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

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE REGIONAL MUNICIPALITY OF WATERLOO

Applicant

-and-

PERSONS UNKNOWN AND TO BE ASCERTAINED

Respondents

APPLICATION UNDER Rule 14.05 of the *Rules of Civil Procedure*

FACTUM OF THE INTERVENER, THE ATTORNEY GENERAL OF ONTARIO

July 31, 2025

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PART I – OVERVIEW

1. The Moving Parties seek an interlocutory injunction restraining enforcement of By-Law #25-021 ("the By-law") enacted by the Applicant, the Regional Municipality of Waterloo ("the Region"). The issue of whether the By-Law violates ss. 7 and 15 of the *Charter* and is of no force or effect will be heard on November 19-21, 2025 with the benefit of a complete evidentiary record.

2. The Attorney General of Ontario ("Ontario") intervenes in this matter pursuant to s. 109 of the *Courts of Justice Act*. Ontario makes the following submissions on the request for injunctive relief. Ontario intends to make further submissions on the merits of the constitutional arguments at the hearing on the merits.

3. Interlocutory injunctions against still-valid laws are granted "only in clear cases."[1] While a constitutional challenge is pending, the court should rarely restrain the enforcement of duly enacted laws that are presumed to further the public good. This is particularly true where the court does not have all the evidence and argument on the constitutional issues, and where the claimant is asserting novel *Charter* claims.

4. This is not a "clear case" for interlocutory relief. The Moving Parties' request for interlocutory relief is premature and does little to serve the public interest nor would an injunction contribute to the maintenance of the *status quo*. Both the By-law itself and the Region's enforcement activities to date are designed to maintain the *status quo* at the encampment until the application can be heard on the merits.

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[1] *Harper v Canada (Attorney General)*, 2000 SCC 57 at para 9 [*Harper*].

5. Any claim that the *Charter* prevents the Region from stopping new individuals from joining the encampment is novel, has little support in the case law, and does not outweigh the public interest in enforcing the By-law.

6. This court should not grant interlocutory relief without the benefit of a full record and full arguments on the merits.

PART II – STATEMENT OF ISSUES

7. Ontario makes submissions on the following issue:

1. Should this court grant an interlocutory injunction restraining the By-law before determining whether or not it is constitutional?

PART III – STATEMENT OF ARGUMENT

8. The three-part test for an interlocutory injunction (the *RJR* test) is: (1) whether there is a serious question to be tried; (2) whether the party seeking the injunction would suffer irreparable harm if an injunction is not granted; and (3) whether the balance of convenience supports granting or dismissing the request.[2] In the case of interlocutory injunctions suspending the operation of a duly enacted law (here, the By-law) the public interest is presumed to lie in the continued operation of the law. The claimants must show that a separate public (not merely private) interest outweighs the public interest in the law's operation. The onus is on the moving parties to establish that all three elements of the test are met.

9. Ontario takes no position on steps 1 and 2 of the test. However, Ontario submits that at step 3, the balance of convenience strongly favours that presumptively constitutional laws stay in force while a constitutional challenge is pending. The court should grant

[2] *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 at 348-349 [*RJR-MacDonald*].

injunctive relief against still-valid laws "only in clear cases."[3] Where the strength of the claimant's case and the nature and extent of the potential harm do not outweigh the public interest in the enforcement of the law, an interlocutory injunction is not warranted.[4]

A. The court should only grant injunctions against valid laws in "clear cases"

10. The Supreme Court has repeatedly held that injunctions restraining the enforcement of valid laws under constitutional attack raise "special considerations" at the balance of convenience stage.[5] An injunction restraining the effect of a law deprives the public of the law's benefit before it has been found to be invalid.[6] Such relief is an "extraordinary remedy" and "will only succeed in clear cases."[7]

11. In assessing the balance of convenience, this court must presume that the impugned law will produce a public good. The public interest in enforcing the law is a "special factor" that "weighs heavily in the balance":[8]

