

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

THE REGIONAL MUNICIPALITY OF WATERLOO

Applicant (Responding Party)

and

PERSONS UNKNOWN AND TO BE ASCERTAINED

Respondents (Moving Parties)

MOVING PARTIES' FACTUM

Motion for Interlocutory Injunction

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PART I: OVERVIEW

1. This motion is brought by 22 named respondents (the “Moving Parties”) who are chronically homeless persons sheltering on a vacant lot owned by the Regional Municipality of Waterloo (“the Region”). They are among the Region’s most vulnerable and marginalized. They shelter at the encampment during periods they cannot access indoor shelter that meets their needs. They move for an interlocutory injunction prohibiting the Region from enforcing a by-law evicting them from their shelters until the constitutionality and legality of that by-law can be determined by this Court.
2. Persons have been sheltering at this location since 2021. In 2023, the Region applied to this Court for permission to clear the site pursuant to a by-law prohibiting temporary structures on Region-owned lands (the “Code of Use By-Law”). This Court refused permission. It declared that By-Law constitutionally inoperable in relation to the site, “insofar, and 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 exceeds the number of available accessible shelter beds in the Region”.¹
3. Since then, the Region has provided basic services to the encampment such as waste disposal and portable toilets. Chronically homeless residents could count on it being available for no-barrier shelter of last resort.
4. However, the Region has now enacted a new by-law with the specific objective of clearing this site by November 30, 2025 so that it can be converted for use as a “lay-down” site for the equipment needed to construct a transit hub (the “Site Specific By-Law”). That construction is

¹ *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, [2023 ONSC 670](#) (“the Encampment Decision”), para. [158](#).

tentatively scheduled to begin in March 2026, though the date is subject to change.

5. The Region does not propose to permit outdoor sheltering anywhere else after the encampment is closed. The Moving Parties will be left with nowhere to go when they cannot access indoor shelter that meets their needs. In the words of one encampment resident: “[we] are at the bottom and now [they] are just taking away the bottom.”²
6. This Court should grant the interlocutory injunction because each element of the *RJR MacDonald* test weighs in favour of doing so.
7. There are serious issues to be tried, both with respect to the constitutionality of the By-Law and its legality. With respect to constitutionality, the conditions that led this Court to declare the Code of Use By-Law constitutionally inoperable in relation to this site have only worsened since 2023. The Region is candid that its homeless population continues to exceed its shelter spaces.³ With respect to legality, the Region’s failure to follow its own consultation process in developing the Site Specific By-Law gives rise to an inference of illegality for the purpose of s. 273 of the *Municipal Act, 2001*.
8. The Moving Parties will suffer irreparable harm if the encampment is converted to a construction site before this Court can determine the constitutionality and legality of the By-Law. The Region asserts it will offer alternative accommodation to those persons who were physically present at the encampment on April 16, 2025, referred to by the Region as the “Existing Residents”. It is unclear how many of the 22 Moving Parties are “Existing Residents”, per the Region but only

² Community Impact Consultation - Preliminary Report 100 Victoria April 22, 2025, Exhibit H to Affidavit of David Alton (“Alton Affidavit”), Supplementary Motion Record (“SMR”), p. 301.

³ Affidavit of Peter Sweeney, Affirmed June 6, 2025 (“First Sweeney Affidavit”), Responding Motion Record (“RMR”) Vol. 1, p. 76 (pdf 80), paras. 56-93.

four of the 15 Moving Parties who provided affidavits are deemed “Existing Residents”.⁴ The By-Law does not make the eviction of Existing Residents contingent on alternative accommodation being offered, and even they will be left with no shelter of last resort to return to if accommodation offered by the Region is only temporary. The Region has not made any formal commitments to the remaining 11 Moving Parties that provided affidavits, who will have nowhere to go if evicted. Eviction will have serious physical and psychological consequences for these vulnerable people, which cannot be remedied through damages.

9. In contrast, there is no evidence in the record that the Region will incur prejudice if a brief interlocutory injunction is granted, causing the balance of convenience to weigh in favour of the Moving Parties. The application hearing is currently scheduled for November 19-21, making it likely this Court will determine the constitutionality and legality of the By-Law after November 30, 2025, but well in advance of the tentative March 2026 construction date. While an injunction could potentially delay construction by a matter of months, given time required to remediate the site, there is no evidence that such a minor delay would cause meaningful prejudice to the Region.

PART II: FACTS

Encampment and its residents

10. The encampment site is a gravel parking lot located at 100 Victoria Street in the City of Kitchener. VIA Rail/GO Transit and bus stations are to its east, with a commercial plaza to the west, a Metrolinx-owned rail corridor to the north, and a variety of business and a church to the

⁴ These are Josephina Dugas, Jeremy Nichol, Noah Helsby, and Joseph Bradley – see: Second Affidavit of Peter Sweeney, Affirmed July 2, 2025 (“Second Sweeney Affidavit”), RMR, Vol.1, p. 5 (pdf 9), paras. 15-16. The Motion Record also includes affidavits from two additional persons who appear to have been included in the April 16, 2025 count – those are Matthew Stefanac and Calvin Sharpe. However, Mr. Stefanac has passed away since swearing his affidavit and counsel is not retained by Mr. Sharpe.

south.⁵

11. Homeless persons began erecting tents on the site in or around December 2021.⁶ However, the number of persons sheltering at the encampment varies,⁷ as chronically homeless persons gain and lose other forms of shelter. Jeremy Linton affirms he has sheltered at the encampment on and off for three years, staying for up to five months at a time when he has not had other options: “It makes me feel safe knowing the encampment is an option for me if I have no where to go”.⁸
12. Encampment residents rely on essential services near the encampment site.⁹ There is a drop-in space across the street where residents can access coffee, water, showers, and laundry. There is also a soup kitchen nearby where residents can have a daily meal and use the telephone. Health and harm reduction services are provided on-site by Sanguen Health. Community volunteers attend regularly to provide clothing, firewood, blankets, food, and water.
13. The Moving Parties’ backgrounds reflect those of the Region’s homeless.¹⁰ All of the Moving Party affiants have disabilities - eleven have mental health or cognitive disabilities,¹¹ eight have

⁵ Affidavit of Douglas Spooner, affirmed June 6, 2022 (“Spooner Affidavit”), RMR, Vol. 2, p. 400 (pdf 8), paras.12-13.

⁶ *Encampment Decision*, para. [19](#).

⁷ First Sweeney Affidavit, RMR, Vol. 1, p. 67 (pdf 71), para. 25.

⁸ Affidavit of Jeremy Linton (“Linton Affidavit”), Motion Record (“MR”), p. 50, para. 10.

⁹ Affidavit of Jeremy Nichol (“Nichol Affidavit”), MR, p. 57, paras. 17-18; Affidavit of Noah Helsby (“Helsby Affidavit”), MR, p. 69, paras. 13-14; Affidavit of Joseph Bradley (“Bradley Affidavit”), MR, p. 75, para. 17; Affidavit of James Davis (“Davis Affidavit”), SMR, p. 51, paras. 17, 24.

¹⁰ 2024 Point in Time Count Findings for Regional Municipality of Waterloo, Exhibit E to First Sweeney Affidavit, RMR, p. 221 (pdf 225).

