

Court file number: CV-22-00000717-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE REGIONAL MUNICIPALITY OF WATERLOO

Applicant

and

PERSONS UNKNOWN AND TO BE ASCERTAINED

Respondents

APPLICATION UNDER section 440 of the *Municipal Act, 2001*, S.O. 2001, c. 25 as amended

FACTUM OF THE RESPONDENTS

October 31, 2022

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FACTUM OF THE RESPONDENTS

PART I – THE PARTIES AND THE NATURE OF THE APPLICATION

1. This Application was commenced by the Regional Municipality of Waterloo (the “Region”) on July 5, 2022 pursuant to sections 11 and 440 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended as well as the *Trespass to Property Act*, R.S.O. 1990, c. T.21, as amended, seeking a number of Declarations and Orders from the Court including but not limited to:
 - a. Declarations that the Respondents are in breach of the Code of Use By-Law 13-050 (“Code of Use By-Law”);
 - b. Interim and Final Orders restraining individuals from breaching the Code of Use By-Law by remaining or re-entering on the Encampment property after the required vacancy date of June 30, 2022;
 - c. Orders for the Waterloo Region Police Service (the “WRPS”) to have authorization to arrest and remove the residents of the Encampment still living on the site; and

- d. Orders for the WRPS to remove any belongings at the Encampment property.
2. The named Respondents (the “Encampment Residents”) Jordan Aylott, Kathryn Bulgin, Jennifer Draper, Mark Duke, Liam Flanagan, Andrew Mandic, Lee-Anne Mason, Sean Simpell, William Tugwood, Michael Wosik and Andrew Zekai are residents of the tent encampment located at 100 Victoria Street in Kitchener, Ontario (the “Encampment”). They are all individuals experiencing homelessness who are struggling to survive by staying in tents in the Encampment.
3. There are two intervenors in this Application, the Waterloo Regional Police Services (“WRPS”) and the Mental Health Legal Committee (“MHLC”). This Court ordered, on the motion filed by the MHLC, the appointment of Mercedes Perez of Perez Bryan Procope LLP October 17, 2022, as *amicus curiae* “for the purpose of advocating on behalf of individuals living at the encampment ... whose capacity to engage or instruct counsel is in question, who have not retained counsel, and who have no other identified way to participate in these proceedings”.
4. The WRPS takes no position on the Application and reserves the right to provide submissions only if the Court makes any orders pertaining to the involvement of the WRPS.
5. The Encampment Residents have served a Notice of Constitutional Question dated September 15, 2022 seeking remedies pursuant to s. 24 (1) of the *Charter of Rights and and Freedoms* (“*Charter*”) and s. 52 (1) of the *Constitution Act*, 1982. The Encampment Residents allege that the Trespass Notice and the enforcement of the provisions of the Code of Use By-Law by the Region against the Encampment infringe and violate s. 7 and s. 15 Charter rights in a manner which cannot be justified under s. 1 of the Charter.

PART II – OVERVIEW

6. This Application was initiated by the Region to evict homeless individuals from their tents in order to obtain possession of a vacant lot for which it has no immediate need. The lot is planned to become a lay down site for construction materials sometime in 2024. If the homeless individuals are evicted and displaced pursuant to an order by this Court, most if not all will likely remain unhoused and will move to other tenting locations. There is not enough room in the Region's Emergency Shelter System to accommodate these individuals, and a severe lack of affordable or subsidized housing for housing options. The proposed eviction is occurring while the Region faces an unprecedented housing crisis, which is particularly severe for people living in poverty. If evicted, the homeless individuals at the Encampment will be required to pack up what they can carry of their belongings or face being arrested and forcibly removed. The eviction of the homeless individuals in the encampment would only serve to criminalise the state of being homeless and deprive homeless individuals of their right to life, liberty and the security of the person.
7. The Region has produced a number of witnesses in support of its request for this Court to endorse its proposed displacement of these individuals who have nowhere else to go. Not one of these witnesses has been able to answer the basic question: where are these homeless individuals expected to go? That is the fundamental question that underlies the core issue that is before this Court.
8. The Region is a municipal government that is subject to the provisions of the *Canadian Charter of Rights and Freedoms*.¹ When exercising the property rights that flow from property ownership, the Region is subject to a different and higher standard than any non-governmental

¹ *Godbout v. Longueuil (City)*, [1997] 3 S.C.R. 844, paras. 50 to 51, (LaForest J.)

property owner. It must not infringe on the protected *Charter* rights of the individuals it seeks to displace, and it must follow the rules that it has established for itself with respect to the proposed displacement of the individuals that have had to respond to this Application.

