ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE REGIONAL MUNICIPALITY OF WATERLOO

Applicant

and

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

Respondents

Compendium of the Intervener Charter Committee on Poverty Issues and the National Right to Housing Network

April 17, 2026

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TAB 1: *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, 2003 SCC 62 at paras 55–58 and paras 87-88.

55 First, an appropriate and just remedy in the circumstances of a *Charter* claim is one that meaningfully vindicates the rights and freedoms of the claimants. Naturally, this will take account of the nature of the right that has been violated and the situation of the claimant. A meaningful remedy must be relevant to the experience of the claimant and must address the circumstances in which the right was infringed or denied. An ineffective remedy, or one which was "smothered in procedural delays and difficulties", is not a meaningful vindication of the right and therefore not appropriate and just (see *Dunedin*, *supra*, at para. 20, McLachlin C.J. citing *Mills*, *supra*, at p. 882, *per* Lamer J. (as he then was)).

56 Second, an appropriate and just remedy must employ means that are legitimate within the framework of our constitutional democracy. As discussed above, a court ordering a *Charter* remedy must strive to respect the relationships with and separation of functions among the legislature, the executive and the judiciary. This is not to say that there is a bright line separating these functions in all cases. A remedy may be appropriate and just notwithstanding that it might touch on functions that are principally assigned to the executive. The essential point is that the courts must not, in making orders under s. 24(1), depart unduly or unnecessarily from their role of adjudicating disputes and granting remedies that address the matter of those disputes.

57 Third, an appropriate and just remedy is a judicial one which vindicates the right while invoking the function and powers of a court. It will not be appropriate for a court to leap into the kinds of decisions and functions for which its design and expertise are manifestly unsuited. The capacities and competence of courts can be inferred, in part, from the tasks with which they are normally charged and for which they have developed procedures and precedent.

58 Fourth, an appropriate and just remedy is one that, after ensuring that the right of the claimant is fully vindicated, is also fair to the party against whom the order is made. The remedy should not impose substantial hardships that are unrelated to securing the right.

59 Finally, it must be remembered that s. 24 is part of a constitutional scheme for the vindication of fundamental rights and freedoms enshrined in the *Charter*. As such, s. 24, because of its broad language and the myriad of roles it may play in cases, should be allowed to evolve to meet the challenges and circumstances of those cases. That evolution may require novel and creative features when compared to traditional and historical remedial practice because tradition and history cannot be barriers to what reasoned and compelling notions of appropriate and just remedies demand. In short, the judicial approach to remedies must remain flexible and responsive to the needs of a given case.

87 Section 24(1) of the *Charter* requires that courts issue effective, responsive remedies that guarantee full and meaningful protection of *Charter* rights and freedoms. The meaningful protection of *Charter* rights, and in particular the enforcement of s. 23 rights, may in some cases require the introduction of novel remedies. A superior court may craft any remedy that it considers appropriate and just in the circumstances. In doing so, courts should be mindful of their roles as constitutional arbiters and the limits of their institutional capacities. Reviewing courts, for their part, must show considerable deference to trial judges' choice of remedy, and should refrain from using hindsight to perfect a remedy. A reviewing court should only interfere where the trial judge has committed an error of law or principle.

88 The remedy crafted by LeBlanc J. meaningfully vindicated the rights of the appellant parents by encouraging the Province's prompt construction of school facilities, without drawing the court outside its proper role. The Court of Appeal erred in wrongfully interfering with and striking down the portion of LeBlanc J.'s order in which he retained jurisdiction to hear progress reports on the status of the Province's efforts in providing school facilities by the required dates.

TAB 2: Mathur v. Ontario, 2024 ONCA 762 at paras 69–71

[69] First, the appellants' requested relief includes declaratory relief, including a declaration that the Target violates their ss. 7 and 15 *Charter* rights, which may be ordered without the necessity of telling Ontario precisely what to do to make its Target *Charter* compliant. As the Supreme Court stated in *Canada (Prime Minister) v. Khadr*, 2010 SCC 3, [2010] 1 S.C.R. 44, at para. 47, a court can exercise its discretion to grant declaratory relief as a proper remedy and, "respectful of the responsibilities of the executive and the courts, … provide the legal framework for the executive to exercise its functions and to consider what actions to take … in conformity with the *Charter*."

[70] Second, the appellants are not requesting the court to order Ontario to set a particular target. As set out above, they seek an order directing Ontario to set a "science-based" target consistent with Ontario's share of the reductions necessary to limit global warming below 1.5 degrees Celsius above pre-industrial temperatures or, alternatively, well below 2 degrees Celsius. The unchallenged international standards and scientific consensus about global warming and climate change and the remaining carbon budget in the evidence on this application is not imprecise. If a breach of the appellants' *Charter* rights is declared, there are clear international standards based on accepted scientific consensus that can inform what a constitutionally compliant Target and Plan should look like. The international standards and the scientific evidence produced by the parties on the application clearly indicate how acceptable levels of greenhouse gas emissions are measured and calculated. Notably, this evidence also suggests that the amount of greenhouse gases that Ontario emits into the atmosphere can be calculated and that the level of reduction of gases that scientific experts opine should be implemented in order to conform with international standards are measurable.

[71] Finally, and importantly, Ontario's argument that ordering a "science-based" target would be "so devoid of content as to be effectively meaningless" is belied by its choice stated in the Plan to align its Target to Canada's 2030 target under the international standard of the Paris Agreement.

TAB 3: *Tanudjaja v. Canada (Attorney General)*,2014 ONCA 852 at paras 29–37.

[29] This is not to say that constitutional violations caused by a network of government programs can never be addressed, particularly when the issue may otherwise be evasive of review.

[30] There are several aspects of this application, however, that make it unsuitable for *Charter* scrutiny. Here, the appellants assert that s. 7 confers a general free-standing right to adequate housing. This is a doubtful proposition in light of *Chaoulli*, where McLachlin C.J.C. and Major J. made the following unequivocal statement, at para. 104:

The *Charter* does not confer a freestanding right to health care. However, where the government puts in place a scheme to provide health care, that scheme must comply with the *Charter*.

[31] Further, as this court noted in *Wynberg v. Ontario* (2006), 2006 CanLII 22919 (ON CA), 82 O.R. (3d) 561, [2006] O.J. No. 2732 (C.A.), at para. 225, leave to appeal denied [2006] S.C.C.A. No. 441:

[I]n *Gosselin*, *supra*, the Supreme Court of Canada rejected an argument that s. 7 of the *Charter* requires the provision of a minimum level of social assistance adequate to meet basic needs.

[32] Moreover, the diffuse and broad nature of the claims here does not permit an analysis under s. 1 of the *Charter*. As indicated in *R. v. Oakes*, 1986 CanLII 46 (SCC), [1986] 1 S.C.R. 103, [1986] S.C.J. No. 7, in the event of a violation of a right guaranteed by the *Charter*, the legislation will nonetheless be sustained if the objective of the legislation is pressing and substantial, the rights violation is rationally connected to the purpose of the legislation, the violation minimally impairs the guaranteed right and the impact of the infringement of the right does not outweigh the value of the legislative object. Here, in the absence of any impugned law there is no basis to make that comparison.

[33] Finally, there is no judicially discoverable and manageable standard for assessing in general whether housing policy is adequate or whether insufficient priority has been given in general to the needs of the homeless. This is not a question that can be resolved by application of law, but rather it engages the accountability of the legislatures. Issues of broad economic policy and

priorities are unsuited to judicial review. Here, the court is not asked to engage in a "court-like" function, but rather to embark on a course more resembling a public inquiry into the adequacy of housing policy.

[34] Were the court to confine its remedy to a bare declaration that a government was required to develop a housing policy, that would be so devoid of content as to be effectively meaningless. [page172] To embark, as asked, on judicial supervision of the adequacy of housing policy developed by Canada and Ontario takes the court well beyond the limits of its institutional capacity. All agree that housing policy is enormously complex. It is influenced by matters as diverse as zoning by-laws, interest rates, procedures governing landlord and tenant matters, income tax treatment of rental housing, not to mention the involvement of the private sector and the state of the economy generally. Nor can housing policy be treated monolithically. The needs of aboriginal communities, northern regions and urban centres are all different, across the country.

[35] I add that complexity alone, sensitivity of political issues, the potential for significant ramifications flowing from a court decision and a preference that legislatures alone deal with a matter are not sufficient on their own to permit a court to decline to hear a matter on the ground of justiciability: see, for example, *Chaoulli*, at para. 107. Again, the issue is one of institutional competence. The question is whether there is a sufficient legal component to anchor the analysis.

[36] The application here is demonstrably unsuitable for adjudication, and the motion judge was correct to dismiss it on the basis that it was not justiciable.

[37] Given that this application was properly dismissed on the ground that it did not raise justiciable issues, it is not necessary to explore the limits, in a justiciable context, of the extent to which positive obligations may be imposed on government to remedy violations of the *Charter*, a door left slightly ajar in *Gosselin v. Quebec (Attorney General)*, [2002] 4 S.C.R. 429, [2002] S.C.J. No. 85, 2002 SCC 84. Nor is it necessary to determine whether homelessness can be an analogous ground of discrimination under s. 15 of the *Charter* in some contexts.