¹¹ Affidavit of Josephina Dugas (“Dugas Affidavit”), MR, p. 23, para 6; Affidavit of Terra-Lynn Weber (“Weber Affidavit”), MR, p. 30, paras. 4-7, 18; Affidavit of Aaron Price (“Price Affidavit”), MR, p. 37, para. 5; Nichol Affidavit, MR, p. 57, para 19; Helsby Affidavit, MR, p. 67, paras. 2-11; Bradley Affidavit, MR, p. 73, paras. 2-9; Affidavit of Stephanie McMillan, sworn May 13, 2025 (“First McMillan Affidavit”), MR, p. 79, paras. 2-11, 22; Affidavit of Julie Young (“Young Affidavit”), SMR, p. 30, para. 5; Affidavit of Kyle York (“York Affidavit”), SMR, p. 40, paras. 2-13; Affidavit of Megan Lopes (“Lopes Affidavit”), SMR, p. 55, paras 2-11; Affidavit of Avery Ament (“Ament Affidavit”), SMR, p. 60, paras. 2-11.

substance use disabilities,¹² and at least four have mobility impairments.¹³ Four of the affiants are Indigenous.¹⁴ A further four identify as LGBTQ2S+.¹⁵ Seven of the affiants affirm to having survived childhood physical and sexual abuse, domestic violence, and/or sexual assault.¹⁶ Three shelter together with their partners.¹⁷ Six are women or identify as gender-diverse.¹⁸ The Moving Parties live in extreme poverty – some have no income at all,¹⁹ and others receive social assistance.²⁰

14. Circumstances that cause the Moving Parties to rely on the encampment vary.²¹ For instance:

- a. Megan “Savannah” 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

¹² Dugas Affidavit, MR, p. 23, para. 6; Weber Affidavit, MR, pp. 30-31, paras. 4-7, 18; Price Affidavit, MR, p. 37, para. 5; Helsby Affidavit, MR, p. 67, paras. 2-11; First McMillan Affidavit, MR, p. 79, paras. 2-11; York Affidavit, SMR, p. 40, paras. 2-13; Lopes Affidavit, SMR, p. 55, paras. 2-11; Ament Affidavit, SMR, p. 60, paras. 2-11.

¹³ Weber Affidavit, MR, pp. 30-32, paras. 4-7, 18; Nichols Affidavit, MR, p. 57, para. 19; Bradley Affidavit, MR, p. 73, paras. 2-9; Price Affidavit, MR p. 40, para. 20; Noah Helsby affirms to physical disabilities, but does not specify whether these include mobility impairment: Helsby Affidavit, MR, pp. 67-68, paras. 2-11. Calvin Sharpe, who has not retained counsel, also affirms to having a “bad back and leg”: Sharpe Affidavit, MR, p. 85, paras. 2-7.

¹⁴ Dugas Affidavit, MR, p. 22, paras. 2-4; Nichol Affidavit, MR, p. 54, para. 3; Helsby Affidavit, MR, p. 67, para. 3; York Affidavit, SMR, p. 40, paras. 3. Calvin Sharpe, who has not retained counsel, is also Indigenous: Sharpe Affidavit, MR, p. 85, para. 3.

¹⁵ Dugas Affidavit, MR, p. 22, para 3; Weber Affidavit, MR, p. 30, para. 3; Price Affidavit, MR, p. 37, para. 3; First McMillan Affidavit, MR, p. 79, para. 3.

¹⁶ Dugas Affidavit, MR, p.24, para. 13; Weber Affidavit, MR, p.31, paras. 12-14, 17; Price Affidavit, MR, p.38, para. 9; Affidavit of Jason Paul (“Paul Affidavit”), SMR, p.23, paras. 6-7; Young Affidavit, SMR p. 30, paras. 3, 12; York Affidavit, SMR, p. 40, para. 7.

¹⁷ Helsby Affidavit, MR, p. 67, para. 5; Davis Affidavit, SMR, p. 50, para. 4; First McMillan Affidavit, MR, p. 79.

¹⁸ Dugas Affidavit, MR, p. 22; Weber Affidavit, MR, p. 30, First McMillan Affidavit, MR, p. 79; Young Affidavit, SMR, p. 30; Lopes Affidavit, SMR, p. 55; Ament Affidavit, SMR, p. 60.

¹⁹ Dugas Affidavit, MR, p. 22, para. 4; Ament Affidavit, SMR, p. 61, paras. 7-8.

²⁰ Weber Affidavit, MR, p. 30, para. 4; Linton Affidavit, MR, p. 49, para. 5; Price Affidavit, MR, p. 37, para. 4; First McMillan Affidavit, MR, p. 80, para. 7; Paul Affidavit, SMR, p. 24, para. 17; Young Affidavit, SMR, p. 30, para. 4; York Affidavit, SMR, p. 40, para. 4; Lopes Affidavit, SMR, p. 56, para. 9; Affidavit of Jakob Stubbs (“Stubbs Affidavit”), SMR, p. 67, para. 6.

²¹ The backgrounds of all 15 Moving Parties is set out in their affidavits.

user and has already overdosed three or four times. She has been evicted from two of the Region's shelters for her behaviour and she has been turned away from other shelters, either because they were at capacity, or due to her behaviour during previous stays. Most recently, she has been sheltering at the encampment after being unable to follow the rules at One Roof Youth Shelter. She has been physically and sexually assaulted while sheltering on the streets outside of the encampment.²² She is not among the four Existing Residents.²³

- b. Joseph Bradley is a 62-year-old army veteran and former mechanic who first experienced homelessness following his return from duty in Afghanistan and Kuwait. He was later able to rent a townhouse with his wife and step-son's family, before being injured in a motorcycle crash that left him with a concussion, dislocated jaw and shoulder, and artificial knee. His wife passed away about eight years ago, and Mr. Bradley's step-grandson took over the lease and asked him to move out. Mr. Bradley has since stayed with a friend and at the encampment.²⁴ He is among the four Existing Residents.²⁵
- c. 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 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.²⁶ They are not among the four

²² Lopes Affidavit, SMR, pp. 55-57.

²³ Second Sweeney Affidavit, RMR, Vol.1, p. 5 (pdf 9), paras. 15-16.

²⁴ Bradley Affidavit, MR, pp. 73-76.

²⁵ Second Sweeney Affidavit, RMR, Vol.1, p. 5 (pdf 9), paras. 15-16.

²⁶ Weber Affidavit, MR, pp. 30-345.

Existing Residents²⁷

- d. Kyle York is a 37-year-old Indigenous man who has ADHD and a mental health disorder. His monthly income is \$292 in social assistance. He was verbally, physically, and sexually abused by his step-father throughout his childhood. He began using substances at the age of fifteen and is now trying to get clean – he is on methadone and has been clean from fentanyl for more than four months. Mr. York has been homeless on and off since the beginning of the pandemic, and he has moved in and out of the encampment. He was housed for a period about two years ago, and he also received transitional housing for a four month period.²⁸ He is not among the four Existing Residents.²⁹
- e. Julie Young is a 47-year-old woman that is illiterate. She used substances on and off for many years, but has been clean for 14 years. She receives under \$400 per month in social assistance. She has been experiencing homelessness since November 2024 when she was evicted from her home. Prior to being evicted she ran her own cleaning business, but her car has since been impounded. In her experience shelters are always full and because they require her to leave during the day she felt she was scrambling to find a place each night.³⁰ She is not among the four Existing Residents.³¹

Court refuses Region's previous application to clear the Encampment

15. This encampment was the subject of an earlier application to this Court in *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained* (the “*Encampment Decision*”).³² In January of 2023, this Court dismissed the Region's application to evict encampment residents under By-law number 13-050 (the “Code of Use By-law”), which prohibited persons from erecting temporary shelters on Region-owned property without a

²⁷ Second Sweeney Affidavit, RMR, Vol.1, p. 5 (pdf 9), paras. 15-16.

²⁸ York Affidavit, SMR, pp. 40-43.

²⁹ Second Sweeney Affidavit, RMR, Vol.1, p. 5 (pdf 9), paras. 15-16.

³⁰ Young Affidavit, SMR p. 30, paras. 2, 5-9, 15, 19-23.

³¹ Second Sweeney Affidavit, RMR, Vol.1, p. 5 (pdf 9), paras. 15-16.

