

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

THE REGIONAL MUNICIPALITY OF WATERLOO

Applicant

and

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

Respondents

FACTUM OF THE NAMED RESPONDENTS/CROSS-APPLICANTS

April 2, 2026

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PART I – OVERVIEW

1. The encampment at 100 Victoria Street North in Kitchener (the “Encampment”) serves as shelter of last resort for chronically homeless residents of the Regional Municipality of Waterloo (“the Region”). They rely on it when they cannot access indoor shelter. They must do so because the Region has insufficient indoor shelter to accommodate its homeless, but its Code of Use By-Law prohibits outdoor sheltering on all other Region-owned lands. However, two new By-Laws (the “Site-Specific” and “Amended Site-Specific” By-Laws, together “the By-Laws”) now provide for the Encampment to be closed so that it can be used as a “lay-down” site during construction of a transit hub. The Region is not prepared to allow its homeless to shelter anywhere else after the Encampment is closed. This creates a fundamental question: Where are the Region’s chronically homeless expected to go when they cannot access indoor shelter?

2. The Region has given assurances of alternate shelter to only those Cross-Applicants/Named Respondents (“Named Respondents”) who are among 40 persons it counted as present at the Encampment on April 16, 2025.¹ However, this shelter is, for the most part, temporary motel or emergency shelter space,² and the Region has made no provision for where persons may go if/when they lose these spaces. It has offered nothing to most of the Named Respondents, who are not among the counted 40, other than to “bring them within the Region’s housing stability system” - effectively, adding them to the waitlists they are already on.³

3. What makes this case remarkable is that this Court has heard the Region’s arguments for

¹ 2nd Affidavit of Peter Sweeney, July 2, 2025 (“2nd Sweeney Aff.”), Reply Application Record (“ReplyAR”), p.15, paras.15-16 indicates the Region accepts that the following four Cross-Applicants/Named Respondents are “Residents” under the By-Law definition: Josephina Dugas, Jeremy Nichol, Noah Helsby, and Joseph Bradley. It does not deem the following to be “Residents”: Terra-Lynn Weber, Aaron Price, James Hammond, Jeremy Linton, Stephanie McMillan, Jason Paul, Julie Young, Kyle York, James Davis, Megan Lopes, Avery Ament, and Jakob Stubbs. It is unclear whether the Region considers the remaining Cross-Applicants/Named Respondents to be “Residents”, but Aline and Michael Jeffery would not be, having arrived only in December 2025 or January 2026. See also: Appendix A: Footnote Abbreviations Chart (“**Appendix A**”) for a complete list of abbreviations used in this Factum’s footnotes.

² Answers to Undertakings from the Cross-Examination of Aaron Moss on Feb. 13, 2026, Applicant’s Brief of Answers to Undertakings (“App. Undertakings Brief”), Case Center A4882, Q/A.2.

³ “Report to Council: PDL-LEG-26-001,” Ex B to Affidavit of Dilupreet Kang, Jan. 9, 2026, (“Kang Aff.”) (“PDL-LEG-26-001”), Supplementary Application Record (“SupAR”), p.101; 3rd Affidavit of Sara Escobar, sworn Feb. 20, 2026 (“3rd Escobar Aff.”), 2nd Supplemental Responding Application Record (“2ndSupRAR”), p.76, para.24.

closing this Encampment before. In 2023, this Court refused permission to clear this very site for the same proposed use (“*Persons Unknown*”). Then, as now, the Region asserted it would find temporary shelter for those then at the Encampment.⁴ Then, as now, the Region asserted construction on the transit hub was to commence imminently.⁵ Then, as now, the Region asserted the Encampment posed health and safety risks.⁶ Nonetheless, this Court declared that closing the Encampment would be contrary to s. 7 of the *Charter*, inviting the Region to apply for that declaration to be lifted upon “being in a position to satisfy this Court that the By-Law no longer violates the section 7 rights of the Encampment residents”.⁷

4. Contrary to the Region’s mischaracterization, the Named Respondents do not say “the Region must essentially solve homelessness for the long term before it can regain possession of 100 Vic”.⁸ Nor do they assert an “unfettered right to seek shelter on publicly owned land.”⁹ Rather, they seek to hold the Region to the declaration this Court has already made. So long as insufficient indoor shelter requires the Region’s homeless to shelter outdoors, and **so long as the Region maintains that they may not do so anywhere else**, the Region cannot gain possession of the site.

5. This Court has already provided the Region with directions as to what it must do to obtain vacant possession of the site for construction lay-down. Yet, instead of following those directions, the Region seeks to evade them through new By-Laws. This Court is bound by the determinations it has already made. This, in and of itself, renders the By-Laws unconstitutional without the need for the Court to freshly apply the *Charter* to facts that have only become more grave with time.

6. However, even if this were not the case, closing the Region’s sheltering location of last resort continues to pose serious risk to the lives and health of the chronically homeless Named Respondents

⁴ *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, [2023 ONSC 670](#) (“*Persons Unknown*”), para.64.

⁵ *Persons Unknown*, para.15.

⁶ *Ibid.*, para.40.

⁷ *Ibid.*, paras.104, 158, 159.

⁸ Factum of the Applicant, Mar. 13, 2026 (“Region’s Factum”), p.3 (pdf 9), para.6.

⁹ *Ibid.*, p.31 (pdf 37), para.65.

and Persons Unknown, who will have no sheltering location of last resort to catch them when they fall. This deprivation continues to be grossly disproportionate to the objective of closing the site so that it can be used for equipment lay-down. Enforcement of the By-Laws continues to violate s. 7 of the *Charter* where the conditions for this Court’s previous declaration continue to exist.

7. There are also two new issues before the Court.

8. The first is how the Supreme Court’s decision in *Kanyinda*,¹⁰ issued March 6, 2026, impacts s. 15 equality rights arguments that this Court rejected in *Persons Unknown*. The impacts of the By-Laws are particularly severe for those homeless who are women, gender diverse, disabled and/or Indigenous because persons from these *Charter* protected groups are less likely to be able to access indoor shelter that meets their needs. In *Persons Unknown*, this Court found no s. 15 infringement for those groups because homelessness itself was not a *Charter*-protected ground of discrimination.¹¹ Yet, following *Kanyinda*, it is now clear that homelessness need not be a *Charter*-protected ground for the Court to find a discriminatory impact on *Charter*-protected *subsets* of the homeless.¹² In light of this fresh guidance, it is now apparent that removing shelter of last resort from the Region’s chronically homeless violates the s. 15 equality rights of those homeless who are least likely to be able to access indoor shelter - women, gender diverse, disabled and/or Indigenous persons.

9. The Region’s process in passing the By-Laws also engages a second new issue – the By-Laws’ legality under s. 273 of the *Municipal Act, 2001*. Following *Persons Unknown*, the Region adopted consultation and decision-making principles, which it set out through a Regional Plan to End Chronic Homelessness (“PECH”).¹³ Yet, instead of complying with the principles set out in the PECH, the Region developed the By-Laws behind closed doors. A by-law is “illegal” for the purpose of s. 273 if it is enacted “without the degree of fairness, openness, and impartiality required of a

¹⁰ *Quebec (Attorney General) v. Kanyinda*, [2026 SCC 7](#) (“*Kanyinda*”).

¹¹ *Persons Unknown*, paras. [123](#)-7.

¹² *Kanyinda*, paras. [42](#), [51](#) (per the majority); [155](#)-8 (per Rowe J., concurring).

¹³ “Final PECH Report 2024,” Ex A to Affidavit of Peter Sweeney, June 6, 2025 (“1st Sweeney Aff.”) (“Final PECH 2024”), Application Record (“AR”), p.106, Actions 2.1 and 2.2.

municipal government".¹⁴ The Region's failure to follow the processes it publicly committed itself to gives rise to an inference of illegality for the purpose of s. 273 of the *Municipal Act, 2001*, such that the By-Laws must be quashed.

PART II: FACTS

Encampment and its residents

10. The Encampment site is a Region-owned gravel lot located at 100 Victoria Street North in Kitchener. The Region also owns surrounding properties, including the western adjoining lots at 70-84 Victoria Street,¹⁵ and the northern adjoining lot at 123 Breithaupt Street, which, like 100 Victoria, is intended for equipment lay-down/staging during construction of the transit hub.¹⁶

11. Homeless persons began erecting tents on the site in or around December 2021.¹⁷ However, the number of persons sheltering at the Encampment is fluid,¹⁸ as chronically homeless persons gain and lose other forms of shelter.¹⁹ In the words of Jeremy Linton: "It makes me feel safe knowing the encampment is an option for me if I have no where to go".²⁰

12. The number of persons who are currently sheltering at the Encampment is disputed between the parties, but the Named Respondents assert it is at least twenty. This is based on the most recent direct evidence of two residents, Aline Jeffery and Charles Kocher. Ms. Jeffery affirmed that, effective January 21, 2025, there were "about twenty people residing at the encampment but up to fifty people stay and sleep by the fire or by the sandbag hut during the day".²¹ Mr. Kocher affirmed

¹⁴ *Grosvenor v. East Luther Grand Valley (Township)*, [2007 ONCA 55](#) ("*Grosvenor*") at paras.27, 43-46.

¹⁵ "Kitchener Central Transit Hub Update," dated Oct. 7, 2025, Ex 1 to Transcript of the Cross-Examination ("Cross-Exam.") of Doug Spooner, Mar. 6, 2026 ("Spooners XE"), Joint Transcripts Brief ("JTB"), V.5, p.178.

¹⁶ Spooners XE, JTBV.5, p.147, Q.76.

¹⁷ *Persons Unknown*, para.19.

¹⁸ 1st Sweeney Aff. AR, p.20, para.25.

¹⁹ E.g: Affidavit of Avery Ament, June 23, 2025 ("Ament Aff."), Responding Application Record ("RAR"), V.1, pp.14-5, paras.11-2; Affidavit of Jason Paul, June 16, 2025 ("Paul Aff."), RARV.1, pp.44-5, paras.14, 20-1; Affidavit of Jeffrey Lima Couto, Oct. 15, 2025 ("Couto Aff."), 2ndSupRAR, p.29, paras.13-4; Affidavit of Jeremy Linton, May 6, 2025 ("Linton Aff."), RARV.1, p.52, paras.7-9; 2nd Affidavit of Megan Lopes, Oct. 10, 2025 ("2nd Lopes Aff."), 2ndSupRAR, p.10, para.12; Affidavit of Terra-Lynn Weber, May 6, 2025 ("Weber Aff."), RARV.1, p.127, para.16; Affidavit of Warren Loppie, July 9, 2025, RARV.1, pp.133, 135, paras.12, 15; Affidavit of Jordan Camm, Oct. 15, 2025 ("Camm Aff."), 2ndSupRAR, pp.22-3, paras.9-13; Affidavit of Charles Kocher, Jan. 13, 2026 ("Kocher Aff."), 2ndSupRAR, pp.39-40, paras.11-3.

²⁰ Linton Aff., RARV.1, p.52, para.10.

²¹ Affidavit of Aline Jeffery, sworn Jan. 21, 2026 ("A. Jeffery Aff."), 2ndSupRAR, p.48, para.21.

that, effective January 15, 2026, there were “around 30 people still living here”.²² This first-hand evidence should be preferred over the account of Aaron Moss, the Region’s Director of Facilities and Fleet, that, effective February 13, 2026, “one to three” persons were “staying” at the Encampment. That evidence is third-hand hearsay, having been relayed to Mr. Moss through the Region’s Director of Housing Services, Ryan Pettipiere, who, in turn, heard it from an unnamed unsheltered support worker.²³ Mr. Moss himself was unable to say how the Region arrived at this number,²⁴ though he affirmed that unsheltered support workers only attended the Encampment once a week at that time.²⁵ Even second-hand hearsay is presumptively inadmissible,²⁶ and the Region agrees that “serious reliability issues” arise where an affiant states facts not “based on ... first-hand observation, but rather based on accounts conveyed”.²⁷

13. Encampment residents rely on essential services near the Encampment site.²⁸ There is a drop-in space across the street where residents can access meals, coffee, water, showers, laundry, and use the telephone. Health and harm reduction services are provided on-site by Sanguen Health, and SOS.²⁹ Community volunteers provide clothing, firewood, blankets, food, and water.³⁰

14. As described by one Named Respondent, persons who rely on the Encampment for last resort shelter “are regular people like [my wife] and I, people who may have made some bad decisions or experienced bad luck”.³¹ Their backgrounds reflect those of the Region’s homeless.³² All have

²² Kocher Aff., 2ndSupRAR, pp.41-2, para.21.

²³ Affidavit of Aaron Moss, Jan. 16, 2026 (“Moss Aff.”), SupAR, p.130, para.38; Cross-Exam. of Aaron Moss, Feb. 13, 2026 (“Moss XE”), JTBV.4, p.519, Q/A.104.

²⁴ Moss XE, JTBV.4, pp.519-520, Q/As.104-7.

²⁵ Moss Aff., SupAR, p.128, para.29.

²⁶ *R. v. Baldree*, [2013 SCC 35](#), para.2.

²⁷ Region’s Factum, p.27 (pdf 33), para.57.

²⁸ E.g: Affidavit of Jeremy Nichol, May 8, 2025 (“Nichol Aff.”), RARV.1, p.59, paras.17-8; Affidavit of Xander Harker, Oct. 10, 2025 (“Harker Aff.”), 2ndSupRAR, p.35, para.25; Kocher Aff., 2ndSupRAR, p.41, para.18; A. Jeffery Aff., 2ndSupRAR, p.48, paras.16-7.

²⁹ Affidavit of Julie Kalbfleisch, Feb. 12, 2026, 2ndSupRAR, pp.59-60, para.3, A. Jeffery Aff., 2ndSupRAR, p.48, para.16; Harker Aff., 2ndSupRAR, p.35, post-script.

³⁰ Harker Aff., 2ndSupRAR, p.35, para.25; Kocher Aff., 2ndSupRAR, p.41, para.18; A. Jeffery Aff., 2ndSupRAR, p.48, para.17; Affidavit of Michael Jeffery, Jan. 21, 2026 (“M. Jeffery Aff.”), 2ndSupRAR, p.55, para.15.

³¹ M. Jeffery Aff., 2ndSupRAR, p.55, para.18.

³² “2024 PIT-Count-Infographic,” Ex E to 1st Sweeney Aff. (“2024 PIT Infographic”), AR, p.174.

disabilities - 18 have mental health or cognitive disabilities, 17 have substance use disabilities, and at least 4 have mobility impairments. 6 are Indigenous. A further 4 identify as LGBTQ2S+. 9 affirm to having survived childhood physical and sexual abuse, domestic violence, and/or sexual assault. 6 shelter together with their partners. 7 are women or identify as gender-diverse. They all live in extreme poverty – some have no income at all, and others receive social assistance.³³

15. Circumstances that have caused the Named Respondents to rely on the Encampment vary. Five representative narratives are set out in **Appendix C**.³⁴

Court refuses Region’s previous application

16. This Encampment was the subject of an earlier application to this Court in *Persons Unknown*.³⁵ In January of 2023, the Court dismissed the Region’s application to close the Encampment under its “Code of Use By-Law”³⁶, which prohibits persons from loitering on Region-owned property or erecting temporary shelters without a permit.³⁷

17. This Court found a purpose of the By-Law was to “prevent the disruption of the Region’s operations on the Designated Premises”.³⁸ The Regional “operation” then at issue was transit construction. Then, as now, the Region advised that it intended to use the site initially as a “lay-down” area for equipment during the construction of a transit hub, and later as a parking lot for the hub.³⁹ Just as the Region now advises that construction is to commence imminently, the Region then advised that construction would commence in the spring of 2023.⁴⁰ Just as this Court found there was no firm construction start date during litigation in 2022,⁴¹ here too the timelines for the project are continually shifting and it remains unclear when vacant possession is required. At the

³³ See **Appendix B**: Shared Backgrounds of Named Respondents (“**Appendix B**”) for all references in this paragraph.

³⁴ **Appendix C**: Select Named Respondent Narratives (“**Appendix C**”).

³⁵ *Persons Unknown*.

³⁶ Code of Use By-Law and Amendments, Ex B to 2nd Sweeney Aff., ReplyAR, p.43.

³⁷ Code of Use By-Law and Amendments, Ex B to 2nd Sweeney Aff., ReplyAR, pp.48-9, ss. 2(e) and (t).

³⁸ *Persons Unknown*, para.9, [114](#), [119](#).

³⁹ *Ibid.*, para.15.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

commencement of litigation, the date was December 1, 2025,⁴² then it shifted to April 1, 2026,⁴³ then to the end of October 2026,⁴⁴ but correspondence from Metrolinx indicates this “might be subject to further change”.⁴⁵

18. Having regard to that purpose, this Court found that prohibiting sheltering deprived the Region’s homeless of their life, liberty, and security of the person in a context where insufficient indoor sheltering options left them “with no alternative but to sleep outside”.⁴⁶ At that time, available shelter spaces fell short “by some 50% of what was required to shelter the Region’s homeless”.⁴⁷ The Region had also entered into contracts with motel operators to permit motels to be used for shelter, but this Court found it was not appropriate to include motel spaces in the count, in part “because their availability is at the discretion of the motel operators”.⁴⁸

19. Then, as now, the Region asserted public health and safety concerns arising from the Encampment. It asserted that, in the months leading up to the hearing, there had been a significant increase in incidents involving police at the site.⁴⁹ It asserted rodent infestations, feces and urine on the site, fire hazards, physical altercations, and consumption of alcohol and drugs.⁵⁰ The Court accepted that these issues created risk, but questioned: “does not closing the Encampment simply move[...] all of these risks elsewhere. Furthermore, does not the Region have some responsibility to take further steps to mitigate these risks?”⁵¹

20. The Court held that in assessing whether persons sheltering at the Encampment had indoor sheltering alternatives, it was “simply not a matter of counting the number of spaces”.⁵² Options

⁴² By-Law 25-021, Ex B to 1st Sweeney Aff. (“Site-Specific By-Law”), AR, p. 138.

⁴³ Amended By-law passed by Regional Council on Jan. 9, 2026, Ex A to Kang Aff. (“Amended By-law”), SupAR, p.92.

⁴⁴ Spooner XE, JTBV.5, pp.131-2, Q/A.31.

⁴⁵ Appendix A - Answer to Undertaking #U2, Answers to Undertakings from the Cross-Examination of Doug Spooner on Mar. 6, 2026, App. Undertakings Brief, Case Center A4890.

⁴⁶ *Persons Unknown*, para.92.

⁴⁷ *Ibid.*

⁴⁸ *Persons Unknown*, para.92.

⁴⁹ *Ibid.*, para.43-4.

⁵⁰ *Ibid.*, para.47.

⁵¹ *Ibid.*, para.48.

⁵² *Ibid.*, para.93.

needed to meet the “diverse needs” of the Encampment residents to be accessible.⁵³

21. **It also directly rejected the Region’s argument that it need only find space for the persons then at the Encampment** in order to establish it would be constitutional to clear the Encampment. Then, as now, the Region had offered assurances that it would find shelter space for each person then sheltering at the Encampment.⁵⁴ In response, this Court held:

[94] Finally, I reject the Region’s submission that, at the end of the day, in order to grant the relief it seeks, I need only be satisfied that there is sufficient capacity in the system to accommodate the Encampment residents. I reject this proposition because of the fluctuating and variable capacity of the system based on the Region’s own numbers. Furthermore, were I to be guided by this principle, and satisfied that there is a sufficient bed capacity for the Encampment residents on any given day, how does this approach respond to the many other vulnerable homeless individuals in the Region? It does not. The approach is particularly problematic in my view because the Region intends to be guided by this decision in its treatment of other encampments. Were 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. [...]

22. The Court found that closing the Encampment would put the lives of the Region’s homeless at risk, constituting a “deprivation” of life for the purpose of s. 7 because exposure to the elements without shelter could create serious harm, inducing death.⁵⁵ It also found that closing the Encampment amounted to a deprivation of liberty,⁵⁶ and of security of the person because it would “expose[...] the homeless of the Region to risk of significant health problems, both physical and psychological in nature”.⁵⁷ These deprivations were not in accordance with the principles of fundamental justice, in part because they were grossly disproportionate to the By-Law’s objectives, which included preventing disruption to Regional operations.⁵⁸

23. The Named Respondents also asserted that applying the By-Law to clear the Encampment would violate their equality rights, contrary to s. 15 of the *Charter*. However, the Court rejected that argument on the basis that “homelessness” was not an analogous ground of discrimination for the

⁵³ *Persons Unknown*, para.93.

⁵⁴ *Ibid.*, para.64.

⁵⁵ *Ibid.*, paras.95-7.

⁵⁶ *Ibid.*, para.101.

⁵⁷ *Ibid.*, para.104.

⁵⁸ *Ibid.*, paras.9, 109-19.

purpose of s. 15.⁵⁹ While the Court also found that women, gender-diverse individuals, and those who suffer from mental illness and addictions had not been discriminated against,⁶⁰ this was in the context of the determination that homelessness was not an analogous ground.

24. Rather than declaring the Code of Use By-Law generally inapplicable to homeless residents of the Region, the Court issued a narrow declaration that it was inapplicable “only insofar[...] as it applies to prevent the residents of the Encampment from living on and erecting temporary shelters without a permit on the Property when the number of homeless persons exceed the number of available accessible shelter beds in the Region”.⁶¹ This left the Encampment as the only space in the Region where sheltering is not prohibited under the Code of Use By-Law.

25. The Court ordered “that the Region may apply to terminate” the declaration upon being in a position to satisfy the Court that the By-Law no longer violated the s. 7 rights of Encampment residents.⁶² The Region has not done so, nor did it appeal the decision, which remains in effect.