TAB 4: *Irwin Toy Ltd. v. Quebec (Attorney General),* [1989] 1 S.C.R. 927
at 1003.

There are several reasons why we are of the view that this argument can not succeed. It is useful to reproduce s. 7, which reads as follows:

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.*

What is immediately striking about this section is the inclusion of "security of the person" as opposed to "property". This stands in contrast to the classic liberal formulation, adopted, for example, in the Fifth and Fourteenth Amendments in the American Bill of Rights, which provide that no person shall be deprived "of life, liberty or property, without due process of law". The intentional exclusion of property from s. 7, and the substitution therefor of "security of the person" has, in our estimation, a dual effect. First, it leads to a general inference that economic rights as generally encompassed by the term "property" are not within the perimeters of the s. 7 guarantee. This is not to declare, however, that no right with an economic component can fall within "security of the person". Lower courts have found that the rubric of "economic rights" embraces a broad spectrum of interests, ranging from such rights, included in various international covenants, as rights to social security, equal pay for equal work, adequate food, clothing and shelter, to traditional property -- contract rights. To exclude all of these at this early moment in the history of *Charter* interpretation seems to us to be precipitous. We do not, at this moment, choose to pronounce upon whether those economic rights fundamental to human life or survival are to be treated as though they are of the same ilk as corporate-commercial economic rights. In so stating, we find the second effect of the inclusion of "security of the person" to be that a corporation's economic rights find no constitutional protection in that section.

TAB 5: *New Brunswick (Minister of Health and Community Services) v. G.(J,)* 1999 SCC 47 [*G(J)*] at paras 105–107; paras 111–115.

105 Having now decided that the government was under a constitutional obligation to provide state-funded counsel to the appellant to ensure the fairness of the custody hearing in this case, I turn to consider a passage from my judgment in *Prosper*, *supra*, which may appear to be in tension with this conclusion.

106 At issue in *Prosper* was whether s. 10(*b*) of the *Charter* imposed a substantive constitutional obligation on governments to ensure that duty counsel is available upon arrest or detention to provide free and immediate preliminary legal advice upon request. The Court was unanimous in concluding that it did not. In my reasons, I held at pp. 266-67 that:

> [T]here is evidence which shows that the framers of the *Charter* consciously chose not to constitutionalize a right to state-funded counsel under s. 10 of the *Charter*: *Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada* (January 27, 1981). Specifically, a proposed amendment, which would have added the following clause to what is now s. 10 of the *Charter* was considered and rejected (p. 46:127):
>
> > (d) if without sufficient means to pay for counsel and if the interests of justice so require, to be provided with counsel;
>
> . . .
>
> In my opinion, it would be imprudent for this Court not to attribute any significance to the fact that this clause was not adopted. In light of the language of s. 10 of the *Charter*, which on its face does not guarantee any substantive right to legal advice, and the legislative history of s. 10, which reveals that the framers of the *Charter* decided not to incorporate into s. 10 even a relatively limited substantive right to legal assistance (i.e., for those "without sufficient means" and "if the interests of justice so require"), it would be a very big step for this Court to interpret the *Charter* in a manner which imposes a positive constitutional obligation on governments. The fact that such an obligation would almost certainly interfere with governments' allocation of limited resources by requiring them to expend public funds on the provision of a service is, I might add, a further consideration which weighs against this interpretation. [Emphasis in original.]

107 The omission of a positive right to state-funded counsel in s. 10, which, as I said in *Prosper*, should be accorded some significance, does not preclude an interpretation of s. 7 that imposes a positive constitutional obligation on governments to provide counsel in those cases when it is necessary to ensure a fair hearing. To hold otherwise would be to suggest that the principles of fundamental justice do not guarantee the right to a fair hearing or, alternatively, that under no circumstances would the requirements of a fair hearing obligate governments to pay for an individual to be represented by counsel. Both of these positions are untenable. In my view, the significance of the omission of a positive right to state-funded counsel under s. 10 is that s. 7 should not be interpreted as providing an absolute right to state-funded counsel at all hearings where an individual's life, liberty, and security is at stake and the individual cannot afford a lawyer. Accordingly, while a blanket right to state-funded counsel does not exist under s. 10, a limited right to state-funded counsel arises under s. 7 to ensure a fair hearing in the circumstances I have outlined above.

108 With respect to the concern in *Prosper* that a positive constitutional obligation to provide state-funded counsel would interfere with governments' allocation of limited resources, I note that these fiscal concerns have been addressed under s. 1.

…..

The reasons of L'Heureux-Dubé, Gonthier and McLachlin JJ. were delivered by

111 L'Heureux-Dubé J. -- The appellant is the mother of three children. At the time of the hearing that is the subject of this appeal, the Minister of Health and Community Services had been granted custody of the children for six months, and was seeking to extend the custody order for a further six months. The legal aid programmes in place in the province of New Brunswick at the time did not provide funding for temporary custody applications or extensions of existing orders, but only for permanent guardianship applications. Ms. G. was therefore not able to receive funded counsel at the hearing where the Minister sought the extension of the custody order, and was unable to afford to hire her own counsel. The hearing took place over three days, and the Minister, along with all other interested parties, was

represented by counsel. Fifteen witnesses were called, including expert witnesses, and several expert reports were presented. Although Ms. G. received the voluntary assistance of counsel, this appeal requires the Court to decide whether the appellant's rights under s. 7 of the *Canadian Charter of Rights and Freedoms* were engaged, and, if so, whether the procedures adopted would have complied with the principles of fundamental justice had she not received counsel. I have read the reasons of the Chief Justice and I agree with him that this child protection hearing implicated the appellant's right to security of the person, and that in this case the procedure that threatened to deprive her of that right would not have been in accordance with the principles of fundamental justice because of the lack of funded counsel. However, I wish to set out my own views on the constitutional rights implicated and the appropriate test for determining when the failure to accord counsel to a parent would result in a procedure that is not in accordance with fundamental justice.

I. The *Charter* Rights Implicated

A. *Equality*

112 Before turning to the analysis of the s. 7 rights implicated and the principles of fundamental justice, I would emphasize that this case also implicates issues of equality, guaranteed by s. 15 of the *Charter*. These equality interests should be considered in interpreting the scope and content of the interpretation of the rights guaranteed by s. 7. This Court has recognized the important influence of the equality guarantee on the other rights in the *Charter*. As McIntyre J. wrote in *Andrews v. Law Society of British Columbia*, 1989 CanLII 2 (SCC), [1989] 1 S.C.R. 143, at p. 185:

> The section 15(1) guarantee is the broadest of all guarantees. It applies to and supports all other rights guaranteed by the *Charter*.

All *Charter* rights strengthen and support each other (see, for example, *R. v. Lyons*, 1987 CanLII 25 (SCC), [1987] 2 S.C.R. 309, at p. 326; *R. v. Tran*, 1994 CanLII 56 (SCC), [1994] 2 S.C.R. 951, at p. 976) and s. 15 plays a particularly important role in that process. The interpretive lens

of the equality guarantee should therefore influence the interpretation of other constitutional rights where applicable, and in my opinion, principles of equality, guaranteed by both s. 15 and s. 28, are a significant influence on interpreting the scope of protection offered by s. 7.

113 This case raises issues of gender equality because women, and especially single mothers, are disproportionately and particularly affected by child protection proceedings: see, for example, M. Callahan, "Feminist Approaches: Women Recreate Child Welfare", in B. Wharf, ed., *Rethinking Child Welfare in Canada* (1993), 172. The fact that this appeal relates to legal representation in the family context for those whose economic circumstances are such that they are unable to afford such representation is significant. As I wrote in *Moge v. Moge*, 1992 CanLII 25 (SCC), [1992] 3 S.C.R. 813, at p. 853, "In Canada, the feminization of poverty is an entrenched social phenomenon." The patterns of relationships within marriage disproportionately lead to women taking responsibility for child care, foregoing economic opportunities in the workforce, and suffering economic deprivation as a result: *Moge*, *supra*, at p. 861. Issues involving parents who are poor necessarily disproportionately affect women and therefore raise equality concerns and the need to consider women's perspectives.

114 As well as affecting women in particular, issues of fairness in child protection hearings also have particular importance for the interests of women and men who are members of other disadvantaged and vulnerable groups, particularly visible minorities, Aboriginal people, and the disabled. As noted by the United States Supreme Court in *Santosky v. Kramer*, 455 U.S. 745 (1982), at p. 763:

Because parents subject to termination proceedings are often poor, uneducated, or members of minority groups. . . such proceedings are often vulnerable to judgments based on cultural or class bias.

Similarly, Professors Cossman and Rogerson note that "The parents in child protection cases are typically the most disadvantaged and vulnerable within the family law system . . . .": "Case Study in the Provision of Legal Aid: Family Law", in *Report of the Ontario Legal Aid Review: A Blueprint of Publicly Funded Legal Services* (1997), 773, at p. 787.