³² [*Encampment Decision*](#).

permit.³³ At that time, the Region advised that it ultimately intended to use the site as a “lay-down” area for equipment during the construction of a transit hub nearby.³⁴

16. This Court found that prohibiting sheltering deprived encampment residents of their life, liberty, and security of the person when insufficient sheltering options left them “with no alternative but to sleep outside”.³⁵ At that time, available shelter spaces fell short “by some 50% of what was required to shelter the Region’s homeless”.³⁶ In arriving at that count, 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”.³⁷ It also held that it was “simply not a matter of counting the number of spaces”. Options needed to meet the “diverse needs” of the encampment residents to be accessible to them.³⁸

17. The Court directly rejected the Region’s argument that it need only establish sufficient capacity to shelter **current encampment residents** in order to establish it would be constitutional to prohibit sheltering on Region property:

[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

³³ Code of Use By-Law, Exhibit B to Second Sweeney Affidavit, RMR, Vol. 1, p. 33 (pdf 37).

³⁴ *Encampment Decision*, para. [15](#).

³⁵ *Encampment Decision*, para. [92](#).

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Encampment Decision*, para. [93](#).

living outside encampments. I am not prepared to do that. [...]

18. These deprivations of life, liberty, and security of the person were not in accordance with the principles of fundamental justice because enforcement of the Code of Use By-Law against residents of this encampment site was overbroad and grossly disproportionate in relation to the By-Law's objectives. Those objectives included preventing disruption to the Region's operations and promoting use and enjoyment of Region premises.³⁹
19. The Court declared the By-law constitutionally inoperative insofar as it applied to prevent encampment residents from living on and erecting temporary shelters at the site, under circumstances where the number of people experiencing homelessness exceeded the available and accessible shelter beds in the Region.⁴⁰ However, it directed that the Region could apply for an order to terminate the declaration upon it being in a position to satisfy the Court that the Code of Use By-law no longer violated the section 7 *Charter* rights of the encampment residents.⁴¹
20. The Region has not done so, nor did the Region appeal the decision, which remains in force.

Encampment remains while other sheltering sites are cleared

21. Following that decision, the Region has continued to provide basic services to the encampment, including waste disposal and portable toilets.⁴²
22. Meanwhile other encampment sites in the Region have been closed, including sites on Regional land and land owned by lower-tier municipalities. An encampment at 150 Main Street in

³⁹ *Encampment Decision*, paras. [9](#), [109](#)-119.

⁴⁰ *Encampment Decision*, paras. [157](#)-8.

⁴¹ *Encampment Decision*, para. [159](#).

⁴² First Sweeney Affidavit, RMR Vol. 1, pp. 87-88 (pdf 91-92), paras. 87-91.

Cambridge was closed by the Region in August 2023.⁴³ An additional site at Soper Park in Cambridge was cleared by the City of Cambridge in September of 2023.⁴⁴ An encampment at Roos Island in Kitchener was closed by the City of Kitchener in spring of 2023.⁴⁵

Homelessness and accessible shelter in the Region

23. Homelessness has more than doubled in the Region since the *Encampment Decision* was released, and the Region's shelter system has not kept pace. One measure of homelessness in a municipality is the "Point in Time Count", which is a count of persons experiencing homelessness on a single night.⁴⁶ The September 2021 Point in Time Count that this Court relied on in the *Encampment Decision* recorded 1,085 persons experiencing homelessness, including 412 who were "living rough",⁴⁷ and 191 who were accessing emergency shelters.⁴⁸ However, by October of 2024, the Region recorded 2,371 homeless, 1,009 of whom were "living rough", 446 in emergency shelters, and 153 in Region-funded motels.⁴⁹ Effective June 6, 2025, the Region's Commissioner of Community Services affirmed the Region's emergency shelter capacity was 377.⁵⁰ Taking the 2,371 homeless in the Region and the 377 shelter capacity effective June 6, 2025, this only covers 15% of the Region's homeless population falling short by 85% of what is required. Accordingly, the Region has acknowledged that it cannot ensure

⁴³ Affidavit of Sara Escobar, Affirmed June 23, 2025 ("Escobar Affidavit"), SMR, pp. 77-78, paras. 15- 17.

⁴⁴ *Ibid* at para. 17.

⁴⁵ Affidavit of David Alton, Affirmed June 23, 2025 ("Alton Affidavit"), SMR, p. 107, para 25.

⁴⁶ Association of Ontario Municipalities, "Municipalities Under Pressure: The Human and Financial Costs of Ontario's Homelessness Crisis", Exhibit F to First Sweeney Affidavit ("AMO Report"), RMR Vol. 1, p. 246 (pdf 250).

⁴⁷ The Point in Time Count defines "living rough" to include people staying in encampments, on the street, or in their vehicle: 2024 Point in Time Count, Exhibit E to First Sweeney Affidavit, RMR Vol.1, p. 221 (pdf 225).

⁴⁸ *Encampment decision*, para. [18](#).

⁴⁹ 2024 Point in Time Count, Exhibit E to First Sweeney Affidavit, RMR, Vol. 1, p. 221 (pdf 225).

⁵⁰ First Sweeney Affidavit, RMR, Vol. 1, p. 83 (pdf 87).

that the number of homeless persons will not exceed the number of shelter spaces in 2025, even leaving aside whether available spaces meet the needs of encampment residents.⁵¹

24. The majority of the Region's homeless move in and out of homelessness. Of the 2,371 homeless captured by the 2024 Point in Time Count, 78% were "chronically homeless", which the Ontario Association of Municipalities defines to include persons in "prolonged or **repeated** periods of homelessness".⁵² This accords with the experience of the Moving Parties, who have moved in and out of the encampment as they lose and gain shelter alternatives.⁵³

Region's Plan to End Chronic Homelessness ("PECH")

25. Approximately 15 months following the *Encampment Decision*, Region Council passed a Plan to End Chronic Homelessness ("PECH").⁵⁴ Region staff had developed this document over more than a year, in collaboration with a Lived Expertise Prototyping Cohort and a group of "co-creators" consisting of system leaders and service staff.⁵⁵ The Report is co-authored by the Region and the Social Development Centre Waterloo Region ("Social Development Centre"), an organization that facilitates inclusion of lived experience in policy development.⁵⁶ The

⁵¹ First Sweeney Affidavit, RMR, Vol. 1, p. 76 (pdf 80), paras. 56-86.

⁵² 2024 Point in Time Count, Exhibit E to First Sweeney Affidavit, RMR Vol. 1, p. 221 (pdf 225); AMO Report, RMR Vol 1, p. 235 (pdf 239), emphasis added. See also the definition of "chronic homelessness" in the Region's Plan to End Chronic Homelessness, April 2023, Exhibit A to First Sweeney Affidavit, RMR Vol. 1, p. 112 (pdf 116).

⁵³ Dugas Affidavit, MR, p. 23, para. 9; Weber Affidavit, MR, p. 32, para. 17; Price Affidavit, MR, p. 38, para. 10; Linton Affidavit, MR, pp. 49-50, paras. 2-6; Nichol Affidavit, MR, pp. 54-56, paras. 2-12; Helsby Affidavit, MR, pp. 67-68, paras. 2-11; First McMillan Affidavit, MR, pp. 79-80, paras. 2-11; Second McMillan Affidavit, SMR p. 46, para. 4; Paul Affidavit, SMR, p. 24, paras. 18-19; York Affidavit, SMR, pp. 40-41, paras. 2-13; Lopes Affidavit, SMR, pp. 56-57, paras 11-22; Stubbs Affidavit, SMR, pp. 66-67, paras. 2-13.

⁵⁴ Alton Affidavit, SMR, p. 100, para. 3; Plan to End Chronic Homelessness, Exhibit B to Alton Affidavit, ("PECH"), SMR, p. 120.

⁵⁵ Report to Council CSD-HOU-24-006, April 9, 2024, Exhibit A to Alton Affidavit, SMR, p. 112.