Code of Use By-Law continues to apply outside of the Encampment

26. The Region chose not to amend its Code of Use By-Law after *Persons Unknown*. Due to the Encampment-specific scope of this Court’s declaration, the Code of Use By-Law therefore continues to restrict sheltering by the homeless on all other Region-owned land. **Therefore, while the Encampment is not the only location in the Region where persons do shelter outside, it is the only location where they may do so lawfully without the risk of eviction.**⁶³

27. The Region’s Commissioner of Community Services has been clear that the Region is not prepared to permit sheltering anywhere else on its lands if the Encampment is cleared.⁶⁴

⁵⁹ *Persons Unknown*, paras.125-6.

⁶⁰ *Ibid.*, para.127.

⁶¹ *Ibid.*, para.157.

⁶² *Ibid.*, para.159.

⁶³ 2nd Cross-Exam. of Peter Sweeney, Dec. 11, 2025 (“2nd Sweeney XE”), JTBV.3, pp.442-3,445-7, 447-8, Q/As.75, 84-5, 89-90. See also Named Respondents’ evidence that they have personally been evicted from other sheltering locations by By-Law enforcement , e.g.: Harker Aff., 2ndSupRAR, p.34, paras.12-15; A. Jeffery Aff., 2ndSupRAR, p.47, para.12; Kocher Aff., 2ndSupRAR, p.40, para.12; Affidavit of James Hammond, sworn May 2, 2025 (“Hammond Aff.”), RARV.1, p.39, para.12; Affidavit of Stephanie McMillan, sworn May 13, 2025 (“1st McMillan Aff.”), RARV.1, p.116, para.13.

⁶⁴ 1st Sweeney Aff., AR, p.28, para.52.

28. Since *Persons Unknown*, other encampment sites in the Region have been cleared, including sites on Region-owned land and land owned by lower-tier municipalities. For instance, an encampment at 150 Main Street in Cambridge was closed by the Region in August 2023.⁶⁵ An additional site at Soper Park in Cambridge was cleared by the City of Cambridge in September of 2023.⁶⁶ An encampment at Roos Island in Kitchener was closed by the City of Kitchener in spring of 2023.⁶⁷ A Cambridge encampment where Xander Harker previously sheltered was cleared in 2024: “They promised to assist us with the move but did not. On the eviction date, they began to throw all of our belongings away”.⁶⁸

Homelessness and accessible shelter in the Region

Increase in homelessness and chronic homelessness since *Persons Unknown*

29. Homelessness has more than doubled in the Region since *Persons Unknown* was released. While the Region baldly asserts that it has “has arguably done more than any other Ontario municipality” to address homelessness,⁶⁹ its housing stability system has not kept pace with this increase. In *Persons Unknown*, this Court found the Region’s shelter system could accommodate only 50% of the Region’s homeless population.⁷⁰ However, the Region’s shelter capacity can now accommodate only 15% of the Region’s total homeless,⁷¹ another way of looking at this is that 43% of the Region’s homeless live outdoors.⁷² Accordingly, the Region has acknowledged that it is not in a position to ask the Court to lift its declaration of invalidity – it cannot ensure that the number of homeless persons will not exceed the number of shelter spaces in 2026, even leaving aside whether available spaces are accessible to persons who depend on the Encampment site.⁷³

30. One measure of homelessness in a municipality is the “Point in Time” (“PiT”) Count, which

⁶⁵ Affidavit of Sara Escobar, June 23, 2025 (“1st Escobar Aff.”), RARV.3, pp.101-2, paras.15-7.

⁶⁶ 1st Escobar Aff., RARV.3, p. 102, para.17.

⁶⁷ Affidavit of David Alton, June 23, 2025 (“Alton Aff.”), RARV.2, p.34, para.25.

⁶⁸ Harker Aff., 2ndSupRAR, p.34, paras.12-4.

⁶⁹ Region’s Factum, p.1 (pdf 7), para.2.

⁷⁰ *Persons Unknown*, para.92.

⁷¹ This is pursuant to the calculations in the paragraph below.

⁷² Exhibit A to 2nd Sweeney XE, JTBV.3, p.456; 2nd Sweeney XE, JTBV.3, p.432, Q/A.40.

⁷³ 1st Sweeney Aff., AR, pp.29-40, paras.56-86.

is a count of persons experiencing homelessness on a single night.⁷⁴ The Association of Ontario Municipalities describes this as an “undercount”.⁷⁵ The September 2021 PiT Count that this Court relied on in *Persons Unknown* recorded 1,085 homeless, including 412 “living rough”,⁷⁶ and 191 accessing emergency shelters.⁷⁷ By October of 2024, the PiT Count recorded 2,371 homeless, 1,009 of whom were “living rough”,⁷⁸ 446 in emergency shelters, and 153 in motels.⁷⁹

31. The majority of the Region’s homeless move in and out of homelessness. Of the 2,371 homeless captured by the 2024 PiT, 78% were “chronically homeless”, defined as persons in “prolonged or repeated periods of homelessness”.⁸⁰ This accords with the experience of the Named Respondents, who move in and out of the Encampment as they lose and gain indoor shelter.⁸¹

Emergency shelter and affordable housing in the Region

32. The Region’s emergency shelter system has not kept pace with this increase in homelessness.

As the Region’s Commissioner for Community Services put it:

This complex situation where the number of homeless individuals vastly exceeds the housing supports that the region can provide, has in turn caused an increase in encampments over the last few years.⁸²

Region’s shelters can accommodate only 15% of Region’s homeless

33. The Region’s emergency shelter system consists of shelters and the motel spaces this Court previously excluded from its shelter space count because availability was “at the discretion of the

⁷⁴ “2024 Point in Time Count for Regional Municipality of Waterloo” (“2024 PIT Findings”) in Ex C to Affidavit of Lynn Kubis, July 7, 2025 (“Kubis Aff.”), RARV.4, p.86.

⁷⁵ “AMO Municipalities Under Pressure - The Human and Financial Costs of Ontario’s Homelessness Crisis,” Ex F to 1st Sweeney Aff. (“AMO Report”), AR, p.210.

⁷⁶ The Point in Time Count defines “living rough” to include people staying in encampments, on the street, or in their vehicle: “2024 PIT Infographic,” Ex E to 1st Sweeney Aff., AR, p.174.

⁷⁷ *Persons Unknown*, para.18.

⁷⁸ Cross-Exam. of Peter Sweeney, July 11, 2025 (“1st Sweeney XE”), JTBV.2, p.89, Q/A.238.

⁷⁹ “2024 PIT Findings,” in Ex C to Kubis Aff. RARV.4, p.86. See also “Appendix A: 2024 Point-in-Time Count Homelessness Data - Insights to Action” in Ex C to Kubis Aff., RARV.4, pp.76-8.

⁸⁰ “2024 PIT Findings,” in Ex C to Kubis Aff., RARV.4, p.86; “AMO Report,” AR, p.188; Definition of “chronic homelessness” in “Final PECH Report 2024,” AR, p.65. See also the survey questions at “Appendix A - PiT Count 2024 Survey” in Ex B to Kubis Aff., RARV.4, p.38.

⁸¹ E.g. Affidavit of Terrance Cole, Oct. 10, 2025 (“Cole Aff.”), 2nd SupRAR, pp.16-7, paras.12-9; Ament Aff., RARV.1, pp.14-5, paras.11-2; Paul Aff., RARV.1, p.45, paras.20-1; Couto Aff., 2nd SupRAR, p.29, paras.13-4; Linton Aff., RARV.1, p.52, paras.7-9; 2nd Lopes Aff., 2nd SupRAR, p.10, para.12; Camm Aff., 2nd SupRAR, pp.22-3, paras.9-12.

⁸² 1st Sweeney XE, JTBV.2, p.11, Q/As.15-16; Aastha Shetty, “Advocates call for more shelter beds as cold weather sets in, region says it knows there aren’t enough,” Ex.1 to 1st Sweeney XE, JTBV.2, pp.140-1.

motel operators”.⁸³

34. Effective February 27, 2026, the Region had 356 spaces in the emergency shelter system, across eight shelters.⁸⁴ These spaces regularly operate at or near capacity.⁸⁵ The Region’s Commissioner of Community Services has been candid that the system has “capacity challenges”.⁸⁶ For instance, Region shelters turned persons away 171 times between October and December 2025, either due to being at capacity or due to service restrictions.⁸⁷

35. Of the 356 spaces:

- a. 50 at Erb’s Road shelter, are “tiny house” spaces.⁸⁸ These spaces are “generally full”.⁸⁹ A person must meet criteria and complete a referral process to qualify for a space.⁹⁰
- b. 20 at YWCA Cambridge, are reserved for women and persons who are gender diverse. These operate 24 hours a day.⁹¹ In Dec., Jan, and Feb they operated over capacity.⁹²
- c. 22 at SHIP 84 Frederick, are reserved for women and persons who are gender diverse, but operate only overnight.⁹³
- d. 24 at oneROOF, are reserved for youth. These operate only overnight, though there is also a daytime drop-in program.⁹⁴
- e. 80 at Cambridge Shelter Corporation Bridges shelter, operate 24 hours per day, but are reserved for men.⁹⁵

⁸³ *Persons Unknown*, para.92.

⁸⁴ 3rd Escobar Aff., 2ndSupRAR, p.71, para.7.

⁸⁵ “Homelessness Chronicity in Emergency Shelters,” Ex A to 3rd Escobar Aff. (“Homelessness Chronicity”), 2nd SupRAR, p.80; “Region of Waterloo’s November 2025 HSS Data Update,” Ex 1 to Transcript of the Continued 2nd Cross-Exam. of Peter Sweeney, Dec. 12, 2025 (“Cont. 2nd Sweeney XE”) (“Nov. 2025 HSS Update”), JTBV.4, p.164; 1st Sweeney XE, JTBV.2, pp.112-3, Q/A.315.

⁸⁶ Cont. 2nd Sweeney XE, JTBV.4, p.9-11, Q/A.3.

⁸⁷ Answers to Undertakings from the 2nd and 3rd Cross-Examinations of Peter Sweeney on Dec. 11 and 12, 2025 and March 6, 2026 (“2nd Sweeney Answers to Undertakings”), App. Undertakings Brief, Case Center A4869, Q/A.3. See also, regarding Oct. 2025: “Nov. 2025 HSS Update,” JTBV.4, p.158.

⁸⁸ “Homelessness Chronicity,” 2ndSupRAR, p.80; 1st Sweeney Aff., AR, p.36; 5th Affidavit of Peter Sweeney, affirmed Feb. 27, 2026 (“5th Sweeney Aff.”), SupAR, p.154, para.10.

⁸⁹ 1st Sweeney XE, JTBV.2, p.53, Q/A.125.

⁹⁰ Transcript of the 3rd Cross-Exam. of Peter Sweeney, Mar. 6, 2026 (“3rd Sweeney XE”), JTBV.5, p.191, Q/As.32-4; “Homelessness Chronicity,” 2ndSupRAR, p.80; 3rd Escobar Aff., 2ndSupRAR,p.71, para.9.

⁹¹ 5th Sweeney Aff., SupAR, p.154, para.10; 3rd Sweeney XE, JTBV.5, pp.188-9, Q/As.13-5; Homeless Chronicity, 2ndSupRAR, p.80; 2nd Sweeney Aff., ReplyAR, pp.18, 19, paras.25, 29.

⁹² Homeless Chronicity, 2ndSupRAR, p.80.

⁹³ 5th Sweeney Aff., SupAR, p.154, para.10; 3rd Sweeney XE, JTBV.5, p.191, Q/As.29-31; “Homelessness Chronicity,” 2ndSupRAR, p.80; 1st Escobar Aff., RARV.3, p.100, para.11.

⁹⁴ 5th Sweeney Aff., SupAR, p.154, para.10; 3rd Sweeney XE, JTBV.5, p.190, Q/As.21-4; 2nd Sweeney Answers to Undertakings, App. Undertakings Brief, Case Center A4871, Q/A.2.

⁹⁵ 5th Sweeney Aff., SupAR, p.154, para.10; 3rd Sweeney XE, JTBV.5, p.188, Q/As.8-11; 3rd Escobar Aff., 2ndSupRAR, pp.71-2, para.10; “Homelessness Chronicity,” 2ndSupRAR, p.80.

- f. 10 at Safe Haven, are reserved for youth ages 12-17.⁹⁶
- g. 20 at Bridgecare shelter, are “primarily” for persons with complex medical needs.⁹⁷ This shelter stopped accepting intakes as of September 2025.⁹⁸
- h. The remaining spaces, at ShelterCare (“House of Friendship”) (100 spaces) and SHIP Edith MacIntosh (30 spaces), are for men only.⁹⁹ SHIP Edith MacIntosh operates only overnight.¹⁰⁰
36. The Region also offers 60 “winter warming” spaces between December and March.¹⁰¹ Of these, 30 are reserved for men,¹⁰² and 30 are for all genders.¹⁰³ These are congregate spaces open overnight, with no beds.¹⁰⁴ They operate over capacity.¹⁰⁵ A third warming space had 100 co-ed warming spaces between January 26 and March 31, 2026, but it does not receive operational funding from the Region.¹⁰⁶ It, too, is a congregate space with no beds and has operated over-capacity.¹⁰⁷
37. The Region also operates transitional housing that is not available on an emergency basis. Persons must qualify for transitional housing, and it is subject to waitlists.¹⁰⁸ It is therefore not an option for a person who requires immediate shelter at a given moment.
38. While many Named Respondents are on a waitlist for affordable housing,¹⁰⁹ the anticipated wait is 8 to 10 years, with 11,421 households on the list as of November 6, 2025.¹¹⁰ The average wait

⁹⁶ 5th Sweeney Aff., SupAR, p.154, para.10; 3rd Sweeney XE, JTBV.5, pp.191-2, Q/As.35-8; 1st Sweeney Aff., AR, p.34, para.71.

⁹⁷ 5th Sweeney Aff., SupAR, p.154, para.10; 3rd Sweeney XE, JTBV.5, p.192, Q/As.38-41.

⁹⁸ “Homelessness Chronicity,” 2nd SupRAR, p.80; 2nd Sweeney Answers to Undertakings, App. Undertakings Brief, Case Center A4871, Q/A.4.

⁹⁹ *Ibid.*; 3rd Sweeney XE, JTBV.5, pp.189-190, Q/As. 18-21.

¹⁰⁰ 3rd Sweeney XE, JTBV.5, p.190, Q/As.25-8.

¹⁰¹ 5th Sweeney Aff., SupAR, p.154-155, para.12; “ES Program Occupancy/Capacity Report,” Ex F to 5th Sweeney Aff. (“Occ./Cap. Report”), SupAR, p.175; 3rd Sweeney XE, JTBV.5, pp.203-4, Q/A.97.

¹⁰² Prabhnoor Kaur, “Cambridge warming centre ‘over capacity most nights’,” Ex C to 1st Escobar Aff., RARV.3, p.116.

¹⁰³ “Occ./Cap. Report,” SupAR, p.175; 3rd Sweeney XE, JTBV.5, pp.203-8, Q/As.94-117.

¹⁰⁴ *Ibid.*

¹⁰⁵ 3rd Sweeney XE, JTBV.5, p.204, Q/A.99; “Occ./Cap. Report,” SupAR, p.175.

¹⁰⁶ “Occ./Cap. Report,” SupAR, p.175; 3rd Sweeney XE, JTBV.5, pp.206-7, Q/As.110, 113.

¹⁰⁷ 3rd Sweeney XE, JTBV.5, pp.208, Q/A. 117; 2nd Sweeney Answers to Undertakings, App. Undertakings Brief, Case Center A4872, Q/A.8.

¹⁰⁸ 1st Escobar Aff., RARV.3, pp.100-1, paras.12-3.

¹⁰⁹ Hammond Aff., RARV.1, p.38, para.5; Linton Aff., RARV.1, p.52, para.14; Affidavit of Julie Young, sworn June 13, 2025 (“Young Aff.”), RARV.1, p.86, para.27; York Aff., RARV.1, p.94, para.19; Helsby Aff., RARV.1, p.110, para.8; Weber Aff., RARV.1, p.127, para.21; Affidavit of Aaron Price, sworn May 6, 2025 (“Price Aff.”), RARV.1, p.10, para.21.

¹¹⁰ 3rd Escobar Aff., 2nd SupRAR, p.73, para.14; Affidavit of Carine Lee Nind, sworn Feb. 20, 2026 (“Nind Aff.”), 2nd SupRAR, p.65, para.11; Transcript of the Cross-Exam. of Sara Escobar, held on July 11, 2025 (“1st Escobar XE”), JTBV.1, p.398, lines 2-4 and pp.425-6, Q/A.165; 2nd Sweeney Answers to Undertakings, App. Undertakings Brief, Case Center A4869, Q/A.5.

for supportive housing units is 13.5 months.¹¹¹

Access barriers for congregate shelters

39. The existing shelter spaces are not accessible to all homeless persons. Some are inaccessible for obvious reasons: women cannot access spaces reserved for men; adults cannot access spaces reserved for youth; opposite sex couples cannot access single sex shelters without forced separation. However, there are also more nuanced access barriers relating to disability. Dr. Sahil Gupta, a physician whose clinical practice and research focuses on “people experiencing homelessness”,¹¹² identified the following disability-related barriers to shelter access:¹¹³

- Crowded congregate settings can destabilize persons with some mental health disabilities;
- Some persons’ mental health impairments prevent them from complying with shelter rules;
- Many shelters cannot meet specific accessibility needs, such as accessibility for people with physical disabilities, allowance for pets, or proximity to an individual’s usual pharmacy (for persons who require daily dispensed medications) or social supports.

40. Dr. Gupta’s evidence is consistent with the experience of the Named Respondents:¹¹⁴

“I found it difficult to remain at these shelters due to some of the rules. I was not allowed to stay at the shelter during the day, and had nowhere else to go. After some time my bed was given away.”¹¹⁵

“There are many rules at the shelter that I find hard to follow because of my disabilities.”¹¹⁶

“I was supposed to be placed at the House of Friendship shelter on Weber St. but I didn't follow through. This is part of my disability. My sleep habits are out of whack because of pain and this impacts my memory. I can only remember to do things in the moment, if I have to act or follow up on a task it is a challenge for me. I cannot remember tasks or errands that need to be completed. I forget to do things, such as eat.”¹¹⁷

Motel rooms are not reliable sources of shelter

41. In addition to emergency shelter spaces, the Region funds motel stays for some persons.

¹¹¹ Answers to Undertakings from the Cross-Examination of Peter Sweeney on July 11, 2025 (“1st Sweeney Answers to Undertakings”), App. Undertakings Brief, Case Center A4862, Q/A.1.

¹¹² Affidavit of Sahil Gupta, sworn Aug. 15, 2025 (“Gupta Aff.”), Supplemental Responding Application Record (“SupRAR”), V.2, p.8, para.4; Curriculum Vitae of Dr. Sahil Gupta, Ex A to Gupta Aff., SupRARV.2, pp.25-6.

¹¹³ Gupta Aff., SupRARV.2, pp.12-4, paras.13-4. See also: Affidavit of Angela Allt, sworn June 20, 2025 (“Allt Aff.”), RARV.2, pp.21-2, para.18.

¹¹⁴ In addition to the references below, see: Affidavit of Kyle York, sworn June 17, 2025 (“York Aff.”), RARV.1, pp.93-4, para.14; Hammond Aff., RARV.1, p.39, para.13; Camm Aff., 2ndSupRAR, p.23, para.11; Affidavit of Josephina Dugas, sworn May 7, 2025 (“Dugas Aff.”), RARV.1, p.77, para.11.

¹¹⁵ Harker Aff., 2ndSupRAR, p.34, paras.10-1.

¹¹⁶ Affidavit of Megan Lopes, sworn June 18, 2025 (“1st Lopes Aff.”), RARV.1, p.105, para.13.

¹¹⁷ Nichol Aff., RARV.1, p.59, para.19.

However, as this Court found in *Persons Unknown*, these are subject to operator discretion.¹¹⁸ They are also typically funded for finite periods.¹¹⁹ For instance, the funding for motel spaces that the Region added to its budget when it passed the Site Specific By-Law “will not extend beyond 2026”.¹²⁰ The Region did not extend funding for those spaces when it amended the By-Law.

42. Because motel spaces are subject to operator discretion, they are not reliable shelter for persons with mental health disabilities that cause challenging behaviours. As described by shelter worker Sara Escobar, “people get kicked out frequently for a variety of reasons. The motel owners set the rules and decide when they want to kick someone out. People get kicked out for behaviour related to mental health disabilities including hoarding, damaging the rooms, allowing too many visitors, acts of violence, or substance related concerns.”¹²¹

43. In 2023, the City of Toronto cleared an encampment located on property outside of a church. The Court permitted the encampment to be cleared based on the City’s assurance that each resident would be offered a hotel space.¹²² The reverend of that church now affirms that “all of the encampment residents who were evicted from the encampment and placed in shelter hotels are back living on the streets”, and “the encampment at the Church has built back up to 9 residents.”¹²³

44. This is consistent with the experience of multiple Named Respondents, who have already been evicted from motel spaces.¹²⁴ For instance, Megan Lopes affirms that the Region offered her a motel space in September 2025. She moved over what belongings she could, but had to leave her tent and mattress because the Region did not offer storage. In October 2025, the motel operator banned her from the motel. She returned to the Encampment, having no place else to go. When she

¹¹⁸ *Persons Unknown*, para.92.

¹¹⁹ 1st Escobar Aff., RARV.3, p.103, para.21.

