

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

THE REGIONAL MUNICIPALITY OF WATERLOO

Applicant (Respondent in Cross Application)

and

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

Respondents (Named Respondents are Applicants in Cross Application)

**NOTICE OF CONSTITUTIONAL QUESTION**

The Cross-Applicants/Named Respondents intend to question the constitutional validity of: By-Law Number 25-021 of 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*, as well as By-law Number 26-001 of 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 Transit Hub and other Transit Development*. The Cross-Applicants also seek remedies pursuant to ss. 24(1) and 52(1) of the *Constitution Act, 1982*, Schedule B to the *Canada Act 1982 (UK), 1982, c. 1.1*.

The question is to be argued on Thursday, April 16<sup>th</sup>, 2026; Friday, April 17<sup>th</sup>, 2026; and Monday, April 20<sup>th</sup>, 2026, at 10:00 a.m., at the Waterloo Region Courthouse for the Superior Court of Justice, located at 85 Frederick Street, Kitchener, Ontario N2H 0A7. Parties may also participate in the hearing by video conference.

The following are the material facts giving rise to the constitutional question:

1. This Notice of Constitutional Question is being filed with respect to a Cross-Application before the Ontario Superior Court of Justice, Court File No. CV-25-00001341-0000, which

will be heard together with the Application, CV-2500000750-0000, commenced by the Regional Municipality of Waterloo (the “Region”). The Cross-Applicants in Application CV-25-00001341-0000 are among the Respondents in CV-25-00000750-0000.

2. The Cross-Applicants are chronically homeless individuals who shelter at an encampment located at 100 Victoria Street, Kitchener (the “Encampment”) during periods when they lack accessible indoor shelter. They are facing eviction from the Encampment as a result of the Site-Specific By-law and the Amended By-law (collectively, the “By-laws”) enacted by the Respondent Regional Municipality of Waterloo (“the Region”).
3. The Court is asked to determine whether, in the absence of sufficient accessible shelter beds for the Region’s homeless, the Region’s efforts to address the individual needs of some of the Cross-Applicants is sufficient to ensure that the By-laws are compliant with the requirements of ss. 7 and 15 of the *Charter*.
4. The material facts giving rise to the constitutional question are set out in the Applicant’s Amended Notice of Application, attached as Schedule ‘A’, issued on October 22, 2025.
5. The following are the legal bases for the constitutional question:

**Section 7 of the Charter**

6. The By-Laws violate the s. 7 right to life, liberty, and security of the person of the Cross-Applicants. These violations are not in accordance with the principles of fundamental justice.
7. The By-laws affect the Cross-Applicants in a multitude of ways that cause deprivations of life, liberty, security of the person, including by:

- a. Preventing the Cross-Applicants from sheltering themselves at the Encampment site when the number of homeless in the Region outnumbers the Region's available and accessible shelter spaces. This leaves the Cross-Applicants unable to protect themselves from the elements in a context where the Region's Code of Use By-law (By-Law Number 13-050 of the Regional Municipality of Waterloo) and the *Trespass to Property Act*, R.S.O. 1990, c. T21 prohibit sheltering in areas not subject to the By-Laws.
- b. Failing to include rights-based measures to ensure access to longer-term adequate housing and supports in accordance with the Region's Plan to End Chronic Homelessness.
- c. Increasing the Cross-Applicants' risk of hypothermia, sunburn, heatstroke, dehydration, and fatigue;
- d. Depriving the Cross-Applicants of the privacy afforded by a tent or tarp, which they require for dignity, autonomy, and the ability to attend to personal hygiene or medical needs without fear of intrusion;
- e. Causing or contributing to the loss of the Cross-Applicants' belongings during and after their eviction, including important survival supplies;
- f. Requiring the Cross-Applicants to move to remote locations to avoid detection, where they are inaccessible to health and social services, and without assistance if they experience a crisis;

- g. Disrupting the Cross-Applicants' connections to food supplies, health care, addiction, housing supports, and other services available at the Encampment;
- h. Disrupting the emotional and physical support provided by the Cross-Applicants' community;
- i. Increasing the risk that the Cross-Applicants with substance use disabilities will be forced to use substances in isolated circumstances away from community supports, leaving them more vulnerable to fatal overdoses;
- j. Increasing the Cross-Applicants' social marginalization and causing them to experience loss of trust in authorities;
- k. Increasing the risk that the Cross-Applicants will be subjected to harms such as intimate partner violence, assault, sexual assault, and human trafficking by forcing them into circumstances where those harms are more likely;
- l. Increasing the risk that the Cross-Applicants will experience significant stress, destabilization, and trauma, in some cases exacerbating existing mental health conditions;
- m. In a context where trespass to property is an offence, increasing the risk that the Cross-Applicants will face charges, fines, arrest, or incarceration if they resist eviction under the By-laws.

8. These deprivations of the Cross-Applicants' rights to life, liberty and security of the person are arbitrary, overbroad, and grossly disproportionate to the purpose of the By-laws and do not accord with the principles of fundamental justice.