⁵⁶ PECH, SMR, p. 123.

contributions of the Social Development Centre were facilitated by David Alton.⁵⁷

26. The PECH prescribes a “human rights approach” to homelessness, where “people experiencing homelessness are treated as rights holders” and “the Region has a duty of care for their housing needs”.⁵⁸ It requires the Region to ensure that national and international human rights law are “appropriately prioritized amidst other legal obligations such as those regarding property rights, privacy and liability”.⁵⁹ This “human rights approach” is set out in detail through the principles articulated in the UN Special Rapporteur on the Right to Adequate Housing’s “National Protocol for Homeless Encampments in Canada”,⁶⁰ including:

Principle 2: Meaningful engagement and effective participation of homeless encampment residents

Residents are entitled to meaningful participation in the design and implementation of policies, programs, and practices that affect them. Ensuring meaningful participation is central to respecting residents’ autonomy, dignity, agency, and self-determination. Engagement should begin early, be ongoing, and proceed under the principle that residents are experts in their own lives. The views expressed by residents of homeless encampments must be afforded adequate and due consideration in all decision-making processes. The right to participate requires that all residents be provided with information, resources, and opportunities to directly influence decisions that affect them.

27. They are also articulated in the Canadian Federal Housing Advocate’s “Guide to Meaningful Engagement and Integrating a Human Rights based Approach into Encampment Responses”,⁶¹ which directs that a human rights approach requires municipalities to “[f]acilitate participation in decision-making of people living in encampments”:

⁵⁷ Alton Affidavit, SMR, p. 99, para. 2.

⁵⁸ PECH, SMR, p. 136.

⁵⁹ PECH, SMR, p. 136.

⁶⁰ Alton Affidavit, SMR, p. 102, para. 8; UN Special Rapporteur on Adequate Housing, Human Rights Approach, National Protocol for Homeless Encampments in Canada, Exhibit D Alton Affidavit, p. 243.

⁶¹ Office of the Federal Housing Advocate, Guide to Meaningful Engagement and Integrating a Human Rights based Approach into Encampment Responses, Exhibit C to Affidavit of Sara Escobar, Affirmed July 7, 2024 (“Second Escobar Affidavit”), Reply Motion Record (“Reply MR”), p. 32.

Excluding people living in encampments from decision-making processes perpetuates their marginalization and undermines their right to autonomy. This kind of exclusion undermines trust and compromises efforts to build meaningful relationships.

It is important that engagement processes begin as early as possible and that they be ongoing to facilitate the participation of people living in encampments. They must be included in decision-making processes concerning policies, programs, practices and laws that affect them. Their perspective must be taken into account in the decisions that directly influence their own lives if we are to achieve real sustainable solutions.⁶²

28. A “Lived Expertise Prototyping Report” was appended to the PECH Report passed by Council.⁶³

While this was appended “for information”, it recommended that the Region “[u]pdate the plans for the transit hub to ensure the continuation of 100 Victoria Street as a sanctioned encampment until functional zero homelessness has been achieved”,⁶⁴ and that the Region “[s]et aside land/funding for a transition fund through conversation with Metrolinx and the Province”, and “[e]nsure residents are provided with comparable land and supports”.⁶⁵

Region passes Site Specific By-Law

Terms of the Site Specific By-Law

29. On April 16, 2025, the Region provided public notice of the Site Specific By-Law by posting a copy on its website.⁶⁶ It did not post notice of the By-Law at the encampment site.⁶⁷

30. The Site Specific By-Law states that it is intended to “specifically regulate and govern 100

⁶² Office of the Federal Housing Advocate, “Guide to Meaningful Engagement and Integrating a Human Rights based Approach into Encampment Responses”, Exhibit C to Second Escobar Affidavit, Reply MR, p. 41.

⁶³ Alton Affidavit, SMR, p.100, paras. 4-5; Social Development Centre, Lived Experience Prototyping Report, Exhibit C to Alton Affidavit, (“Lived Experience Report”), SMR, p. 210.

⁶⁴ Lived Experience Report, SMR, p. 218, 228.

⁶⁵ *Ibid*, p. 237.

⁶⁶ Second Sweeney Affidavit, RMR, Vol. 1, p. 5 (pdf 9), para. 15.

⁶⁷ Alton Affidavit, SMR, p. 104, paras. 14-18; Social Development Council, Community Impact Consultation, Preliminary Report – 100 Victoria, April 22, 2025, Exhibit H to Alton Affidavit, SMR, p. 298-301; Nichol Affidavit, MR, p. 58, para. 23; Dugas Affidavit, MR, p. 27, para. 24; Price Affidavit, MR, p. 40, para. 21.

Victoria Street and to obtain vacant possession as of December 1, 2025”.⁶⁸ A Report to Council upon the introduction of the By-Law specified the By-Law would “facilitate remediation of the property commencing December 1, 2025 and Metrolinx’s use of the property by March 2026” for the purpose of constructing the Kitchener Central Transit Hub.⁶⁹ Council passed the Site Specific By-Law on April 23, 2025.

31. Effective upon its April 23, 2025 adoption by Council, the By-Law prohibits anyone who does not meet the definition of “resident” from sheltering at the encampment.⁷⁰ It defines “resident” to mean persons “residing at 100 Victoria Street as of the date that notice of this bylaw is provided through the posting of the agenda for the Council meeting at which this By-law will be considered”.⁷¹ It further provides that “[c]ommencing on December 1, 2025, **no person** shall enter onto, reside on, or occupy 100 Victoria Street or any part thereof”.⁷² Persons contravening that provision will be guilty of an offence and liable for a fine of up to \$5,000.⁷³ The By-Law authorizes the Region to, among other actions, erect fencing around the site to prevent entry, remove persons’ personal property from the site, and take steps under the *Trespass to Property Act*⁷⁴ to enforce the By-Law.⁷⁵

32. The Region’s Commissioner of Community Services affirms that the Region recognizes “approximately 40” persons as having resided in the encampment on April 16, 2025, that being

⁶⁸ By-Law 25-021, Exhibit B to First Sweeney Affidavit, (“Site Specific By-Law”), RMR Vol. 1, p. 185 (pdf 189).

⁶⁹ Report PDL-LEG-25-017, Exhibit C to First Sweeney Affidavit, RMR Vol. 1, p. 192 (pdf 196).

⁷⁰ Schedule B, s. 1(e), Site Specific By-Law, RMR Vol. 1, p. 190 (pdf 194).

⁷¹ S. 1(7), Site Specific By-Law, RMR Vol. 1, p. 186 (pdf 190). That date was April 16, 2025.

⁷² S. 3(1), Site Specific By-Law, RMR Vol. 1, p. 186 (pdf 190), emphasis added.

⁷³ S. 4, Site Specific By-Law, RMR Vol. 1, p. 186 (pdf 190).

⁷⁴ *Trespass to Property Act*, [R.S.O. 1990, c. T.21](#).

⁷⁵ S. 5(8)-(10), Site Specific By-Law, RMR Vol. 1, p. 187 (pdf 191).

the date “notice” of the By-Law was given.⁷⁶ This count includes only four of the 15 Moving Parties that provided affidavits (the “Existing Residents”).⁷⁷

33. Council also directed staff to add \$814,333 to the regional housing budget in order to “implement a plan for alternative accommodation” for “current residents” of the encampment.⁷⁸ Of this new funding, \$466,083 would go to “motels with social supports”, \$77,000 to “site remediation”, and \$271,250 to new supportive housing units.⁷⁹ The funding for “motels with social supports” would be “temporary” and would not continue beyond 2026.⁸⁰

34. The Report to Council summarized a “transition plan” for the encampment, entailing Region staff providing “enhanced site support by focussing efforts and resources on **current residents** for available housing and shelter options and ongoing site management”. This “operational effort” will “wind down before November 30th”.⁸¹

35. Enforcement of the By-Law is not conditional on any encampment resident being offered alternative accommodation.⁸² The By-Law may be enforced whether or not residents are housed.