¹²⁰ The Region designated an additional \$799,000 towards motel spaces, with the notation that “motels will only be used for temporary support and will not extend beyond 2026”: PDL-LEG-25-017 - 100 Victoria Street, North, Kitchener: Site Specific By-law, Ex C to 1st Sweeney Aff. (“PDL-LEG-25-017”), AR, p.150.

¹²¹ 1st Escobar Aff., RARV.3, p.103, para.21.

¹²² *Church of Saint Stephen et al. v. Toronto*, [2023 ONSC 6566](#) (“*Saint Stephen*”), para.2.

¹²³ Affidavit of Sara Magdalen Helwig, sworn July 2, 2025 (“*Helwig Aff.*”), RARV.3, p.176, paras.11-2.

¹²⁴ E.g.: 2nd Lopes Aff., 2ndSupRAR, pp.9-10, paras.5-12; Nichol Aff., RARV.1, p.58, para.13; Dugas Aff., RARV.1, p.79, para.22.

returned, she found that her tent and mattress had been destroyed. As a result, she feels her circumstances have “deteriorated” compared to when she left.¹²⁵

Region’s Plan to End Chronic Homelessness (“PECH”) commits Region to human rights approach and “Whole Community Model” of decision making

45. Approximately 15 months after *Persons Unknown*, the Region passed a new Plan to End Chronic Homelessness (“PECH”).¹²⁶ The PECH mandates four “interventions” for Region housing and homelessness services: (1) Broadening our Current Housing/Prevention support continuum; (2) Community-Driven System Leadership; (3) Centring Lived Expertise and Equity-Owed Groups; and (4) Defining and Combining Housing First and Human Rights Approaches.¹²⁷

46. The second of these, “**Community-driven system leadership**”,¹²⁸ sets out a leadership model revolving around a “Whole Community Leadership Table”, or “Co-Creator’s Table”, with “decision-making power over the implementation of the PECH”: “[t]he role of the Region as the Service System Manager remains, but would move from singularly driving these decisions to collaborating and supporting - working alongside the new leadership tables to guide PECH implementation”.¹²⁹ The Table’s decision-making responsibility extends to decisions regarding “Unsheltered Homelessness & Encampments”.¹³⁰ The Table is comprised of over 60 community organizations and individuals.¹³¹ It meets once a month.¹³²

47. The third PECH intervention of “**centring lived expertise and equity-owed groups**” commits the Region to working together with a “**Lived Expert Prototyping Cohort**”.¹³³ That Cohort consists of “Lived Experts” and representatives from mutual aid groups, advocacy groups, and

¹²⁵ 2nd Lopes Aff., 2ndSupRAR, pp.8-11.

¹²⁶ Alton Aff., RARV.2, p.27, para.3; Waterloo Region, “The Plan to End Chronic Homelessness: Navigating Complexity Together: A Roadmap to Functional Zero by 2030,” Ex B to Alton Aff. (“PECH”), RARV.2, p.50.

¹²⁷ PECH, RARV.2, p.48.

¹²⁸ *Ibid.*, pp.48, 84.

¹²⁹ PECH, RARV.2, p.84.

¹³⁰ *Ibid.*, p.124.

¹³¹ Affidavit of Dr. Laura Pin, sworn July 9, 2025 (“1st Pin Aff.”), SupRARV.1, pp.278-9, para.3.

¹³² *Ibid.*

¹³³ PECH, RARV.2, p.87.

agencies, along with some Region and City staff.¹³⁴

48. The fourth PECH intervention requires the Region to take a “**human rights approach**” to ending homelessness. It defines this as an approach where:

[p]eople experiencing homelessness are treated as rights holders, where their agency is respected, and where the Region has a duty of care for their housing needs. The Region will be compliant with national and international human rights law and ensure it is appropriately prioritized amidst other legal obligations such as those regarding property rights, privacy, and liability.¹³⁵ [Emphasis added]

49. This approach is set out more fully through the 8 principles of the United Nations Special Rapporteur on the Right to Adequate Housing’s “National Protocol for Homeless Encampments in Canada: A Human Rights Approach”.¹³⁶

Adoption of the new By-Laws and provision of Individual Housing Plans

50. On April 16, 2025, the Region posted notice of the Site Specific By-Law on its website.¹³⁷ It did not post notice at the Encampment site.¹³⁸ Council passed the By-Law on April 23, 2025.¹³⁹

51. Effective upon its adoption, the By-Law prohibited anyone who did not meet the definition of “Resident” from sheltering at the Encampment.¹⁴⁰ It defined “Resident” to mean persons “residing at 100 Victoria Street” as of the April 16, 2025 notice date.¹⁴¹ It further provided that “[c]ommencing on December 1, 2025, no person shall enter onto, reside on, or occupy 100 Victoria Street”.¹⁴² Persons contravening either provision would be guilty of an offence and liable for a fine of up to

¹³⁴ PECH, RARV.2, p.58; Alton Aff., RARV.2, p.26, para.2.

¹³⁵ PECH, RARV.2, pp.63, 88.

¹³⁶ UN Special Rapporteur on Adequate Housing, “A Human Rights Approach: A National Protocol for Homeless Encampments in Canada,” Ex L to Affidavit of Marie-Josée Houle, sworn Aug. 15, 2025 (“Houle Aff.”), SupRARV.3, pp.873-5. See also: UN Special Rapporteur on Adequate Housing, “A Human Rights Approach: A National Protocol for Homeless Encampments in Canada,” Ex D to Alton Aff. (“National Protocol”), RARV.2, pp.172-4; Canadian Human Rights Commission, “Upholding dignity and human rights: the Federal Housing Advocate’s review of homeless encampments: Final Report,” Ex H to Houle Aff. (“Upholding Dignity & Human Rights”), SupRARV.3, pp.801-4; Houle Aff., SupRARV.3, p.470, para.60.

¹³⁷ 1st Sweeney Aff., AR, p.22, para.29; Site-Specific By-Law, AR, p.139, s.1(7).

¹³⁸ Alton Aff., RARV.2, pp.31-2, paras.14-8; Social Development Centre, “Community Impact Consultation – Preliminary Report: 100 Victoria, dated Apr. 22, 2025,” Ex H to Alton Aff. (“SDC Report, Apr. 2025”), RARV.2, pp.225-8; Nichol Aff., RARV.1, p.60, para.23; Dugas Aff., RARV.1, p.80, para.24; Price Aff., RARV.1, p.10, para.21.

¹³⁹ Site-Specific By-Law, AR, p.141.

¹⁴⁰ “Schedule “B”: Prohibited Activities” in Site-Specific By-Law, AR, p.143, s. 1(e).

¹⁴¹ Site-Specific By-Law, AR, p.139, s. 1(7). That date was April 16, 2025.

¹⁴² *Ibid.*, p.139, s. 3(1).

\$5,000,¹⁴³ but the By-Law also specified that the Region could take enforcement steps under the *Trespass to Property Act*.¹⁴⁴ The By-Law further authorized the Region to, among other actions, erect fencing around the site to prevent entry, and remove persons' personal property from the site.¹⁴⁵

52. The Region's Commissioner of Community Services affirms that the Region recognizes "approximately 40" persons as "residents".¹⁴⁶ The Region has not advised how many of the Named Respondents are included in this count, but at least 12 are not.¹⁴⁷

53. On the same day that Council passed the By-Law, it directed staff to add \$814,333 to its housing stability budget.¹⁴⁸ Contrary to the Region's assertion at paragraph 3 of its factum, this did not add "approximately 40 spaces" to the Region's housing stability system. Rather, the new funding was made up of \$466,083 for "motels with social supports" and \$271,250 for new supportive housing units,¹⁴⁹ with the remaining funds designated for site remediation. The funding for "motels with social supports" is only "temporary". It "will not extend beyond 2026".¹⁵⁰

54. On August 8, 2025, this Court issued an interim injunction restraining the Region from acting on any part of the By-Law until the conclusion of this hearing.¹⁵¹

55. On December 18, 2025, the Region posted notice on its website that it intended to amend the By-Law, with a meeting scheduled for January 7, 2026.¹⁵² It passed the Amended By-Law on January 9.¹⁵³ The Amended By-Law called for the Encampment to be closed on April 1, 2026.

56. Contrary to the Region's assertion at paragraph 37 of its factum, the amendments do not

¹⁴³ Site-Specific By-Law, AR, p.139, s. 4.

¹⁴⁴ *Trespass to Property Act*, [R.S.O. 1990, c. T.21](#) ("*Trespass to Property Act*"), [s. 2\(b\)](#); Site Specific By-Law, AR, p.140, s. 5(10); *Trespass to Property Act*, [s. 2\(b\)](#), s. 9(1).

¹⁴⁵ Site Specific By-Law, AR, p.140, s. 5(8)-(10).

¹⁴⁶ 1st Sweeney Aff., AR, p.20, para.25.

¹⁴⁷ 2nd Sweeney Aff., ReplyAR, p.15, paras.15-6. See footnote 1 for whom of the Cross-Applicants/Named Respondents the Region deems as "Residents" under the By-Law definition.

¹⁴⁸ PDL-LEG-25-017, AR, p.145.

¹⁴⁹ *Ibid*, p.149.

¹⁵⁰ PDL-LEG-25-017, AR, p.150.

¹⁵¹ *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, [2025 ONSC 4774](#) ("*Interim Injunction*"), para. [118](#).

¹⁵² 2nd Affidavit of Laura Pin, sworn Feb. 20, 2026 ("2nd Pin Aff."), 2ndSupRAR, p.106, para.9.

¹⁵³ Kang Aff., SupAR, p.89-90, para.3; Amended By-law, SupAR, pp.92-5.

provide that “Existing Residents cannot be removed from the Property unless they have an offer in writing for alternative accommodation”. Rather, s. 6(1) of the Amended By-Law offers that protection **only until April 1, 2026**, a period during which enforcement of the By-Law has been enjoined by this Court in any event.¹⁵⁴ Even that protection was not extended to most of the Named Respondents, whom the Region does not deem “Residents”.

57. It is also not the case that, as the Region asserts at para 77 of its factum, the Amended By-Law no longer makes it an offence or imposes fines for persons who remain on the property. While the amendment removed the stand-alone \$5,000 fine, it maintained the clauses relating to *Trespass to Property Act* enforcement.¹⁵⁵ Accordingly, persons who remain can still be arrested without warrant, charged with an “offence”, and subject to a fine of up to \$10,000.¹⁵⁶

58. Finally, the Amendments included a new “Transition Protocol” outlining steps the Region would take prior to removing those persons it deemed “Residents”.¹⁵⁷ Under that Protocol, “Residents” would be offered “alternative accommodation” as set out in Individual Housing Plans (“IHPs”), which the Region would make “best efforts” to develop.¹⁵⁸

59. The Region characterizes these IHPs as “personalized plans designed to match individuals with housing options reflecting their specific needs and preferences”.¹⁵⁹ However, the three IHPs on the record do not support this contention.¹⁶⁰ Two offer emergency shelter spaces, one of which the recipient could not accept because the spaces did not accommodate couples. The third offered a motel space. All three are undated, consist of only a few lines, and offer no information as to what the unnamed recipient’s “specific needs and preferences” are.

¹⁵⁴ “Appendix B: Consolidated version of By-law #25-021 showing the tracked amendments” to PDL-LEG-26-001, Ex B to Kang Aff. (“By-law with Tracked Amendments”), SupAR, p.112.

¹⁵⁵ *Ibid.*, p.111, s. 5.

¹⁵⁶ *Trespass to Property Act*, ss.[2\(b\)](#), [9\(1\)](#).

¹⁵⁷ “Schedule “C”: Transition Protocol” to By-law w/ Tracked Amendments (“Transition Protocol”), SupAR, pp.116-7.

¹⁵⁸ Transition Protocol, SupAR, p.116.

¹⁵⁹ Region’s Factum, pp.6-7 (pdf 12-3), para.14.

¹⁶⁰ Individual Housing Plans, Ex 4 to 2nd Sweeney XE, JTB V.4, pp.175-7.

60. The Protocol further provides that USWs will make “best efforts” to find “Alternative Accommodation” where a resident loses “Alternative Accommodation due to non-compliance with the rules”.¹⁶¹ However, there is no provision for how such situations would come to the Region’s attention, nor how the Region would find “Alternative Accommodation” where its shelter system is consistently at capacity and the wait list for subsidized housing is eight to ten years.

By-Laws developed without the consultation prescribed by PECH

61. The Site Specific By-Law was developed behind closed doors, without notice to the Co-Creator’s Table, the Lived Expertise Prototyping Cohort, or persons then at the Encampment.

Lack of meaningful engagement with Lived Expertise Prototyping Cohort

62. The Region did not consult with the Lived Expertise Prototyping Cohort regarding By-Law development.¹⁶² On February 14, 2024, the Region advised the Facilitator of the Lived Expertise Program, David Alton, that it intended to close the Encampment.¹⁶³ At that time, Region staff informed them construction would begin on the transit hub in six to eight months.¹⁶⁴ D. Alton suggested the Region use the ensuing months to follow the human rights approach required by the PECH.¹⁶⁵ They proposed that the Region hold a stakeholders meeting to consult on a relocation process,¹⁶⁶ and that residents could potentially consent to relocation if the Region offered an alternative site.¹⁶⁷ Region staff did meet with the stakeholders D. Alton had identified, but used the occasion only to inform them the Region intended to close the site.¹⁶⁸

No notice to or engagement with Co-Creators Table

63. Dr. Laura Pin is a member of the Co-Creators table and also sits on a PECH sub-committee focused on human rights review of Region policies and by-laws.¹⁶⁹ Prior to the introduction of the

¹⁶¹ Transition Protocol, SupAR, p.116, s. 2(e).

¹⁶² Alton Aff., RARV.2, pp.29-34, paras.8-23.

¹⁶³ *Ibid.*, pp.26, 29, paras.2, 8.

¹⁶⁴ *Ibid.*, p.29, para.8.

¹⁶⁵ *Ibid.*, p.29, para.8.

¹⁶⁶ *Ibid.*, p.29, paras.8-9.

¹⁶⁷ *Ibid.*, p.29, para.8.

¹⁶⁸ *Ibid.*, p.30, para.11; “100 Victoria Systems Meeting Notes,” Mar. 7, 2025, Ex E to Alton Aff., RARV.2, pp.211-2.

¹⁶⁹ 1st Pin Aff., SupRARV.1, p.279, para.4.

By-Law, the Region had approached Dr. Pin to do policy work in relation to the PECH.¹⁷⁰ Two days before the By-Law was introduced, the Region's Director of Housing Services told Dr. Pin that the Region would be making an announcement that he expected might change her decision about accepting the contract.¹⁷¹ He did not say what this announcement would be.

64. The Co-Creators Table then met the following day, on April 15. At that meeting, Region staff did not mention the By-Law that the Region planned to introduce the next day.¹⁷² Prior to that meeting, the Co-Creator's Table had last met on March 20, 2025.¹⁷³ There had been no mention of the impending By-Law then, either.¹⁷⁴

65. The next day, Co-Creators were notified by residents about heavy equipment and dumpsters being delivered to the Encampment. In response to their inquiry, the Region's Commissioner of Community Services emailed Table Members at 2:45pm to advise that at 4pm, a report to counsel would be available on the Region's website recommending a new By-Law.¹⁷⁵

Lack of notice to Encampment residents

66. On April 22, 2025, the day before the By-Law was passed, the PECH Lived Experience Working Group surveyed 27 persons sheltering at the Encampment as to what they knew about the By-Law.¹⁷⁶ None had received any information about it from Region staff.¹⁷⁷ In the words of one Named Respondent:

No one from the Region has spoken to me about the By Law. I have heard that the encampment is closing down but I don't know why. I think everyone living here should know why and be given an explanation, especially the people that have been living here for so long. This place is our home and it is all we have.¹⁷⁸

¹⁷⁰ 1st Pin Aff., SupRARV.1, p.280, para.7.

¹⁷¹ *Ibid.*, p.281, paras.8-9.

¹⁷² *Ibid.*, p.281, para.10.

¹⁷³ *Ibid.*, p.280, para.6.

¹⁷⁴ "The Plan to End Chronic Homelessness: Co-Creator Roundtable" presentation slides, dated Mar. 20, 2025, Ex B to 1st Pin Aff., SupRARV.1, pp.307-332; 1st Pin Aff., SupRARV.1, p.280, para.6.

¹⁷⁵ 1st Pin Aff., SupRARV.1, pp.281-2, paras.11-2; Email from Laura Pin to Co-Creators Table Members, Apr. 16, 2025, Ex D to 1st Pin Aff., SupRARV.1, p.337; Email from Peter Sweeney to Co-Creators Table Members, Apr. 16, 2025, Ex E to 1st Pin Aff., SupRARV.1, p.339.

¹⁷⁶ Alton Aff. RARV.2, p.31, para.16; SDC Report, Apr. 2025, RARV.2, pp.225-8.

¹⁷⁷ *Ibid.*

¹⁷⁸ Dugas Aff., RARV.1, p.80, para.24.

PART III: ISSUES, LAW AND ARGUMENT

Issues

67. There are five issues in this Application and Cross-Application:

- a. Does the By-Law violate s. 7 of the *Charter*?
- b. Does the By-Law violate s. 15 of the *Charter*?
- c. If the By-Law violates either s. 7 or s. 15 of the *Charter*, is this violation justified under s. 1 of the *Charter*?
- d. Should the By-Law be quashed for illegality under s. 273 of the *Municipal Act*?
- e. Should the Court maintain the existing interim injunction or grant the Region's request for a fresh interlocutory injunction under s. 440 of the *Municipal Act*?

68. These issues turn in part on how the Court resolves a key preliminary issue: Does horizontal *stare decisis* bind this Court to the legal determinations made in *Persons Unknown*?

69. An additional preliminary issue is the admissibility of the parties' expert evidence. The Named Respondents challenge the admissibility of Dr. Koivu's evidence. The Region challenges the admissibility of the evidence of Dr. Pauly, Dr. Pin, and Canada's Federal Housing Advocate. They also describe the evidence of Drs. Schwan and Gaetz as "purportedly 'expert'".¹⁷⁹

Law and Argument

Preliminary Issue 1: Admissibility of expert evidence

Pauly, Pin, Houle, Schwan, and Gaetz evidence should be admitted

70. Dr. Pauly's expert opinion evidence should be admitted because it meets each of the four *Mohan* factors (relevance, necessity, absence of an exclusionary rule and a properly qualified expert).¹⁸⁰ Dr. Pauly is a registered nurse and public health researcher with more than a decade of experience in the field of homelessness.¹⁸¹ She has published extensively in this area¹⁸² and been part of numerous publicly funded research teams defining and enumerating homelessness and evaluating responses to homelessness.¹⁸³ Her evidence on the demographics of encampments provides relevant

¹⁷⁹ Region's Factum, p.25 (pdf 31), para.54.

¹⁸⁰ *R. v. Mohan*, [1994 CanLII 80 \(SCC\)](#), [1994] 2 S.C.R. 9 ("*Mohan*"). See also: *White Burgess Langille Inman v. Abbott and Haliburton Co.*, [2015 SCC 23](#) ("*White Burgess*").

¹⁸¹ Affidavit of Dr. Bernadette Pauly ("Pauly Aff."), SupRARV.2, p.209, para.2.

¹⁸² Dr. Bernadette Pauly's University of Victoria Faculty Curriculum Vitae, Ex A to Pauly Aff. ("Pauly CV"), SupRARV.2, pp.234-8, 241, 244, 246-251, 254.

¹⁸³ Pauly CV, SupRARV.2, pp.260-7.

and necessary context for this Court’s analysis under both ss. 7 and 15 of the *Charter*, and her evidence on the impact of encampment evictions and displacements is relevant and necessary to the assessment of whether there is a deprivation of s. 7. While parts of one of her previous affidavits were found not to comply with British Columbia’s Civil Rules in *Brett*,¹⁸⁴ there is no indication that her affidavit in this case has similar defects, and she has provided expert evidence in nine other cases.¹⁸⁵ In any event, Dr. Pauly has signed an acknowledgment of her duty to the Court under r. 4.1.01(1)(a), which “will generally be sufficient” to establish “independence and impartiality”.¹⁸⁶ This acknowledgement was missing in *Brett*.¹⁸⁷

71. This Court should also admit the evidence of Canada’s Federal Housing Advocate, Marie-Josée Houle. The Region’s objection to her evidence is that she is an advocate on encampment issues. However, Courts have been clear that advocacy alone does not undermine the admissibility of expert evidence¹⁸⁸ because “many experts are advocates”¹⁸⁹ and, particularly in public interest litigation, “it would be surprising not to have experts who have expressed points of view and advocated for particular outcomes”.¹⁹⁰ That Ms. Houle had previously written publicly to the Region to express the same view she now expresses in her affidavit – that its Site Specific By-Law is inconsistent with the human rights approach – merely reinforces that this is her opinion. Ms. Houle, too, has signed the acknowledgement of her duty of “independence and impartiality” to this Court.

72. The Region’s objection that Dr. Pin lacks qualification is unfounded. Unlike the Region’s sole expert, Dr. Koivu, Dr. Pin has engaged in research and published extensively on the issues with

¹⁸⁴ *Vancouver Fraser Port Authority v Brett*, [2020 BCSC 876](#) (“*Brett*”), para.75.

¹⁸⁵ Pauly CV, SupRARV.2, p.275.

¹⁸⁶ *White Burgess*, para.48; Acknowledgement of Expert’s Duty of Dr. Bernadette Pauly, dated Aug. 14, 2025, SupRARV.2, pp.409-410.

¹⁸⁷ *Brett*, para.75.