9. The Region will paint the situation at the encampment as being one that is increasingly dangerous, unsanitary, a public nuisance and unsustainable. However, the Region has not supported the homeless individuals at the encampment in a meaningful way or in a way that is in accordance with its own Encampment policy. The Region has failed to mitigate identified risks as doing so would improve the conditions at the encampment and potentially show the Region's tacit approval of the encampment. The evidence produced by the Region does not support the allegation that the encampment is inherently dangerous and fails to weigh the risks to the homeless individuals if they are evicted from the encampment.
10. The Region will also attempt to characterize living in a tent as a choice made by the individuals in the encampment. This characterization is misleading as it does not recognize the complex situation faced by homeless individuals and does not consider the lack of options available to people living in extreme poverty. A shelter bed is not a home.

PART III- THE FACTS

The Background of the Encampment

11. The Encampment began on or about December 2021 when a small number of people set up tents at the 100 Victoria Street encampment site ("**Encampment**"). Will Tugwood and Jennifer Draper were among that first group of people. Jenn and Will had been living in a tent at the back of the

property across the street from where St. John's Soup Kitchen is located. They were told by staff at St. John's that they needed to leave and should set up their tents across the street at 100 Victoria.²

12. The individuals living at the Encampment are unhoused and unable to find housing due to limited financial means and complex personal circumstances. The Encampment Residents are in receipt of either Ontario Works or Ontario Disability Support Program Benefits, and as a result are living in extreme poverty. They are unable to rent market housing, and are left to seek housing in subsidized, supportive, and low barrier options which are extremely limited in the Region of Waterloo.

13. The Encampment Residents demographically consist of the following:

- a. Couples;
- b. Members of racialized communities;
- c. Individual men and women;
- d. Persons with a disability including physical and mental disabilities;
- e. Persons suffering from substance use disorders;
- f. Persons in the 2SLGBTQ+ community;
- g. Indigenous people; and
- h. Domestic abuse survivors.

14. Among the Region's homeless population, Indigenous persons are overrepresented. In a survey conducted by the Region of people residing in encampments, 19% of the survey respondents identified as Indigenous.³

² Affidavit of Jennifer Draper (Aug. 15, 2022) **Responding Record Vol I**, para. 20

³ Undertakings Brief

15. The lot at 100 Victoria is a vacant lot owned by the Region. It is bordered by Weber Street on the east side, Victoria Street on the south side, CN Rail train tracks on the north side and a privately owned parking lot and plaza on the west side.⁴
16. The Encampment lot will be used as a lay down site for the when the Metrolinx transit hub project commences, however the Region has no firm date on when that might happen.⁵ Eventually, the Region plans to use the lot as a parking site but that will not be until a date some time in 2024.⁶
17. The number of tents at the site increased slowly over the winter and then more rapidly in the spring of 2022. Many of the Respondents, like Mr. Tugwood and Ms. Draper had either been living at other tent sites or had recently become homeless.
18. By June 1, 2022, the Encampment had grown to approximately 67 tents and more than 50 people.⁷
19. Jordan Aylott had lived in an encampment site behind a Circle K convenience store, at another encampment near Ira Needles Boulevard in Waterloo, and at the OneRoof youth shelter in Kitchener, before he arrived at the Encampment. Jordan had aged out of the youth shelter when he turned 25.⁸
20. Mark Duke is an Indigenous person who came to the Encampment in the early spring of 2022. He receives approximately \$400 a month from Ontario Works benefits. He had previously been living in a rooming house, but experienced an illegal eviction. After his eviction, he couch surfed or accessed shelters when he had nowhere else to stay.⁹

⁴ Affidavit of Ellen McGaghey (July 5, 2022), **Application Record**, p. 9, paras 6-7

⁵ Cross-Examination of Ellen McGaghey (Oct. 3, 2022), **Transcript**, para 59.

