

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

THE REGIONAL MUNICIPALITY OF WATERLOO

Applicant
(Appellant)

and

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

Respondents
(Respondents in Appeal)

NOTICE OF CONSTITUTIONAL QUESTION

The Applicant (Appellant), the Regional Municipality of Waterloo (the “**Region**”) has commenced an appeal concerning the constitutional validity of Bylaw No. 25-021 of the Regional Municipality of Waterloo, as amended on January 9, 2026 (the “**By-laws**”).

The question is to be argued at the Court of Appeal of Ontario at a time and place to be set by the Court.

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

1. The Region enacted the By-laws to obtain vacant possession of a parcel of land it owns in downtown Kitchener (the “**Property**”). There is an encampment of unhoused individuals currently present on the Property (the “**Encampment**”).
2. The Property is required to facilitate construction of the Kitchener Central Transit Hub, a significant public transit project that will benefit all current and future residents of the Waterloo region.
3. The Named Respondents are all individuals who have recently experienced homelessness in the Region. Many (but not all) have previously resided at the Property.

4. The By-laws distinguish between the approximately 40 individuals residing at the Encampment as of April 16, 2025, the date of public notice of the By-law (the “**Existing Residents**”), and those who have come to the Property more recently. The By-laws provide arrangements for both Existing Residents and newer arrivals, including the following:
 - a. Existing Residents cannot be removed without a written offer for Alternative Accommodation, defined as including emergency shelters, transitional housing, affordable/supportive housing, motels, and other options, recognizing that Existing Residents have diverse needs;
 - b. If an Existing Resident loses their Alternative Accommodation due to non-compliance with applicable rules, the Existing Resident will be referred back to the Region’s team of unsheltered support workers and best efforts will be made to find a substitute option;
 - c. Existing Residents are guaranteed offers of social service supports of the same nature as provided at the Property once they move to Alternative Accommodation;
 - d. The Region will offer Existing Residents transportation, and coverage for up to 6 months of storage for additional belongings, at no cost; and
 - e. For others onsite at the Property who are not Existing Residents, the Region will take them into the housing stability system and make efforts, subject to availability and cooperation, to provide them with appropriate housing options.
5. The Region also allocated new resources to create additional capacity for approximately 40 persons in its housing stability system (a combination of rent supplements, supportive housing, and motel rooms), to match the number of Existing Residents who would be displaced.

The following is the legal basis for the constitutional question:

1. Section 7 of the *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 (“**Charter**”) provides: “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.”
2. The By-laws do not infringe s. 7 because they do not cause deprivations of life, liberty, and/or security of the person. Any deprivations thereof are also not arbitrary, overbroad, or grossly disproportionate. The By-laws provide protections for Existing Residents and other occupants of the Encampment that remove or limit any negative impacts on these populations.

3. S. 15(1) of the *Charter* provides: “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”.
4. The By-laws do not infringe s. 15(1) because they do not create distinctions (either on their face or in their impact) based on any protected ground, including sex, race, and/or disability. Homelessness is also not an analogous ground under s. 15(1). In the alternative, any distinction based on a protected group that is caused by the By-laws is not one that reinforces, perpetuates, or exacerbates disadvantage.
5. If the By-laws do infringe ss. 7 and/or 15(1) of the *Charter*, any infringements are justified under s. 1.
6. Accordingly, the Region seeks a declaration that the By-laws are constitutional.

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Applicant (Appellant)

–and– JOSEPHINA DUGAS et al.
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PROCEEDING COMMENCED AT TORONTO

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