¹⁸⁸ *Black et al. v. City of Toronto*, [2020 ONSC 6398](#) (“*Black*”), paras. 31-7; *The Corporation of the City of Kingston v. Doe*, [2023 ONSC 6662](#) (“*Kingston*”), para.104; *R. v. Shafia*, [2016 ONCA 812](#), para. 253; *R. v. Nygard*, [2024 ONSC 4262](#) (“*Ny gard*”), paras.42-3; *Dyck v. Tahoe Resources Inc.*, [2021 ONSC 5712](#), para.302; *Wise v. Abbott Laboratories, Ltd*, [2016 ONSC 7275](#), paras. 34-83; *Affleck v. The Attorney General of Ontario*, [2021 ONSC 1108](#), paras. 18-37.

¹⁸⁹ *Ny gard*, para.42.

¹⁹⁰ *Black*, para.31.

respect to which she offers her opinions.¹⁹¹ The Region itself has deemed her expertise on these topics sufficient to hire her as its consultant.¹⁹² The Region also objects that whether the By-Law is consistent with the “human rights approach” is not proper subject for opinion evidence. Regardless of whether this is the case, this Court may admit evidence as to what the “human rights approach” requires, just as in negligence cases, an expert may opine on what the standard of care requires.¹⁹³

73. The Region’s objections to the evidence of Drs. Schwan and Gaetz is equally unfounded on the record. Both have published extensively on the issues for which they give evidence and Dr. Schwan was lead researcher on the largest ever Canadian study “examining women and gender-diverse people’s distinct housing experiences, challenges, and service needs”.¹⁹⁴ Their expertise is not “purported”.¹⁹⁵ The evidence of Dr. Schwan provides relevant and necessary context for the Named Respondents’ sex-based s. 15 argument. The evidence of Dr. Gaetz regarding the definition and causes of homelessness is also relevant and necessary to this Court’s s. 15 analysis, having regard to the Supreme Court’s instructions in *Kanyinda*, described below, that courts must consider such context in assessing disadvantage.

Koivu evidence is inadmissible

74. The majority of the evidence of the Region’s sole expert witness, Dr. Koivu, is not relevant to the Court’s s. 7 analysis because it does not address the issue before the Court – whether the sheltering restrictions arising from the By-Law increase the risks faced by persons who lack accessible indoor shelter. Instead, Dr. Koivu opines that indoor shelter is safer than remaining outside.¹⁹⁶ There is no dispute that residing outside, with or without any form of protection from the elements, is dangerous. However, **the Region’s chronically homeless rely on the Encampment precisely when they cannot access indoor shelter.** As described below, the issue in assessing

¹⁹¹ Curriculum Vitae of Dr. Laura Pin, Ex A to 1st Pin Aff., SupRARV.1, pp.288-296.

¹⁹² *Ibid.*, p.290.

¹⁹³ *Smith v. Kane*, [2021 ONCA 634](#), paras.95-6.

¹⁹⁴ Affidavit of Kaitlyn Schwan, sworn Aug. 15, 2025 (“Schwan Aff.”), SupRARV.3, p.8, para.5.

¹⁹⁵ Region’s Factum, p.25 (pdf 31), para.54.

¹⁹⁶ Transcript of the Cross-Exam. of Dr. Sharon Koivu, held Dec. 11, 2025 (“Koivu XE”), JTBV.2, pp.369-71, Q/As.115-7.

whether there is a “sufficient causal connection” under s. 7 is whether restricting outdoor sheltering contributes to the dangers of outdoor homelessness by making an already dangerous situation more so by requiring persons to remain unsheltered and/or hidden. For the most part, Dr. Koivu’s evidence does not assist the Court with that issue.¹⁹⁷

75. The exception is Dr. Koivu’s opinion that tents do not mitigate risks caused by exposure to the elements.¹⁹⁸ However, this opinion is inadmissible because it does not satisfy the *Mohan* criterion that an expert have acquired “special or peculiar knowledge through study or experience in respect of the matters on which he or she undertakes to testify”.¹⁹⁹ Dr. Koivu freely admits that she is “not an expert in tents”.²⁰⁰ She is therefore not in a position to provide expert opinion as to how tents function. The Court of Appeal has cautioned that it is a judge’s responsibility “to be vigilant that as the expert testifies, he or she does so within the confines of their qualifications”.²⁰¹ Accordingly, courts have been appropriately critical of experts “simply read[ing] literature on a specific area and putting forth an opinion represented as that of an expert”.²⁰² Dr. Koivu only refers to two academic papers to support her opinion on tent functionality.²⁰³ Aside from those, the sources Dr. Koivu cites in relation to tent function are inadmissible hearsay:²⁰⁴ online news articles²⁰⁵ and newsletters.²⁰⁶

76. Dr. Koivu’s reliance on online articles stands in contrast to the evidence of the Named

¹⁹⁷ Expert Affidavit of Dr. Sharon Koivu, affirmed Sept. 11, 2025 (“Koivu Aff.”), SupAR, pp.18-9, 20, paras.13, 18.

¹⁹⁸ Koivu Aff., SupAR, pp.20, 22-3, paras.21, 30, 33-5.

¹⁹⁹ *Mohan; R. v. Abbey*, [2017 ONCA 640](#), paras. 47-9; *White Burgess*, para.23.

²⁰⁰ Koivu XE, JTBV.2, pp.480-1, Q/A.333.

²⁰¹ *Pederson v. Forget*, [2026 ONCA 118](#), para.22. See also: *R. v. Sekhon*, [2014 SCC 15](#), para.46; *R. v. Abbey*, [2009 ONCA 624](#), para.62.

²⁰² *St. Theresa Point First Nation v. Canada*, [2025 FC 1926](#), para.42; *R v Mathisen*, [2008 ONCA 747](#), paras. 126-7.

²⁰³ These are footnotes 12&14, at paras.34-7 of her affidavit. Koivu Aff., SupAR, pp.22-3; Works Cited, SupAR, p.68.

²⁰⁴ *Public School Boards’ Assn. of Alberta v Alberta (Attorney General)*, [2000 SCC 2](#), [2000] 1 SCR 44, para 14; *Moffitt v T.D. Canada Trust*, [2021 ONSC 6133](#), paras. 255-260; *Ruck v City of Mississauga*, [2024 ONSC 2579](#), para 23.

²⁰⁵ Footnotes 41-81, 88-9 to Dr. Koivu’s Affidavit. See: Works Cited, SupAR, pp.71-4. These, together with the two academic papers referred to above, constitute the sole authorities Dr. Koivu cites for her opinion on tent functionality.

²⁰⁶ For instance, Dr. Koivu’s opinion at para.24 of her affidavit that encampments do not protect against hypothermia is based in part on a 2020 online posting by Abby Lee Hood, whose stated qualification consists of being a “Nashville-based writer who lives with their three-legged cat and hedgehog. [...] [T]hey enjoy playing the fiddle or roller skating and is working on their debut novel”. Further, the opinion expressed in that posting does not pertain to encampments, but is rather that hypothermia is a problem for any person who lacks indoor shelter. See: Article, Invisible People website, Ex 11 in Koivu XE Exs., JTBV.3, p.387.

Respondents' expert witnesses, Drs. Hwang and Gupta, whose primary area of research is the health impacts of unsheltered homelessness. Drs. Hwang and Gupta have published extensively on health outcomes for the homeless, whereas Dr. Koivu is an in-patient addiction consultant, consulting with treating physicians whose patients have been admitted to hospital.²⁰⁷ She has never conducted research on health and homelessness.²⁰⁸

77. The fact that Dr. Koivu's evidence was accepted by Justice Ramsay in *Heegsma*²⁰⁹ does not weigh in favour of the Court doing so here. Justice Ramsay's decision is under appeal, and one of the grounds is that the Court erred by relying on Dr. Koivu's evidence when it was irrelevant and she lacked qualification.²¹⁰ The Ontario Court of Appeal heard the appeal of that decision on February 10 and 11, 2026, and its decision is pending.

Preliminary Issue 2: The legal determinations in *Persons Unknown* continue to bind this Court in relation to s. 7 of the *Charter*

78. The Region cannot evade this Court's previous order by acting under By-Laws that are new in form, but not in substance. *Stare decisis* binds this Court to follow its previous determination that it is unconstitutional to prohibit sheltering on this site when "the number of homeless persons exceeds the number of available and accessible shelter beds in the Region."²¹¹

79. The fact that the By-Laws are different in name from the Code of Use By-Law does not prevent the application of *stare decisis*. This is because the By-Laws' object and impact are substantively identical as those already considered by this Court.²¹² There is no meaningful distinction between prohibiting loitering and sheltering in order to "prevent[...] the disruption of the Region's operations on the Designated Premises"²¹³ and restricting sheltering to "specifically

²⁰⁷ Koivu XE, JTBV.2, pp.343-5, Q/As. 37-42; Koivu Aff., SupAR, p.17, para.3.

²⁰⁸ Curriculum Vitae of Dr. Sharon Koivu, Ex A to Koivu Aff., SupAR, pp.45-61.

²⁰⁹ *Heegsma v. Hamilton (City)*, [2024 ONSC 7154](#) ("*Heegsma*"), para.15.

²¹⁰ Appendix D: Excerpts from Appellant Factum in *Heegsma v. City of Hamilton*, COA-25-CV-0166 ("**Appendix D**").

²¹¹ *Persons Unknown*, para.158.

²¹² This is similar to the situation before the Court in *Cycle Toronto et al. v. Attorney General of Ontario et al.*, [2025 ONSC 4397](#) ("*Cycle Toronto*") (appeal pending: OCA File No. COA-25-CV-1047), where the Attorney asserted an application had become moot because the Attorney General had replaced the By-Law at issue, but the Court found the new By-Law still accomplished the same effect, and was therefore a "sleight of hand," at paras.114, 117, 119.

²¹³ *Persons Unknown*, paras.9, 114, 119.

regulate and govern 100 Victoria Street and to obtain vacant possession”²¹⁴ where the purpose of vacant possession in either case is the same - supporting construction of the Region’s transit hub.

80. The conditions under which a legal determination is binding on courts of coordinate jurisdiction were addressed by a unanimous Supreme Court in *R. v. Sullivan*.²¹⁵ Horizontal *stare decisis* dictates that a Superior Court decision is binding on coordinate judges, who may only depart from it if an exception from *Re Hansard Spruce Mills*²¹⁶ applies.²¹⁷ These are:²¹⁸

- a. subsequent decisions have affected the validity of the impugned judgment;
- b. it is demonstrated that some binding authority in case law, or some relevant statute was not considered (*in percuriam*);
- c. the judgment was unconsidered, a *nisi prius* judgment given in circumstances familiar to all trial Judges, where the exigencies of the trial require an immediate decision without opportunity to fully consult authority.

81. None of these exceptions apply here. Nor can the Region’s current application be distinguished on its facts. To the contrary, the conditions that led this Court to find a deprivation of life, liberty, and security of the person have only worsened since *Persons Unknown*. The Region’s provision of IHPs for 40 persons, most of whom are not Named Respondents, does not change that its chronically homeless have no place but this site to shelter when they lose other options. As the Region has conceded, it is not in a position to ask the Court to lift its declaration pursuant to the terms set by *Persons Unknown*.²¹⁹

82. In the alternative, if *stare decisis* does not apply, *Persons Unknown* is persuasive authority for a determination that the By-Law violates s. 7, given its substantively identical context.

Response to the “other encampment cases” relied on by Region

83. While the Region asserts that *stare decisis* does not apply with respect to *Persons Unknown*, it asks this Court to take guidance from several other decisions. However, these concern different

²¹⁴ Site-Specific By-Law, AR, p.138.

²¹⁵ *R. v. Sullivan*, [2022 SCC 19](#) (“*Sullivan*”).

²¹⁶ *Re Hansard Spruce Mills*, [1954 CanLII 253 \(BC SC\)](#), [1954] 4 D.L.R. 590 (B.C.S.C.) (“*Spruce Mills*”).

²¹⁷ *Sullivan*, paras.6, 44.

²¹⁸ *Ibid.*, para.73.

²¹⁹ 1st Sweeney Aff., AR, pp.29-40, paras.56-86.

issues and contexts.

84. The Region first relies on *Kingston*²²⁰ for the assertion that “the ONSC concluded that the *Charter* was not infringed by a city bylaw prohibiting camping in public parks during the daytime”.²²¹ However, that is not what the Court did in that case. Rather, Justice Carter stated: “I disagree with the City that s. 7 cannot be invoked to protect daytime sheltering in a public park”,²²² while ultimately finding that the respondents in that particular case had failed to adduce the “meaningful evidence with respect to daytime sheltering options” that was necessary to meet their burden of proof.²²³

85. The Region next relies on a series of injunction cases: *Poff*, *Black*, *Saint Stephen*, *Clinique juridique itinérante*, *Matsqui*, and *Johnny 2*.²²⁴ These cases turned on the *RJR Macdonald*²²⁵ test,²²⁶ with the exception of *Johnny 2*, which considered whether the municipality had complied with conditions set in a previous injunction proceeding.²²⁷ None required the *Charter* determinations that are at issue here. To date, Courts have found infringements in **all** cases²²⁸ but *Heegsma*²²⁹ that apply the *Charter* to sheltering prohibition on public lands in situations of insufficient system capacity. Appeal of *Heegsma* is pending.²³⁰

86. Further the factual contexts of those decisions can be distinguished. In *Poff* and *Black*, the Court found the municipalities had sufficient shelter space for their homeless populations.²³¹ In *Saint*

²²⁰ [Kingston](#).

²²¹ Region’s Factum, pp.31-2 (pdf 37-8), para.67.

²²² *Kingston*, para.113.

²²³ *Ibid.*, para.112.

²²⁴ *Poff v. City of Hamilton*, [2021 ONSC 7224](#) (“*Poff*”); *Black*; *Saint Stephen*; *Clinique juridique itinérante c. Procureur général du Québec*, [2023 QCCS 1949](#) (“*Clinique juridique itinérante*”) (leave to appeal dismissed in [2023 QCCA 855](#)); *Matsqui-Abbotsford Impact Society v Abbotsford (City)*, [2024 BCSC 1902](#) (“*Matsqui*”) (leave to appeal granted in [2025 BCCA 78](#)); *Prince George (City) v Johnny*, [2025 BCSC 1556](#) (“*Johnny 2*”).

²²⁵ *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994 CanLII 117](#) (SCC), [1994] 1 SCR 311 (“*RJR MacDonald*”).

²²⁶ *Matsqui* (leave to appeal granted in [2025 BCCA 78](#)), para.73; *Clinique juridique itinérante*, para.17; *Poff*, para.32; *Saint Stephen*, para.10; *Black*, para.39.

²²⁷ *Johnny 2*, paras. 71, 79, 107.

²²⁸ *Victoria (City) v. Adams*, [2009 BCCA 563](#) (“*Adams 2*”); *Abbotsford (City) v. Shantz*, [2015 BCSC 1909](#) (“*Shantz*”); *Bamberger v Vancouver (Board of Parks and Recreation)*, [2022 BCSC 49](#) (“*Bamberger*”); *Persons Unknown*; *Kingston*.

²²⁹ *Heegsma*.

²³⁰ COA-25-CV-0166.

²³¹ *Poff*, para.236; *Black*, para.5.

Stephen, Matsqui, and *Johnny 2*, the encampments at issue were not the only spaces where persons could shelter themselves, though in the two British Columbia decisions, sheltering was only permitted overnight.²³² In *Clinique juridique itinérante*, the encampment was on a highway underpass and stood in the way of urgently required highway repairs, delay of which would put lives at risk.²³³

87. The Region also relies on *Maple Ridge*, but that decision concerned whether encampment residents had complied with the terms of a previous consent order under British Columbia's *Fire Services Act*.²³⁴ The Court ordered residents to comply with fire safety conditions, but refused the municipality's request for an order clearing shelter structures.²³⁵

Issue 1: If *stare decisis* does not apply, the By-Law nonetheless violates s. 7 of the *Charter*

The Region's right to exclude persons from its properties is subject to the Charter

88. The Region is an "occupier" for the purpose of the *Trespass to Property Act* and it accordingly has the power to exclude persons from its properties.²³⁶ However, because the Region is a branch of "government", it must exercise that power in accordance with the *Charter*.²³⁷ This means it may not require persons to leave its property if doing so would violate the *Charter*.

The Named Respondents do not assert property rights

89. This is not a case about property rights.²³⁸ The Named Respondents do not claim a right to control this particular piece of land. Rather, they seek not to be deprived of the ability to erect the shelters they need to protect their own health and safety when they lack indoor alternatives.²³⁹ The Supreme Court has recognized that enforcement of a negative right may require a government to take

²³² *Saint Stephen*, para.32; *Matsqui* (leave to appeal granted in [2025 BCCA 78](#)), paras.32, 36; *Johnny 2*, paras.22-4.

²³³ *Clinique juridique itinérante*.

²³⁴ *Maple Ridge (City) v Scott*, [2019 BCSC 157](#) ("*Maple Ridge*").

²³⁵ *Ibid.*, paras.49-56.

²³⁶ *Trespass to Property Act*, ss. 1(1), 2(1).

²³⁷ *Canadian Charter of Rights and Freedoms* ("*Charter*"), s.32(1); *Bracken v. Niagara Parks Police*, [2018 ONCA 261](#), paras.89-90; *Victoria (City) v. Adams*, [2008 BCSC 1363](#) ("*Adams I*"), para.132 (appeal allowed in part in *Adams 2*, but not on this point), *Godbout v. Longueuil (City)*, [1997 CanLII 335](#) (SCC), [1997] 3 SCR 844, paras.50-51.

²³⁸ *Persons Unknown*, para.77; *Kingston*, para.113.

²³⁹ *Canada (Attorney General) v. Bedford*, [2013 SCC 72](#) ("*Bedford*"), para.88. See also *Adams 2*, paras.95-6.

positive steps.²⁴⁰ In this sense, the distinction between positive and negative rights can be a “false dichotomy”²⁴¹ because “no right can exist without some form of corresponding obligation ... to do or not do something”.²⁴²

90. The Named Respondents are not seeking to impose free-standing positive obligations on the Region. However, similar to the Ontario Court of Appeal’s finding in *Mathur*,²⁴³ the Region has committed itself to the obligations set out in its PECH, which include taking a human rights-based approach to decision-making regarding homelessness. The question is whether, through the lens of that voluntarily imposed obligation, the By-Laws are Charter compliant and will not lead to a deprivation of rights. The Named Respondents seek for the Region to follow the standards it has set for itself through its PECH. The By-Laws might not result in a deprivation of s. 7 interests if the Region were to use the PECH consultation processes it committed itself to develop a “safe tenting protocol” to permit and regulate outdoor sheltering at other locations.

Section 7 test

91. A claim that a state action breaches s. 7 proceeds in two steps. First, a claimant must establish that the impugned law or state action deprives them of life, liberty, or security of the person. This requires showing a “sufficient causal connection” between the law or action and the alleged interference with the s. 7 interest. A risk of such a deprivation suffices.²⁴⁴ A Court “may consider ‘reasonable hypotheticals’ to determine whether a law is consistent with the *Charter*”.²⁴⁵ Second, the claimant must show that this deprivation is not in accordance with the principles of fundamental justice.²⁴⁶

²⁴⁰ *Kanyinda*, para. [122](#), per Rowe J., concurring; *Toronto (City) v. Ontario (Attorney General)*, [2021 SCC 34](#), paras. [152](#)-153, per Abella in dissent.

²⁴¹ *La Rose v. Canada*, [2023 FCA 241](#) (“*La Rose*”), para. [103](#).

²⁴² *Ibid.*, paras. [101](#)-3.

²⁴³ *Mathur v. Ontario*, [2024 ONCA 762](#) (“*Mathur*”), (leave to appeal dismissed, File No. [41596](#)), paras. [5](#), [34](#), [37](#), [40](#).

²⁴⁴ *Canadian Council for Refugees v. Canada (Citizenship and Immigration)*, [2023 SCC 17](#) (“*CCR*”), para. [56](#); *Carter v. Canada (Attorney General)*, [2015 SCC 5](#), [2015] 1 S.C.R. 331 (“*Carter*”), para. [62](#).

²⁴⁵ *R. v. Kloubackov*, [2025 SCC 25](#) (“*Kloubackov*”), para. [143](#); *R. v. Appulonappa*, [2015 SCC 59](#), [2015] 3 SCR 754, para. [28](#).

²⁴⁶ *Kloubackov*, para. [137](#); *Bedford*, paras. [57](#)-8, [75](#)-6, [93](#)-6, [123](#); *Carter*, para. [72](#); *CCR*, paras. [56](#), [60](#).

Sufficient causal connection between By-Law and deprivations at step 1

92. To establish a “sufficient causal connection” between a state action and a deprivation of life, liberty, or security of the person, the impugned law or state action need not “be the only or the dominant cause of the prejudice suffered by the claimant”.²⁴⁷ That other factors also have a causal connection to the harms alleged does not prevent a finding of causation.²⁴⁸ This means that even where risks faced by the Named Respondents are also caused by homelessness, poverty, violence, weather, and discrimination, state interference with their ability to protect themselves from those risks will still give rise to a sufficient causal connection.²⁴⁹

93. Similarly, a “sufficient causal connection” between an impugned law and harm will exist even where the impugned law interacts with **other laws** to contribute to risk or harm.²⁵⁰ The Court must interpret the impact of an impugned law in the context of the legal scheme as a whole.²⁵¹ This means that this Court must interpret the impact of the By-Laws in context with the restrictions arising from the Code of Use By-Law. While the By-Laws do not directly restrict the Named Respondents from sheltering elsewhere in the Region, they do when applied in context with the Code of Use By-Law.