> Courts will not lightly order that laws that Parliament or a legislature has duly enacted for the public good are inoperable in advance of complete constitutional review, which is always a complex and difficult matter. It follows that only in clear cases will interlocutory injunctions against the enforcement of a law on grounds of alleged unconstitutionality succeed.[9]

12. The government need not prove that restraining the impugned law's effect will harm the public interest. The harm is presumed due to the inherent public interest function of democratically-elected bodies and the need to respect decisions made by those bodies

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[3] *Harper* at para 9.
[4] *AC and JF v Alberta*, 2021 ABCA 24 at paras 29, 67-68 [*AC and JF*].
[5] *Harper* at para 5; *Manitoba (A.G.) v Metropolitan Stores Ltd.*, [1987] 1 SCR 110 at 129 [*Metropolitan Stores*]; *RJR-MacDonald* at 343; see also *Poff v City of Hamilton*, 2021 ONSC 7224 at paras 38, 43-45 [*Poff*].
[6] *Harper* at para 5.
[7] *Harper* at para 9; *Poff* at paras 44, 255.
[8] *RJR-MacDonald* at 343; *Harper* at para 9.
[9] *Harper* at para 9.

until and unless they are found to violate the Constitution.[10] As the Supreme Court held in *RJR-MacDonald*:

> [The onus of demonstrating harm to the public interest] will nearly always be satisfied simply upon proof that the authority is charged with the duty of promoting or protecting the public interest and upon some indication that the impugned legislation, regulation, or activity was undertaken pursuant to that responsibility. Once these minimal requirements have been met, the court should in most cases assume that irreparable harm to the public interest would result from the restraint of that action.[11]

13. The presumed harm to the public interest applies equally where claimants seek to restrain subordinate legislation enacted by municipal governments.[12] As this court noted in *Poff v Hamilton*, a decision denying injunctive relief against the City's Parks By-Law, the complex and challenging social, economic and policy issues affecting homelessness "ought to be left to elected officials, health care and other professionals, social agencies and experts who are best equipped to address the welfare and needs of the homeless."[13]

14. The Supreme Court has held that in constitutional cases a claimant seeking to restrain the law's effect must demonstrate a countervailing public interest that transcends their own interests and weighs in favour of granting the injunction: "to overcome the assumed benefit to the public interest arising from the continued application of the legislation, the applicant who relies on the public interest must demonstrate that the suspension of legislation would itself provide a public benefit."[14]

15. Claimants, therefore, face a high burden to show that theirs is one of the "clear

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[10] *RJR-MacDonald* at 346; *Harper* at para 9; *Poff* at paras 249-250.
[11] *RJR-MacDonald* at 346; *Harper* at para 9.
[12] *Smith v St. Albert (City)*, 2014 ABCA 76 at para 24; *Nanaimo (City) v Courtoreille*, 2018 BCSC 1629 at para 110; *Poff* at paras 43-45.
[13] *Poff* at paras 249-250.
[14] *RJR-MacDonald* at 349.

cases" in which the court should restrain enforcement of a valid by-law before deciding whether or not it is unconstitutional.

B. Courts should rarely restrain still-valid laws before receiving full evidence and argument on the constitutional issues

16. In *Manitoba v Metropolitan Stores*, the Supreme Court explained that courts should be particularly cautious in granting interlocutory relief in constitutional cases. The Court reiterated that it is not the court's function at the interlocutory stage of litigation to try to resolve conflicts of evidence or decide difficult questions of law: these are matters best left to hearing on the merits. The Court then went on to explain why constitutional adjudication is "particularly unsuited to the expeditious and informal proceedings" of an interlocutory court:

> [T]he extent and exact meaning of the rights guaranteed by the *Charter* are often far from clear and the interlocutory procedure rarely enables a motion judge to ascertain these crucial questions. […] [T]he factual situation as well as the law may be so uncertain at the interlocutory stage as to prevent the court from forming even a tentative opinion on the case of the plaintiff; [citations omitted.][15]