115 Thus, in considering the s. 7 rights at issue, and the principles of fundamental justice that apply in this situation, it is important to ensure that the analysis takes into account the principles and purposes of the equality guarantee in promoting the equal benefit of the law and ensuring that the law responds to the needs of those disadvantaged individuals and groups whose protection is at the heart of s. 15. The rights in s. 7 must be interpreted through the lens of ss. 15 and 28, to recognize the importance of ensuring that our interpretation of the Constitution responds to the realities and needs of all members of society.

TAB 6: *Gosselin v. Québec (Attorney General),* [2002] 2002 SCC 84 at paras 82–83.

81 Even if s. 7 could be read to encompass economic rights, a further hurdle emerges. Section 7 speaks of the right not to be deprived of life, liberty and security of the person, except in accordance with the principles of fundamental justice. Nothing in the jurisprudence thus far suggests that s. 7 places a positive obligation on the state to ensure that ea: *Gosselin v. Québec (Attorney General),* [2002] 2002 SCC 84 at paras 82–83.ch person enjoys life, liberty or security of the person. Rather, s. 7 has been interpreted as restricting the state's ability to deprive people of these. Such a deprivation does not exist in the case at bar.

82 One day s. 7 may be interpreted to include positive obligations. To evoke Lord Sankey's celebrated phrase in *Edwards v. Attorney-General for Canada*, 1929 CanLII 438 (UK JCPC), [1930] A.C. 124 (P.C.), at p. 136, the *Canadian Charter* must be viewed as "a living tree capable of growth and expansion within its natural limits": see *Reference re Provincial Electoral Boundaries (Sask.)*, 1991 CanLII 61 (SCC), [1991] 2 S.C.R. 158, at p. 180, *per* McLachlin J. It would be a mistake to regard s. 7 as frozen, or its content as having been exhaustively defined in previous cases. In this connection, LeBel J.'s words in *Blencoe*, *supra*, at para. 188 are apposite:

> We must remember though that s. 7 expresses some of the basic values of the *Charter*. It is certainly true that we must avoid collapsing the contents of the *Charter* and perhaps of Canadian law into a flexible and complex provision like s. 7. But its importance is such for the definition of substantive and procedural guarantees in Canadian law that it would be dangerous to freeze the development of this part of the law. The full impact of s. 7 will remain difficult to foresee and assess for a long while yet. Our Court should be alive to the need to safeguard a degree of flexibility in the interpretation and evolution of s. 7 of the *Charter*.

The question therefore is not whether s. 7 has ever been — or will ever be — recognized as creating positive rights. Rather, the question is whether the present circumstances warrant a novel application of s. 7 as the basis for a positive state obligation to guarantee adequate living standards.

83 I conclude that they do not. With due respect for the views of my colleague Arbour J., I do not believe that there is sufficient evidence in this case to support the proposed interpretation of s. 7. I leave open the possibility that a positive obligation to sustain life, liberty, or security of the person may be made out in special circumstances. However, this is not such a case. The impugned program contained compensatory "workfare" provisions and the evidence of actual hardship is wanting. The frail platform provided by the facts of this case cannot support the weight of a positive state obligation of citizen support.

TAB 7: *Taylor v. Newfoundland and Labrador*, 2026 SCC 5 at para 82 and paras 124–126.

[82] This Court has identified other indicators of the interests underlying *Charter* provisions. For instance, international law and comparative constitutional law can shed light on the purposes behind analogous *Charter* protections. Courts must presume that the *Charter* guarantees protections at least as broad as those afforded by similar international human rights documents that Canada has ratified (*9147-0732 Québec inc.*, at para. 31). And they may look to the comparative constitutional landscape in other rights-respecting democracies as "relevant and persuasive" to domestic constitutional meaning (*United States v. Burns*, 2001 SCC 7, [2001] 1 S.C.R. 283, at para. 80; *9147-0732 Québec inc.*, at para. 35). Finally, the drafting history of a provision, while never determinative of meaning, can provide some indication of purpose (*Re B.C. Motor Vehicle Act*, 1985 CanLII 81 (SCC), [1985] 2 S.C.R. 486, at p. 508; *Poulin*, at paras. 78-79; *Desautel*, at para. 41). The drafting history, critically, is distinct from the historical origins of the right in question. The former relates to the actual process of drafting and ratifying the *Charter*, and the latter relates to the historical development of the values and interests enshrined in the Constitution.

….

[124] In the aftermath of the Second World War, the new United Nations General Assembly adopted the *Universal Declaration of Human Rights*, G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948). Article 13(1) of the *Universal Declaration of Human Rights* states that "[e]veryone has the right to freedom of movement and residence within the borders of each State." Article 13(2) states that "[e]veryone has the right to leave any country, including his own, and to return to his country." These sweeping statements are also reflected in the *International Covenant on Civil and Political Rights*, Can. T.S. 1976 No. 47 (ICCPR), a binding international human rights treaty Canada ratified in 1976 (see W. S. Tarnopolsky, "A Comparison Between the Canadian Charter of Rights and Freedoms and the International Covenant on Civil and Political Rights" (1982), 8 *Queen's L.J.* 211). As a pre-*Charter* instrument which informed the drafting of the *Charter*, the ICCPR is entitled to extra weight in the interpretive analysis (*9147-0732 Québec inc.*, at paras. 41-42).

[125] Article 12 of the ICCPR guarantees that

> 1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
>
> 2. Everyone shall be free to leave any country, including his own.
>
> 3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
>
> 4. No one shall be arbitrarily deprived of the right to enter his own country.

Because Canada ratified this binding instrument, the *Charter* is presumed to guarantee mobility rights at least as generous as these (*9147-0732 Québec inc.*, at paras. 31 and 41, citing *Reference re Public Service Employee Relations Act (Alta.)*, 1987 CanLII 88 (SCC), [1987] 1 S.C.R. 313, at p. 349).

[126] The United Nations Human Rights Committee has interpreted Article 12(1) of the ICCPR to guarantee a right to travel within one's country as one deems fit, including across subnational borders, and without making the right contingent on an intent to change residence (*Ackla v. Togo*, Communication No. 505/1992, U.N. Doc. CCPR/C/56/D/505/1992 (1996)). The Committee has also stated in its General Comment on Article 12 that "[l]iberty of movement is an indispensable condition for the free development of a person" and that "[t]he right to move freely relates to the whole territory of a State, including all parts of federal States" (*General Comment No. 27: Freedom of movement (Art. 12)*, U.N. Doc. CCPR/C/21/Rev.1/Add.9, November 1, 1999, at paras. 1 and 5).

TAB 8: UN Human Rights Committee, Concluding Observations, Canada CCPR/C/79/Add.105 at para 12; General Comment No. 36 (3 September, 2019) CCPR/C/GC/36 at para 26; Concluding Observations, Canada CCPR/C/CAN/CO/7 (23 March 2026) at para 31.

Concluding Observations, Canada CCPR/C/79/Add.105 at para 12.

12. The Committee is concerned that homelessness has led to serious health problems and even to death. The Committee recommends that the State party take positive measures required by article 6 to address this serious problem.

General Comment No. 36 (3 September, 2019) CCPR/C/GC/36 at para 26.

26. The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. These general conditions may include high levels of criminal and gun violence,91 pervasive traffic and industrial accidents,92 degradation of the environment (see also para. 62 below),93 deprivation of indigenous peoples' land, territories and resources,94 the prevalence of life-threatening diseases, such as AIDS, tuberculosis and malaria,95 extensive substance abuse, widespread hunger and malnutrition and extreme poverty and homelessness.96 The measures called for to address adequate conditions for protecting the right to life include, where necessary, measures designed to ensure access without delay by individuals to essential goods and services such as food,97 water, shelter, health care,98 electricity and sanitation, and other measures designed to promote and facilitate adequate general conditions, such as the bolstering of effective emergency health services, emergency response operations (including firefighters, ambulance services and police forces) and social housing programmes. States parties should also develop strategic plans for advancing the enjoyment of the right to life, which may comprise measures to fight the stigmatization associated with disabilities and diseases, including sexually transmitted diseases, which hamper access to medical care;99 detailed plans to promote education for non-violence; and campaigns for raising awareness of gender-based violence100 and harmful practices,101 and for improving access to medical examinations and treatments designed to reduce maternal and infant mortality. 102 Furthermore, States parties should also develop, when necessary, contingency plans and disaster

management plans designed to increase preparedness and address natural and manmade disasters that may adversely affect enjoyment of the right to life, such as hurricanes, tsunamis, earthquakes, radioactive accidents and massive cyberattacks resulting in disruption of essential services.

UN Human Rights Committee, Concluding Observations, Canada CCPR/C/CAN/CO/7 (23 March 2026) at para 31.