94. Here, the By-Laws contribute to the harms described below because they prevent the chronically homeless Named Respondents from taking steps to protect themselves from the dangers of unsheltered homelessness. When those persons that the By-Laws do not deem to be “Residents” are evicted from the Encampment with no place to go, when the temporary spaces the Region has offered to those it does deem “Residents” end, when chronically homeless Persons Unknown who are currently sheltering elsewhere face eviction and cannot access indoor shelter, they will be left with no space of last resort to catch their fall.

²⁴⁷ *Cycle Toronto*, para.164 (appeal pending: OCA File No. COA-25-CV-1047); *CCR*, para.60; *Bedford*, para.76.

²⁴⁸ *CCR*, para.60; *Bedford*, para.76.

²⁴⁹ *Bedford*, paras.85-9.

²⁵⁰ *CCR*, para.64.

²⁵¹ *Ibid.*

By-Laws engage “life”

95. The right to life is engaged where a law or state action creates an increased risk of death, either directly or indirectly.²⁵² Just as this Court held in *Persons Unknown* that preventing persons from sheltering at this site engaged their “life” interest, Canadian Courts have repeatedly held that outdoor sheltering engage the s. 7 “life” interest of homeless persons when they lack accessible indoor alternatives.²⁵³ As this Court recognized in its earlier motion decision, this is because “[p]rohibiting homeless persons from taking measures to shelter themselves by erecting temporary structures in circumstances where there are no practical housing alternatives has been found to engage the right to life (due to exposure to risks of serious harm including death).”²⁵⁴

96. This finding is supported on the record in this case. Dr. Hwang’s evidence that “[t]here is no question that the lack of shelter for people living outside causes severe adverse effects on their health”.²⁵⁵ This is because “[h]omeless people who are prohibited from erecting even rudimentary shelter from the elements — such as tents, tarps, or cardboard barriers — will suffer clear and direct adverse impacts on their health”.²⁵⁶ While there is no question that outdoor homelessness is dangerous, with or without a tent, particular risks of *unsheltered* outdoor homelessness, or “sleeping rough” without any shelter, include:²⁵⁷

- A lack of protection from wind and rain increases the wind chill effect, greatly increasing the risk of hypothermia.
- Prolonged exposure to wet and cold can lead to serious skin and foot diseases as well as respiratory diseases.
- The lack of protection from the sun greatly increases homeless people’s risk of severe sunburn and heatstroke during the summer months.
- Lack of shelter leads to disturbed and fragmented sleep, causing serious health conditions.

²⁵² *Carter*, para. 62.

²⁵³ *Persons Unknown*, paras.96-7; *Kingston*, paras.78-9; *Bamberger*, paras.11,63; *Vandenberg v Vancouver (City) Fire and Rescue Services*, 2023 BCSC 2104 (“*Vandenberg*”), paras.143-4; *Adams 2*, paras.102-10. The Court did not find the life interest to be engaged in *Heegsma*, but that is because it was comparing the risks of outdoor sheltering vs. being sheltered, which is not the comparison here. *Heegsma* is under appeal in Court of Appeal File No. COA-25-CV-0166.

²⁵⁴ *Interim Injunction*, para.88.

²⁵⁵ Affidavit of Dr. Stephen Hwang, sworn May 6, 2025 (“Hwang Aff.”), SupRARV.1, p.72, para.10.

²⁵⁶ *Ibid.*, SupRARV.1, pp.71-2, para.9.

²⁵⁷ *Ibid.*

By-Laws engage “liberty”

97. The right to liberty is engaged when state compulsions or prohibitions affect fundamental life choices. The right to liberty “protects an irreducible, core sphere of personal autonomy wherein individuals may make fundamental and inherently private choices free from state interference.”²⁵⁸ It protects an individual’s choice of residence because the right to decide where to live is “essential to maintain personal autonomy and dignity”.²⁵⁹ The By-Laws engage the Named Respondents’ liberty interests because they permit them to be arrested without warrant if they shelter on the property.²⁶⁰ However, multiple Courts have also held that restricting the homeless from sheltering themselves engages the right to liberty²⁶¹ because shelter is a matter “critical to any individual’s dignity and independence”.²⁶²

98. These determinations are consistent with the evidence in this case. Dr. Gupta explains how, for some residents, encampments provide a sense of “autonomy and self-determination”: “Encampments offer a sense of control over one’s life and decisions, which is critical for psychological well-being”.²⁶³ In the words of one Named Respondent:

Being homeless on its own is so hard. Having a community when I wake up in the morning, knowing that I won't get kicked out of a shelter and that I have neighbours to go to for help is huge. I feel connected here, I have never feared for my safety and I feel like I have independence which helps my self esteem.²⁶⁴

By-Laws engage “security of the person”

99. The right to security of the person protects individuals’ physical and psychological integrity. It is infringed by serious state-imposed psychological stress.²⁶⁵ As this Court has already found in relation to this very Encampment,²⁶⁶ “security of the person” is engaged by both: (a) by-laws

²⁵⁸ *Drover v. Canada (Attorney General)*, [2025 ONCA 468](#) (“*Drover*”), para.129; *Interim Injunction*, para.87.

²⁵⁹ *Drover*, para.131.

²⁶⁰ Appendix B: Consolidated version of By-law #25-021 showing the tracked amendments” to PDL-LEG-26-001, Ex B to Kang Aff. (“By-law with Tracked Amendments”), SupAR, p.111, s. 5; *Trespass to Property Act*, s. 9(1).

²⁶¹ *Persons Unknown*, para.101; *Kingston*, para.79; *Adams 2*, paras.107-9; *Shantz*, para.188.

²⁶² *Persons Unknown*, para.101.

²⁶³ *Gupta Aff.*, SupRARV.2, p.19, para.21(c).

²⁶⁴ *Dugas Aff.*, RARV.1, p.77, para.15.

²⁶⁵ *Carter*, para. 64; *CCR*, para.90; *Chaoulli v. Quebec (Attorney General)*, [2005 SCC 35](#), para.116.

²⁶⁶ *Interim Injunction*, para.89.

restricting the homeless from sheltering, and (b) forced encampment evictions.²⁶⁷

100. The impact of **sheltering restrictions** on security of the person is demonstrated through Dr. Gupta's evidence²⁶⁸ that “[h]aving access to a tent or similar shelter can substantially reduce the risks that contribute” to multiple medical conditions, because, in addition to providing protection from the elements as discussed above, shelter provides:

a. **Privacy:** A private space reduces exposure to violence, theft, or harassment, all common risks when sleeping in exposed areas. Privacy also supports dignity, autonomy, and the ability to attend to personal hygiene or medical needs without fear of intrusion.

b. **A safe and consistent place to sleep:** Regular, uninterrupted sleep is essential to physical recovery, immune function, and mental health regulation. Shelter reduces the need to remain constantly alert, allowing the body and mind to rest and decreasing the likelihood of substance use for the purpose of staying awake.

c. **Stability for the storage of personal belongings:** Shelter permits persons to keep essential items such as medications, identification documents, clothing, harm reduction supplies, food and cooking supplies, and other survival items.

101. The record also demonstrates that **forced displacement**, itself, engages the security of the person. The evidence of Drs. Gupta,²⁶⁹ Hwang,²⁷⁰ and Pauly²⁷¹ is that risks arising from forced displacement include:

a. **Severe impact on health:** Mental health symptoms frequently escalate, and some patients experience a complete collapse of previously stable health.²⁷²

b. **Disruption of relative stability:** Displacement interrupts established access to services, healthcare, and social supports.²⁷³ “Stability in location” facilitates access to healthcare and follow-up.²⁷⁴ Further, persons often lose personal belongings noted above.²⁷⁵ Loss of identification and other records, which are required to apply for housing, health benefits, employment and to file taxes has particularly severe consequences.²⁷⁶ This destabilization often results in patients presenting to the emergency department in crisis.²⁷⁷

²⁶⁷ *Persons Unknown*, para.104; *Kingston*, para.79; *Adams 2*, paras.102-10; *Shantz*, paras.206-19; *Vandenberg*, para.148. See also footnote 253 re: *Heegsma*.

²⁶⁸ Gupta Aff., SupRARV.2, p.14-5, para.16.

²⁶⁹ Gupta Aff., SupRARV.2., pp.15-6, para.17.

²⁷⁰ Hwang Aff., SupRARV.1, pp.72-3, paras.11-3.

²⁷¹ Pauly Aff., SupRARV.2, pp.216-9, para.20.

²⁷² Gupta Aff., SupRARV.2, pp.15-6, para.17.

²⁷³ *Ibid.*, pp.17-8, para.20; Allt Aff., RARV.2, p.17, paras.6-7; Pauly Aff., SupRARV.2, pp.219-21, paras.21-2.

²⁷⁴ *Ibid.*, pp.17-8, para.20; Pauly Aff., SupRARV.2, p.219, para.21(a); Hwang Aff., SupRARV.1, p.72-3, para.11.

²⁷⁵ Hwang Aff., SupRARV.1, p. 73, para.12; Pauly Aff., SupRARV.2, pp.216-8, para.20(a), (d).

²⁷⁶ Pauly Aff., SupRARV.2, pp.216, 220, paras.20(a), 22(a).

²⁷⁷ Gupta Aff., SupRARV.2, pp.15-6, para.17.

c. **Structural vulnerability:** Displacement compounds existing vulnerabilities.²⁷⁸ Dr. Pauly describes how evictions erode trust in authorities, which is a critical element of service delivery for persons who use drugs and those who experience homelessness.²⁷⁹

d. **Perception of rights violations:** Dr. Gupta has seen mental health escalations connected to how the eviction was carried out.²⁸⁰

102. Dr. Hwang's evidence was that moving people against their will, even with sufficient notice or engagement, can have adverse impacts.²⁸¹ He noted that the key factor impacting harm is not the duration of the engagement prior to displacement, but what housing is actually offered and made available.

103. These impacts have been born out by the Named Respondents' own personal experiences, as set out in **Appendix E**.²⁸²

Response to Region's submissions regarding health and safety issues at Encampment

104. Health and safety issues that chronically homeless persons face at the Encampment do not negate the life, liberty, and security of the person impact of removing this site without providing any other location for persons to fall back on when indoor shelter is unavailable. There is no doubt that outdoor homelessness is dangerous. This is implicit in its official definition - Canada's National Homelessness Strategy defines homelessness as an experience that is generally "negative, unpleasant, unhealthy, unsafe, stressful and distressing".²⁸³ In particular, fire risk is inherent where municipalities do not supply electrical hook-ups, fire extinguishers, or fire safety plans, as the Region has not done here,²⁸⁴ and where homeless persons must rely on fires and propane tanks for winter warmth. As the British Columbia Supreme Court put it, the homeless must choose between "freezing or burning".²⁸⁵

²⁷⁸ *Ibid.*, pp.15-6, para.17; Pauly Aff., SupRARV.2, p.217, para.20(c).

²⁷⁹ Pauly Aff., SupRARV.2, pp. 219-20, para.21(b).

²⁸⁰ Gupta Aff., SupRARV.2, pp.15-6, para.17. See also: Hwang Aff., SupRARV.1, p. 73, para.13.

²⁸¹ Transcript of the Cross-Examination of Dr. Stephen Hwang, held on July 11, 2025, ("Hwang XE"), JTBV.1, p.488-9, 499-501, Q/A 92, 118-119.

²⁸² Appendix E: Evidence of Security of the Person Impact of Sheltering Restrictions and Forced Displacement from Named Respondent Affidavits ("**Appendix E**").

²⁸³ Affidavit of Dr. Stephen Gaetz, sworn Aug. 15, 2025, SupRARV.2, pp.46-7, para.6.

²⁸⁴ 2nd Sweeney Answers to Undertakings, App. Undertakings Brief, Case Center A4873-A4874, Q/As.12-7.

²⁸⁵ *Maple Ridge*, para.[78](#).

105. These risks are appropriately addressed by the Region complying with the human rights approach it committed itself to through its PECH and ensuring that homeless persons can take necessary steps to protect their health and safety.²⁸⁶ A human rights approach in relation to fire safety risks includes fire safety mitigation measures.²⁸⁷ The Federal Advocate has directed:

People living in encampments face life and death risks throughout the year, but in the winter months, these risks are heightened dramatically. Efforts to stay warm without access to appropriate shelter, clothing, and heat sources greatly increases the risk of fire. This risk is often cited as a reason to forcibly remove encampments. However, as noted earlier, removal from one site, without provision of adequate alternatives, only causes further disruption and harm to the lives of encampment residents while doing little or nothing to reduce the risks they face. In fact, if encampments are pushed to more isolated locations, the risks may be further increased.

A human rights-based response to the risk of fire would include mitigation measures, including provision of more weather resistant forms of temporary shelter, safe sources of heat, and access to fire extinguishers, along with fire safety training.²⁸⁸

106. In other decisions, Courts have scrutinized municipal claims that encampments must be closed due to health and safety risks arising from homelessness.²⁸⁹ For instance, in *Bamberger*, the British Columbia Supreme Court reasoned that as long as a lack of accessible shelter space remains a problem, "court injunctions effectively clear out a camp from one location but have not been effective in preventing the re-establishment of camps in another location".²⁹⁰

Region's Transition Protocol does not adequately mitigate these deprivations

107. The Region's Transition Protocol does not follow the obligations of a human rights-based approach in PECH and does not adequately mitigate the s.7 deprivations. The Transition Protocol is underinclusive, does not address systemic issues and is time limited.

108. The Transition Protocol applies only to a minority of the Named Respondents and

²⁸⁶ Canadian Human Rights Commission ("CHRC"), "The Office of the Federal Housing Advocate's 2022-2023 Annual Report to the Minister," Ex E to Houle Aff., SupRARV.3, p.606. See also: CHRC, Flynn et al, "Overview of Encampments Across Canada: A Right to Housing Approach," Ex F to Houle Aff., SupRARV.3, p.704.

²⁸⁷ National Protocol, RARV.2, p. 176, Principle 6; Office of the Federal Housing Advocate, "Guide to Meaningful Engagement and Integrating a Human Rights-based Approach into Encampment Responses," Ex G to Houle Affidavit, SupRARV.3, p.767, Action F; "Upholding Dignity & Human Rights," SupRARV.3, p.787.

²⁸⁸ "Upholding Dignity & Human Rights," SupRARV.3, p.787.

²⁸⁹ *Persons Unknown*, paras.47-8. Also: *British Columbia v. Adamson*, [2016 BCSC 584](#) ("*Adamson*"), paras.116, 185; *Bamberger*, para.185.

²⁹⁰ *Bamberger*, para. 185; *Adamson*, para. 185.

encampment residents, those arbitrarily deemed by the Region to be “Residents”.²⁹¹ It leaves the remaining encampment residents with few if any options of alternative shelter once the Encampment is closed. A human rights-based approach requires that *all* residents be provided with resources.²⁹²

109. Second, it does not address the systemic issues related to rising homelessness. It does not address the underlying issues of insufficient shelter space and the lack of affordable housing. Transitioning Encampment residents into existing emergency shelter spaces means that other chronically homeless residents of the Region will be unable to access those same spaces, leading *those* persons to require a space where they can lawfully shelter outdoors. The Region’s addition of an unclear number of motel rooms to its system until 2026 does not resolve this issue. As this Court put it in *Persons Unknown*: “Were 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.”²⁹³

110. Third, even for the minority of Named Respondents included in the Protocol, supports are only temporary. The Protocol provides for storage of belongings for up to six months, but the waitlist for subsidized housing is 8 to 10 years.²⁹⁴ A human rights-based approach requires that relocation must not result in the continuation or exacerbation of homelessness.²⁹⁵

These deprivations are not in accordance with the principles of fundamental justice

111. The second branch of s. 7 requires a claimant to establish that an impugned provision conflicts with basic constitutional values, including that the impact of a law must not be grossly disproportionate to its objects.²⁹⁶ Gross disproportionality balances the negative effect on the individual against the purpose of the law, not against societal benefit that might flow from the law.²⁹⁷

²⁹¹ 2nd Sweeney Aff., ReplyAR, p.15, paras.15-6. See footnote 1 for whom of the Cross-Applicants/Named Respondents the Region deems as “Residents” under the By-Law definition.

²⁹² National Protocol, RARV.2, p. 186, Principle 2, para.43.

²⁹³ *Persons Unknown*, para.94.

²⁹⁴ Transition Protocol, SupAR, p.108, s. 4; 3rd Escobar Aff., 2ndSupRAR, p.73, para.14; Nind Aff., 2ndSupRAR, p.65, para.11; Transcript of the 2nd Cross-Exam. of S. Escobar, Mar. 2, 2026 (“2nd Escobar XE”), JTBV.5, pp. 18-19, Q/A. 63-6.

²⁹⁵ National Protocol, RARV.2, p. 193, Principle 5, para.59(iii).

²⁹⁶ *Kloubakov*, para.137; *Bedford*, paras.57-8, 75-6, 93-6, 123; *Carter*, para.72; *CCR*, paras.56, 60.

²⁹⁷ *Bedford*, para.121.

It is “not concerned with the number of people who experience grossly disproportionate effects; a grossly disproportionate effect on one person is sufficient to violate the norm.”²⁹⁸

112. In *Persons Unknown*, this Court found that closing the Encampment was grossly disproportionate to the Region’s objectives, which included preventing disruptions to Regional operations.²⁹⁹ The operation at issue was the same new transit hub that remains at issue. The Region’s intent, then, as now, was to use the site for equipment lay-down in the short-term, though it also advised that it would use it for parking in the longer term.³⁰⁰ The Region then advised that construction on the transit hub would commence in the spring of 2023, just months after *Persons Unknown* was released.³⁰¹

113. The Court’s previous determination continues to apply. Contrary to the Region’s submission, the gross disproportionality analysis is not now “fundamentally different from *Persons Unknown*” on the basis that in that case, “the Region did not put any plan for the occupants of 100 Vic before Valente J.”³⁰² The Region **did** put such a plan before Justice Valente in *Persons Unknown*. In the months leading up to that decision, Council had moved to develop a “plan to establish interim housing solutions for the regional residents experiencing homelessness including those currently residing in the encampment”.³⁰³ Pursuant to that plan, the Region advised the Court that it was implementing multiple “interim housing solutions”, including expanded transitional housing, home-based supports, emergency shelter, and a managed hybrid/outdoor shelter model.³⁰⁴ This Court accepted the Region’s assurance that the Region was “committed to reserving spots for the Encampment residents at its emergency shelter locations.”³⁰⁵ While the Region is now using a new

²⁹⁸ *Bedford*, para.122.

²⁹⁹ *Persons Unknown*, paras.115-9.

³⁰⁰ *Ibid.*, paras.15-6.

³⁰¹ *Ibid.*, para.15.

³⁰² Region’s Factum, p.39 (pdf 45), para.83.

³⁰³ *Persons Unknown*, para.34.

³⁰⁴ *Ibid.*, para.35.

³⁰⁵ *Ibid.*, para.64.

term for these assurance – IHPs – the substance of its assurances are the same.

114. There being no fundamental difference between either the By-Laws’ object or their “multiple and severe negative consequences” for the Named Respondents,³⁰⁶ the By-Laws remain grossly disproportionate to their goal in a context where the Region has chosen not to permit outdoor sheltering anywhere else.

Issue 2: The By-Laws violate s. 15

115. The By-Laws also violate s. 15 because, while they cause disadvantage to all chronically homeless of the Region, this disadvantage is disproportionately felt by those who are women, gender diverse, and/or disabled. The By-Laws also have a disproportionate impact on Indigenous persons and on persons receiving social assistance because Indigenous persons and persons receiving social assistance experience unsheltered homelessness at a disproportionate rate. **The Named Respondents here address only the sex-based disproportionate impact of the By-Law. They rely on the arguments of *amicus*, Aboriginal Legal Services, and the Charter Committee on Poverty Issues with respect to the disability, Indigeneity, and receipt of social assistance-based impacts.**

First Spruce Mills factor exempts Persons Unknown s. 15 determination from stare decisis

116. While this Court is bound by *Persons Unknown*’s legal determinations with respect to s. 7, it is not so bound with respect to s. 15. This is because the Supreme Court’s March 6, 2026 decision in *Kanyinda*³⁰⁷ has rendered the *Persons Unknown* s. 15 analysis invalid, such that, if *stare decisis* does apply, the first *stare decisis* exception³⁰⁸ permits this Court to determine the issue for itself.

117. In *Persons Unknown*, Justice Valente rejected the s. 15 claim of homeless persons who were women, gender diverse, and/or disabled on the basis that “homelessness” itself was not an enumerated or analogous ground.³⁰⁹ However the majority reasons in *Kanyinda* now make clear that a s. 15 violation may be established in relation to an enumerated/analogous **subset** of a broader group

³⁰⁶ *Persons Unknown*, para. [117](#).

³⁰⁷ [Kanyinda](#).

³⁰⁸ [Spruce Mills](#), p. [592](#); *R. v. Sullivan*, para. [73](#).

³⁰⁹ *Person Unknown*, paras. [123](#)-6.

that is not, in itself, identified by an enumerated or analogous ground.³¹⁰ Justice Valente's basis for finding no breach of s. 15 is therefore invalid after *Kanyinda*.