17. In every constitutional case in the *Charter* era, the Supreme Court has denied requests for interlocutory relief suspending impugned legislation on the basis that doing so would harm the public interest.[16] The Moving Parties point to two recent cases where this court granted interlocutory relief against valid legislation: *Cycle Toronto* and *The Neighbourhood Group*.[17] While Ontario refrains from commenting on the correctness of those two decisions, it submits that they are in any event distinguishable. In those cases, the

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[15] *Metropolitan Stores* at 130-131.
[16] *Metropolitan Stores* at 157; *RJR-Macdonald* at 354; *Harper* at para 7; *Thomson Newspapers Co v Canada (Attorney General)*, [1998] 1 SCR 877; *Gould v Attorney General of Canada*, [1984] 2 SCR 124.
[17] *The Neighbourhood Group et al. v HMKRO*, 2025 ONSC 1934 [*The Neighbourhood Group*]; *Cycle Toronto et al. v Attorney General of Ontario et al.*, 2025 ONSC 2424 [*Cycle Toronto*].

court had received full evidence and argument on the merits: the interlocutory injunctions were granted at the merits hearing to apply while the decisions on the applications remain under reserve.

18. In *Cycle Toronto*, the claimants brought a motion for interlocutory relief restraining the implementation of legislation requiring the removal of bicycle lanes in the City of Toronto. The motion judge, Firestone R.S.J., declined the request for interlocutory relief and directed the moving parties to bring any requests for further injunctive relief to the application judge.[18] The application judge, Schabas J., concluded that he was entitled to depart from Firestone R.S.J.'s decision because he had the benefit of all the evidence filed by both sides as well as full argument on the merits. He granted interlocutory relief for the period while his decision was on reserve.[19]

19. Similarly, in *The Neighbourhood Group*, the claimants made a request to the application judge for injunctive relief restraining the effect of legislation requiring a 200 meter buffer zone between supervised consumption sites and schools and daycares. Callaghan J. reasoned it was appropriate, after having heard full evidence and argument on the merits, to grant a brief interlocutory injunction pending his decision on the merits "in the coming months."[20]

20. Here, the Moving Parties prematurely seek interlocutory relief early in the proceedings and before this court has even had an opportunity to receive the full record of evidence or full argument on the merits of the constitutional issues from the parties and interveners. This court should heed the caution in *Manitoba v Metropolitan Stores* and

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[18] *Cycle Toronto et al. v Attorney General of Ontario et al.*, 2025 ONSC 1650 at para 84, per Firestone RSJ.
[19] *Cycle Toronto* at paras 6-9, 42.
[20] *The Neighbourhood Group* at paras 9, 60.

decline to consider granting interlocutory relief until it has had an opportunity to "fully explore the merits of the [Moving Parties'] case."[21]

C. The relative strength of the *Charter* claims is relevant to the balance of convenience

21. The Moving Parties' claim for injunctive relief calls into question the constitutional validity of the By-law under ss. 7 and 15 of the *Charter*. While the court is not in a position to determine the *Charter* claims at this interlocutory stage, the court may consider the relative strength or weakness of the *Charter* claims in deciding whether the balance of convenience favours granting the injunction: "the plaintiff's chance of ultimate success is relevant to an assessment of the relative risks of harm."[22] Where it is clear that the claimant has a relatively weak or novel claim, the public interest in enforcing duly-enacted laws will rarely be outweighed.[23] As the Honourable Robert Sharpe, writing extrajudicially, recently commented:

> … if the judge is of the view that the plaintiff is unlikely to succeed but cannot say that the claim is frivolous or vexatious, the judge should still go on to consider the other factors rather than dismiss the application at the threshold stage. ... Plaintiffs should not automatically be refused relief simply because they cannot, at the preliminary stage, marshal the evidence required to prove their case. On the other hand, it seems to me incontrovertible that the plaintiff's chance of ultimate success is relevant to an assessment of the relative risks of harm. I have argued, and several courts have accepted, that the three components of the test for interlocutory relief should not be considered as 'separate, water tight categories' ….[24]

22. Professor Roach has similarly commented:

> A proportionality-based approach to determining the balance of convenience can also facilitate greater attention to the merits of the case.

