocol | “Schedule “C”: Transition Protocol” to By-Law with Tracked Amendments, Ex B to Kang Aff., SupAR |
| Other | |
| XE | Cross-Examination |

**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, JEFF COUTO,
JORDAN CAMM, TERRANCE COLE, XANDER HARKER, CHARLES KOCHER, ALINE
JEFFERY, MICHAEL JEFFERY, AND PERSONS UNKNOWN

Respondents

CERTIFICATE

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

Dated this April 8, 2026.



Mercedes Perez
Amicus Curiae

SCHEDULE “A”

List of authorities in order of reference:

1. *The Regional Municipality of Waterloo v Persons Unknown and to be Ascertained*, [2023 ONSC 670](#)
2. *Bruff-Murphy v Gunawardena*, [2017 ONCA 502](#)
3. *R v Mohan*, [\[1994\] 2 SCR 9](#)
4. *R v Abbey*, [\[1982\] 2 SCR 24](#)
5. *R v Abbey*, [2009 ONCA 624](#)
6. *White Burgess Langille Inman v Abbott and Haliburton Co.*, [2015 SCC 23](#)
7. *R v Sekhon*, [2014 SCC 15](#) per Moldaver J
8. *Danson v Ontario (Attorney General)*, [\[1990\] 2 SCR 1086](#)
9. *Mackay v Manitoba*, [\[1989\] 2 SCR 357](#)
10. *International Air Transport Association v Canada (Transportation Agency)*, [2024 SCC 30](#),
11. *R v Spence*, [2005 SCC 71](#)
12. *Canada (Attorney General) v Bedford*, [2013 SCC 72](#)
13. *R v Malmo-Levine; R v Caine*, [2003 SCC 74](#)
14. *R v Lavallee*, [\[1990\] 1 SCR 852](#)
15. *R v Gladue*, [\[1999\] 1 SCR 688](#)
16. *R v Wells*, [2000 SCC 10](#)
17. *Canada (Attorney General) v PHS Community Services Society*, [2011 SCC 44](#)
18. *Carter v Canada (Attorney General)*, [2015 SCC 5](#)
19. *R v Nur*, [2015 SCC 15](#)
20. *Hy and Zel's Inc. v Ontario (Attorney General); Paul Magder Furs Ltd. v Ontario (Attorney General)*, [\[1993\] 3 SCR 675](#)
21. *Black et al v City of Toronto*, [2020 ONSC 6398](#)
22. *The Corporation of the City of Kingston v Doe*, [2023 ONSC 6662](#)
23. *Affleck v The Attorney General of Ontario*, [2021 ONSC 1108](#)
24. *R v Sharma*, [2022 SCC 39](#)
25. *St. Theresa Point First Nation v Canada*, [2025 FC 1926](#)
26. *International Air Transport Association v Canada (Transportation Agency)*, [2024 SCC 30](#)
27. *R v Morgentaler*, [\[1988\] 1 SCR 30](#)
28. *Moge v. Moge*, [1992 CanLII 25](#)
29. *Reference re Employment Insurance Act (Can.), ss.22 and 23*, [2005 SCC 56](#)
30. *R v Sullivan*, [2022 SCC 19](#)
31. *Quebec (Attorney General) v 9147-0732 Québec inc.*, [2020 SCC 32](#) [“9147-0732 Québec”]
32. *Quebec (Attorney General) v Kanyinda*, [2026 SCC 7](#)
33. *New Brunswick (Minister of Health and Community Services) v G(J)*, [\[1999\] 3 SCR 46](#)
34. *Taylor v Newfoundland and Labrador*, [2026 SCC 5](#)
35. *Nevsun Resources Ltd. v Araya*, [2020 SCC 5](#)
36. *R v Ewanchuk*, [\[1999\] 1 SCR 330](#)
37. *Health Services and Support - Facilities Subsector Bargaining Assn. v British Columbia*, [2007 SCC 27](#)
38. *Victoria (City) v Adams*, [2008 BCSC 1363](#); aff'd [2009 BCCA 563](#)