Kanyinda's guidance for claims concerning an enumerated/analogous subset of a broader group
118. In *Kanyinda* the Supreme Court found that Quebec's daycare subsidy scheme discriminated on the basis of sex by excluding refugee claimants. In coming to this determination, the majority emphasized that courts must take an intersectional approach to the discrimination analysis, having regard to a claimant's full context, **including factors that are not enumerated or analogous grounds in and of themselves.**³¹¹

119. *Kanyinda* did not alter the two-step test for discrimination under s. 15(1). The test continues to require a claimant to show that a challenged law or state action:

- (1) on its face or in its impact, creates a distinction based on listed or analogous grounds; and
- (2) imposes burdens or denies a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage.³¹²

120. However, *Kanyinda* clarified how these steps apply where a claimant's disadvantage is caused by multiple factors, not all of which are *Charter*-protected.³¹³ Ms. Kanyinda asserted discrimination as a female refugee claimant. The fact that refugee claimant status itself was not an enumerated or analogous ground did not defeat her claim of sex-based discrimination. Rather, it shifted the framework to the specific context of refugee claimants, and it required the Court to consider the pre-existing disadvantage Ms. Kanyinda faced both as a refugee claimant and as a woman. While the impugned law caused disadvantage to both male and female refugee claimants, the question for the Court was whether this disadvantage was disproportionately experienced by female refugee claimants.³¹⁴ It was not necessary for Ms. Kanyinda to establish that the impugned law disproportionately disadvantaged all women,³¹⁵ or that its adverse impact was only felt by

³¹⁰ *Kanyinda*, paras.42-3.

³¹¹ *Ibid.*, paras.42, 51.

³¹² *Ibid.*, para.48.

³¹³ *Ibid.*, para.51.

³¹⁴ *Ibid.*, paras.8, 10.

³¹⁵ *Ibid.*, paras.43, 56.

refugee claimants who were women,³¹⁶ or that refugee status itself was *Charter* protected.³¹⁷

121. Having regard to the *Kanyinda* framework, the s. 15 claim does not hinge on whether homelessness itself is an enumerated or analogous ground, **though the Named Respondents agree with the position of the intervener, CCPI, that it should be recognized as one.** Rather, the question is whether the By-Laws disproportionately impact those homeless who are women, gender diverse, disabled, and Indigenous.

Step 1 of s. 15(1) framework post-Kanyinda

122. The first branch of the s. 15 test is intended “to exclude claims that have ‘nothing to do with substantive equality’”.³¹⁸ It is not meant to be “an onerous hurdle designed to weed out claims on technical bases”.³¹⁹ Similar to s. 7, a claimant must only establish that the impugned law is *one* factor that contributes to an adverse impact to establish a sufficient causal connection.³²⁰

123. The first branch of the s. 15(1) test may be satisfied either where the impugned law gives rise to “built-in headwinds” for members of protected groups, or where it fails to accommodate members of protected groups.³²¹ Instead of asking whether a law explicitly targets a protected group for differential treatment, a court must explore whether it does so indirectly through its impact on members of that group.³²²

124. While no specific form of evidence is required, a disproportionate impact amounting to a “distinction” for the purpose of step one may be established through (a) evidence about the claimant group’s situation, including barriers it faces; and (b) evidence about the results produced by the challenged law in practice.³²³

³¹⁶ *Kanyinda*, paras. [80](#)-1.

³¹⁷ *Ibid.*, paras. [25](#), [42](#)-3.

³¹⁸ *Ibid.*, para. [60](#).

³¹⁹ *Ibid.*

³²⁰ *Ibid.*, para. [56](#), [59](#); *Mathur*, paras. [61](#), [64](#); *R. v. Sharma*, [2022 SCC 39](#), [2022] 3 SCR 147 (“*Sharma*”), para. [45](#).

³²¹ *Fraser v. Canada (Attorney General)*, [2020 SCC 28](#) (“*Fraser*”), paras. [53](#)-4.

³²² *Ibid.*

³²³ *Kanyinda*, para. [52](#), *Sharma*, para. [49](#); *Fraser*, para. [56](#).

Application of Step 1: The By-Laws contribute to a sex-based disproportionate impact

125. The By-Laws contribute to a sex-based disproportionate impact because they result in particular “built-in headwinds” for homeless persons who are women or gender diverse. This is because: (a) homeless women and persons who are gender diverse are less likely than homeless men to be able to access indoor shelter that meets their needs; and (b) restrictions on outdoor sheltering pose unique safety risks for homeless persons who are women and gender diverse when they cannot access indoor shelter.

126. Pursuant to the November 2024 PiT Count, 35% of the Region’s then 2,371 persons experiencing homelessness were women or gender diverse.³²⁴ However, within the adult emergency shelter system, only 20 of the shelter spaces operating 24/7 (at YWCA Cambridge shelter) were set aside for women/gender diverse,³²⁵ whereas 180 were for men.³²⁶ Of the Region’s single sex overnight shelters, 30 spaces are designated for men, whereas 22 are for women/gender diverse.³²⁷ It is therefore common that all spaces designated for women/gender diverse are full on a given night.³²⁸ According to women’s shelter worker Sara Escobar, the YWCA is “always at capacity”.³²⁹

127. This means that if the Encampment is closed, women and gender diverse persons will disproportionately need to find other ways to shelter outside of the municipal shelter system. These strategies, including sleeping rough in remote locations to avoid detection, resuming “unsafe and exploitative relationships”, and “exchanging sex for shelter” pose particular safety concerns for women and gender diverse Encampment Residents.³³⁰

128. Violence from intimate partners or within families is a key pathway into homelessness for

³²⁴ “2024 PIT Infographic,” AR, p.174.

³²⁵ See: 5th Sweeney Aff., SupAR, p.154, para.10; 3rd Sweeney XE, JTBV.5, p.188, Q/A.13.

³²⁶ These are the 80 spaces at the Cambridge Shelter Corp and the 100 spaces at House of Friendship. See: 5th Sweeney Aff., SupAR, p.154, para.10; 3rd Sweeney XE, JTBV.5, pp.188-9, Q/As.8-9; 18-9.

³²⁷ These are the shelter spaces at SHIP-84 Frederick. See: 5th Sweeney Aff., SupAR, p.154, para.10; 3rd Sweeney XE, JTBV.5, pp.190-1, Q/As.25-31.

³²⁸ For instance, on Feb. 13, 2026, the system had capacity for eight men, but no women: “Homeless Chronicity,” 2ndSupRAR, p.81; 3rd Escobar Aff., 2ndSupRAR, p.71, para.8. See also: Weber Aff., RARV.1, p.128, para.26.

³²⁹ 2nd Affidavit of Sara Escobar, sworn July 7, 2025 (“2nd Escobar Aff.”), RARV.3, p.100, para.11.

³³⁰ Schwan Aff., SupRARV.3, pp.10, 15, paras.8, 18.

women and girls.³³¹ A 2020 report by the YWCA of Kitchener-Waterloo found that 83% of women and gender-diverse persons experiencing homelessness in the Region had previously stayed in abusive or violent situations to avoid homelessness.³³² This reflects the experience of homeless women nation-wide. The 2020 “Pan-Canadian Women’s Housing and Homelessness Survey”, co-authored by Dr. Schwan, is a mixed method survey of 500 women and gender diverse persons experiencing homelessness across the country.³³³ It found that women who were turned away from shelters used “alternative strategies such as survival sex, going back to their abuser, or navigating systems like healthcare or criminal justice to seek immediate shelter”,³³⁴ and that women were likely to rely on “relational, precarious, and dangerous supports to survive housing instability”.³³⁵ This reflects the experience of female/gender diverse Named Respondents.³³⁶

129. There is no doubt that homeless women and persons who are gender diverse may also face safety risks in encampments. However, Dr. Schwan’s research found that encampment living provided relative safety in comparison to the other available options.³³⁷ Her research demonstrates that “encampments can buffer women from exposure to violence, harassment, or abuse that they might otherwise experience when residing outdoors alone, or within situations of hidden homelessness.”³³⁸ This was because female encampment residents could “‘look out for each other,’ warn each other of dangerous or exploitative men, watch over each other’s tents and possessions, and remain with partners or pets (e.g., dogs) who provided physical safety”.³³⁹ This, too, has been

³³¹ Schwan, et al., “The Pan-Canadian Women’s Housing & Homelessness Survey,” Ex B to Schwan Aff. (“Pan-Canadian Survey”), SupRARV.3, p.93.

³³² Project Willow, “Don’t tell them you’re homeless: Experiences of gender-based violence among women experiencing homelessness in the Waterloo Region,” Ex C to Schwan Aff. (“Willow Report”), SupRARV.3, p.161.

³³³ Pan-Canadian Survey, SupRARV.3, p.86.

³³⁴ Schwan Aff., SupRARV.3, p.15, para.18; Pan-Canadian Survey, SupRARV.3, pp.89, 120, 123, 125.

³³⁵ *Ibid.*, p. 11, para.11; Pan-Canadian Survey, SupRARV.3, p.93.

³³⁶ Julie Young became homeless following an abusive relationship: Young Aff., RARV.1, p.84, paras.12-3; Terra-Lynn Weber, too, left an abusive relationship, and became homeless following a violent assault by a male roommate: Weber Aff., RARV.1, p.126-7, paras.12-14, 17.

³³⁷ Schwan Aff., SupRARV.3, p.21, para.33.

³³⁸ *Ibid.*, p.22, para.35.

³³⁹ *Ibid.*

the experience of female Named Respondents.³⁴⁰

130. It is true that, between December to March, women may access the 30 co-ed congregate winter warming spaces in addition to the shelter spaces reserved for women/gender diverse occupants. However, the evidence demonstrates that these are not safe for women. In the YWCA of Kitchener-Waterloo report, 73% of those surveyed had avoided using co-ed spaces because of safety concerns.³⁴¹ As one participant shared in relation to congregate co-ed shelter: “I went there once and the first night I was there I was unfortunate to be raped”.³⁴² Named Respondent Josephina Dugas affirms to having been raped in a shelter.³⁴³

131. The evidence also demonstrates particular safety risks for women in motels. For instance, the Region no longer places women or gender-diverse people at one of the four motels used for overflow shelter due to reports of sexual coercion and exploitation by motel staff under threat of eviction.³⁴⁴

Step 2 of s. 15(1) framework post-Kanyinda

132. The key question under step two is whether the law worsens or reinforces the disadvantage experienced by the protected group.³⁴⁵ The majority in *Kanyinda* emphasized that assessment of whether a distinction perpetuates disadvantage for the purpose of step two must “recognize that discrimination cannot be neatly packaged into a single ground and a person will often live with other circumstances, realities, or identities that may enhance or exacerbate their disadvantage”.³⁴⁶

133. Contrary to the Region’s contention at paragraph 92 of its factum, an impugned law need not be based on stereotypical assumptions to satisfy step two. The Court was emphatic about this in *Kanyinda*: “at the second step of the s. 15(1) test, there is no need to show that the challenged measure stereotypes or causes prejudice towards the protected group” because “such an approach incorrectly

³⁴⁰ Dugas Aff., RARV.1, p.77-8, paras.15, 19; 1st Lopes Aff., RARV.1, p.106, paras.21-2.

³⁴¹ Willow Report, SupRARV.3, p.161. See also: Schwan Aff., SupRARV.3, p.18, para.25.

³⁴² Schwan Aff., SupRARV.3, pp.16-8, paras.22, 26; Willow Report, SupRARV.3, p.163.

³⁴³ Dugas Aff., RARV.1, p.77, para.13.

³⁴⁴ 2nd Sweeney Answers to Undertakings, App. Undertakings Brief, Case Center A4870, Q/A.10; Cont. 2nd Sweeney XE, JTBV.4, p.102, Q/As.276-80; Ex.3 to Cont. 2nd Sweeney XE, JTBV.4, p.173.

³⁴⁵ *Kanyinda*, para.67.

³⁴⁶ *Ibid.*, para.63.

focuses the inquiry on whether a discriminatory *attitude* exists as opposed to a discriminatory *impact* [...]”³⁴⁷

Application of Step (2): The By-Laws impose burdens and denies benefits in a way that reinforces, perpetuates, and exacerbates disadvantage

134. Here, the By-Laws’ disproportionate impact on those homeless who are women and gender diverse is that it requires them to seek out particularly unsafe forms of shelter due to the disproportionate lack of municipal shelter spaces for these groups. This deepens the pre-existing disadvantage these groups already face. As the Supreme Court has recognized, “[w]e live in a time where myths, stereotypes, and sexual violence against women [...]are tragically common”.³⁴⁸ Women also experience disproportionate rates of deep poverty in comparison to men, due to what the Supreme Court has recognized as “a multiplicity of economic barriers”.³⁴⁹

Issue 3: Violations of ss. 7 and 15 are not justified under s. 1

135. In order to justify the infringements under s. 1, the Region must show that the By-Laws have a pressing and substantial object and that the means chosen are proportionate to that object. A law is proportionate if: (1) the means are rationally connected to the objective; (2) it is minimally impairing of the rights; and (3) there is proportionality between the deleterious and salutary effects of the law.³⁵⁰

136. It is “difficult” to justify a s. 7 violation.³⁵¹ As this Court recognized in *Persons Unknown*, “[a] section 7 breach will rarely be justifiable under section 1 except ‘in cases arising out of exceptional conditions, such as disasters, the outbreak of war, epidemics and the like.’”³⁵² The Named Respondents are aware of only one appellate decision where a s. 7 breach has been found to be justified and it is the decision the Region relies on to assert the s. 7 infringement is justified here

³⁴⁷ *Kanyinda*, para.67.

³⁴⁸ *R. v. Barton*, [2019 SCC 33](#), para.1.

³⁴⁹ *Moge v. Moge*, [1992 CanLII 25](#) (SCC), [1992] 3 SCR 813, starting at: “Given the multiplicity of economic barriers.”

³⁵⁰ *Carter*, para.94; *R. v. Oakes*, [1986 CanLII 46](#) (SCC), [1986] 1 S.C.R. 103 (“*Oakes*”).

³⁵¹ *Carter*, para.95.

³⁵² *Persons Unknown*, para.129. See also: *New Brunswick (Minister of Health and Community Services) v. G.(J.)*, [1999 CanLII 653](#) (SCC), [1999] 3 S.C.R. 46, para.99, citing *Re B.C. Motor Vehicle Act (British Columbia)*, [1985 CanLII 81](#) (SCC), [1985] 2 S.C.R. 486, para.85.

- *Michaud*.³⁵³ This high standard is appropriate due to the fundamental nature of the interests s. 7 protects. As the Supreme Court put it in *Carter*, it is “hard to justify a law that runs afoul of the principles of fundamental justice and is thus inherently flawed”.³⁵⁴

137. The Region asserts that this Court should take a deferential approach at s. 1 because the By-Laws are a “complex regulatory response” to the social problem of homelessness.³⁵⁵ However, the By-Laws are far from a “complex regulatory response”. They do not seek to balance competing objectives or regulate Encampment conditions in the public interest. Rather, effective April 1, 2026, they are simply a bare sheltering prohibition.

138. In any event, the By-Laws do not satisfy the *Oakes* test, failing the second and third step of the proportionality analysis.³⁵⁶

139. The second step asks if the provision “impair[s] ‘as little as possible’ the right or freedom in question”³⁵⁷ A bare prohibition on sheltering at the only lawful sheltering site in the Region is not minimally impairing because the Region has not taken adequate steps to mitigate the impact of closing the Encampment on its chronically homeless.³⁵⁸ It is open to the Region to consider a safe tenting protocol or to designate other sites for sheltering. Either could permit the Region to obtain vacant possession while mitigating the harm caused by closure of the site. Contrary to the Region’s assertion,³⁵⁹ offering no sheltering location of last resort to the 43% of the Region’s homeless population living outdoors is not within a range of reasonable alternatives. Similarly, the court is not “micro-manag[ing]”³⁶⁰ resources in finding that there are alternative, less harmful means of achieving the government’s objective. Rather, that is the precise purpose of this portion of the

³⁵³ *R. v. Michaud*, [2015 ONCA 585](#) (“*Michaud*”); Region's Factum, p. 44 (pdf 50), para.97.

³⁵⁴ *Carter*, para.95.

³⁵⁵ Region's Factum, pp.43-4 (pdf 49-50), paras.93, 96-7.

³⁵⁶ *Taylor v. Newfoundland and Labrador*, [2026 SCC 5](#) (CanLII) (“*Taylor*”), paras.188-93, 194-95.

³⁵⁷ *R. v. Big M Drug Mart Ltd.*, [1985 CanLII 69](#) (SCC), [1985] 1 SCR 295, para.139; *Oakes*, para.70.

³⁵⁸ See, for example: *Canada (Attorney General) v. Chambre des notaires du Québec*, [2016 SCC 20](#), paras.62-8, 91.

³⁵⁹ Region’s Factum, pp.43-44 (pdf 49-50), para.96.

³⁶⁰ *Ibid.*, p.45 (pdf 51), para.99.

analysis.

140. Finally, the third step of the test asks if there is a “proportionality between the effects of the measures which are responsible for limiting the *Charter* right or freedom, and the objective which has been identified as of ‘sufficient importance’”.³⁶¹ Only the third branch takes full account of the ‘severity of the deleterious effects of a measure on individuals or groups’”.³⁶² Indeed, if the lack of access to a benefit has a severe effect on the affected group, this will weigh especially heavily in the balancing exercise.³⁶³

141. The Named Respondents submit that in this case the cost of achieving the objective is *simply too great*; the deleterious effects outweigh the salutary effects described by the Region. The deleterious impacts are severe – the risk of deprivation to lives, liberty, and security of the person of the Region’s chronically homeless are significant.

142. On the other hand, the Region has not demonstrated the salutary effects that will result from the transit hub. The anticipated benefits of the transit hub (greater connectivity, reduced transfer times, more efficient transit connections)³⁶⁴ are speculative. In cross examination, the Region’s Acting Commissioner, Transportation admitted that his statements that the transit hub would dramatically improve transit access were not based on any specific modeling or empirical data that was projected for this project.³⁶⁵

143. In these circumstances, the *Charter* infringement is “too high a price to pay for the benefit that actually results from the law”.³⁶⁶ As Justice Carter stated in *Kingston*:

[87] To borrow the language from *Bedford*, a law that prevents the homeless from avoiding a serious risk of injury or death by erecting shelter overnight when there is nowhere else to go is a law that has lost sight of its purpose [...]³⁶⁷

³⁶¹ *Kanyinda*, para.197 (per Rowe J., concurring); *Oakes*, para.70 (emphasis deleted).

³⁶² *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37, para.76.

³⁶³ *Kanyinda*, para.199 (per Rowe J., concurring).

³⁶⁴ Region’s Factum, p.46 (pdf 52), para.101.

³⁶⁵ Spooner XE, JTBV.5, p.165, Q/As.125-6.

³⁶⁶ P. W. Hogg and W. K. Wright, *Constitutional Law of Canada* (5th ed. Supp.) at § 38:22, qtd. in *Kanyinda*, para.202 (per Rowe J., concurring).

³⁶⁷ *Kingston*, para.87. See also: *Bedford*, para.136.

Issue 4: The By-Laws should be quashed for illegality under s. 273 of the *Municipal Act*

144. Pursuant to s. 273 of the *Municipal Act, 2001*, a court may quash a municipal bylaw, in whole or in part, for illegality. A by-law is "illegal" for the purpose of s. 273 if it is passed in "bad faith", which will be indicated where the by-law is enacted "without the degree of fairness, openness, and impartiality required of a municipal government".³⁶⁸ Indicia of bad faith include a failure to consult on the by-law, and a failure to provide meaningful notice to affected stakeholders.³⁶⁹ They may also include: "questionable timing; [...] lack of notice; the usual practices and procedures are set aside; the parties most affected are kept in the dark; or the law singles out one individual or property".³⁷⁰

145. These indicia are established here. The By-Law targets this single property for the apparent purpose of avoiding the impact of this Court's previous constitutional declaration. The Region eschewed the practices and procedures it publicly committed itself to through the PECH, keeping key stakeholders in the dark and concealing the By-Law from the Lived Expertise Prototyping Cohort and the from the Co-Creators Table that is to have "decision-making power over the implementation of the PECH"³⁷¹. The Region did not comply with the principles set out in its own "Guidelines for Public Engagement", instead rushing the By-Law through Council, and introducing the Amendment the afternoon on the Friday before Christmas break.³⁷² Together, these factors give rise to an inference of illegality. The By-Laws, original and amended, should be quashed.

Issue 5: Injunction under s. 440 of the *Municipal Act* should be refused and the existing interim injunction continued until a final decision is issued

146. The Region's reliance on s. 440 of the *Municipal Act* prior to the determination of By-Law constitutionality is premature. If the By-Law is unconstitutional, this Court cannot give it effect through s. 440. Where By-Law constitutionality has been put at issue, the test for **interlocutory**

³⁶⁸ *Grosvenor*, paras.27, 43-6.

³⁶⁹ *Unifor, Local 1688 v. The City of Ottawa*, [2018 ONSC 3377](#), paras.90, 123.

³⁷⁰ *Bertrand v. Ramara (Township)*, [2024 ONSC 7291](#), para.170; *Toronto Taxi Alliance Inc. v. City of Toronto*, [2015 ONSC 685](#), 33 M.P.L.R. (5th) 103, para. 106.

³⁷¹ Final PECH 2024, AR, pp.84, 88, 106, Actions 2.1 and 2.2.

³⁷² 2nd Pin Aff., 2ndSupRAR, pp.105-10, paras.8-19; Region of Waterloo, "Guidelines for Public Engagement at the Region of Waterloo," Ex A to 2nd Pin Aff., 2ndSupRAR, pp.117-21.

injunction is the *RJR MacDonald* test, not the municipal law statutory injunction test.³⁷³

147. This Court has already applied the *RJR MacDonald* test to these facts and found that it does not weigh in favour of the By-Law being enforced.³⁷⁴ The facts that gave rise to that determination have not meaningfully changed - while not all of the Named Respondents who were at the Encampment at that time remain, others have newly sought refuge there after losing their indoor shelter. Accordingly, that injunction should be continued on its existing terms until a final decision has been issued.