31. The Committee takes note of the initiatives adopted by the State Party to prevent and mitigate the effects of climate change and environmental degradation. However, the Committee is concerned about the State Party's position according to which the right to life does not, or would not, create positive obligations. It is also concerned about the adverse impact of climate change and environmental degradation on the right to life, particularly for Indigenous peoples, and other individuals in situations of vulnerability. The Committee is also concerned about reports indicating that the State Party is expanding its fossil-fuel production and increasing investments in fossil fuel projects (art. 6).

TAB 9: Toussaint v. Canada (Attorney General), 2022 ONSC 4747 at paras 28 – 30; paras 133-134.

[27] To understand the factual narrative and the legal problems presented by the motion now before the court, it is necessary to understand the nature and role of the United Nation's Human Rights Committee. One of the issues raised by Ms. Toussaint's action is the effect, if any, of the UN Human Rights Committee's "Views" on Canada's liability, if any, to Ms. Toussaint. As the factual summary, which is set out above, and as her more detailed story and the Amended Amended Statement of Claim, which are set out below, reveal, the triple-suns of Ms. Toussaint's legal universe are Ontario's Superior Court of Justice, the Federal Court, and the United Nations Human Rights Committee. I shall have more to say about the Committee throughout this decision but by way of introduction, the Committee is associated with Canada's international law obligations.

[28] In 1970, Canada acceded to the *Vienna Convention on the Law of Treaties,* and Canada agreed to perform its obligations under international treaties in good faith and not to invoke any provisions of its domestic as a justification for its failure to perform its obligations. The *Vienna Convention on the Law of Treaties* codified for Canada the rule of customary international law known as *pacta sunt servanda*, which is a peremptory norm and forms part of *jus cogens*.

[29] In 1976, Canada acceded to the *International Covenant on Civil and Political Rights* (the "ICCPR") and the *Optional Protocol* of the ICCPR, and by so doing, Canada promised: (a) to protect the right to life of persons within Canada; (b) to protect the right to non-discrimination of persons within Canada; (c) to recognize the competence of the United Nations Human Rights Committee to hear communications from persons within Canada, (d) to recognize the competence of the United Nations Human Rights Committee to determine whether there has been a violation of the right to life of persons within Canada; (e) to recognize the competence of the United Nations Human Rights Committee to determine whether there has been a violation of the right to non-discrimination; and (f) to recognize the competence of the

United Nations Human Rights Committee to provide an effective and enforceable remedy to the extent the Committee determine that a violation has occurred.

[30] Although Canada has ratified the *International Covenant on Civil and Political Rights* (the "*ICCPR*") and the *Optional Protocol,* it has not enacted legislation to incorporate the *ICCPR* or the *Optional Protocol* into domestic law.

……

[133] The preliminary matter is to properly focus the substantive legal analysis. For reasons that will shortly become apparent, it pains me to have to say that Canada's argument that it is plain and obvious that Ms. Toussaint's claim is doomed to fail does it no pride, because Canada pejoratively mischaracterizes Ms. Toussaint's human rights claim and thus its rhetorical and largely conclusory argument misfires and is also unfair.

The Characterization of Ms. Toussaint's Human Rights Claim

[134] In a dog whistle argument that reeks of the prejudicial stereotype that immigrants come to Canada to milk the welfare system, Canada mischaracterizes Ms. Toussaint's *Charter* claim as a right to receive free health care anywhere in the world, regardless of one's lack of status" or as a right to receive "an optimum level of health insurance and as a claim for a purely socio-economic right which is outside the guarantees of the *Canadian Charter of Rights and Freedoms*.

[135] Canada mischaracterizes Ms. Toussaint's claim that her *Charter* rights have been violated as a claim based on principles of international law supporting a right to receive free health care regardless of immigration status. Canada says that there is no Canadian law that incorporates customary international law that includes a right to free health care regardless of immigration status, and, in any event, principles of international law are not directly enforceable in Canada, unless they are incorporated into Canadian law and a right to free health care regardless of immigration status has not been incorporated into Canadian law.[65]

[136] Since Ms. Toussaint's claim does not assert a right to free health care anywhere in the world regardless of one's lack of status, Canada's argument is a fallacious straw man argument that might successfully knock down claims that are not being asserted.

TAB 10: *St. Theresa Point First Nation v. Canada*, 2025 FC 1926 at para 281.

(c) *Conclusion*

[280] Section 7 of the *Charter* contains three distinct rights – to life, to liberty and to the security of the person – and the claimant need only show one of the three has been infringed (Constitutional Crossroads: Reflections on Charter Rights, Reconciliation, and Change, 2022 UBC Press at 161). For the same reasons as set out above relating to section 15, I find that section 7 is engaged by virtue of section 32(1) of the *Charter*.

[281] I agree with Canada that, to date, section 7 has not been interpreted to impose positive obligations on governments, nor does it protect economic interests (*Gosselin* at para 81). The jurisprudence has only considered section 7 in relation to deprivations of those rights. Any evolution of section 7 into the realm of positive rights must be incremental and reserved for special circumstances (*Gosselin* at paras 80-83). At this early stage of the proceeding, I also find that the evidence presents the special circumstances suggested by *Gosselin* for a positive obligation on the part of Canada to protect the section 7 rights of Class Members. Once again, by making this finding I am not suggesting that any positive obligation has been breached. I only state that there are special circumstances that arise on the record which indicate that a positive obligation would appear to exist. The full scope and extent of such a positive obligation, and any breaches of such a right, are reserved for the Stage II Common Issue determination.

[282] The Court can go no further at this time.

TAB 11: *La Rose v. Canada*, 2023 FCA 241 at para 115–116.

[114] There is no reason to conclude that harms flowing from climate change and climate-related legislation are manifestly incapable of proof, as did the Federal Court. While the pleadings require amendment, there is a vast body of scientific knowledge dealing with climate change, GHG emissions, and their consequences on human health and the environment. These harms have been acknowledged by the Canadian government itself: the *Canadian Net-Zero Emissions Accountability Act* states in its preamble that "climate change poses significant risks to human health and security" and that "the science clearly shows that human activities are driving unprecedented changes in the Earth's climate". The *Canadian Net-Zero Emissions Accountability Act* goes on to enshrine certain GHG targets, including net-zero emissions for 2050 (*Canadian Net-Zero Emissions Accountability Act*, s. 6). One of the purposes of the Act is stated in section 4 to be "requir[ing] the setting of national targets for the reduction of GHG emissions based on the best scientific information available".

[115] I return to *Gosselin*, where the Court held that a positive rights claim could be advanced in "special circumstances" (at para. 83). There is no guidance in the jurisprudence as to what those circumstances might be. The appellants contend that the circumstances before the Court constitute special circumstances warranting a novel application of section 7 and that the Federal Court erred in closing the door on this argument.

[116] Climate change's current and potential effects are widespread and grave, they include loss of land and culture, food insecurity, injury and death. In the *GGPPA References* the Supreme Court noted that climate change is an existential challenge, a threat of the highest order to the country, and to the future of humanity which cannot be ignored (*GGPPA References* at para. 167). If these do not constitute special circumstances, it is hard to conceive that any such circumstances could ever exist; however this remains to be determined by the trial judge.

[117] I have explained the analytical limits of positive/negative rights dichotomy and why the claims before us can be taken to assert elements of both. Subject to what follows, there is, nevertheless, a sufficient pleading of a section 7 violation in its orthodox understanding to survive a motion to strike. Where novel Charter claims test the boundaries of a right, such claims

may require a trial in order to understand the nature of the legislation, executive action or regulation and the harm experienced by claimants. This is one of those cases.

TAB 12: *R. v. Morgentaler* [1988] 1 SCR 30 at 175

While Lamer J. draws mainly upon ss. 8 to 14 of the *Charter* to give substantive content to the principles of fundamental justice, he does not preclude, but seems rather to encourage, the idea that recourse may be had to other rights guaranteed by the *Charter* for the same purpose. The question, therefore, is whether the deprivation of the s. 7 right is in accordance not only with procedural fairness (and I agree with the Chief Justice and Beetz J. for the reasons they give that it is not) but also with the fundamental rights and freedoms laid down elsewhere in the *Charter*.

This approach to s. 7 is supported by comments made by La Forest J. in *R. v. Lyons*, 1987 CanLII 25 (SCC), [1987] 2 S.C.R. 309. He urged that the rights enshrined in the *Charter* should not be read in isolation. Rather, he states at p. 326:

. . . the *Charter* protects a complex of interacting values, each more or less fundamental to the free and democratic society that is Canada (*R. v. Oakes*, 1986 CanLII 46 (SCC), [1986] 1 S.C.R. 103, at p. 136), and the particularization of rights and freedoms contained in the *Charter* thus represents a somewhat artificial, if necessary and intrinsically worthwhile attempt to structure and focus the judicial exposition of such rights and freedoms. The necessity of structuring the discussion should not, however, lead us to overlook the importance of appreciating the manner in which the amplification of the content of each enunciated right and freedom imbues and informs our understanding of the value structure sought to be protected by the *Charter* as a whole and, in particular, of the content of the other specific rights and freedoms it embodies.