39. *Ontario (Attorney General) v G*, [2020 SCC 38](#)
40. *Canadian Council for Refugees v Canada (Citizenship and Immigration)*, [2023 SCC 17](#)
41. *Andrews v Law Society of British Columbia*, [\[1989\] 1 SCR 143](#)
42. *Winnipeg Child and Family Services v K LW*, [2000 SCC 48](#)
43. *Canada (Attorney General) v Bedford*, [2012 ONCA 186](#)
44. *Quebec (Attorney General) v Senneville*, [2025 SCC 33](#)
45. *Abbotsford (City) v Shantz*, [2015 BCSC 1909](#)
46. *Vandenberg v Vancouver (City) Fire and Rescue Services*, [2023 BCSC 2104](#)
47. *R v Penunsi*, [2019 SCC 39](#)
48. *Drover v Canada (Attorney General)*, [2025 ONCA 468](#)
49. *References re Greenhouse Gas Pollution Pricing Act*, [2021 SCC 11](#)
50. *Chaoulli v Quebec (Attorney General)*, [2005 SCC 35](#)
51. *Re Hansard Spruce Mills*, [\[1954\] 4 DLR 590 \(BCSC\)](#)
52. *Fraser v Canada (Attorney General)*, [2020 SCC 28](#)
53. *Eldridge v British Columbia (Attorney General)*, [\[1997\] 3 SCR 624](#),
54. *Granovsky v Canada (Minister of Employment and Immigration)*, [2000 SCC 28](#)
55. *Vriend v Alberta*, [\[1998\] 1 SCR 493](#)
56. *Eldridge v British Columbia (Attorney General)*, [\[1997\] 3 SCR 624](#)
57. *Bertrand v Ramara (Township)*, [2024 ONSC 7291](#) [“Bertrand”]
58. *Tiny Township Assn of Responsible Str Owners v Tiny (Township)*, [2025 ONSC 1578](#)
59. *Council of Canadians with Disabilities v VIA Rail Canada Inc.*, [2007 SCC 15](#)
60. *2386240 Ontario Inc (cob Al-Omda Lounge) v Mississauga (City)*, [2019 ONCA 413](#)
61. *Unifor, Local 1688 v Ottawa (City)*, [2018 ONSC 3377](#)

SCHEDULE “B”

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

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11

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.

Enforcement of guaranteed rights and freedoms

24 (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

Application of Charter

32 (1) This Charter applies

(a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and

(b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

Primacy of Constitution of Canada

52 (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

Convention on the Elimination of All Forms of Discrimination against Women, Can TS1982 No 31, (ratified by Canada in 1981)

Article 14.2

States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

Article 15 (40)

States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Convention on the Rights of Persons with Disabilities, [2010] Can TS No 8 (ratified by Canada in 2010)

Article 4.2 – General Obligations

With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.

Article 19 - Living independently and being included in the community

States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

- a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;
- b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;
- c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

Article 28 - Adequate standard of living and social protection

1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:

- a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;
- b) To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;
- c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;
- d) To ensure access by persons with disabilities to public housing programmes;
- e) To ensure equal access by persons with disabilities to retirement benefits and programmes.

Human Rights Code, RSO 1900, c H 19

Services

1 Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.

Accommodation

2 (1) Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, disability or the receipt of public assistance.

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.

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

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

International Convention on the Elimination of All Forms of Racial Discrimination, 660 UNTS 195 (ratified by Canada in 1970)

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (e) Economic, social and cultural rights, in particular:
 - (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
 - (ii) The right to form and join trade unions;
 - (iii) The right to housing;
 - (iv) The right to public health, medical care, social security and social services;

Municipal Act, 2001, S.O. 2001, c. 25

Application to quash by-law

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

Definition

(2) In this section,

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

Inquiry

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

Other cases

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

Timing

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

National Housing Strategy Act, SC 2019, c 29, s 313

Preamble

Whereas housing is essential to the inherent dignity and well-being of the person and to building sustainable and inclusive communities as well as a strong national economy in which the people of Canada can prosper and thrive;

Whereas access to affordable housing contributes to achieving beneficial social, economic, health and environmental outcomes;

Whereas improved housing outcomes are best achieved through cooperation between governments and civil society as well as the meaningful involvement of local communities;

Whereas national goals, timelines and initiatives relating to housing and homelessness are essential to improving the quality of life of the people of Canada, particularly persons in greatest need;

Whereas a national housing strategy would support a common vision, key principles and a coordinated approach to achieving improved housing outcomes;

Whereas a national housing strategy would contribute to meeting the Sustainable Development Goals of the United Nations;

And whereas a national housing strategy would support the progressive realization of the right to adequate housing as recognized in the International Covenant on Economic, Social and Cultural Rights, to which Canada is a party;

Housing Policy 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.