148. In the alternative, if the pending challenge to the By-Law's constitutional validity does not make s. 440 unavailable on an interlocutory basis, the By-Laws' illegality, described above, does.

149. In the further alternative, the same conduct giving rise to an inference of bad faith under s. 273 also amounts to exceptional circumstances weighing against enforcement for the purpose of s. 440. Even where a municipality establishes a by-law breach, the Court retains discretion to refuse injunction in "exceptional circumstances."³⁷⁵ In *Persons Unknown*, the Region's failure to follow its own Encampment Protocol prior to seeking eviction gave rise to such exceptional circumstances.³⁷⁶ The same exceptional circumstances exist here with respect to the Region's failure to comply with its PECH in developing the By-Laws.

PART IV: ORDER REQUESTED

150. The Cross-Applicants/Named Respondents request:

- a. An order continuing the existing injunction until a final decision has been rendered.
- b. A declaration pursuant to s. 52(1) of the *Constitution Act* that the Site Specific By-Law, as originally passed and as amended, violates s. 7 of the *Charter*, and that this violation is not justified under s. 1 of the *Charter*.
- c. A declaration pursuant to s. 52(1) of the *Constitution Act* that the Site Specific By-Law, as originally passed and as amended, violates s. 15 of the *Charter*, and that this violation

³⁷³ *Victoria (City) v. Thompson*, [2011 BCSC 1810](#), paras. [30-49](#), in relation to a protest (not survival) encampment.

³⁷⁴ *Persons Unknown*.

³⁷⁵ *Persons Unknown*, para. [133](#); *The Corporation of the City of Windsor v. Persons Unknown*, [2022 ONSC 1168](#), paras. [51-6](#).

³⁷⁶ *Persons Unknown*, paras. [134-43](#).

is not justified under s. 1 of the *Charter*.

- d. An Order under the *Municipal Act*, quashing the Site Specific By-Law, as originally passed and as amended.
- e. An Order under s. 24(1) of the *Charter* enjoining the Region from enforcing the Site Specific By-Law, as originally passed and as amended.
- f. An Order refusing the Region's application for injunction.
- g. An Order for their costs of this application and cross-application.

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



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

**Lawyers for the Cross-Applicants/Named
Respondents**

APPENDIX A: FOOTNOTE ABBREVIATIONS CHART

| Abbreviation | Document Title & Location (If Applicable) |
|--------------------------------------|--|
| Respondents' Factum Documents | |
| Appendix A | Appendix A: Footnote Abbreviations Chart |
| Appendix B | Appendix B: Shared Backgrounds of Named Respondents |
| Appendix C | Appendix C: Select Named Respondent Narratives |
| Appendix D | Appendix D: Excerpts from Appellant Factum in <i>Heegsma v. City of Hamilton</i> , COA-25-CV-0166 |
| 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 |
| A. Jeffery Aff. | Affidavit of Aline Jeffery, sworn January 21, 2026, 2 nd SupRAR |
| 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 |
| Ament Aff. | Affidavit of Avery Ament, sworn June 23, 2025, RARV.1 |
| Bradley Aff. | Affidavit of Joseph Bradley, sworn May 9, 2025, RARV.1 |
| Camm Aff. | Affidavit of Jordan Camm, sworn October 15, 2025, 2 nd SupRAR |
| Cole Aff. | Affidavit of Terrance Cole, sworn October 10, 2025, 2 nd SupRAR |
| Couto Aff. | Affidavit of Jeffrey Lima Couto, sworn October 15, 2025, 2 nd SupRAR |
| Dugas Aff. | Affidavit of Josephina Dugas, sworn May 7, 2025, RARV.1 |
| 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 |
| Gupta Aff. | Affidavit of Sahil Gupta, sworn August 15, 2025, SupRARV.2 |
| Hammond Aff. | Affidavit of James Hammond, sworn May 2, 2025, RARV.1 |
| Harker Aff. | Affidavit of Xander Harker, sworn October 10, 2025, 2 nd SupRAR |
| "Homelessness Chronicity" | Homelessness Chronicity in Emergency Shelters, Ex A to 3 rd Escobar Aff., 2 nd SupRAR |
| Houle Aff. | Affidavit of Marie-Josée Houle, sworn August 15, 2025, Sup RARV.3 |
| Helsby Aff. | Affidavit of Noah Helsby, sworn May 15, 2025, RARV.1 |
| Helwig Aff. | Affidavit of Sara Magdalen Helwig, sworn July 2, 2025, RARV.3 |
| Hwang Aff. | Affidavit of Dr. Stephen Hwang, sworn May 6, 2025, SupRARV.1 |
| Kocher Aff. | Affidavit of Charles Kocher, sworn January 13, 2026, 2 nd SupRAR |

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| Kubis Aff. | Affidavit of Lynn Kubis, sworn July 7, 2025, RARV.4 |
| Linton Aff. | Affidavit of Jeremy Linton, sworn May 6, 2025, RARV.1 |
| 1 st Lopes Aff. | Affidavit of Megan Lopes, sworn June 18, 2025, RARV.1 |
| 2 nd Lopes Aff. | 2 nd Affidavit of Megan Lopes, sworn October 10, 2025, 2 nd SupRAR |
| M. Jeffery Aff. | Affidavit of Michael Jeffery, sworn January 21, 2026, 2 nd SupRAR |
| 1 st McMillan Aff. | Affidavit of Stephanie McMillan, sworn May 13, 2025, RARV.1 |
| Nichol Aff. | Affidavit of Jeremy Nichol, sworn May 8, 2025, RARV.1 |
| Nind Aff. | Affidavit of Carine Lee Nind, sworn February 20, 2026, 2 nd SupRAR |
| Pan-Canadian Survey | Schwan, et al., “The Pan-Canadian Women’s Housing & Homelessness Survey,” Ex B to Schwan Aff., SupRARV.3 |
| Paul Aff. | Affidavit of Jason Paul, sworn June 16, 2025, RARV.1 |
| Pauly Aff. | Affidavit of Dr. Bernadette Pauly, Sup RARV.2 |
| Pauly CV | Dr. Bernadette Pauly’s University of Victoria Faculty Curriculum Vitae, Ex A to Pauly Aff., Sup RARV.2 |
| PECH | Waterloo Region, “The Plan to End Chronic Homelessness: Navigating Complexity Together: A Roadmap to Functional Zero by 2030,” 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 |
| Price Aff. | Affidavit of Aaron Price, sworn May 6, 2025, RARV.1 |
| Schwan Aff. | Affidavit of Kaitlyn Schwan, sworn August 15, 2025, SupRARV.3 |
| SDC Report, Apr. 2025 | Social Development Centre, “Community Impact Consultation – Preliminary Report: 100 Victoria, dated April 22, 2025,” Ex H to Alton Aff., RARV.2 |
| Sharpe Aff. | Affidavit of Calvin Sharpe, sworn May 30, 2025, RARV.1 |
| Stefanac Aff. | Affidavit of Matthew Stefanac, sworn May 6, 2025, RARV.1 |
| “Upholding Dignity & Human Rights” | 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 |
| Weber Aff. | Affidavit of Terra-Lynn Weber, sworn May 6, 2025, RARV.1 |
| Willow Report | Project Willow, “Don’t tell them you’re homeless: Experiences of gender-based violence among women experiencing homelessness in the Waterloo Region,” Ex C to Schwan Aff., SupRARV.3, |
| York Aff. | Affidavit of Kyle York, sworn June 17, 2025, RARV.1 |
| Young Aff. | Affidavit of Julie Young, sworn June 13, 2025, RARV.1 |
| “2024 PIT Findings” | 2024 Point in Time Count for Regional Municipality of Waterloo in Ex C to Kubis Aff., RARV.4 |
| Applicant’s Record | |
| AR | Application Record |
| ReplyAR | Reply Application Record |
| SupAR | Supplementary Application Record |
| Region’s Factum | Factum of the Applicant, dated March 13, 2026 |
| App. Undertakings Brief | Applicant’s Brief of Answers to Undertakings |
| “AMO Report” | AMO Municipalities Under Pressure - The Human and Financial Costs of Ontario’s Homelessness Crisis, Ex F to 1st Sweeney Aff., AR |
| Amended By-law | Amended By-law passed by Regional Council on Jan. 9, 2026, Ex A to Kang Aff., SupAR |

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| By-Law with Tracked Amendments | “Appendix B: Consolidated version of By-law #25-021 shogun the tracked amendments” to PDL-LEG-26-001, Ex B to Kang Aff., SupAR |
| Final PECH 2024 | “Final PECH Report 2024,” Ex A to 1st Sweeney Aff., AR |
| 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 |
| “Occ./Cap. Report” | “ES Program Occupancy/Capacity Report,” Ex F to 5 th Sweeney Aff., SupAR |
| 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 |
| PDL-LEG-26-001 | Report to Council: PDL-LEG-26-001, Ex B to Kang Aff., SupAR |
| Site-Specific By-Law | By-Law 25-021, Ex B to 1 st Sweeney Aff., 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 |
| Works Cited | List of Works Cited, Ex C to Koivu Aff., Sup AR |
| “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 |
| Koivu XE | Transcript of the Cross Examination of Dr. Sharon Koivu, held on December 11, 2025, JTBV.2 |
| Koivu XE Exs. | Transcript of the Cross-Examination of Dr. Sharon Koivu, held on December 11, 2025 (exhibits only), JTB V.3 |
| Moss XE | Transcript of the Cross-Examination of Aaron Moss, held on February 13, 2026, JTBV.4 |
| “Nov. 2025 HSS Update” | Region of Waterloo’s November 2025 HSS Data Update, Ex 1 to Continued 2nd Sweeney XE, JTBV.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 |

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| 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 | |
| CHRC | Canadian Human Rights Commission |
| Cross-Exam. | Cross-Examination |

APPENDIX B: SHARED BACKGROUNDS OF NAMED RESPONDENTS

| Background | Identifying Named Respondents | Foundation in Record |
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| Mental/ cognitive disability | 1. Josephina Dugas | Affidavit of Josephina Dugas, sworn May 7, 2025 (“Dugas Affidavit”), RAR V.1, p. 76, paras. 6-7 |
| | 2. Terra-Lynn Weber | Weber Affidavit, RAR V.1, pp. 125-127, paras. 4-7, 18 |
| | 3. Aaron Price | Affidavit of Aaron Price, sworn May 6, 2025 (“Price Affidavit”), RAR V.1, p. 7, para. 5 |
| | 4. Jeremy Nichol | Nichol Affidavit, RAR V.1, p. 59, para. 19-20 |
| | 5. Noah Helsby | Helsby Affidavit, RAR V.1, pp. 109-110, paras. 6 |
| | 6. Stephanie McMillan | Affidavit of Stephanie McMillan, sworn May 13, 2025 (“1 st McMillan Affidavit”), RAR V.1, pp. 115-117, paras. 3, 6-8 |
| | 7. Julie Young | Affidavit of Julie Young, sworn June 13, 2025 (“Young Affidavit”), RAR V.1, p. 83, para. 5 |
| | 8. Kyle York | Affidavit of Kyle York, sworn June 17, 2025 (“York Affidavit”), RAR V.1, pp. 92-93, para. 6 |
| | 9. Megan Lopes | Affidavit of Megan Lopes, sworn June 18, 2025 (“1 st Lopes Affidavit”), RAR V.1, pp. 104-105, paras 5-6, 18 |
| | 10. Avery Ament | Ament Affidavit, RAR V.1, pp. 13-15, paras. 3 |
| | 11. Jeffrey Couto | Couto Affidavit, 2 nd Sup RAR, pp. 28-29, paras. 8-9 |
| | 12. Jordan Camm | Camm Affidavit, 2 nd Sup RAR, p. 21, paras. 3-4; |
| | 13. Terrance Cole | Cole Affidavit, 2 nd Sup RAR, p. 15, paras. 7-9 |
| | 14. Xander Harker | Harker Affidavit, 2 nd Sup RAR, p. 33, paras. 4-5 |
| | 15. Charles Kocher | Kocher Affidavit, 2 nd Sup RAR, p. 39, para. 6 |
| | 16. Aline Jeffery | A. Jeffrey Affidavit, 2 nd Sup RAR, p. 45, para. 4 |
| | 17. Michael Jeffery | M. Jeffery Affidavit, 2 nd Sup RAR, p. 53, paras. 5, 7. |
| | 18. James Davis | Davis Affidavit, para. 8. |
| Substance use disabilities | 1. Josephina Dugas | Dugas Affidavit, RAR V.1, p. 76, para. 7 |

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| | 2. Terra-Lynn Weber | Weber Affidavit, RAR V.1, pp. 125-127, para. 7 |
| | 3. Aaron Price | Price Affidavit, RAR V.1, p. 7, para. 5-6, 19 |
| | 4. Noah Helsby | Helsby Affidavit, RAR V.1, pp. 109-110, para. 6 |
| | 5. Stephanie McMillan | 1 st McMillan Affidavit, RAR V.1, pp. 115-116, para. 8 |
| | 6. Kyle York | York Affidavit, RAR V.1, pp. 92-93, paras. 10-12 |
| | 7. Megan Lopes | 1 st Lopes Affidavit, RAR V.1, pp. 104-105, paras. 10 |
| | 8. Avery Ament | Ament Affidavit, RAR V.1, pp. 13-15, paras. 3, 6-7, 14 |
| | 9. Jeffery Couto | Couto Affidavit, 2 nd SupRAR, pp. 28-29, paras. 9-12 |
| | 10. Jordan Camm | Camm Affidavit, 2 nd SupRAR, p. 22, paras. 5, 8 |
| | 11. Terrance Cole | Cole Affidavit, 2 nd SupRAR, p. 15, para. 11-13 |
| | 12. Xander Harker | Harker Affidavit, 2 nd SupRAR, p. 33, paras. 4-5 |
| | 13. Charles Kocher | Kocher Affidavit, 2 nd SupRAR, p. 39, paras. 6, 8-9 |
| | 14. Aline Jeffery | A. Jeffrey Affidavit, 2 nd SupRAR, pp. 45-46, paras. 4-6 |
| | 15. Julie Young | Young Affidavit, RAR V.1, p. 84, paras. 8-9 |
| | 16. Jason Paul | Paul Affidavit, 2 nd SupRAR, p. 44, para. 8 |
| | 17. James Davis | Davis Affidavit, para. 9. |
| Mobility impairment | 1. Terra-Lynn Weber | Weber Affidavit, RAR V.1, pp. 125-127, paras. 4-7, 18 |
| | 2. Jeremy Nichol | Nichol Affidavit, RAR V.1, pp. 57, 60, paras. 8-10, 22, 24 |
| | 3. Joseph Bradley | Bradley Affidavit, RAR V.1, pp. 63-64, paras. 3, 15 |
| | 4. Aaron Price | Price Affidavit, RAR V.1, p. 10, para. 20 |
| | 5. Noah Helsby affirms to physical disabilities and that he cannot walk long distances | Helsby Affidavit, RAR V.1, pp. 109-110, paras. 6, 13 |

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| | 6. Calvin Sharpe affirms to having a “bad back and leg”: | Affidavit of Calvin Sharpe, sworn May 30, 2025 (“Sharpe Affidavit”), RAR V.1, pp. 19-20, paras. 2-7. |
| Indigeneity | <ol style="list-style-type: none"> 1. Josephina Dugas 2. Jeremy Nichol 3. Noah Helsby 4. Kyle York 5. Calvin Sharpe 6. Charles Kocher 7. Aline Jeffery | <p>Dugas Affidavit, RAR V.1, p. 75, paras. 3</p> <p>Nichol Affidavit, RAR V.1, p. 56, para. 3</p> <p>Helsby Affidavit, RAR V.1, p. 109, para. 3</p> <p>York Affidavit, RAR V.1, p. 92, para. 3</p> <p>Sharpe Affidavit, RAR V.1, p. 19, para. 3</p> <p>Kocher Affidavit, 2nd Sup RAR, p. 39, para. 6</p> <p>A. Jeffrey Affidavit, 2nd Sup RAR, p. 45, para. 3.</p> |
| Women/Gender Diverse | <ol style="list-style-type: none"> 1. Josephina Dugas 2. Terra-Lynn Weber 3. Stephanie McMillan 4. Julie Young 5. Megan Lopes 6. Avery Ament 7. Aline Jeffery | <p>Dugas Affidavit, RAR V.1, p. 75, paras. 2</p> <p>Weber Affidavit, RAR V.1, pp. 125, paras. 2-3</p> <p>1st McMillan Affidavit, RAR V.1, pp. 115, para. 2</p> <p>Young Affidavit, RAR V.1, p. 83, para. 2</p> <p>1st Lopes Affidavit, RAR V.1, pp. 104, para. 2</p> <p>Ament Affidavit, RAR V.1, pp. 13, para. 2</p> <p>A. Jeffrey Affidavit, 2nd SupRAR, p. 45, para. 2.</p> |
| LGBTQ2S+ | <ol style="list-style-type: none"> 1. Josephina Dugas 2. Terra-Lynn Weber 3. Aaron Price 4. Stephanie McMillan | <p>Dugas Affidavit, RAR V.1, p. 75, para 3</p> <p>Weber Affidavit, RAR V.1, p. 125, para. 3</p> <p>Price Affidavit, RAR V.1, p. 7, para. 3</p> <p>1st McMillan Affidavit, RAR V.1, p. 115, para. 3</p> |
| Abuse survivors (childhood physical/sexual abuse, domestic violence, and/or sexual assault) | <ol style="list-style-type: none"> 1. Josephina Dugas 2. Terra-Lynn Weber 3. Aaron Price 4. Jason Paul 5. Julie Young 6. Kyle York | <p>Dugas Affidavit, RAR V.1, p. 77, para. 13</p> <p>Weber Affidavit, RAR V.1, pp. 126-127, paras. 12-14, 17, 22-23</p> <p>Price Affidavit, RAR V.1, p. 8, para. 9</p> <p>Paul Affidavit, RAR V.1, p. 44, paras. 6-7</p> <p>Young Affidavit, RAR V.1, pp. 83, 84, paras. 12</p> <p>York Affidavit, RAR V.1, p. 92, para. 7</p> |

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| | 7. Terrance Cole | Cole Affidavit, 2nd Sup RAR, p. 15, para. 7 |
| | 8. Jeff Couto | Couto Affidavit, 2 nd Sup RAR, p. 29, para. 17 |
| | 9. Aline Jeffery | A. Jeffery Affidavit, 2 nd Sup RAR, pp. 46, 48, paras. 5, 19. |
| Shelter together with partner | 1. Aline Jeffery | A. Jeffery Affidavit, 2 nd Sup RAR, p. 45, para. 2. |
| | 2. Michael Jeffery | M. Jeffery Affidavit, 2nd Sup RAR, p. 53, para 8-14, 20 |
| | 3. James Davis | Davis Affidavit, RAR V.1, p. 32, para 4, 11-13, 19, 22 |
| | 4. Noah Helsby | Helsby Affidavit, RAR V.1, p. 109, para 5 |
| | 5. Terrance Cole | Cole Affidavit, 2nd Sup RAR, pp. 14, 17, paras. 4, 25; |
| | 6. Stephanie McMillan | First McMillan Affidavit, RAR V.1, pp. 116, 117, paras. 14, 16, 22; |

APPENDIX C: SELECT NAMED RESPONDENT NARRATIVES**1. Charles Kocher**

Charles Kocher is a 41-year-old Mi'kmaq man. He has two children who live with his parents. He has long struggled with addiction, but was able to maintain sobriety for ten years after the birth of his son before relapsing. He lives with serious physical health challenges: he has had three heart attacks and a blood clot that travelled to his lungs, causing him to fall into a coma. He was discharged from the hospital into homelessness and went to the Encampment, having no place else to go. Mr. Kocher now has a drainage tube from his gall bladder that must be flushed every “couple of days”. He cannot afford the transportation to attend those appointments, so he must hope the incision site does not become infected, and he lives with “a lot of pain”. He has been homeless for the past 3-4 years, during which he has been evicted from other public spaces. Once, by-law staff threw out all of his belongings during eviction enforcement. He has also tried to access the Region’s indoor shelters, but this has been challenging: he is turned away when they are at capacity, and he lost the space he had at the House of Friendship Shelter due to missing bed checks because of “legal issues”. Mr. Kocher was sheltering at the Encampment during the spring of 2025, but he does not know if the Region deems him to be a “Resident” under the By-Laws.³⁷⁷

2. Jeffrey Couto

Jeff Couto is a 43-year old man who has stayed at the Encampment on and off since 2021. He lives with significant trauma – he was sexually assaulted as a child and his father was murdered. Prior to becoming homeless, he had a career in renovations and roofing. He owned his own business, with 15 employees and five trucks. He also owned his own home. He was married and had three children. However, he had to close his business in 2021 after being unable to climb out from pandemic-related losses. Without his livelihood, his mental health suffered and he began to use drugs. He separated from his wife due to his mental health challenges, slipped deeper into substance use. He became

³⁷⁷ Kocher Aff., 2ndSupRAR, pp.38-42.

addicted to fentanyl. Mr. Couto wants to be clean. He has been through two detox programs, but has been unable to maintain sobriety. When he is clean, he stays with his mother, but he cannot do so if he is using. During those times, he returns to the Encampment.³⁷⁸

3. Megan Lopes

Megan Lopes is a 20-year-old woman with mental health disabilities that cause her to struggle with aggression. She has been homeless on and off since leaving home at the age of 14. Her monthly income is \$346 per month in social assistance. She is a substance user and has already overdosed three or four times. She has been evicted from two of the Region's shelters due to her behaviour, and she has been turned away from others, either because they were at capacity, or due to her conduct during previous stays. She stays at the Encampment when she lacks other options. In September 2025, the Region offered her a motel room. Region staff paid for a taxi to the motel and she was able to bring several bags with her, but she had to leave her tent and mattress at the Encampment because the Region did not offer storage. Weeks later, the motel manager banned her from the motel. He became upset after Ms. Lopes repeatedly complained her key card did not work and because she once wore her sports bra in the common area. The manager also alleged she had caused property damage. With no place to go, Ms. Lopes returned to the Encampment. Her tent and mattress had been destroyed and she was unable to transport her other belongings back to the site. As a result, she feels her circumstances have "deteriorated" compared to when she left.³⁷⁹

4. Aline Jeffery

Aline Jeffery is a 46-year-old Métis woman. She is married and shelters together with her husband, Michael. She has survived substantial trauma: she was sexually and emotionally abused as a child, she was abused during her first marriage, and she was drugged and sexually assaulted in March of 2025. Ms. Jeffery has multiple disabilities, including Lupus, Fibromyalgia, PTSD, and Borderline

³⁷⁸ Couto Aff., 2ndSupRAR, pp.27-30.