Site Specific By-Law development process

36. David Alton, Lived Expertise Program Manager of the PECH Lived Expertise Prototyping

⁷⁶ First Sweeney Affidavit, RMR Vol. 1, p. 67 (pdf 71), para. 25.

⁷⁷ Second Sweeney Affidavit, RMR Vol. 1, p. 5 (pdf 9), paras. 15-16. Note that affiants James Hammond and Calvin Sharpe are not Moving Parties, and affiant Matthew Stefanac has passed away since affirming his affidavit. Note that seven additional Moving Parties did not provide affidavit evidence: Veronica Wilkolaski, Tatyanna Minsky, Brianna Cooper, Brent Woloschuk, Binh Nguyen, Thomas Glutting and Scott Walker.

⁷⁸ Report PDL-LEG-25-017, Exhibit C to First Sweeney Affidavit, RMR Vol. 1, p. 192 (pdf 196).

⁷⁹ *Ibid*, p. 196 (pdf 200).

⁸⁰ *Ibid*, p. 197 (pdf 201).

⁸¹ *Ibid*, p. 195 (pdf 199), emphasis added.

⁸² Site Specific By-Law, RMR Vol. 1, pp. 185-194 (pdf 189-198).

Cohort, was first advised that the Region intended to close the encampment on February 14, 2024.⁸³ At that time, Mr. Alton suggested the Region use the ensuing months to follow the human rights approach required by the PECH. He further suggested that if the Region offered an alternative encampment location, residents could potentially consent to relocation.⁸⁴

37. Mr. Alton proposed the Region hold a stakeholders meeting to consult on a relocation process.⁸⁵

Region staff met with the stakeholders Mr. Alton had identified on March 7, 2024, but used the occasion to inform them of the Region's plan to close the encampment, rather than to consult on options.⁸⁶ Mr. Alton is not aware of any further stakeholder or lived experience engagement leading up to the introduction of the By-Law.⁸⁷

38. On April 22, 2025, the day before the By-Law was passed, the PECH Lived Experience Working Group surveyed 27 encampment residents about what they knew regarding the By-Law.⁸⁸ None had received any information about the By-Law from Region staff,⁸⁹ let alone been consulted in the manner required by the human rights approach prescribed by the PECH. One of the Moving Parties, Ms. Dugas stated:

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

⁸³ Alton Affidavit, SMR, p. 102, para. 8.

⁸⁴ Alton Affidavit, SMR, p. 102, para. 8.

⁸⁵ Alton Affidavit, SMR, p. 102, para. 9.

⁸⁶ Alton Affidavit, SMR, p. 103, para. 11; 100 Victoria Systems Meeting Notes, March 7, 2025, Exhibit E to Affidavit of David Alton, SMR, pp. 284-5.

⁸⁷ Alton Affidavit, SMR, p. 103, para 12.

⁸⁸ Alton Affidavit, SMR, p. 104, para 16; Social Development Council, Community Impact Consultation, Preliminary Report – 100 Victoria, April 22, 2025, Exhibit H to Alton Affidavit, SMR, p. 298-301.

⁸⁹ Alton affidavit, SMR, p. 105, para 17; Social Development Council, Community Impact Consultation, Preliminary Report – 100 Victoria, April 22, 2025, Exhibit H to Alton Affidavit, SMR, p. 298-301.

for so long. This place is our home and it is all we have.⁹⁰

PART III: ISSUES, LAW, AND ARGUMENT

Issues

39. The Moving Parties seek an interlocutory injunction restraining the Region from enforcing the Site Specific By-Law while the decision on the merits of their application is pending. This relief should be granted because: (i) there is a serious issue to be tried; (ii) the Moving Parties will suffer irreparable harm if injunction is refused; and (iii) the balance of convenience favors the Moving Parties.

Law and Argument

Test for interlocutory injunction

40. This Court may grant an interlocutory injunction where it is “just or convenient”, on such terms as are “just”.⁹¹

41. The common law requires a moving party to establish three elements to demonstrate an interlocutory injunction is “just or convenient”. These elements, arising from *RJR-MacDonald Inc. v. Canada (Attorney General)*,⁹² are:

- (a) a serious question to be determined;
- (b) the moving party will suffer irreparable harm that cannot be compensated by damages without the injunction; and
- (c) the balance of convenience favours granting injunctive relief.⁹³

42. These factors are not watertight compartments, and the strength of one may make up for

⁹⁰ Dugas Affidavit, MR, p. 27, para 24.

⁹¹ *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. [101](#).

⁹² *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994 CanLII 117](#) (SCC) (“*RJR MacDonald*”).

⁹³ *Ibid.*

weakness in another.⁹⁴

A. There is a serious issue to be tried

43. The threshold under the first branch of this test is low, particularly where an application asserts constitutional rights. Given the complex nature of most constitutional rights, a motions court will rarely have the time to engage in the requisite extensive analysis of the merits of an applicant's claim. Therefore, a prolonged examination of the merits is neither necessary nor desirable. Once satisfied that the underlying application is neither frivolous nor vexatious, a motions judge should proceed to consider the second and third stages of the test even if of the opinion that the applicant is unlikely to succeed on the merits.⁹⁵

44. The Moving Parties' Notice of Application⁹⁶ and Notice of Constitutional Question⁹⁷ challenge the By-Law as contrary to ss. 7 and 15 of the Charter, and as illegal for the purpose of s. 273 of the *Municipal Act, 2001*.⁹⁸ These issues are not frivolous or vexation – they are serious issues.

Serious issue in relation to s. 7 of the Charter

45. Even leaving aside the issue of s. 15, this Court has already held that application of a municipal By-Law to restrict sheltering at **this very site** deprived encampment residents of their life, liberty, and security of the person in a manner that was overbroad and grossly disproportionate, and therefore not in accordance with the principles of fundamental justice.⁹⁹ This Court has already found that the resulting infringement of s. 7 of the Charter was not justified by s. 1 of

⁹⁴ A.A. v. Z.M., [2024 ONCA 923](#) at para. 17.

⁹⁵ *Cycle Toronto et al. v. Attorney General of Ontario et al.*, [2025 ONSC 1650](#) (leave to appeal refused, Divisional Court File 391/25ML, Book of Non-CanLII Authorities, Tab 1) at para. 32.

⁹⁶ See Application Record.

⁹⁷ See Application Record.

⁹⁸ *Municipal Act, 2001*, [S.O. 2001, c. 25](#).

⁹⁹ [Encampment Decision](#).

the Charter. Since that time, the conditions that led the Court to find a deprivation of life, liberty, and security of the person have only worsened.¹⁰⁰

46. It is true that the principles of fundamental justice at issue - overbreadth and gross disproportionality - turn on assessing the infringement to life, liberty, or security of the person against the objectives of the By-Law.¹⁰¹ The Moving Parties recognize that the Region's new By-Law has a new objective. It specifies that it is enacted "to specifically regulate and govern 100 Victoria Street and to obtain vacant possession as of December 1, 2025", whereas the Code of Use By-Law was intended to "prevent disruption to the Region's operations", among other purposes.¹⁰² However, at issue in the Encampment Decision was whether the Code of Use By-Law permitted the Region to obtain vacant possession of the site so that it could ultimately be used as an equipment lay-down site for construction of the transit hub.¹⁰³ This is the very use that is to be before this Court in the underlying application. In this context, the issue of whether it would violate s. 7 to apply the Site Specific By-Law to evict the Moving Parties is far from "frivolous" or "vexatious".

47. Rather, given this Court's previous declaration, there is a strong case that the Site Specific By-Law violates s. 7 of the Charter. This factor weighs heavily in favour of interlocutory injunction. The Region should not be permitted to use an unconstitutional By-Law to remove vulnerable persons from their shelter of last resort.

¹⁰⁰ See paras. 23-24.

¹⁰¹ *Canada (Attorney General) v. Bedford*, [2013 SCC 72](#), paras. [108](#)-123.