⁶ Cross-Examination of Ellen McGaghey (Oct. 3, 2022), **Transcript**, paras 70-75.

⁷ Exhibit "E" of Affidavit of Ellen McGaghey (July 5, 2022), **Application Record**, pg. 81.

⁸ Affidavit of Jordan Aylott (Aug. 15, 2022), **Responding Record**, Vol. I, para 15, pg 273

⁹ Affidavit of Mark Duke (Aug. 11, 2022), **Responding Record**, Vol. I, pg 291-295

21. Andrew Mandic suffers from disabilities including, mental health issues and addictions. He became homeless after being laid off from work. He receives about \$630 a month from Ontario Disability Support Plan benefits. He has lived at the Encampment on and off since the beginning and has been homeless on and off for about five years. Prior to living at the Encampment, he accessed services at the House of Friendship, as well as stayed at the Edith MacIntosh Shelter and Bridges. If evicted, he is unsure of where he will go.¹⁰
22. Andrew Zekai is an Indigenous person who suffers with drug addiction. He receives \$325.85 a month from Ontario Works benefits. He came to the Encampment in or around the early summer of 2022. He has been in and out of jail for the last 7½ years and homeless for most of the time when not incarcerated. Prior to living at the Encampment, he would sleep in parks, benches, stairwells and people's backyards. He has stayed in shelters but they are triggering for his drug use. If evicted, he will have nowhere to go and expects he will lose his belongings.¹¹
23. Jennifer Draper is an Indigenous woman who is disconnected from her community and cultural practices. She suffers from depression, anxiety and panic disorder. She uses crack cocaine and methamphetamine when she can afford it. She receives \$353 per month from Ontario Works. Ms. Draper started living at the Encampment in December 2021. Ms. Draper previously rented a home for herself and three children until she lost her job and her landlord sold the house. She began living in her van and moved her children in with a friend until they were apprehended by Child and Family Services. Ms. Draper then stayed at Mary's Place and various outdoor locations with her partner, Mr. Tugwood. If evicted, they will sleep on the streets or in the bush.¹²

¹⁰ Affidavit of Andrew Mandic (Aug. 11, 2022), **Responding Record, Vol. I, pg 302-305**

¹¹ Affidavit of Andrew Zekai (Aug. 16, 2022), **Responding Record, Vol. I, pg 331-334**

¹² Affidavit of Jennifer Draper (Aug. 15, 2022), **Responding Record, Vol. I, pg 283-289**

24. Albert William Patrick (“Will”) Tugwood is an Indigenous person who started living at the Encampment in December 2021. He receives approximately \$353 a month from Ontario Works benefits. He worked in construction until 2017 when he suffered a bad fall and has not been able to return to work. He has chronic low back pain and has developed depression since becoming homeless. Mr. Tugwood previously rented a room with his partner Jenn until a disagreement with their friend had them kicked out. Prior to living at the Encampment, he accessed shelters, slept on the streets and in the woods. If evicted, he will have nowhere to go.¹³
25. Kathryn (Katie) Bulgin is a 32 year old female who suffers from drug addiction. She is a survivor of assault and sexual assault. She came to the Encampment in June 2022. She receives approximately \$730 a month from Ontario Works benefits. She has been homeless for approximately six years. She became homeless when her mother did not want to support her anymore. Prior to living at the Encampment, Ms. Bulgin slept behind dumpsters, hotel rooms, couch surfed, and accessed shelters. If evicted from the Encampment, she will have to move her tent elsewhere and will feel unsafe.¹⁴
26. Leanne Mason is a 50 year old woman who suffers from drug addiction. She receives about \$300 a month from Ontario Works benefits. She has been homeless for the last year and a half and began living at the Encampment in or around the early summer of 2022. She was previously living with her sister but moved out as she did not want to be around her nephew while she was using drugs. Prior to living at the Encampment, Ms. Mason lived in a tent in Cambridge. She has also stayed in

¹³ Affidavit of Albert Tugwood (Aug. 15, 2022), **Responding Record, Vol. I, pg. 317-322**

¹⁴ Affidavit of Kathryn (Katie) Bulgin (Aug. 16, 2022), **Responding Record, Vol. I, pg 276-281**

shelters but was assaulted at Mary's Place and had her belongings thrown out at Bridges. If evicted, she will go back to camping somewhere in Cambridge.¹⁵