I believe, therefore, that a deprivation of the s. 7 right which has the effect of infringing a right guaranteed elsewhere in the *Charter* cannot be in accordance with the principles of fundamental justice.

TAB 13: *Kazemi Estate v. Islamic Republic of Iran*, 2014 SCC 62, [2014] 3 SCR 176 at paras 150–151

[150] It is true that the *Charter* will often be understood to provide protection at least as great as that afforded by similar provisions in international human rights documents to which Canada is a party (*Reference re Public Service Employee Relations Act (Alta.)*, 1987 CanLII 88 (SCC), [1987] 1 S.C.R. 313, at pp. 348-49, *per* Dickson C.J. dissenting). In my view, however, this presumption operates principally as an interpretive tool in assisting the courts in delineating the breadth and scope of *Charter* rights (see *Health Services and Support*, at paras. 71-79; see also Beaulac, at pp. 231-39). International Conventions may also assist in establishing the elements of the *Malmo-Levine* test for recognition of new principles of fundamental justice (see *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, 2004 SCC 4, [2004] 1 S.C.R. 76, at para. 10). But not all commitments in international agreements amount to principles of fundamental justice. Their nature is very diverse. International law is ever changing. The interaction between domestic and international law must be managed carefully in light of the principles governing what remains a dualist system of application of international law and a constitutional and parliamentary democracy. The mere existence of an international obligation is not sufficient to establish a principle of fundamental justice. Were we to equate all the protections or commitments in international human rights documents with principles of fundamental justice, we might in effect be destroying Canada's dualist system of reception of international law and casting aside the principles of parliamentary sovereignty and democracy.

[151] That being said, I am prepared to accept that *jus cogens* norms can generally be equated with principles of fundamental justice and that they are particularly helpful to look to in the context of issues pertaining to international law. Just as principles of fundamental justice are the "basic tenets of our legal system" (*Re B.C. Motor Vehicle Act*, 1985 CanLII 81 (SCC), [1985] 2 S.C.R. 486, at p. 503), *jus cogens* norms are a higher form of customary international law. In the same manner that principles of fundamental justice are principles "upon which there is some consensus that they are vital or fundamental to our societal notion of justice" (*Rodriguez v. British Columbia (Attorney General)*, 1993 CanLII 75 (SCC), [1993] 3 S.C.R. 519, at p.

590), *jus cogens* norms are customs accepted and recognized by the international community of states from which no derogation is permitted (*Bouzari*, at paras. 85-86; van Ert, at p. 29).

TAB 14: *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 4 at paras 127-135

[127] The next question is whether the Minister's decision that the *CDSA* applies to Insite is in accordance with the principles of fundamental justice. On the basis of the facts established at trial, which are consistent with the evidence available to the Minister at the relevant time, I conclude that the Minister's refusal to grant Insite a s. 56 exemption was arbitrary and grossly disproportionate in its effects, and hence not in accordance with the principles of fundamental justice.

[128] As noted above, the Minister, when exercising his discretion under s. 56, must respect the rights guaranteed by the *Charter*. This means that, where s. 7 rights are at stake, any limitations imposed by ministerial decision must be in accordance with the principles of fundamental justice. The Minister cannot simply deny an application for a s. 56 exemption on the basis of policy *simpliciter*; insofar as it affects *Charter* rights, his decision must accord with the principles of fundamental justice.

(a) *Arbitrariness*

[129] When considering whether a law's application is arbitrary, the first step is to identify the law's objectives. Decisions of the Minister under s. 56 of the *CDSA* must target the purpose of the Act. The legitimate state objectives of the *CDSA* (then the *Narcotic Control Act*, R.S.C. 1986, c. N-1) were identified by this Court in *Malmo-Levine* as the protection of health and public safety129] .

[130] The second step is to identify the relationship between the state interest and the impugned law, or, in this case, the impugned decision of the Minister. The relationship between the general prohibition on possession in the *CDSA* and the state objective was recognized in *Malmo-Levine* with respect to marihuana:

The criminalization of possession is a statement of society's collective disapproval of the use of a psychoactive drug such as marihuana . . ., and, through Parliament,

the continuing view that its use should be deterred. The prohibition is not arbitrary but is rationally connected to a reasonable apprehension of harm. In particular, criminalization seeks to take marihuana out of the hands of users and potential users, so as to prevent the associated harm and to eliminate the market for traffickers. [para. 136]

The question is whether the decision that the *CDSA* applies to the activities at Insite bears the same relationship to the state objective. As noted above, the burden is on the claimants to establish that the limit imposed by the law is not in accordance with the principles of fundamental justice.

[131] The trial judge's key findings in this regard are consistent with the information available to the Minister, and are those on which successive federal Ministers have relied in granting exemption orders over almost five years, including the facts that: (1) traditional criminal law prohibitions have done little to reduce drug use in the DTES; (2) the risk to injection drug users of death and disease is reduced when they inject under the supervision of a health professional; and (3) the presence of Insite did not contribute to increased crime rates, increased incidents of public injection, or relapse rates in injection drug users. On the contrary, Insite was perceived favourably or neutrally by the public; a local business association reported a reduction in crime during the period Insite was operating; the facility encouraged clients to seek counselling, detoxification and treatment. Most importantly, the staff of Insite had intervened in 336 overdoses since 2006, and no overdose deaths had occurred at the facility. (See trial judgment, at paras. 85 and 87-88.) These findings suggest not only that exempting Insite from the application of the possession prohibition does not undermine the objectives of public health and safety, but furthers them.

[132] The jurisprudence on arbitrariness is not entirely settled. In *Chaoulli*, three justices (*per* McLachlin C.J. and Major J.) preferred an approach that asked whether a limit was "necessary" to further the state objective (paras. 131-32). Conversely, three other justices (*per* Binnie and LeBel JJ.), preferred to avoid the language of necessity and instead approved of the prior articulation of arbitrariness as where "[a] deprivation of a right . . . bears no relation to, or is inconsistent with, the state interest that lies behind the legislation" (para. 232). It is

unnecessary to determine which approach should prevail, because the government action at issue in this case qualifies as arbitrary under both definitions.

(b) *Gross Disproportionality*

[133] The application of the possession prohibition to Insite is also grossly disproportionate in its effects. Gross disproportionality describes state actions or legislative responses to a problem that are so extreme as to be disproportionate to any legitimate government interest: *Malmo-Levine*, at para. 143. Insite saves lives. Its benefits have been proven. There has been no discernable negative impact on the public safety and health objectives of Canada during its eight years of operation. The effect of denying the services of Insite to the population it serves is grossly disproportionate to any benefit that Canada might derive from presenting a uniform stance on the possession of narcotics.

(c) *Overbreadth*

[134] Having found the Minister's decision arbitrary and its effects grossly disproportionate, I need not consider this aspect of the argument.

[135] I conclude that, on the basis of the factual findings of the trial judge, the claimants have met the evidentiary burden of showing that the failure of the Minister to grant a s. 56 exemption to Insite is not in accordance with the principles of fundamental justice.

TAB 15: *Quebec (Attorney General) v. Kanyinda*, 2026 SCC 7 at paras 217–218

[217] Over time, this Court has developed a number of criteria and indicators that can be used to identify an analogous ground and screen out claims "having nothing to do with substantive equality", in order to "keep the focus on equality for groups that are disadvantaged in the larger social and economic context" (*Kahkewistahaw First Nation v. Taypotat*, 2015 SCC 30, [2015] 2 S.C.R. 548, at para. 19, and *Dickson v. Vuntut Gwitchin First Nation*, 2024 SCC 10, at para. 193, both quoting L. Smith and W. Black, "The Equality Rights" (2013), 62 *S.C.L.R.* (2d) 301, at p. 336). On this non-exhaustive list, the violation of human dignity and freedom resulting from a distinction based on a stereotype, rather than on individual capacity, worth or circumstances, is a first indicator (*Miron*, at para. 148). Next, the fact that a group has suffered historical disadvantage (*ibid.*; *Andrews*, at p. 152; *Turpin*, at pp. 1331-32) or that it represents a "discrete and insular minority" (*Miron*, at para. 148, quoting *Andrews*, at p. 152, per Wilson J., and at p. 183, per McIntyre J.) may also be a relevant factor. The vulnerability and marginalization of a group within society are other indicators. In addition, the "immutable" nature of an individual's personal characteristics, including those that are "constructively immutable", that is, changeable only at an unacceptable cost to personal identity, such as religion or citizenship (*Corbiere*, at para. 13; *Dickson*, at para. 193), is generally a common denominator for all analogous grounds. Lastly, recognition by legislators and jurists that a ground is discriminatory is another helpful indicator for determining whether it is analogous to the enumerated grounds.