¹⁰² *Encampment Decision*, paras. [9](#), [109](#)-119.

¹⁰³ *Encampment Decision*, para. [15](#).

Serious issue in relation to By-Law illegality

48. Nor is the issue of the By-Law's illegality under s. 273 of the *Municipal Act, 2001* frivolous or vexatious. 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".¹⁰⁴ Indicia of bad faith may include a failure to consult on the by-law, and a failure to provide meaningful notice to affected stakeholders.¹⁰⁵
49. The Moving Parties will assert that these indicia are established here based on, among other factors, the Region's failure to advise encampment residents of the By-Law in a manner sufficient for them to provide meaningful input, and the Region's failure to comply with the consultation processes approved by Council. Based on the record, the Moving Parties' assertion that the indicia of bad faith are present is not frivolous or vexatious.

B. The Moving Parties will suffer irreparable harm

50. "Irreparable harm" refers to the nature of the harm suffered, rather than its magnitude. Harm is "irreparable" if it cannot be quantified in monetary terms or if it cannot be cured if the eventual decision does not accord with the decision on the interlocutory motion.¹⁰⁶
51. The Court need only be satisfied that refusing injunction will increase the risk of a moving party incurring irreparable harm.¹⁰⁷ It need not be certain the harm will occur.
52. In *Clinique juridique itinérante c. Procureur général du Québec - Ministère des Transports et*

¹⁰⁴ *Grosvenor v. East Luther Grand Valley (Township)*, [2007 ONCA 55](#) at paras. [27](#), [43-46](#).

¹⁰⁵ *Unifor, Local 1688 v. The City of Ottawa*, [2018 ONSC 3377](#) at paras. [90](#), [123](#).

¹⁰⁶ *The Neighbourhood Group et al. v. HMKRO*, [2025 ONSC 1934](#) at para. [37](#).

¹⁰⁷ *Cycle Toronto et al. v. Attorney General of Ontario et al.*, [2025 ONSC 2424](#) at paras. [16](#) -17.

de la Mobilité durable du Québec,¹⁰⁸ the Quebec Superior Court found irreparable harm based on evidence that an encampment eviction could cause residents to experience:

- a. social marginalization;
- b. loss of trust in authorities;
- c. significant stress impacting mental health; and
- d. distress, destabilization, and trauma.¹⁰⁹

53. Courts have also found irreparable harm where the conduct sought to be enjoined increased the risk that: moving parties with substance dependence would use drugs alone, leaving them more vulnerable to fatal overdose,¹¹⁰ moving parties would face physical injury or assault,¹¹¹ or moving parties could incur psychological harm that was more than transient or trifling.¹¹²

54. In *Black et al. v. City of Toronto*, this Court recognized that encampment eviction would result in irreparable harm, in part because the City of Toronto's status as a municipality prevented an award of damages unless there was underlying or intentional wrongdoing.¹¹³

55. All of the Moving Parties submit that they will suffer irreparable harm if, effective December 1, 2025, the Region is permitted to remove them from their shelters,¹¹⁴ dispose of their

¹⁰⁸ *Clinique juridique itinérante c. Procureur général du Québec - Ministère des Transports et de la Mobilité durable du Québec*, [2025 QCCS 2087](#), unofficial translation at Book of Non-CanLII Authorities, Tab 2, [pp. 31-32](#), at paras. [113](#)-115.

¹⁰⁹ *Ibid* at paras. [112](#)-115.

¹¹⁰ *Harm Reduction Nurses Association v. British Columbia (Attorney General)*, [2023 BCSC 2290](#), leave to appeal refused, [2024 BCCA 87](#), at para. [89](#); *The Neighbourhood Group et al. v. HMKRO*, [2025 ONSC 1934](#) at para. [40](#).

¹¹¹ *Cycle Toronto v. AG Ontario*, [2025 ONSC 1650](#), at para. [18](#), leave to appeal refused in 2025 ONSC 3837.

¹¹² *Toronto Standard Condominium Corporation No. 2395 v Wong*, [2016 ONSC 8000](#), at para. [32](#).

¹¹³ *Black et al. v. City of Toronto*, [2020 ONSC 6398](#), at paras. [73](#)-75.

¹¹⁴ S. 5, Site Specific By-Law, RMR Vol. 1, p. 187-88 (pdf 190-91).

belongings¹¹⁵ and erect a fence around the site to prevent their return.¹¹⁶ The Moving Parties who are not deemed Existing Residents by the Region further assert irreparable harm if the Region is permitted to restrict them from the encampment leading up to December 1, 2025.

56. The irreparable harm the Moving Parties assert includes:

(a) Loss of emotional and physical support of their community:

“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.”¹¹⁷

(b) Loss of access to mental health, addiction, food, and housing supports:

“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.

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.”¹¹⁸

¹¹⁵ S. 5(9), Site Specific By-Law, RMR Vol. 1, p. 187 (pdf 191).

¹¹⁶ S. 5(8), Site Specific By-Law, RMR Vol. 1, p. 187 (pdf 191).

¹¹⁷ Dugas Affidavit, MR, p. 24, paras. 14-15. See also: Stefanac Affidavit, MR, p. 62-63, paras. 10, 11; Price Affidavit, MR, p. 38-39, paras. 10, 13; Linton Affidavit, MR, p. 50-51, paras. 10, 17; Helsby Affidavit, MR, p. 69, para. 15.

¹¹⁸ Dugas Affidavit, MR, p. 25-26, paras. 16-23. See also: Young Affidavit, SMR, p. 33-34, paras. 22, 24, 28; Price Affidavit, MR, p. 39-40, paras. 17, 20; Linton Affidavit, MR, p. 51, paras. 15-17; Stefanac Affidavit, MR, p. 63, para. 12; Helsby Affidavit, MR, p. 69, paras. 13-14; Bradley Affidavit, MR, p. 75, para. 17; First McMillan Affidavit, MR, p. 82, para. 23; Davis Affidavit, SMR, p. 51-52, paras. 17, 24; Lopes Affidavit, SMR, p. 57, para. 16.

- (c) Increased risk of overdose, dehydration, and starvation arising from being forced to relocate to remote locations to avoid detection:

“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.

I feel safer at the Encampment than I do at the Trap House. The security makes me feel safe, FightBack is here, and I have made friends here. We look out for each other. Being at the Encampment makes me want to be clean, it's the safest option.

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.”¹¹⁹

- (d) Increased risk of assault, frostbite, sunstroke, and loss of life and limb arising from sleeping outdoors without the benefit of the belongings removed by the Region under the By-Law;¹²⁰

The severe adverse effects on the health of those living outside without access to even rudimentary forms of shelter were discussed by Dr. Stephen Hwang, a practicing medical doctor for 33 years and professor at University of Toronto and researcher on health and homelessness at St. Michael's Hospital in Toronto. Dr. Hwang noted: “There is no question that the lack of shelter for people living outside causes severe adverse effects on their health.” Dr. Hwang indicated that a tent provides relief from the elements, and “Homeless people who are prohibited from sheltering themselves from wind and rain are at greater risk of hypothermia.” “Homeless persons are at a particularly high risk of death from hypothermia because their clothing gets wet and they cannot dry it.” Forced evictions deprive homeless people of survival supplies that “result in adverse effects on their ability to look after their own health.”¹²¹

- (e) A loss of trust in authorities, exacerbating the Moving Parties' social exclusion and increasing their reluctance to seek health and social supports.¹²²

¹¹⁹ Ament Affidavit, SMR, p. 62, paras. 12-14. See also: Affidavit of Dr. Stephen Hwang, MR, p. 138, para. 11; Paul Affidavit, SMR, p. 25, para. 35; Nichol Affidavit, MR, p. 58, para. 25; First McMillan Affidavit, MR, p. 82, para. 24.