27. Liam Flanagan suffers from depression and receives approximately \$690 a month from Ontario Works benefits. He came to the Encampment in or around July 2022. He has been homeless for less than year. He was previously living with his parents. He has stayed in various shelters but prefers the Encampment for several reasons. If evicted from the Encampment, he will move to another encampment in the area or try accessing shelters in Toronto.¹⁶

28. Michael Wosik suffers from disabilities including, alcohol addiction, depression and chronic back pain. He receives \$325.85 a month from Ontario Works benefits. His wife left him in August 2020 and he became homeless in December 2020. He came to the Encampment in April 2022. He has previously resided at an encampment in Cambridge, stayed with friends, and has stayed in various shelters. If evicted from the Encampment, he will have nowhere to go and has no idea what he will do.¹⁷

29. Sean Simpell suffers from disabilities including drug addiction and back pain. He receives \$325.85 per month from Ontario Works benefits. He has been homeless since approximately July 2020, when he got out of jail. He came to the Encampment in March 2021. He previously bounced back and forth between a trailer and an encampment in Cambridge. He has also accessed shelters including St. Andrew's Church and Mary's Place. If evicted from the Encampment, he will lose everything.¹⁸

¹⁵ Affidavit of Lee-Anne Mason (Aug. 24, 2022), **Responding Record, Vol. I, pg. 307-310**

¹⁶ Affidavit of Liam Flanagan (Aug. 11, 2022), **Responding Record, Vol. I, pg 297-399**

¹⁷ Affidavit of Michael Wosik (Aug. 11, 2022), **Responding Record, Vol. I, pg. 325-329**

¹⁸ Affidavit of Sean Simpell (Aug. 15, 2022), **Responding Record, Vol. I, pg 312-315**

30. Sean King's affidavit is unsworn as the Legal Clinic was unable to connect back with him. In the affidavit of Nancy Singer at paragraph 4¹⁹, she has submitted the unsworn affidavit by way of hearsay evidence. Ms. Singer states: "when I spoke with Mr. King on August 2, he was no longer staying at the Encampment, but was maintaining a tent on the site to store his personal belongings". Mr. King advised Ms. Singer that he is in recovery from drug addiction and receives \$500 a month from Ontario Works benefits. He has a service dog named Powder. His wife died in January 2022. Mr. King previously resided in a rental unit until he was evicted for rent arrears. He has been homeless for about ten months. He came to the Encampment in or around the spring of 2022. He often stays overnight in shelters.
31. In March 2022, the Region hired Barber Collins Security to provide security services for the purpose of monitoring the site and protecting the adjacent private property.²⁰
32. The Barber Collins guards kept people from parking at the plaza at 70 Victoria Street. They also enforced the parking at the privately owned parking lot at 84 Victoria Street. The guards also discouraged individuals from loitering on the 70 Victoria and 84 Victoria properties.
33. The residents of the Encampment were able to use the facilities at St. John's Kitchen while it was open Monday to Friday during daytime hours from and in May 2022 the Region voted to have security staff posted at the entrance to St. John's Soup Kitchen to allow overnight access.²¹
34. The purpose of the security service was to protect the 70 Victoria plaza and 84 Victoria parking lot by keeping the Encampment activities and residents out of the neighbouring private property and to provide the Region with detailed reports of the activities at the Encampment.

¹⁹ Affidavit of Nancy Rose Singer re: Sean King (September 13, 2022), **Supplemental Responding Record, paras 3-4**

²⁰ Affidavit of Shannon Walls (July 5, 2022), **Application Record, paras 2, pg. 105**