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[21] *Metropolitan Stores* at 133.
[22] Robert Sharpe, "Interim Remedies and Constitutional Rights" (2019) 69:1 UTLJ 9, Ontario's Book of Authorities [BOA], Tab 2 at 13, quoted with approval in *AC and JF* at paras 29, 67-68.
[23] *AC and JF* at paras 29, 67-68.
[24] Robert Sharpe, "Interim Remedies and Constitutional Rights" (2019) 69:1 UTLJ 9, BOA, Tab 2 at 13, quoted with approval in *AC and JF*.

> The Alberta Court of Appeal, in overturning the issuance of an interim injunction, stressed that while the applicant's Charter case was serious and not frivolous, its relative weakness played an important role in determining that the balance of convenience and the public interest did not support granting the injunction. It quoted Justice Sharpe's writings on this issue with approval. The overall balance stage of proportionality reasoning allows a court to take a harder look at the merits of the applicant's case as well as the relative consequences of granting or not granting relief. [Footnotes omitted.][25]

23. Ontario intends to make full argument on the merits of the constitutional issues together with the parties and other interveners at the return of the application. However, to assist the court in making a preliminary assessment of the strength of the Moving Parties' *Charter* claims not merely for the first step of the *RJR* test but also for the other steps, Ontario sets out the legal principles governing *Charter* ss. 7 and 15 below.

a) The general principles governing Charter s. 7 (life, liberty, and security of the person)

24. The *Charter* s. 7 analysis proceeds in two stages. The first question is whether the impugned law deprives the claimant of their life, liberty or security of the person. If the answer to that question is "yes", the second question is whether the infringement is in accordance with the principles of fundamental justice.[26] If the claimant cannot meet the first step of the test, the "analysis stops there."[27] The claimant bears the onus at both steps.

25. At the first step, while s. 7 restricts the state's ability to *deprive* persons of life, liberty and security of the person, it does not create a positive obligation on the state to

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[25] Kent Roach, Constitutional Remedies in Canada, 2nd Edition (Toronto: Thomson Reuters, 2013), § 7:14, BOA, Tab 1 at 7.
[26] *Carter v Canada (Attorney General)*, 2015 SCC 5 at para 55 [*Carter*].
[27] *Blencoe v British Columbia (Human Rights Commission)*, [2000] 2 SCR 307 at para 47.

ensure that each person enjoys life, liberty or security of the person.[28] As this Court held in *Tanudjaja*:

> As it presently stands, there can be no positive obligation on Canada and Ontario to act to put in place programs that are directed to overcoming concerns for the "life, liberty and security of the person". In this context, there is no fundamental right to affordable, adequate and accessible housing provided through s. 7 of the *Charter*.[29]

26. In the context of encampments, for example, courts have not held that individuals seeking to enter and live on public property have a positive right to do so.[30]

27. At the second step of s. 7, the Supreme Court has held that "[s]ection 7 does not promise that the state will never interfere with a person's life, liberty or security of the person – laws do this all the time – but rather that the state will not do so in a way that violates the principles of fundamental justice."[31] Beyond the procedural principles related to the judicial process, the three principles of fundamental justice related to a law's "instrumental rationality" are that a law must not be arbitrary, overbroad, or grossly disproportionate.[32]

28. A law is arbitrary where there is "no connection to its objective."[33] The connection between a law's purpose and means can be established "on the basis of reason or logic."[34] The Court of Appeal for Ontario has emphasized that there is a "heavy onus on