**Section 15(1) of the Charter**

9. The By-Laws infringe s. 15 of the *Charter* by creating a distinction on enumerated grounds (disability, sex, marital status, Indigeneity / race) and/or analogous grounds (receipt of social assistance and homelessness), and imposing a burden or denying a benefit in a manner that reinforces, perpetuates or exacerbates disadvantage.
10. Encampment residents, including the Cross-Applicants, belong to multiple enumerated and analogous groups and struggle with intersecting disadvantages.
11. The By-laws cause disproportionate impact and fail to ensure reasonable accommodation of needs based on enumerated and analogous grounds, both individually and as they intersect. This is for reasons including that:
  - a. Women and persons who are gender diverse are less likely than men to be able to access indoor shelter that meets their needs when they are prevented from sheltering outdoors; and they experience unique safety risks arising from being unable to protect themselves by erecting even rudimentary shelter;
  - b. Persons with disabilities disproportionately experience homelessness and are therefore disproportionately impacted by the By-laws to the extent that the By-laws cause or contribute to disadvantage for persons who are homeless;

- c. Persons with physical and mental disabilities are less likely to be able to access indoor shelter if they must leave the Encampment site due to physical barriers and lack of accessibility at emergency shelters, as well as service restrictions, rules and prohibitions on substance use, and barriers to complete intake procedures, and are therefore more likely to face the risks of unsheltered outdoor homelessness if they are prevented from sheltering outdoors;
- d. Persons with disabilities are disproportionately impacted by forced relocation, and by relocation to remote locations, to the extent that their disabilities impact their abilities to carry their belongings with them, disassemble shelters, and travel distances to access the food supplies, health care, and other supports and services located at or around the Encampment site;
- e. Persons with mental disabilities, such as mental illness and substance use disabilities experience disproportionate effects as described above, including increased psychological stress, exacerbation of existing mental illness, sleep deprivation, risk of starvation, risk of fatal overdose, increased risk of arrest, and loss of the protective effects of community and emotional support;
- f. Indigenous persons are disproportionately homeless and therefore disproportionately impacted by the By-laws to the extent that the By-laws cause or contribute to disadvantage for persons who are homeless;
- g. Indigenous persons are less able to access indoor shelter and face particular disadvantage from outdoor sheltering prohibitions due to: (1) the lack of culturally-

appropriate shelter supports, (2) past experiences of racism resulting in mistrust of authorities;

- h. Persons who are homeless constitute a socially marginalized and historically disadvantaged group subject to persistent stigmatization, stereotyping, political marginalization and social exclusion on the basis of a personal characteristic analogous to the enumerated grounds of discrimination under s. 15(1). Homelessness is also extremely difficult to change due to the lack of access to affordable housing, inadequacy of social assistance, as well as the stigma attached to being unhoused. The By-laws directly perpetuate and exacerbate the discrimination and disadvantage of homeless individuals and fails to accommodate the distinctive needs of persons experiencing homelessness for access to accessible shelter, housing, and related supports necessary to the protection of life, security and substantive equality;
  - i. Persons who are in receipt of social assistance (as an analogous ground) face discrimination and disadvantage. Receipt of social assistance is extremely difficult to change due to a stigma associated with receiving social assistance and the inadequacy of social assistance. The inadequacy of social assistance and stigma attached to receipt of social assistance create barriers to finding affordable housing and employment. The By-laws exacerbate the discrimination and disadvantage of individuals receiving social assistance.
12. The By-laws have the effect of reinforcing, perpetuating or exacerbating disadvantage of members of the above referenced groups.

**Section 1 of the Charter**

13. The violations of ss. 7 and 15 cannot be justified by s. 1 of the *Charter*.

**Charter interpreted in accordance with international law**

14. Ss. 7 and 15 must be interpreted in accordance with the presumption of conformity with Canada's international human rights obligations, including under the *International Covenant on Civil and Political Rights*, *International Covenant of Economic, Social and Cultural Rights*, *Convention on the Elimination of All Forms of Discrimination Against Women*, *Convention on the Rights of the Child*, *International Convention on the Elimination of All Forms of Racial Discrimination*, and the *United Nations Convention on the Rights of Persons with Disabilities*. The Site-Specific By-law and the Amended By-law are inconsistent with ss. 7 and 15 interpreted in conformity with these obligations.

***Remedy Sought***

15. The Cross-Applicants seek a declaration that the By-laws violate ss. 7 and 15 of the *Canadian Charter of Rights and Freedoms* and that they are not saved by s. 1. The Cross-Applicants ask:

- a) that the By-laws be declared of no force and effect under s. 52(1) of the *Constitution Act, 1982*, in whole or in part; and,
- b) any appropriate remedies pursuant to s. 24(1) of the *Charter* to prevent infringements; and,
- c) Any further remedy this Honourable Court considers appropriate and just in the circumstances.

February 26, 2026

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**THE REGIONAL MUNICIPALITY OF  
WATERLOO**  
Respondent

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**PERSONS UNKNOWN/TO BE  
ASCERTAINED**  
Applicants

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

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Proceeding commenced at KITCHENER

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