²¹ Affidavit of Shannon Walls (July 5, 2022), **Application Record, p.105**

The Risk Assessment and the Eviction Process

35. On May 12, 2022, the Region conducted a risk assessment of the Encampment. A second risk assessment was conducted on May 26, 2022. As a result of the risk assessments, the Region commenced the eviction process at the Encampment by posting signs on the Encampment property on June 6, 2022.²²
36. The Notice of Prohibited Activities and Trespass stated that individuals engaged in prohibited activities in contravention of the Code of Use By-law 13-050, such as erecting a tent, bringing goods onto the property or loitering, were to vacate the property by 9:00 a.m. on June 30, 2022 and not return to the property thereafter.²³
37. When questioned about the risk assessment tool, the Region's witness Arran Rowles stated:
- a. The risk assessment tool was not well-researched.²⁴ There was little or no analysis behind the decision to assign 20 tents as a numerical indicator of high risk. The Region chose 20 tents as indicative of high risk because it based the tool on a document used by the City of Sudbury which assessed 8 tents as indicative of risk and the Region thought "20 made good sense" and was also based on feedback from community partners which was "their best guidance and guess as well".²⁵
 - b. There was no qualitative analysis of the data such as police occurrences. WRPS occurrences were counted numerically and there was no attempt to look at the level of severity (or lack of severity) of the underlying incidents.²⁶

²² Affidavit of Ellen McGaghey (July 5, 2022), **Application Record, pg. 13, paras 16-17**

²³ Exhibit "F" to the Affidavit of Ellen McGaghey (July 5, 2022), **Application Record, pg. 95**

²⁴ Cross Examination of Arran Rowles (Oct 3, 2022), **Transcript, para 60.**

²⁵ Cross Examination of Arran Rowles (Oct 3, 2022), **Transcript, paras 15-19.**

²⁶ Cross Examination of Arran Rowles (Oct 3, 2022), **Transcript, paras 30-40.**

- c. The Region did not receive any written reports from the WRPS about the nature of police occurrences related to the Encampment during the risk assessment process.²⁷
 - d. There was no attempt to engage or consult with the residents of the Encampment in the risk assessment process.²⁸
 - e. The Region did not assess the potential risks that Encampment residents would face if evicted because there was not enough time to consider this before choosing to commence the eviction process.²⁹
 - f. The Region conducted its third and final Risk Assessment on June 30, 2022 and has not conducted another risk assessment since that time. The reason given for not conducting further risk assessments is that the Region considers the situation to be “fairly constant”.³⁰
38. The Region has not produced any police reports detailing criminal activities in its application materials, despite relying on alleged criminal activity as a risk factor.
39. The Region has not provided any Fire Department records in its application materials despite relying on fire hazards as a risk factor.
40. The Region did not rely on written reports from community partners such as the agencies providing outreach services, the Police or Fire in creating the risk assessment. No minutes were kept for the meetings where these partners provided verbal reports.³¹
41. The Region relied on a poorly researched, rushed risk assessment tool that showed almost all areas as medium to low concern (the only high risk factors were the number of tents and number of

²⁷ Cross Examination of Arran Rowles (Oct 3, 2022), **Transcript, paras 44-47.**

²⁸ Cross Examination of Arran Rowles (Oct 3, 2022), **Transcript, para 52.**

²⁹ Cross Examination of Arran Rowles (Oct 3, 2022), **Transcript, paras 60-61.**

³⁰ Cross Examination of Arran Rowles (Oct 3, 2022), **Transcript, paras 72-76.**

³¹ Cross Examination of Arran Rowles (Oct 3, 2022), **Transcript, paras 44-51**

people at the Encampment) in deciding to evict the Encampment residents pursuant to the Code of Use By-Law.

The Encampment Policy and the Code of Use By-law

42. The Region's Code of Use By-law regulates the conduct of persons on buildings, grounds and public transportation vehicles owned or operated by the Region ("Designated Premises").³²
43. The purposes of the Code of By-law are to:
 - a. Prevent physical damage to the Designated Premises;
 - b. Prevent disruption of Regional operations; and
 - c. Regulate the use and enjoyment of the Designated Premises by other persons.
44. The Code of Use By-law prohibits a number of activities in Schedule "B" including, but not limited to loitering and erecting a tent or shelter without authorization. The Code of Use By-law gives designated personnel the authority to administer and enforce the by-law.
45. Prior to December 2021, the Code of Use By-law was used by the Region to deal with the situation of homeless encampments.
46. In November 2021, the Region evicted residents at an encampment at Charles Street East and Stirling Avenue (the "Stirling Encampment") pursuant to the Code of Use By-law. By-law officers, WRPS officers and heavy machinery operators attended at the site.³³
47. The residents were told to leave and take their belongings. Any belongings that they could not carry were cleared using heavy machinery and were disposed of by the Region.³⁴