Trespass to Property Act, R.S.O. 1990, c. T.21

Trespass an offence

2 (1) Every person who is not acting under a right or authority conferred by law and who,

(a) without the express permission of the occupier, the proof of which rests on the defendant,

(i) enters on premises when entry is prohibited under this Act, or

(ii) engages in an activity on premises when the activity is prohibited under this Act; or

(b) does not leave the premises immediately after he or she is directed to do so by the occupier of the premises or a person authorized by the occupier,
is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.

Arrest without warrant on premises

9 (1) A police officer, or the occupier of premises, or a person authorized by the occupier may arrest without warrant any person he or she believes on reasonable and probable grounds to be on the premises in contravention of section 2.

Arrest without warrant off premises

10 Where a police officer believes on reasonable and probable grounds that a person has been in contravention of section 2 and has made fresh departure from the premises, and the person refuses to give his or her name and address, or there are reasonable and probable grounds to believe that the name or address given is false, the police officer may arrest the person without warrant.

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.

SCHEDULE “C”

Academic references not publicly available online:

Hutchison, C. *The Modern Principle of Statutory Interpretation*, 2nd Ed.

Chapter 2: The Modern Principle

THE MODERN PRINCIPLE REFINED

[1] Introduction

The modern principle is a sound methodology of interpretation that balances multiple legitimate inputs relevant to a determination of legislative intent, and where necessary, the pragmatic development of the law. In a broader sense, it assesses both the systemic and practical coherence of a given interpretation. Systemic coherence refers to consistency with prior interpretations of a provision, or reasonable inferences drawn from the purpose, legislative history and statutory and legal context of a provision. The more a particular interpretation further systemic harmony of the overall legal terrain, the greater should be its interpretative resonance. Practical coherence is a pragmatic concern insofar as the interpretation should be consistent with desirable consequences, as well as the expectations of affected parties, *e.g.*, customary practices. Pragmatic concerns are implicit when, for example, courts assess whether a particular interpretation furthers a statutory purpose; in truly ambiguous cases, an even greater range of consequences (including salient impacts external to the statute) attaching to competing interpretations may be considered

The goal for courts applying the modern principle is to, first and foremost, uncover legislative intent as it applies to a particular fact situation; where indicators of legislative intent yield a reasonably certain interpretation, the inquiry ends. This usually means that, on balance, a judge is persuaded that enough indicators of the modern principle suggest a particular interpretation that *most likely* reflects the intent behind the legislation. The resulting interpretation explicates the policy of the legislation as it applies to that situation and others like it.

A modern principle analysis may not always yield satisfying results on this front. Sometimes, legislative intent as it applies to the case will be inscrutable — or to use legal parlance, it is an ambiguous case. There is no bright line between *intentional* versus *ambiguous* constructions of a statute, as there will, in close cases, be room for legitimate disagreement as to whether or not a particular reading of the legislation is persuasive or merely plausible in terms of reflecting legislative intent. Much will depend on the cogency and thoroughness of the arguments and analysis presented.

THE REGIONAL MUNICIPALITY OF WATERLOO
Applicant

and

PERSONS UNKNOWN AND TO BE ASCERTAINED
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceedings commenced in Kitchner

FACTUM OF *AMICUS CURIAE*

PEREZ PROCOPE LEINVEER LLP

Barristers & Solicitors
55 University Avenue, Suite 1100
Toronto, Ontario M5J 2H7

Mercedes Perez (LSO # 48381L)

Tel: 416-320-1914
Email: mperez@pbplawyers.com

Karen A. Steward (LSO # 58758O)

Barrister & Solicitor

Tel: 416-270-0929
Email: karenannesteward@yahoo.ca

SWADRON ASSOCIATES

Barristers & Solicitors
15 Wellesley St. W., Suite 321
Toronto, Ontario M4Y 0G7

Jen Danch (LSO # 74520I)

Tel: 416-362-1234
Email: jdanch@swadron.com

Amicus Curiae