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[28] *Gosselin v Quebec (Attorney General)*, 2002 SCC 84 at para 81.
[29] *Tanudjaja v Attorney General (Canada)*, 2013 ONSC 5410 at para 59 [*Tanudjaja*]; aff'd in *Tanudjaja v Canada (Attorney General)*, 2014 ONCA 852.
[30] *Carter* at para 71; *R v Kloubakov*, 2025 SCC 25 at paras 136-140.
[31] *Heegsma v Hamilton (City)*, 2024 ONSC 7154 at paras 69-70; *The Corporation of the City of Kingston v Doe,* 2023 ONSC 6662 at para 67; *Johnston v Victoria (City),* 2011 BCCA 400 at paras 10-13*; Victoria (City) v Adams*, 2009 BCCA 563 at para 74 [*Adams*].
[32] *Canada (Attorney General) v Bedford*, 2013 SCC 72 at paras 97-98, 101, 103, 106 [*Bedford*].
[33] *Carter* at para 83; *Bedford* at paras 98-100, 108, 111, 119-120; *R v Schmidt*, 2014 ONCA 188 at para 46.
[34] *Harper v Canada (Attorney General)*, 2004 SCC 33 at para 104, citing *RJR-MacDonald Inc. v Canada (Attorney General)*, [1995] 3 SCR 199 at para 153.

the party challenging the legislation to establish that there is no connection between the effect of the law and its purpose," noting that "[t]he standard is not easily met."[35] A law that is "capable of fulfilling its objectives" is not arbitrary.[36]

29. A law is overbroad where it goes further than reasonably necessary to achieve its legislative goals.[37] For example, a blanket prohibition will be overbroad where it "sweep[s] conduct into its ambit that bears no relation to its objective."[38] By contrast, a law that is well-tailored to achieve its objective is not overbroad.

30. The rule against gross disproportionality "only applies in extreme cases where the seriousness of the deprivation is totally out of sync with the objective of the measure."[39] This idea "is captured by the hypothetical of a law with the purpose of keeping the streets clean that imposes a sentence of life imprisonment for spitting on the sidewalk. The connection between the draconian impact of the law and its object must be entirely outside the norms accepted in our free and democratic society."[40]

31. The Supreme Court has distinguished between *Charter* cases where the government is best characterized as the "singular antagonist" (e.g., in penal cases) versus those where it is "striking a balance between the claims of competing groups" (e.g., the shared use of public spaces).[41] In the latter kinds of cases, courts interpreting and applying the *Charter* "must be mindful of the legislature's representative function."[42]

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[35] *R v Long*, 2018 ONCA 282 at para 76.
[36] *Carter* at para 83.
[37] *R. v Safarzadeh-Markhali*, 2016 SCC 14 at para 50 [*Safarzadeh-Markhali*], citing *Bedford* at para 101.
[38] *Bedford* at para 117.
[39] *Bedford* at para 120.
[40] *Bedford* at para 120.
[41] *Irwin Toy Ltd. v Quebec (Attorney General)*, [1989] 1 SCR 927 at 994 [*Irwin Toy*]; *Heegsma* at para 77.
[42] *Irwin Toy* at 993; *Heegsma* at paras 83-85.

b) The general legal principles governing Charter s. 15 (discrimination)

32. To establish a breach of s. 15 a claimant must prove that the law:

a. on its face or in its impact creates a distinction based on an enumerated or analogous ground (step one); and

b. that the distinction imposes burdens or denies benefits in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage (step two).[43]

33. A claimant must satisfy both steps of the test to establish a breach of s. 15(1).

34. At the first step, the claimant must prove through evidence that the law creates or contributes to a disproportionate impact based on a protected ground.[44] In adverse impact cases, where the law is facially neutral, "establishing the distinction will be more difficult."[45]

35. It is important to distinguish between adverse impacts caused or contributed to by the impugned law and those that exist independently of it.[46] The fact that most individuals impacted by the law belong to a protected group is *not* sufficient to meet the burden at the first step: "Merely proving overrepresentation is insufficient" because "all laws…affect individuals, including within groups protected by s. 15."[47] Courts "must take care to distinguish between the effects which are wholly caused, or are contributed to, by an impugned provision, and those social circumstances which exist independently of such a provision."[48]