[218] Côté J. notes in her reasons that some of the indicators set out and adopted in our jurisprudence are not relevant to the analysis, notably because they are unrelated to the central criterion of immutability (paras. 355-58). With respect, I am of the view that consideration of all of these factors not only assists in identifying the groups that the *Charter* is meant to protect but also favours a more flexible and progressive approach in the application of s. 15, one that is capable of recognizing contemporary forms of discrimination, beyond only its historical manifestations (*Miron*, at para. 149; D. Gibson, "Analogous Grounds of

Discrimination Under the Canadian Charter: Too Much Ado About Next to Nothing" (1991), 29 *Alta. L. Rev.* 772, at p. 788; J. Sealy-Harrington, "Assessing Analogous Grounds: The Doctrinal and Normative Superiority of a Multi-Variable Approach" (2013), 10 *J.L. & Equality* 37, at pp. 52-55).

TAB 16: *Falkiner v. Ontario (Minister of Community and Social Services)* (2002), 59 OR (3d) 481 (CA) at paras 92–93.

[92] The Divisional Court also recognized that social assistance recipients deserved s. 15 protection. The Divisional Court, however, defined the analogous ground more narrowly as sole support parents on social assistance or single mothers on social assistance. The intervenor LEAF supported the Divisional Court's characterization. It seems to me, however, that recognizing the broader or more general category, receipt of social assistance, is preferable. It is more truly analogous to the enumerated grounds, which themselves are general; it conforms to the similar protection accorded to social assistance recipients in human rights legislation; it recognizes a group that is vulnerable to discrimination and that historically has been subjected to negative stereotyping; and it simplifies the equality analysis under s. 15. By contrast, recognizing as analogous a highly specific ground like sole support mothers on social assistance makes the s. 15 analysis, which is difficult enough, unnecessarily complex. Moreover single mothers on social assistance already receive two-fold s. 15(1) protection on the grounds of sex and marital status. What is novel about the respondents' position is that they seek recognition that their status as social assistance recipients is also relevant to the equality analysis. In my view, the most coherent way to achieve this is to recognize receipt of social assistance as an analogous ground.

[93] In summary, the definition of spouse has subjected the respondents to differential treatment on the basis of three prohibited grounds of discrimination: sex, marital status and receipt of social assistance.

TAB 17: Affidavit of Kaitlin Schwan affirmed August 15, 2025 B1-9593 – B1-9599

adoption of such security systems for some women, who often used all available means to keep themselves safe.

37. My engagements with women residing in encampments indicated that encampment evictions often eroded the security systems, safety measures, and mutual aid systems women had adopted for themselves within encampments. These were not easily re-established.

HOMELESSNESS AS A PERSONAL CHARACTERISTIC LINKED TO DISCRIMINATION, STEREOTYPE, STIGMATIZATION, CRIMINALIZATION AND SOCIAL EXCLUSION

38. Based on my experience working with people experiencing homelessness and from research done by myself and others in this field, it is my opinion that homeless persons are subject to distinctive historical disadvantage, pervasive stereotyping, stigma, criminalization, and systemic discrimination on the basis of the personal characteristic of homelessness. The experience of homelessness becomes deeply embedded in personal identity such that it is difficult to change. Many people experiencing homelessness have less political influence than other groups and face major obstacles to voting. Politicians rarely describe people experiencing homelessness as constituents whom they represent but rather refer to them as social problems to be addressed in the interests of other constituents.

39. As documented by the UN Special Rapporteur on Adequate Housing in her 2015 Report to the UN Human Rights Council, the experience of homelessness goes beyond the deprivation of physical shelter. The Special Rapporteur explains that "being deprived of a home gives rise to a social identity through which "the homeless" is constituted as a social

group subject to discrimination and stigmatization." The Report of the Special Rapporteur, with which I agree, is attached as **Exhibit "D"** to this affidavit.

40. The Special Rapporteur also explains that "with a unique understanding of the systems that deny them their rights, homeless people must be recognized as central agents of the social transformation necessary for the realization of the right to adequate housing."[30] I agree with the Special Rapporteur's understanding of homelessness not solely as a deprivation of housing but also as personal characteristic and identity that is socially constructed through dominant patterns of stigmatization, social exclusion, and marginalization and also as rights claimants whose struggle for dignity and home must be recognized as central to the human rights movement in Canada and internationally.

41. Homeless people are often treated as "outsiders" or unwelcome intruders in their own communities in a manner that is analogous to other forms of discrimination. Opposition from residents to the development of housing for individuals experiencing homelessness is common, and some municipalities deliberately withhold access to essential services—such as water and sanitation—as a means of displacing them.[31] Such tactics are often accompanied by dehumanizing comments about homeless people, such a comment from a

[30] Report of the UN Special Rapporteur on the Right to Adequate Housing, UN Human Rights Council Thirty-first session, A/HRC/31/54 (30 December 2015), attached as Exhibit D.
[31] See: Office of the Federal Housing Advocate. (2022). *Homeless encampments in Canada: A human rights crisis.* Canadian Human Rights Commission. https://www.chrc-ccdp.gc.ca/resources/newsroom/homeless-encampments-canada-human-rights-crisis. Office of the Federal Housing Advocate. (2023). *The Advocate's review of homeless encampments.* Canadian Human Rights Commission. https://www.chrc-ccdp.gc.ca/publications/advocates-review-homeless-encampments

former mayor of Ottawa comparing homeless persons to pigeons, who stated: "if you don't feed them, they'll go away."[32]

42. Homeless people are particularly vulnerable to violence not only because they live outdoors but because of widespread hostility and discriminatory attitudes toward them. People experiencing homelessness who are victims of violence rarely report these incidents to police, as they often believe police and the justice system will not care, will deny them fair and equal treatment, and/or will fail to treat them with basic dignity.[33]

43. In their study of how people experiencing homelessness were treated in eight Canadian cities, Marie-Eve Sylvestre and Celine Bellot found a marked increase in penalties imposed during the late 1990s and early 2000s for simply being present in public spaces or engaging in basic survival activities. For example, they found that in Montreal between 2006 and 2010, although homeless people represented only 1 or 2 per cent of the population, they received, on average, approximately 25 percent of all statements of offences issued by the Montreal police – mostly related to simply trying to survive in public spaces in the absence of a home.[34] A copy of Marie-Eve Sylvestre and Celine Bellot's chapter entitled "Challenging Discriminatory and Punitive Responses to Homelessness in Canada" is attached and marked as **Exhibit "E"** to this affidavit.

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[32] Reported in Maclean's "Why Kindness meters' are a horrible way to deal with panhandlers" (March 14, 2016) online at https://macleans.ca/news/canada/kindness-meters-are-no-way-to-deal-with-panhandlers-say-experts/

[33] See Kouyoumdjian, F., et al. (2019). *Interactions between police and persons who experience homelessness: A systematic review*. *Canadian Journal of Public Health, 110*(5), 625–634. https://doi.org/10.1177/0706743719861386. Zakrison, T. L., et al. (2004). Homeless people's trust and interactions with police and paramedics. *Canadian Journal of Urban Research*, 13(2), 1–17.

[34] Marie-Eve Sylvestre* and Céline Bellot Challenging Discriminatory and Punitive Responses to Homelessness in Canada.

44. As Sylvestre and Bellot document, widespread criminalization of those who are homeless – by making survival activities linked to homelessness illegal – is more accurately understood as rendering those who are homeless illegal because of a personal characteristic rather than as rational measures to address harms they may cause to others. For example, by-laws that prohibit homeless people from sleeping in public, even when no alternative shelter is available, are aimed more at removing them from neighbourhoods and public spaces than at addressing any specific harm. Such measures further deprive homeless people of dignity and security, and entrench their social exclusion and precarious situation within society.

45. A dominant feature of responses to homelessness that is similar to other grounds of discrimination is the phenomenon of scapegoating or blaming them for broader social ills for which they are not responsible but rather are the victims. At times when the number of people experiencing homelessness has increased due to economic factors or inflated housing prices that are beyond the control of those affected, one would expect greater compassion towards those who are the victims of these developments and who have no power over these market forces. However, the opposite is the case. In the mid-1990s, as the number of homeless people in Canada grew significantly, social and income supports were dramatically reduced and governments stopped funding subsidized housing. Provinces adopted laws that had the effect of criminalizing homeless people, such as Ontario’s Safe Streets Act (1999) and B.C.’s Safe Streets Act (2004), and municipalities

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enacted measures to drive homeless people out of public places or business areas by imposing curfews and preventing them from lying down on benches by installing arm rests.

46. Sylvestre and Bellot document a number of key characteristics shared by most homeless people that make them particularly susceptible to discrimination, social exclusion, and ongoing historical disadvantage, making homelessness a personal characteristic that is very difficult to change or overcome. They find that public responses to homelessness are often informed by three stigmatizing ideas: the characterization of people experiencing homelessness as morally depraved, as being homeless by choice, and as criminals or law-breakers.

47. As explained by Sylvestre and Bellot, homelessness is not a choice of lifestyle but rather a complex, structural, and socially constructed identity, rooted in social, economic, and political causes. They note that the disproportionate penalization of people experiencing homelessness creates further social exclusion, making it more difficult to secure employment or housing and thus creating further obstacles to escaping from homelessness. These findings align with my own observations from working with people experiencing homelessness.