¹²⁰ Affidavit of Dr. Stephen Hwang, MR, p. 133, 137, 139, paras. 7(a), 9, 12; Affidavit of Sara Escobar, SMR, p. 78, para. 19; Helsby Affidavit, MR, p. 68, para. 10.

¹²¹ Affidavit of Dr. Stephen Hwang, MR, p. 137-138, 139, paras 9, 10, 12.

¹²² Affidavit of Dr. Stephen Hwang, MR, p. 139, para. 13. See also: Dugas Affidavit, MR, p. 25, para. 21.

57. In short, as Canada’s Federal Housing Advocate warns:

It is important for municipalities and municipal actors to recognize that forced evictions of encampments make people more unsafe and expose them to a greater risk of violence and harm a person’s safety, health, dignity and may even cost them their life. Evictions destabilize people, remove them from their support systems, and cause them to lose the tools and equipment they need to survive.¹²³

58. These harms are irreparable because, as in *Black*, they cannot be adequately remedied through an award of damages. In *Matsqui-Abbotsford Impact Society v Abbotsford (City)*,¹²⁴ the British Columbia Supreme Court commented, with respect to similar harm, that “[t]he Court must take these claims seriously, acknowledging that forced displacement can result in irreversible consequences, particularly for vulnerable populations”.¹²⁵

59. This is not a case like *Poff v. City of Hamilton*, where irreparable harm did not arise from encampment eviction because the five moving parties had all been offered alternative accommodation.¹²⁶ Here, only four of the Moving Party affiants have been prioritized for accommodation plans, and no such plans existed for them as of the date they swore their affidavits.¹²⁷ Further, in *Poff*, the Court was not in a position to consider the circumstances of residents other than the five moving parties because other residents were not represented before the Court.¹²⁸ Here, however, the Persons Unknown are represented through *amicus*.

60. Nor is this a case like *Church of Saint Stephen et al. v. Toronto*, where all encampment residents

¹²³ Office of the Federal Housing Advocate, “Guide to Meaningful Engagement and Integrating a Human Rights based Approach into Encampment Responses”, Exhibit C to Second Escobar Affidavit, Reply MR, p. 45.

¹²⁴ *Matsqui-Abbotsford Impact Society v Abbotsford (City)*, [2024 BCSC 1902](#), leave to appeal granted [2025 BCCA 78](#).

¹²⁵ *Matsqui-Abbotsford Impact Society v Abbotsford (City)*, at para [126](#). See also paras [128](#) – 131, [141](#)-143.

¹²⁶ *Poff v. City of Hamilton*, [2021 ONSC 7224](#) at paras. [116](#), [130](#)-5, [139](#).

¹²⁷ Dugas Affidavit, MR, p. 25-27, paras. 21-24; Nichol Affidavit, MR, p. 58, para. 22; Helsby Affidavit, MR, p. 69, para. 17; Bradley Affidavit, MR, p. 75, para. 16.

¹²⁸ *Poff v. City of Hamilton*, [2021 ONSC 7224](#) at paras. [116](#), [130](#)-5, [139](#).

had been offered motel spaces prior to eviction and the Court accepted that they could remain at the motels throughout the winter.¹²⁹ The Moving Parties have not been provided with motel accommodation in this case, let alone accommodation that meets their needs.¹³⁰ However, more significantly, the Court's determination in *Saint Stephen* is contrary to this Court's finding in the *Encampment Decision* that motel accommodation in this Region is subject to discretion of motel operators.¹³¹ It is also contrary to the evidence before this Court, evidence which does not appear to have been before the Court in *Saint Stephen*, that motel accommodation is unreliable for persons who have disabilities that make it likely they will be evicted from motels.¹³² Further, the Region's evidence indicates that motel spaces will not be funded beyond 2026, and it gives no indication of where the chronically homeless Moving Parties are to go when the funding ends.¹³³

61. Finally, this case is not analogous to *Matsqui-Abbotsford Impact Society v Abbotsford (City)*,¹³⁴ where the "serious" risks that the Court recognized encampment residents would face from eviction could be mitigated by the City taking steps to gradually relocate existing residents while at the same time preventing new arrivals to the encampment.¹³⁵ In that case, the City of Abbotsford sought to enforce trespass notices against residents of an encampment located outside its City Hall. Significantly, Abbotsford permitted outdoor sheltering in other areas of the

¹²⁹ *Church of Saint Stephen et al. v. Toronto*, [2023 ONSC 6566](#) at para. 30.

¹³⁰ Dugas Affidavit, MR, p. 25-27, paras. 21-24; Nichol Affidavit, MR, p. 58, para. 22; Helsby Affidavit, MR, p. 69, para. 17; Bradley Affidavit, MR, p. 75, para. 16.

¹³¹ *Encampment Decision*, para. 92.

¹³² Escobar Affidavit, SMR, p. 79-80, paras. 21, 24; Allt Affidavit, SMR, p. 340-342, paras. 13-17.

¹³³ Report PDL-LEG-25-017, Exhibit C to First Sweeney Affidavit, RMR Vol. 1, p. 197 (pdf 201).

¹³⁴ *Matsqui-Abbotsford Impact Society v Abbotsford (City)*, [2024 BCSC 1902](#), leave to appeal granted in [2025 BCCA 78](#) at para. 154.

¹³⁵ *Ibid* at paras. 217 – 220.

City,¹³⁶ and, at the time City staff served the notices, they also provided residents with a list of locations where outdoor sheltering was permitted. In that context, the irreparable harm could be mitigated by providing accessible accommodation to only counted residents because chronically homeless residents who had not been counted could still access other outdoor shelter of last resort. Unlike in this case, the City of Abbotsford had not “tak[en] away the bottom.”¹³⁷

62. Further, in *Abbotsford*, the encampment residents were in a position to enforce the mitigation terms ordered by the Court because these formed part of the Court’s order. Here, however, the By-Law does not require the Region to take any steps to mitigate the harms eviction will cause. The By-Law sets no consequence for the Region failing to meet its assurances.

63. This is not to say that it would not be possible to mitigate those harms. In fact, such mitigating strategies were precisely what David Alton suggested the Region negotiate according to the human rights approach adopted under the PECH. However, the approach put forward by the Region is insufficient to mitigate the irreparable harm By-Law enforcement will cause.

C. The balance of convenience favours granting the injunction

64. The third element of the test is a consideration of the balance of convenience, or, which of the parties will suffer the greater harm from granting or refusing the requested injunction.¹³⁸

65. Where a requested injunction pertains to a still-valid law, the Court must assume the law serves a public interest.¹³⁹ However, governments “do not have a monopoly on the public interest”,

¹³⁶ *Matsqui-Abbotsford Impact Society v Abbotsford (City)*, [2024 BCSC 1902](#), leave to appeal granted in [2025 BCCA 78](#) at paras [30](#), [31](#), [19](#).

¹³⁷ Community Impact Consultation - Preliminary Report 100 Victoria April 22, 2025, Exhibit H to Affidavit of David Alton (“Alton Affidavit”), Supplementary Motion Record (“SMR”), Tab 11, p. 301.

¹³⁸ *The Neighbourhood Group et al. v. HMKRO*, [2025 ONSC 1934](#) at para. [45](#).

¹³⁹ *Ibid* at para. [46](#).

which includes “both concerns of society generally and the particular interests of the identifiable groups”.¹⁴⁰ Thus, the Court may consider harm to non-parties to this injunction motion when addressing the balance of convenience, including the Region’s homeless population at large.¹⁴¹

66. The presumption of public interest in a still-valid law may also be overcome where a moving party has a particularly strong case and will suffer irreparable harm, or where it can demonstrate compelling and competing public interests other than those asserted by the government.¹⁴²

67. Where the application of a law is at issue in an injunction motion, the Court may consider whether temporarily suspending the law would simply preserve the status quo when assessing balance of convenience. In *Cycle Toronto*, this was relevant where, as here, refusing the injunction would effectively grant ultimate success to the government party, permitting it to move ahead with construction.¹⁴³

68. Here, the irreparable harm asserted by the Moving Parties includes increased marginalization. This Court has recognized there is a “significant public interest” in “avoiding further marginalization of those with disabilities and other vulnerable people”.¹⁴⁴ It has also recognized a public interest in “preventing harm”.¹⁴⁵

69. In contrast, the Region has not tendered evidence that there would be any particular harm to the

¹⁴⁰ *The Neighbourhood Group et al. v. HMKRO*, [2025 ONSC 1934](#) at para. 50; *Cycle Toronto et al. v. Attorney General of Ontario et al.*, [2025 ONSC 2424](#), leave to appeal refused in 2025 ONSC 3837; *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994 CanLII 117](#) (SCC) at “It is, we think, appropriate that it be open to both parties...”