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[43] *R v Sharma*, 2022 SCC 39 at paras 28, 188 [*Sharma*]; *Ontario Health Coalition and Advocacy Centre for the Elderly v His Majesty the King in Right of Ontario*, 2025 ONSC 415 at para 308 [*Ontario Health Coalition*].
[44] *Sharma* at para 44.
[45] *Sharma* at para 42, citing *Withler v Canada*, 2011 SCC 12 at para 64.
[46] *Fair Change v His Majesty the King in Right of Ontario*, 2024 ONSC 1895 at para 383 [*Fair Change*]; *Symes v Canada*, [1993] 4 SCR 695 at 765 [*Symes*]; *Sharma* at para 44.
[47] *Ontario Health Coalition* at para 317; see also *Fair Change* at para 327.
[48] *Symes* at 764-765.

36. The causation analysis at step one of s. 15(1) therefore "necessarily entails drawing a *comparison* between the claimant group and other groups or the general population."[49] What must be proved is not that the law impacts individuals belonging to a protected group (e.g. individuals experiencing disability), but that the law impacts these individuals differently "as compared to non-group members" (e.g. individuals without disability).[50]

37. At the second step, the claimant must demonstrate that the differential treatment established in step one amounts to discrimination by imposing a burden or denying a benefit in a manner that has the effect of reinforcing, perpetuating or exacerbating the group's disadvantage.[51]

38. Courts in Ontario and B.C., including this court in the previous application brought by the Region, have already concluded that municipal by-laws prohibiting encampments on public property do not violate *Charter* s. 15.[52]

D. The Moving Parties have not demonstrated a clear case for interlocutory relief

39. The Moving Parties have not presented a clear case demonstrating why interlocutory relief should be granted before the return of the application. Any such relief is premature, harms the public interest in the continued operation of the By-law, and risks exacerbating health and safety conditions at the encampment. Neither the By-law itself nor the Region's enforcement activities to date implicate the Moving Parties' *Charter* rights in

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[49] *Sharma* at paras 31-32 (emphasis in original), citing *Andrews v Law Society of British Colum*bia, [1989] 1 SCR 143 at 164; *Fair Change* at paras 326, 383; *Ontario Health Coalition* at para 310; *Metro Taxi Ltd. et al. v City of Ottawa*, 2024 ONSC 2725.
[50] *Fair Change* at para 327.
[51] *Sharma* at paras 50-51.
[52] *Heegsma* at paras 80-82; *The Regional Municipality of Waterloo v Persons Unknown and to be Ascertained*, 2023 ONSC 670 at paras 125-127; *Abbotsford (City) v Shantz*, 2015 BCSC 1909 at paras 234-236.

a manner that necessitates interlocutory relief against the By-law before the return of the application.

40. The By-law currently authorizes only limited, preliminary enforcement activity to monitor the encampment and stabilize the number of individuals living there. The By-law expressly contemplates that no existing resident living on the encampment before April 16 will be removed before December 1, after the return of the application.[53] To the extent the By-law restricts new individuals from living at the encampment, that action is aimed at assisting the Region's efforts to find alternative accommodation for existing residents. As noted by the Region's affiant Peter Sweeney, "the more individuals who join the Encampment the closer to December 1, the more difficult it will be [for the Region] to find alternative and other accommodation for every person residing at the Encampment."[54] Increasing numbers of individuals living at the encampment also exacerbates challenges relating to garbage and waste management, conflict between residents, the volume of drugs that find their way into the encampment community, the potential for overdose deaths and health crises, fires that can cause injury and destruction of property, and pest control.[55]

41. In any event, the Region's evidence is that enforcement to date has been limited. The Region has not removed a single person from the encampment since the By-law was enacted, including new individuals who started living at the encampment after April 16.[56] Existing residents and visitors are permitted to come and go from the encampment and donations of supplies may continue to be dropped off on site or at the

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[53] By-law #25-021, s. 6, Exhibit B to Affidavit of Peter Sweeney affirmed June 6, 2025, Region's Responding Motion Record [RMR], vol 1, tab 3 at 185.
[54] Affidavit of Peter Sweeney affirmed July 2, 2025 at para 10 [Second Sweeney Affidavit], RMR, vol 1, tab 1 at 3.
[55] Second Sweeney Affidavit at para 10, RMR, vol 1, tab 1 at 3.
[56] Second Sweeney Affidavit at para 8, RMR, vol 1, tab 1 at 3.

adjacent parking lot.[57] Paramedic services can still access the site in the case of an emergency.[58]

42. Both the text of the By-law and the Region's limited enforcement activities are aimed at maintaining, rather than altering, the *status quo* at the encampment until this court hears the application.