48. The Quebec Human Rights Commission has investigated the treatment of homeless people by police in Montreal and the discriminatory effects of by-laws. The Commission produced an opinion on "the judiciarization of the homeless" in 2009. The Commission found that "the stigmatization of the homeless in SPVM [City of Montreal Police Service] standards

and policies as well as the ensuing police profiling, undermines the rights of the individuals concerned to the safeguard of their dignity without discrimination based on social condition." The Commission found that homeless persons "are more likely to be punished by police officers to quell fears based on prejudice than because of the actual degree of nuisance or danger created by their behaviour."[35] The Commission also considered the effects of bylaws designed to restrict access by the homeless to public spaces and found such bylaws to have a discriminatory effect of depriving homeless people of basic human needs such as a place to sleep. A copy of the Commission's Report is attached as **Exhibit "F"** to this affidavit.

49. The Commission also found that punitive approaches to homelessness and discriminatory bylaws impede exits from homelessness and are costly compared to providing housing and supports. It recommended that punitive approaches be reversed and that governments "give priority to a preventive and proactive approach to homelessness, in particular by providing sufficient and adequate housing for the homeless or individuals at risk of homelessness, if they so desire."[36]

50. In 2000, the Canadian Human Rights Act Review Panel, chaired by the retired Supreme Court Justice Honourable Gérard La Forest, held extensive consultations and commissioned research to make recommendations on changes needed to the *Canadian*

[35] Commission des droits de la personne et des droits de la jeunesse, *The Judiciarization of the Homeless in Montréal: A Case of Social Profiling: Executive Summary of the Opinion of the Commission* (November 6, 2009) online at https://www.cdpdj.qc.ca/storage/app/media/publications/Homeless_Summary.pdf.
[36] *Ibid*, Recommendation 11.

Human Rights Act. The panel reported to the federal government that "research papers and the submissions we received provided us with ample evidence of widespread discrimination based on characteristics related to social conditions, such as poverty, low education, homelessness and illiteracy."[37] The panel recommended that "social condition" be added to the *Canadian Human Rights Act* as a prohibited ground of discrimination to provide remedies to such discrimination. A copy of chapter 17 of the Report of the Canadian Human Right Act Review Panel, dealing with the ground of "social condition" is attached to my affidavit and marked as **Exhibit "G"**.

51. Other human rights bodies have similarly recommended that social and economic conditions, such as Homelessness, should be considered a ground of decimation. For example, the Ontario Human Rights Commission has similarly recommended the inclusions of social condition as a prohibited ground of discrimination under Ontario's *Human Rights Code*, noting that this ground "would permit the Commission to deal more effectively with issues related to homelessness; and, it would be a means for the Commission and the province to better comply with some of Canada's international obligations."[38] A copy of the section on "Social and Economic Condition" from the Ontario Human Rights Commission's report "Human Rights and rental housing in Ontario: Background paper is attached and marked as **Exhibit "H"** to this affidavit.

[37] Canadian Human Rights Act Review Panel under the authority of the Minister of Justice and the Attorney General of Canada. Promoting Equality: A new Vision (2000) Online at https://publications.gc.ca/collections/Collection/J2-168-2000E.pdf.

[38] Ontario Human Rights Commission, Human Rights and rental housing in Ontario: Background paper Approved by the Commission: March 28, 2007, "Social and Economic Condition", online at https://www3.ohrc.on.ca/en/human-rights-and-rental-housing-ontario-background-paper/social-and-economic-condition.

52. International human rights bodies have also recognized homelessness as a prevalent ground of discrimination and urged Canada and other states to provide necessary protection from this kind of discrimination. As the UN Special Rapporteur on Adequate Housing explained in her Report on Homelessness (**Exhibit "D"**):

> Those who are homeless are constructed as a social group. Worldwide, their identity is created and then reinforced by people who have more money, more power or more influence. It is a vicious circle. Laws, policies, business practices and media stories depict and treat homeless people as morally inferior, undeserving of assistance and authors of their own misfortune, and blame them for the social problems they come to represent. Once stigmatized, their needs are further neglected and inequality and discrimination further entrenched.[39]

53. The Special Rapporteur states that: "Homeless people must be recognized as a protected group in all relevant domestic anti-discrimination and hate-crime laws, including where relevant in national Constitutions, national and subnational human rights legislation and in city charters."[40]

RECEIPT OF SOCIAL ASSISTANCE AS A GROUND OF DISCRIMINATION

54. Differential treatment on the ground of receipt of social assistance has been found to be more widespread than any other ground of discrimination that is prohibited under *Ontario's*

[39] Report of the Special Rapporteur on Adequate Housing, Exhibit D at para 19.
[40] Ibid at para 91(f)

TAB 18: *Eldridge* at paras 72–73, para 96.

72 Once it is accepted that effective communication is an indispensable component of the delivery of medical services, it becomes much more difficult to assert that the failure to ensure that deaf persons communicate effectively with their health care providers is not discriminatory. In their effort to persuade this Court otherwise, the respondents and their supporting interveners maintain that s. 15(1) does not oblige governments to implement programs to alleviate disadvantages that exist independently of state action. Adverse effects only arise from benefit programs, they aver, when those programs exacerbate the disparities between the group claiming a s. 15(1) violation and the general population. They assert, in other words, that governments should be entitled to provide benefits to the general population without ensuring that disadvantaged members of society have the resources to take full advantage of those benefits.

73 In my view, this position bespeaks a thin and impoverished vision of s. 15(1). It is belied, more importantly, by the thrust of this Court's equality jurisprudence. It has been suggested that s. 15(1) of the *Charter* does not oblige the state to take positive actions, such as provide services to ameliorate the symptoms of systemic or general inequality; see *Thibaudeau*, *supra*, at para. 37 (*per* L'Heureux-Dubé J.). Whether or not this is true in all cases, and I do not purport to decide the matter here, the question raised in the present case is of a wholly different order. This Court has repeatedly held that once the state does provide a benefit, it is obliged to do so in a non-discriminatory manner; see *Tétreault-Gadoury v. Canada (Employment and Immigration Commission)*, 1991 CanLII 12 (SCC), [1991] 2 S.C.R. 22, *Haig v. Canada (Chief Electoral Officer)*, 1993 CanLII 58 (SCC), [1993] 2 S.C.R. 995, at pp. 1041-42, *Native Women's Assn. of Canada v. Canada*, 1994 CanLII 27 (SCC), [1994] 3 S.C.R. 627, at p. 655, and *Miron*, *supra*. In many circumstances, this will require governments to take positive action, for example by extending the scope of a benefit to a previously excluded class of persons; see *Miron*, *Tétreault-Gadoury*, and *Schachter v. Canada*, 1992 CanLII 74 (SCC),

[1992] 2 S.C.R. 679. Moreover, it has been suggested that, in taking this sort of positive action, the government should not be the source of further inequality; *Thibaudeau*, at para. 38 (*per* L'Heureux-Dubé J.).

…..

96 A declaration, as opposed to some kind of injunctive relief, is the appropriate remedy in this case because there are myriad options available to the government that may rectify the unconstitutionality of the current system. It is not this Court's role to dictate how this is to be accomplished. Although it is to be assumed that the government will move swiftly to correct the unconstitutionality of the present scheme and comply with this Court's directive, it is appropriate to suspend the effectiveness of the declaration for six months to enable the government to explore its options and formulate an appropriate response. In fashioning its response, the government should ensure that, after the expiration of six months or any other period of suspension granted by this Court, sign language interpreters will be provided where necessary for effective communication in the delivery of medical services. Moreover, it is presumed that the government will act in good faith by considering not only the role of hospitals in the delivery of medical services but also the involvement of the Medical Services Commission and the Ministry of Health.

TAB 19: *National Housing Strategy Act* SC 2019, c. 29, s. 313 Section 5

4 It is declared to be the housing policy of the Government of Canada to

> **(a)** recognize that the right to adequate housing is a fundamental human right affirmed in international law;
>
> **(b)** recognize that housing is essential to the inherent dignity and well-being of the person and to building sustainable and inclusive communities;
>
> **(c)** support improved housing outcomes for the people of Canada; and
>
> **(d)** further the progressive realization of the right to adequate housing as recognized in the International Covenant on Economic, Social and Cultural Rights.

5 (1) The Minister must develop and maintain a national housing strategy to further the housing policy, taking into account key principles of a human rights-based approach to housing.

(2) The National Housing Strategy is to, among other things,

(a) set out a long-term vision for housing in Canada that recognizes the importance of housing in achieving social, economic, health and environmental goals;

(b) establish national goals relating to housing and homelessness and identify related priorities, initiatives, timelines and desired outcomes;

(c) focus on improving housing outcomes for persons in greatest need; and

(d) provide for participatory processes to ensure the ongoing inclusion and engagement of civil society, stakeholders, vulnerable groups and persons with lived experience of housing need, as well as those with lived experience of homelessness.

TAB 20: 2024 Point in Time Count Preliminary Overview B1-8557 - 8559

Region of Waterloo

Community Services

Housing Services

To: Community and Health Services Committee

Meeting Date: December 3, 2024

Report Title: 2024 Point in Time Count Preliminary Overview

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1. Recommendation

For information.