¹⁴¹ *The Neighbourhood Group et al. v. HMKRO*, [2025 ONSC 1934](#) at para. 50; *Poff v. City of Hamilton*, [2021 ONSC 7224](#) at para 141.

¹⁴² *Cycle Toronto et al. v. Attorney General of Ontario et al.*, [2025 ONSC 2424](#) at para. 22, leave to appeal refused in 2025 ONSC 3837.

¹⁴³ *Ibid* at para. 39.

¹⁴⁴ *The Neighbourhood Group et al. v. HMKRO*, [2025 ONSC 1934](#) at para. 53.

¹⁴⁵ *Cycle Toronto et al. v. Attorney General of Ontario et al.*, [2025 ONSC 2424](#) at para. 27.

public interest if construction of the transit hub is briefly delayed until the Court can determine the constitutionality and legality of the By-Law. The underlying application is to be argued November 19-21. The Court will therefore be in a position to determine the application well in advance of the March 2026 date currently set for construction to begin. At most, having regard to time required for remediation, an interlocutory injunction may delay the commencement of construction by a matter of months, should Metrolinx adhere to the March 2026 date. Even this minor delay would only arise if Metrolinx is in a position to meet the March date, which it has advised is subject to change.¹⁴⁶

70. Courts have granted injunctions temporarily suspending the implementation of a law for periods where there was no evidence that doing so would have a negative effect on the public interest.¹⁴⁷

71. The Region implies it will be prejudiced if it cannot prevent new residents from entering the encampment leading up to November 30, 2025 because it is focused on transitioning the Existing Residents to alternative accommodation and “an influx of new residents” makes the Region “less able to meet those needs”.¹⁴⁸ Yet, this is an indication of the inadequacy of the Region’s plan in meeting the needs of its homeless, who are not limited to the persons the Region counted on April 16. It is not a factor that properly weighs against injunction.

72. Given the insufficient public interest considerations on the side of the Region and the significant harms caused by displacing unhoused residents, the balance of convenience favours granting the injunction.

¹⁴⁶ Letter from Metrolinx, December 18, 2024, Exhibit E to Affidavit of Doug Spooner, RMR Vol. 2, p. 525 (pdf 133).

¹⁴⁷ *Cycle Toronto et al. v. Attorney General of Ontario et al.*, [2025 ONSC 2424](#) at paras 35-37.

¹⁴⁸ First Sweeney Affidavit, RMR Vol. 1, p. 93 (pdf 97), para 107; p. 96 (pdf 100) para. 116.

Undertaking as to damages

73. The Moving Parties seek an exemption to the requirement that the Moving Parties provide an undertaking as to damages in the event that their application fails. The Moving Parties seek this exemption as they are homeless and clearly not in a viable pecuniary position.

74. Exemptions are typically reserved for rare or exceptional cases. However, courts have held that greater flexibility ought to be granted in cases such as this one which have broader public interest significance, which concern human rights as opposed to commercial and pecuniary interests, and which include Charter-based relief.¹⁴⁹

PART IV: ORDER REQUESTED

75. The Moving Parties request:

- a. An *ex parte* interlocutory Order or interim injunction restraining the Applicant, its servants, employees, agents, assigns, officers, directors and anyone else acting on its behalf from enforcing or acting on any part of the Site Specific By-Law, including but not limited to:
 - i. directly or indirectly evicting the Moving Parties from the Encampment;
 - ii. preventing the Moving Parties' entry to or use of the Encampment site, directly or indirectly, including without limitation the use of fences or other barriers;
 - iii. preventing the Moving Parties from relocating their temporary shelters to another part of the Encampment site;
 - iv. prohibiting entry onto the premises of non-residents, including prohibiting vehicle access to the premises;
 - v. disposing of or removing any personal belongings, real or personal property belonging to the Moving Parties and located at the Encampment;
 - vi. engaging in any harassing behaviour towards the Moving Parties;

¹⁴⁹ *Cardinal v. Cleveland Indians Baseball Company Limited Partnership*, [2016 ONSC 6929](#) at para. 28; *Poff v. City of Hamilton*, [2021 ONSC 7224](#) at para 51.

- b. An Order staying the implementation of the Site-Specific By-Law until the Moving Parties' Application has been determined by this Court;
- c. Their costs of this motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of July 2025.



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

Lawyers for the Respondents (Moving Parties)

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

THE REGIONAL MUNICIPALITY OF WATERLOO

Applicant/Responding Party

and

PERSONS UNKNOWN AND TO BE ASCERTAINED

Respondents/Moving Parties

CERTIFICATE

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

Dated this July 22nd, 2025.



Ashley Schuitema, Joanna Mullen, and Shannon Down

Lawyers for the Respondents (Moving Parties)

SCHEDULE “A”

List of Authorities in order of reference:

1. *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, [2023 ONSC 670](#)
2. *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994 CanLII 117](#) (SCC)
3. *A.A. v. Z.M.*, [2024 ONCA 923](#)
4. *Cycle Toronto et al. v. Attorney General of Ontario et al.*, [2025 ONSC 1650](#)
5. *Attorney General of Ontario v. Cycle Toronto*, 2025 ONSC 3837
6. *Canada (Attorney General) v. Bedford*, [2013 SCC 72](#)
7. *Grosvenor v. East Luther Grand Valley (Township)*, [2007 ONCA 55](#)
8. *Unifor, Local 1688 v. The City of Ottawa*, [2018 ONSC 3377](#)
9. *The Neighbourhood Group et al. v. HMKRO*, [2025 ONSC 1934](#)
10. *Clinique juridique itinérante c. Procureur général du Québec - Ministère des Transports et de la Mobilité durable du Québec*, [2025 QCCS 2087](#)
11. *Harm Reduction Nurses Association v. British Columbia (Attorney General)*, [2023 BCSC 2290](#)
12. *Harm Reduction Nurses Association v. British Columbia (Attorney General)*, [2024 BCCA 87](#)
13. *Toronto Standard Condominium Corporation No. 2395 v Wong*, [2016 ONSC 8000](#)
14. *Black et al. v. City of Toronto*, [2020 ONSC 6398](#)
15. *Matsqui-Abbotsford Impact Society v Abbotsford (City)*, [2024 BCSC 1902](#)
16. *Matsqui-Abbotsford Impact Society v Abbotsford (City)*, [2025 BCCA 78](#)
17. *Poff v. City of Hamilton*, [2021 ONSC 7224](#)
18. *Church of Saint Stephen et al. v. Toronto*, [2023 ONSC 6566](#)
19. *British Columbia v. Adamson*, [2016 BCSC 584](#)
20. *Cardinal v. Cleveland Indians Baseball Company Limited Partnership*, [2016 ONSC 6929](#)

SCHEDULE “B”

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

Courts of Justice Act, [R.S.O. 1990, c. C.43](#)

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

(2) An order under subsection (1) may include such terms as are considered just.

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

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.

**THE REGIONAL MUNICIPALITY OF
WATERLOO**
Applicant (Responding Party)

and

**PERSONS UNKNOWN/TO BE
ASCERTAINED**
Respondents (Moving Parties)

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

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at KITCHENER

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