43. To the extent the Moving Parties argue that individuals not already living at the encampment have a *Charter* right to come and live there, that is a wholly novel claim that does not outweigh the public interest in enforcing the By-law until the application is heard. The caselaw does not contemplate any *Charter* protection for individuals seeking a positive right to join an encampment and does not impose a positive obligation on the government to provide any person with housing.[59]

PART IV – ORDER REQUESTED

44. Ontario respectfully submits that the motion for interlocutory injunctive relief should be dismissed. Any further requests for injunctive relief should be directed to the hearing of the application on the merits.

45. Ontario does not seek costs and asks that no order as to costs be made against it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 31ST DAY OF JULY 2025

Andrea Bolieiro

Sara Badawi

[57] Second Sweeney Affidavit at paras 60, 67, RMR, vol 1, tab 1 at 18, 20.
[58] Affidavit of Brent Wood affirmed June 26, 2025, RMR, vol 1, tab 2.
[59] *Tanudjaja* at paras 58-59, 71, 81-82, aff'd 2014 ONCA 852; see also *Adams* at para 74.

SCHEDULE A – AUTHORITIES CITED

CASES

1. *Abbotsford (City) v Shantz*, 2015 BCSC 1909
2. *AC and JF v Alberta*, 2021 ABCA 24
3. *Andrews v Law Society of British Colum*bia, [1989] 1 SCR 143
4. *Blencoe v British Columbia (Human Rights Commission)*, [2000] 2 SCR 307
5. *Canada (Attorney General) v Bedford*, 2013 SCC 72
6. *Carter v Canada (Attorney General)*, 2015 SCC 5
7. *Cycle Toronto et al. v Attorney General of Ontario et al.*, 2025 ONSC 2424
8. *Cycle Toronto et al. v Attorney General of Ontario et al.*, 2025 ONSC 1650
9. *Fair Change v His Majesty the King in Right of Ontario*, 2024 ONSC 1895
10. *Gosselin v Quebec (Attorney General)*, 2002 SCC 84
11. *Gould v Attorney General of Canada*, [1984] 2 SCR 124
12. *Harper v Canada (Attorney General)*, 2000 SCC 57
13. *Harper v Canada (Attorney General)*, 2004 SCC 33
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15. *Irwin Toy Ltd. v Quebec (Attorney General)*, [1989] 1 SCR 927
16. *Johnston v Victoria (City)*, 2011 BCCA 400
17. *Manitoba (A.G.) v Metropolitan Stores Ltd.*, [1987] 1 SCR 110
18. *Metro Taxi Ltd. et al. v City of Ottawa*, 2024 ONSC 2725
19. *Nanaimo (City) v Courtoreille,* 2018 BCSC 1629
20. *Ontario Health Coalition and Advocacy Centre for the Elderly v His Majesty the King in Right of Ontario*, 2025 ONSC 415
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24. *R v Safarzadeh-Markhali*, 2016 SCC 14
25. *R v Schmidt*, 2014 ONCA 188
26. *R v Sharma*, 2022 SCC 39
27. *RJR-MacDonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311
28. *RJR-MacDonald Inc. v Canada (Attorney General)*, [1995] 3 SCR 199
29. *Smith v St. Albert (City)*, 2014 ABCA 76