2. Purpose / Issue:

To provide an update on the coordination and preliminary results of the federally mandated Point-in-Time Count conducted in the Waterloo Region on October 22, 2024.

3. Strategic Plan:

This report supports the following strategic priorities derived from the Region of Waterloo's Corporate Strategic Plan 2023 – 2027:

- Strategic Priority 1: Homes for All: We will invest in affordable homes and economic opportunities for all that are part of inclusive and environmentally sustainable communities.
- Strategic Priority 3: Equitable Services and Opportunities: Through collaboration and innovative design, we will provide equitable, accessible services across the Waterloo Region that support the social determinants of health and complete communities as we grow.
- Strategic Priority 4: Resilient and Future Ready Organization: The Region of Waterloo is a great place to work, where everyone is valued, feels they belong and where they have the supports and tools they need to do a great job. We will be prepared for the future by providing a safe space for bold ideas and experimentation that transform services, based on data and other ways of knowing.

4. Report Highlights:

- The 2024 Point-in-Time (PiT) Count found a total number of 2,371 individuals estimated to be experiencing homelessness in the Waterloo Region on October 22, 2024. The number of these individuals who have been chronically homeless will need to be further analyzed and will be reported on early 2025.

- Waterloo Region's fourth PiT Count took place on October 22, 2024, over a 24-hour period. The PiT Count is a community-level, comprehensive measure of sheltered and unsheltered homelessness that provides a picture, or 'snapshot', of individuals experiencing homelessness at a single point in time. It includes both chronic homelessness and temporary or episodic homelessness. This broader scope signifies that while chronic homelessness is a major component of the total, the PiT Count also captures individuals in situations such as emergency shelter stays, temporary housing, or those staying in places not meant for human habitation.
- The initiative is coordinated through the *Reaching Home Program: Canada's Homelessness Strategy*. As part of this agreement, the Region of Waterloo is federally required to complete a PiT Count, which is comprised of two parts: the enumeration (or *count*) and the Survey on Homelessness (see **Appendix A)**.
- This year's PiT Count was completed with the support of more than 40 community partner agencies, including three hospitals, two correctional institutions, rural and Indigenous partners, in conjunction with Regional Staff. All seven area municipalities in the Waterloo Region were included, spanning the traditional territories of the Anishinaabe, Chonnonton and Haudenosaunee peoples.
- Community engagement and coordination efforts heavily focused on making contact with populations that have higher rates of hidden homelessness, including newcomers, Indigenous, veterans, women, and gender-diverse individuals. A list of Target Population Groups was created to supplement efforts towards achieving a more representative and inclusive dataset that captured all populations, and therefore, all dimensions of homelessness in our community. This achieved a robust and far-reaching enumeration and survey achievement, which included both major hospital and incarceration institutions.
- These findings indicate the structure of homelessness has critically increased since 2021, which found an estimated 1,085 individuals experiencing homelessness in the Waterloo Region and is consistent with the warnings issued in the Plan to End Chronic Homelessness Key Findings Report.

5. Background:

On Tuesday October 22, 2024, the Region of Waterloo's Homelessness and Supportive Housing team conducted its fourth PiT Count, alongside local community partners, which included service providers, non-shelter service providers (food and meal providers, health clinics targeted to individuals experiencing homelessness), and public systems (hospitals, police, and correctional facilities).

The data from the 2021 and 2024 PiT Counts indicates a substantial expansion in homelessness in the Waterloo Region, specifically rising from 1,085 individuals in 2021, to 2,371 this year. This trend warrants careful analysis to understand the underlying factors and implications faced in our Region.

It is imperative to note that the 2021 PiT Count took place during an active wave of the COVID-19 pandemic. Several planned engagement efforts were modified and/or cancelled due to Public Health guidelines and measures that challenged in-person engagement and implementation of PiT Count processes. Additionally, staffing was a significant problem across the system, negatively impacting capacity and overall participation in the PiT Count.

The 2024 PiT Count presents itself as a remarkably different landscape since the COVID-19 pandemic. For example, economic fallout from events (i.e., the pandemic) and rising inflation may have had delayed impacts on housing stability and resultingly pushed more individuals into homelessness. Fundamentally, however, the 2024 PiT Count has achieved a more comprehensive and effective coordination and collaboration process involving a higher number of community partner agencies compared to the 2021 PiT Count.

Furthermore, the foundational work of The Plan to End Chronic Homelessness (PECH) has brought in more community partner agencies and service providers, increasing overall involvement in this year's PiT Count. Namely:

- Number of locations and services has increased, strengthening staffing experience and trusting relationships with individuals experiencing homelessness and receiving support,
- Outreach support has significantly expanded in both numbers so full-time staff and more established partnerships with partners like Sanguen, Traverse, Community Healthcaring, and others,
- COVID-19 is no longer a significant concern; community members and individuals accessing social services and/or experiencing homelessness are moving more freely than in 2021.

The results of this year's PiT Count demand attention to resource needs and inform shifts related to homelessness since the 2021 PiT Count. The 2024 PiT Count highlights the urgent issue of homelessness in the Waterloo Region, with numbers indicating that while chronic homelessness is indeed rising, the overall increase in homelessness is broader. This calls for comprehensive and emergent actions to reduce chronic homelessness and address the increasing number of individuals in our community facing homelessness.

Furthermore, as emphasized in the PECH, investment from both public and private sectors, key system partners (healthcare, mental health and addictions, justice), and all levels of government is required to respond to, and address this growing crisis impacting our community; otherwise the Plan risks just becoming an idea. Efforts to address homelessness must consider both long-term solutions for chronic homelessness and more immediate strategies to prevent or intervene in episodic homelessness.

TAB 21: *Housing Services Act,* 2011, S.O. 2011, c. 6, Sched. 1 ss. 4-5.

Provincial interest

4 (1) For the purposes of sections 5 and 6, it is a matter of provincial interest that there be a system of housing and homelessness services that,

(a) is focussed on achieving positive outcomes for individuals and families;

(b) addresses the housing needs of individuals and families in order to help address other challenges they face;

(c) has a role for non-profit corporations and non-profit housing co-operatives;

(d) has a role for the private market in meeting housing needs;

(e) provides for partnerships among governments and others in the community;

(f) treats individuals and families with respect and dignity;

(g) is co-ordinated with other community services;

(h) is relevant to local circumstances;

(i) allows for a range of housing options to meet a broad range of needs;

(j) ensures appropriate accountability for public funding;

(k) supports economic prosperity; and

(l) is delivered in a manner that promotes environmental sustainability and energy conservation. 2011, c. 6, Sched. 1, s. 4 (1).

Housing and homelessness plans

6 (1) Each service manager shall have a plan to address housing and homelessness. 2011, c. 6, Sched. 1, s. 6 (1).

What plan must include

(2) The plan must include,

(a) an assessment of current and future housing needs within the service manager's service area;

(b) objectives and targets relating to housing needs;

(c) a description of the measures proposed to meet the objectives and targets;

(d) a description of how progress towards meeting the objectives and targets will be measured; and

(e) such other matters as may be prescribed. 2011, c. 6, Sched. 1, s. 6 (2).

TAB 22: *Hamid Saydawi and Masir Farah v. Italy* E/C.12/75/D/226/2021 at para 13(d).

13.The Committee considers that the remedies recommended in the context of individual communications may include guarantees of non-repetition and recalls that the State party has an obligation to prevent similar violations in the future. The State party should ensure that its legislation and the enforcement thereof are consistent with the obligations established under the Covenant. In particular, the State party has an obligation:

(a)To ensure that its normative framework allows persons in respect of whom an eviction order is issued and who might consequently be at risk of destitution or of violation of their Covenant rights, including persons who have scarce economic resources or are occupying a dwelling without legal title, to challenge the decision before a judicial or other impartial and independent authority with the power to order the cessation of the violation and to provide an effective remedy so that such authorities can examine the proportionality of the measure in the light of the criteria for limiting the rights enshrined in the Covenant under the terms of article 4;

(b)To take the necessary measures to ensure that evictions affecting persons who do not have the means of obtaining alternative housing are carried out only within the framework of proceedings involving genuine and effective consultation with the persons concerned, in which all available alternative housing (whether belonging to such persons or made available by the relevant State agencies) is assessed and only after the State has taken all essential steps, to the maximum of its available resources, to ensure that evicted persons have alternative housing, especially in cases involving families, older persons, children and/or other persons in vulnerable situations. If the group to be evicted includes children, the proceedings must guarantee their right to be heard;

(c)To take the necessary measures to solve the problems caused by the failure of the courts and social services to coordinate their efforts, which can result in an evicted person's being left without adequate accommodation;

(d)To develop and implement, to the maximum of its available resources, a comprehensive plan to guarantee the right to adequate housing for low-income persons, in keeping with general comment No. 4 (1991). This plan should provide for the necessary resources, indicators, time

frames and evaluation criteria to guarantee these individuals' right to housing in a reasonable, timely and measurable manner.