³⁷⁹ 1st Lopes Aff., RARV.1, pp.104-6; 2nd Lopes Aff., 2ndSupRAR, pp.8-11.

Personality Disorder. She has also struggled with substance use since having been prescribed Oxycontin and Percocets for her Lupus and Fibromyalgia. Ms. Jeffery raised four children, having become pregnant with her first when she was only fourteen. She worked hard to support them, first as a medical assistant and then as a law clerk. However, in 2019, her medical conditions became too disabling. She now relies on Canada Pension Plan Disability payments. Ms. Jeffery and her husband became homeless in September of 2025. They packed their belongings into a U-Haul van, where they lived for approximately a month until the van was confiscated by police. Since then, they have stayed in motels when they could afford to, but have now been banned from three of the Region's four motels due to a dispute with the operator. They have also stayed in parks, but have been repeatedly evicted under the Region's Code of Use By-Law. Needing accommodation as a couple, being banned from the motels, and unable to shelter in parks, they began sheltering at the Encampment in December 2025 or January 2026.

5. Terra-Lynn Weber

Terra-Lynn Weber is a 35-year-old non-binary person who previously worked as a house cleaner and owned their own home. They lost their home when their abusive ex-partner set it on fire. They have been homeless on and off for approximately four years, sheltering at the Encampment much of that time. They previously slept on the street, where they were urinated on, assaulted, and lost toes to frostbite. About a year ago, they found a shared room they could afford on their monthly social assistance income of \$772. However, their male roommate assaulted them, leaving them with a severe head injury. They have had three strokes since that assault, and now have a speech disability and balance and mobility impairments. They also have a long-standing substance use disability. They live in perpetual fear due to all that they have been through. They sleep at a church during the day and spend wakeful nights alert in their tent. They were sheltering at the Encampment in the spring of 2025, but they are not deemed a "Resident" under the By-Law, likely because they are not at the site during the day. They have been turned away from shelters in the past, and their mobility problems

make them unable to navigate congregate living environments if beds are close together.³⁸⁰

³⁸⁰ Weber Aff., RARV.1, pp.125-29.

APPENDIX D: EXCERPTS FROM APPELLANT FACTUM IN *HEEGSMA V. CITY OF HAMILTON*, COA-25-CV-0166

Court File No. COA-25-CV-0166

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

KRISTEN HEEGSMA, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO, SHAWN ARNOLD, CASSANDRA JORDAN, JULIA LAUZON, AMMY LEWIS, ASHLEY MACDONALD, COREY MONAHAN, MISTY MARSHALL, SHERRI OGDEN, JAHMAL PIERRE, and LINSLEY GREAVES

Appellants

-and -

CITY OF HAMILTON

Respondent

-and -

ATTORNEY GENERAL OF ONTARIO

Intervener

FACTUM OF THE APPELLANTS

August 29, 2025

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Failing to apply Mohan

44. Ramsay J. failed to apply *Mohan* to admit evidence given by Hamilton’s expert, Dr. Koivu, with respect to general health outcomes of homelessness. *Mohan* requires the Court to assess whether a tendered expert is properly qualified to give the evidence at issue and whether expert evidence is relevant. Ramsay J. did not apply these criteria to Dr. Koivu or her evidence. If he had, they would not have been satisfied.

45. Dr. Koivu is unqualified to give evidence on general health outcomes of homelessness because she is an inpatient **addiction** physician who treats unhoused patients referred by other medical services **in hospital**. She does not practice family or emergency medicine in relation to the unhoused, unlike the Appellants’ physician experts, Drs. Hayman, Hwang, Orkin, and Sereda. Nor does she provide outpatient care of any kind – also unlike the Appellants’ physician experts – let alone in encampments or shelters, unlike Dr. Sereda. Her publications are only about addiction. Further, her testimony strayed from her expertise. She drew on her experience as a **camper** (not a physician) to implausibly opine that tents did not reduce the risk of frostbite. Finally, most of the sources she cited were inadmissible hearsay – news stories on events in encampments she did not directly observe and with which she was uninvolved.²⁶

46. Dr. Koivu’s evidence also failed to satisfy *Mohan* because it was irrelevant. She compared the health outcomes of unhoused persons staying in **shelters** to those in

²⁶ *Heegsma*, paras. [55-61](#); Sharon Koivu XE Transcript (September 6, 2024) [“**Koivu XE**”], p.62, Q56; pp.62-69, Q57-Q180; pp.70-71, Q190-Q212; pp.75-76, Q277-Q290, pp.76-79, Q296-Q357; pp.82-138, Exs.1-5 [ABC, Vol-11, Tab-143]; Sharon Koivu Affidavit (July 26, 2024) [“**Koivu Affidavit**”], pp.9-10, paras.5-6; p.11, para.15; pp.29-40, Ex.A [ABC, Vol-11, Tab-142].

encampments but did not address the central issue: how outcomes or medical care for **encampment** residents compare to those for persons **living rough**.

47. Because Dr. Koivu’s evidence was inadmissible, the Appellants’ expert evidence was uncontradicted and Ramsay J. should have relied on it.

48. Ramsay J. also erred by asking the wrong question in assessing the admissibility of Dr. Sereda’s evidence. Instead of determining whether her evidence met *Mohan*, Ramsay J. excluded it on the basis that she was “a partisan advocate for one side” because she had advocated for the unhoused in London. He failed to follow *Black*, which held that advocacy by experts on homelessness is not disqualifying *per se*. Nor did he address *Kingston*, which held that Dr. Sereda’s advocacy for the unhoused did not disqualify her as an expert in a *Charter* challenge to a by-law prohibiting encampments.²⁷

Applying the wrong test regarding the treating physicians’ evidence

49. Ramsay J. erred by applying the participant expert test to exclude relevant evidence from the Appellants’ physicians – Drs. Wiwcharuk, O’Shea, Bodkin and Lamont – of the Appellants’ experiences of sheltering restrictions and evictions, and the resulting physical and psychological harms.

50. To be clear, Ramsay J. correctly struck opinion evidence from the physicians’ affidavits, because the physicians were not tendered as experts. The Appellants’ Notice

...

²⁷ *Heegsma*, para. 54; *Black v. Toronto*, 2020 ONSC 6398, para. 31 [*Black*]; *Kingston v. Doe*, 2023 ONSC 6662, para. 104.

**APPENDIX E: EVIDENCE OF SECURITY OF THE PERSON IMPACT OF
SHELTERING RESTRICTIONS AND FORCED DISPLACEMENT FROM NAMED
RESPONDENT AFFIDAVITS**

“By-law officers came and evicted us from the site in 2024. They promised to assist us with the move but did not. On the eviction date, they began to throw all of our belongings away.

I lost my tools, a valuable jacket, and many of my other belongings.

I made a suicide attempt due to the stress I experienced from the eviction.”³⁸¹

“If the Encampment were no longer available to me, I would be forced to stay in severely dangerous places. I have stayed in Trap Houses in the past where weapons and drugs were being sold. I do not want to be in that environment -- it is scary.

...

Approximately one week ago, I had a seizure as a result of drug use, I was able to get help immediately because of the supports at the Encampment. If I were on the street at that time, it is likely that no one would have known what was happening and I would not have received immediate treatment.”³⁸²

“We have had to move at least ten times since the end of September and were robbed of the few belongings we had left one night when we were staying in a park. When we were told to leave a different park we were so depressed.”³⁸³

“When sleeping on the streets I suffer from panic attacks. I can only sleep for 2 hours and I have to wake up and move along. I am afraid to sleep on the streets because of the bad experiences I have had.

I have been living at this encampment for 8 months. Being homeless on its own is so hard. Having a community when I wake up in the morning, knowing that I won't get kicked out of a shelter and that I have neighbours to go to for help is huge. I feel connected here, I have never feared for my safety and I feel like I have independence which helps my self esteem.”³⁸⁴

“I like staying at the Encampment because I feel safer here. I like that there are volunteers and security around. I like that people bring by food donations and there is a soup kitchen across the street. I also go to Sanguen Health Centre and Ray of Hope. I feel like if you need help here is it (*sic*) close by.”³⁸⁵

“I access the showers and laundry across the street from the encampment. They are also helping me get ID, I'm really grateful for the services there. I also access the community donations of food, water and clothing that are dropped off at the encampment, and the harm reduction services that are offered. Without these donations I would be hungry and it would be hard to get clothing.

³⁸¹ Harker Aff., 2ndSupRAR, p.34, paras.13-5.

³⁸² Ament Aff., RARV.1, p.15, paras.12-4. See also: Hwang Aff., SupRARV.1, pp.72-3, para.11; Paul Aff., RARV.1, pp.46-7, para.35; Nichol Aff., RARV.1, p.60, para.25; 1st McMillan Aff., RARV.1, p.118, para.24.

³⁸³ M. Jeffery Aff., 2ndSupRAR, p.54, para.11.

³⁸⁴ Dugas Aff., RARV.1, p.77, paras.14-5. See also: Affidavit of Matthew Stefanac, sworn May 6, 2025 (“Stefanac Aff.”), RARV.1, pp.99-100, paras.10-1; Price Aff., RARV.1, p.8-9, paras.10, 13; Linton Aff., RARV.1, pp.52-3, paras.10, 17; Aff. of Noah Helsby, sworn May 15, 2025, (“Helsby Aff.”), RARV.1, p.111, para.15.

³⁸⁵ Camm Aff., 2ndSupRAR, p.23, para.15.

I also go to the soup kitchen and the church for meals. I was using the services at the CTS down the road before that was shut down.

At the encampment I feel like I have stability and a spot to focus on getting things done. I'm trying to get OW, I'm working on getting ID, I'm trying to get my medications in place, and find out how to get back into my schooling. If I didn't have the encampment all of these things would be ripped out from beneath me.”³⁸⁶

“If I am unable to have the option to access the encampment, I would be hungry more often. I will have to continue sleeping alone at parks, wherever I can find a spot. It would be terrible. More people would be living on the street without the encampment.”³⁸⁷

“If the Encampment were closed down, it would impact me pretty badly. I'd have to go back to sleeping in alleyways.”³⁸⁸

“There are limited shelter supports in the community during the day. If we didn't have the encampment, we would just disperse throughout the community and set up shelter in more discreet areas. These are often temporary shelters/encampments because it depends on the season. For example, we may have a hidden spot but then the leaves fall off the trees and we are visible and need to pack up and move everything again.”³⁸⁹

“I have been homeless for over 3 years. I have accessed shelters and slept on the streets. I have had personal belongings stolen from me on a regular basis while sleeping on the streets. I was staying at 150 Main St. Cambridge encampment and my belongings got bulldozed.”³⁹⁰

“The encampment at 100 Victoria is located close to services I access for food and treatment. I go across the street for coffee and to the soup kitchen. I also access the hospital, the probation office and the RAAM clinic, which are all nearby.

I rely on the donations and harm reduction supplies brought to the 100 Victoria encampment.

...

If 100 Victoria were not available to me I would probably live in a stairwell.”³⁹¹

“I rely on donations and food drop-offs made to the 100 Victoria Street encampment as well as the Community Fridge, St. Johns Kitchen and Ray of Hope. It is very difficult for me to find food and water at nighttime. People from the community come regularly to drop off food and water at the encampment, and this is very helpful.”³⁹²

³⁸⁶ Dugas Aff., RARV.1, p. 78, paras.16-8. See also: Young Aff., RARV.1, pp.86-7, paras.22, 24, 28; Price Aff., RARV.1, pp.9-10, paras.17, 20; Linton Aff., RARV.1, p.53, paras.15-7; Stefanac Aff., RARV.1, p.100, para.12; Helsby Aff., RARV.1, p.111, paras.13-4; Bradley Aff., RARV.1, p.65, para.17; 1st McMillan Aff., RARV.1, p.118, para.23; Affidavit of James Davis, sworn June 20, 2025, RARV.1, p.33-4, paras.17, 24; 1st Lopes Aff., RARV.1, p.106, para.16.

³⁸⁷ Linton Aff., RARV.1, p. 53, para.17.

³⁸⁸ Camm Aff., 2nd SupRAR, p.24, para.18.

³⁸⁹ Paul Aff., RARV.1, pp.46-7, para.35.

³⁹⁰ Helsby Aff., RARV.1, p.110, para.10.

³⁹¹ Cole Aff., 2nd SupRAR, pp. 17-8, paras.20-1, 27.

³⁹² Harker Aff., 2nd SupRAR, p.35, para.25.

Court File No. CV-25-00000750-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

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, JEFFERY COUTO,
JORDAN CAMM, TERRANCE COLE, XANDER HARKER, CHARLES KOCHER,
ALINE JEFFERY, MICHAEL JEFERY, 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 2, 2026.



Ashley Schuitema, Joanna Mullen, and Shannon Down

Lawyers for the Cross-Applicants/Named Respondents

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](#) (“Persons Unknown”)
2. *Quebec (Attorney General) v. Kanyinda*, [2026 SCC 7](#)
3. *Grosvenor v. East Luther Grand Valley (Township)*, [2007 ONCA 55](#)
4. *R. v. Baldree*, [2013 SCC 35](#)
5. *Church of Saint Stephen et al. v. Toronto*, [2023 ONSC 6566](#)
6. *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, [2025 ONSC 4774](#) (“Interim Injunction”)
7. *R. v. Mohan*, [1994 CanLII 80 \(SCC\)](#), [1994] 2 S.C.R. 9
8. *White Burgess Langille Inman v. Abbott and Haliburton Co.*, [2015 SCC 23](#)
9. *Vancouver Fraser Port Authority v Brett*, [2020 BCSC 876](#) (“Brett”)
10. *Black et al. v. City of Toronto*, [2020 ONSC 6398](#)
11. *The Corporation of the City of Kingston v. Doe*, [2023 ONSC 6662](#)
12. *R. v. Shafia*, [2016 ONCA 812](#)
13. *R. v. Nygard*, [2024 ONSC 4262](#)
14. *Dyck v. Tahoe Resources Inc.*, [2021 ONSC 5712](#)
15. *Wise v. Abbott Laboratories, Ltd.*, [2016 ONSC 7275](#)
16. *Affleck v. The Attorney General of Ontario*, [2021 ONSC 1108](#)
17. *Smith v. Kane*, [2021 ONCA 634](#)
18. *R. v. Abbey*, [2017 ONCA 640](#)
19. *Pederson v. Forget*, [2026 ONCA 118](#)
20. *R. v. Sekhon*, [2014 SCC 15](#)
21. *R. v. Abbey*, [2009 ONCA 624](#)
22. *St. Theresa Point First Nation v. Canada*, [2025 FC 1926](#)
23. *R. v. Mathisen*, [2008 ONCA 747](#)
24. *Public School Boards’ Assn. of Alberta v Alberta (Attorney General)*, [2000 SCC 2](#), [2000] 1 SCR 44
25. *Moffitt v T.D. Canada Trust*, [2021 ONSC 6133](#)
26. *Ruck v City of Mississauga*, [2024 ONSC 2579](#)
27. *Heegsma v. Hamilton (City)*, [2024 ONSC 7154](#)
28. *Cycle Toronto et al. v. Attorney General of Ontario et al.*, [2025 ONSC 4397](#)
29. *R. v. Sullivan*, [2022 SCC 19](#)
30. *Re Hansard Spruce Mills*, [1954 CanLII 253 \(BC SC\)](#), [1954] 4 D.L.R. 590 (B.C.S.C.)
31. *Poff v. City of Hamilton*, [2021 ONSC 7224](#)
32. *Clinique juridique itinérante c. Procureur général du Québec*, [2023 QCCS 1949](#), leave to appeal dismissed in [2023 QCCA 855](#)
33. *Matsqui-Abbotsford Impact Society v Abbotsford (City)*, [2024 BCSC 1902](#), leave to appeal granted in [2025 BCCA 78](#) (“Matsqui”)
34. *Prince George (City) v Johnny*, [2025 BCSC 1556](#) (“Johnny 2”)
35. *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994 CanLII 117 \(SCC\)](#), [1994] 1 SCR 311
36. *Victoria (City) v. Adams*, [2009 BCCA 563](#) (“Adams 2”)
37. *Abbotsford (City) v. Shantz*, [2015 BCSC 1909](#)
38. *Bamberger v Vancouver (Board of Parks and Recreation)*, [2022 BCSC 49](#)

39. *Maple Ridge (City) v Scott*, [2019 BCSC 157](#)
40. *Bracken v. Niagara Parks Police*, [2018 ONCA 261](#)
41. *Victoria (City) v. Adams*, [2008 BCSC 1363](#) (“Adams I”)
42. *Godbout v. Longueuil (City)*, [1997 CanLII 335](#) (SCC), [1997] 3 SCR 844
43. *Canada (Attorney General) v. Bedford*, [2013 SCC 72](#)
44. *Toronto (City) v. Ontario (Attorney General)*, [2021 SCC 34](#)
45. *La Rose v. Canada*, [2023 FCA 241](#)
46. *Mathur v. Ontario*, [2024 ONCA 762](#), leave to appeal dismissed, File No. [41596](#)
47. *Canadian Council for Refugees v. Canada (Citizenship and Immigration)*, [2023 SCC 17](#)
48. *Carter v. Canada (Attorney General)*, [2015 SCC 5](#), [2015] 1 S.C.R. 331
49. *R. v. Kloubakov*, [2025 SCC 25](#)
50. *R. v. Appulonappa*, [2015 SCC 59](#), [2015] 3 SCR 754
51. *Vandenberg v Vancouver (City) Fire and Rescue Services*, [2023 BCSC 2104](#)
52. *Drover v. Canada (Attorney General)*, [2025 ONCA 468](#)
53. *Chaoulli v. Quebec (Attorney General)*, [2005 SCC 35](#)
54. *British Columbia v. Adamson*, [2016 BCSC 584](#)
55. *R. v. Sharma*, [2022 SCC 39](#), [2022] 3 SCR 147
56. *Fraser v. Canada (Attorney General)*, [2020 SCC 28](#)
57. *R. v. Barton*, [2019 SCC 33](#)
58. *Moge v. Moge*, [1992 CanLII 25](#) (SCC), [1992] 3 SCR 813
59. *R. v. Oakes*, [1986 CanLII 46](#) (SCC), [1986] 1 S.C.R. 103
60. *New Brunswick (Minister of Health and Community Services) v. G.(J.)*, [1999 CanLII 653](#) (SCC), [1999] 3 S.C.R. 46
61. *Re B.C. Motor Vehicle Act (British Columbia)*, [1985 CanLII 81](#) (SCC), [1985] 2 S.C.R. 486
62. *R. v. Michaud*, [2015 ONCA 585](#)
63. *Taylor v. Newfoundland and Labrador*, [2026 SCC 5](#)
64. *R. v. Big M Drug Mart Ltd.*, [1985 CanLII 69](#) (SCC), [1985] 1 SCR 295
65. *Alberta v. Hutterian Brethren of Wilson Colony*, [2009 SCC 37](#)
66. *Canada (Attorney General) v. Chambre des notaires du Québec*, [2016 SCC 20](#)
67. *Unifor, Local 1688 v. The City of Ottawa*, [2018 ONSC 3377](#)
68. *Bertrand v. Ramara (Township)*, [2024 ONSC 7291](#)
69. *Toronto Taxi Alliance Inc. v. City of Toronto*, [2015 ONSC 685](#), 33 M.P.L.R. (5th) 103
70. *Victoria (City) v. Thompson*, [2011 BCSC 1810](#)
71. *The Corporation of the City of Windsor v. Persons Unknown*, [2022 ONSC 1168](#)

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.

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.

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.

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

Definitions

1 (1) In this Act,

“occupier” includes,

- (a) a person who is in physical possession of premises, or
- (b) a person who has responsibility for and control over the condition of premises or the activities there carried on, or control over persons allowed to enter the premises,

even if there is more than one occupier of the same premises; (“occupant”)

“premises” means lands and structures, or either of them, and includes,

- (a) water,
- (b) ships and vessels,
- (c) trailers and portable structures designed or used for residence, business or shelter,
- (d) trains, railway cars, vehicles and aircraft, except while in operation. (“lieux”) R.S.O. 1990, c. T.21, s. 1 (1); 2025, c. 5, Sched. 2, s. 1.

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. R.S.O. 1990, c. T.21, s. 2 (1); 2016, c. 8, Sched. 6, s. 1.

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](#). R.S.O. 1990, c. T.21, s. 9 (1).

**THE REGIONAL MUNICIPALITY OF
WATERLOO**
Applicants

and

**PERSONS UNKNOWN AND TO BE
ASCERTAINED**
Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at KITCHENER

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