30. *Symes v Canada*, [1993] 4 SCR 695
31. *Tanudjaja v Attorney General (Canada)*, 2013 ONSC 5410
32. *Tanudjaja v Canada (Attorney General)*, 2014 ONCA 852
33. *The Corporation of the City of Kingston v Doe*, 2023 ONSC 6662
34. *The Neighbourhood Group et al. v HMKRO*, 2025 ONSC 1934
35. *The Regional Municipality of Waterloo v Persons Unknown and to be Ascertained*, 2023 ONSC 670
36. *Thomson Newspapers Co v Canada (Attorney General)*, [1998] 1 SCR 877
37. *Victoria (City) v Adams*, 2009 BCCA 563
38. *Withler v Canada*, 2011 SCC 12

Secondary Sources

39. Kent Roach, Constitutional Remedies in Canada, 2nd Edition (Toronto: Thomson Reuters, 2013)
40. Robert Sharpe, "Interim Remedies and Constitutional Rights" (2019) 69:1 UTLJ 9

SCHEDULE B – LEGISLATION CITED

Canadian Charter of Rights and Freedoms

Legal Rights
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 Rights
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.

Courts of Justice Act
R.S.O. 1990, c. C.43

Notice of constitutional question

109 (1) Notice of a constitutional question shall be served on the Attorney General of Canada and the Attorney General of Ontario in the following circumstances:

1. The constitutional validity or constitutional applicability of an Act of the Parliament of Canada or the Legislature, of a regulation or by-law made under such an Act or of a rule of common law is in question.

2. A remedy is claimed under subsection 24 (1) of the *Canadian Charter of Rights and Freedoms* in relation to an act or omission of the Government of Canada or the Government of Ontario.

Failure to give notice

(2) If a party fails to give notice in accordance with this section, the Act, regulation, by-law or rule of common law shall not be adjudged to be invalid or inapplicable, or the remedy shall not be granted, as the case may be.

Form of notice

(2.1) The notice shall be in the form provided for by the rules of court or, in the case of a proceeding before a board or tribunal, in a substantially similar form.

Time of notice

(2.2) The notice shall be served as soon as the circumstances requiring it become known and, in any event, at least fifteen days before the day on which the question is to be argued, unless the court orders otherwise. 1994, c. 12, s. 42 (1).

Notice of appeal

(3) Where the Attorney General of Canada and the Attorney General of Ontario are entitled to notice under subsection (1), they are entitled to notice of any appeal in respect of the constitutional question.

Right of Attorneys General to be heard

(4) Where the Attorney General of Canada or the Attorney General of Ontario is entitled to notice under this section, he or she is entitled to adduce evidence and make submissions to the court in respect of the constitutional question.

Right of Attorneys General to appeal

(5) Where the Attorney General of Canada or the Attorney General of Ontario makes submissions under subsection (4), he or she shall be deemed to be a party to the proceeding for the purpose of any appeal in respect of the constitutional question. R.S.O. 1990, c. C.43, s. 109 (3-5).

Boards and tribunals

(6) This section applies to proceedings before boards and tribunals as well as to court proceedings. 1994, c. 12, s. 42 (2).

By-Law Number 21-025
The Regional Municipality of Waterloo

A By-law Respecting the Use of 100 Victoria Street North, Kitchener (as Owned by The Regional Municipality of Waterloo) to facilitate the Kitchener Central Transit Hub and other Transit Development

PART III - TRESPASS

6. From the date of passage of this By-law until November 30, 2025, no Resident will be removed involuntarily from or prohibited from entering their temporary shelter at 100 Victoria Street as a result of engaging in a Prohibited Activity, unless the Prohibited Activity creates or contributes to a serious risk to their own health or safety or the health or safety of another person. For greater certainty, nothing in this By-law permits a Resident to relocate their temporary shelter to another part of the premises at 100 Victoria Street without the permission of the Region.

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

THE REGIONAL MUNICIPALITY OF WATERLOO **Applicant**	**-and -**	**PERSONS UNKNOWN AND TO BE ASCERTAINED** **Respondent**

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings commenced at Kitchener

FACTUM OF THE INTERVENER, THE ATTORNEY GENERAL OF ONTARIO

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