³² Exhibit "A", Affidavit of Ellen McGaghey, (July 5, 2022) **Application Record** pp 18-21

³³ Affidavit of Lesley Crompton (Aug. 31, 2022), **Responding Record**, pp 376-377

³⁴ Affidavit of Lesley Crompton (Aug. 31, 2022), **Responding Record Vol II**, pp 377-378

48. After public outcry following the Stirling Encampment eviction and an admission by the Region that the manner of the eviction “did not reflect the dignity of those living at the encampment”, Regional staff prepared a draft Encampment Policy.³⁵
49. The draft policy “Homeless Encampments on Region-owned or occupied lands” (the “Encampment Policy”) was presented to Regional Council at the December 15, 2021 council meeting attached to a staff report titled “Policy Review of Region By-law 13-050-Use or Occupation of Region-owned Public Land”.³⁶
50. The report states that the Code of Use By-law has broad application and lacks the specific direction required to deal with a situation such as a homeless encampment.³⁷
51. The draft Encampment Policy supplements the Code of Use By-law and provides a specific process to be followed when dealing with an encampment situation.
52. Council voted to approve the Encampment Policy at the December 15, 2021 meeting. A By-law to confirm the actions of Council of December 15, 2021 was passed as well, giving the Encampment Policy the authority of a by-law.³⁸
53. The Encampment Policy states that it will guide Regional staff in providing outreach services to individuals living rough on lands owned by the Region. The policy seeks to balance the need to provide appropriate supports to vulnerable individuals with the civic responsibility of maintaining the use of these lands for the public and/or operational requirements of the community.³⁹

³⁵ Exhibit “A”, Affidavit of Lynn Kubis (Aug. 31, 2022) **Responding Record Vol I**, p9, para 5 and 6

³⁶ Exhibit “A”, Affidavit of Lynn Kubis (Aug. 31, 2022) **Responding Record Vol I**, pp 12-13

³⁷ Exhibit “A”, Affidavit of Lynn Kubis (Aug. 31, 2022) **Responding Record Vol I**, p9, para 5

³⁸ Exhibit “A”, Affidavit of Lynn Kubis (Aug. 31, 2022) **Responding Record Vol I**, p 23

³⁹ Exhibit “A”, Affidavit of Lynn Kubis (Aug. 31, 2022) **Responding Record Vol I**, p 12

54. The Encampment policy requires the Region to take certain steps prior to any encampment eviction. The key principles can be summarized as follows:

- a. The Region's priority is to assist individuals to access safer, sustainable and healthier alternatives, **not enforcement**. Enforcement will only take place after all reasonable support efforts have been attempted without success. Only in exceptional circumstances will more immediate intervention be required to address public safety concerns (emphasis added);
- b. Regional staff, supported by community social services will work with individuals according to their needs on a case-by-case basis to provide access to services, supports and shelter;
- c. The Region will engage in ongoing proactive communication with individuals experiencing homelessness, service providers, Regional councillors, community agencies and other groups;
- d. The Region acknowledges that individuals living rough cannot be forced to accept services and the refusal alone is not sufficient reason to prevent the Enforcement of Regional By-laws.⁴⁰

55. The Encampment Policy describes two steps:

- a. Outreach to individuals experiencing homelessness to assist and encourage people living rough to access safer and healthier alternatives, including housing, support services, shelter and more permanent housing options. It is anticipated that over time individuals who are

⁴⁰ Exhibit "A", Affidavit of Lynn Kubis (Aug. 31, 2022) **Responding Record Vol I**, p 12-13

being so assisted will access better alternatives than living rough and will voluntarily leave the encampment;

- b. Enforcement will only occur after all reasonable outreach and support efforts have been provided without success and after reasonable notice of the need to vacate has been provided. The policy then describes how the decision to evict will occur within the Region's departments. Finally, enforcement shall be done in a way that respects the safety of all concerned and the dignity of the individuals experiencing homelessness.⁴¹

Steps taken by the Region pre-Enforcement pursuant to the Encampment Policy

56. The Region has provided evidence regarding what steps were taken to follow the Encampment Policy in offering services and supports to the Encampment Residents prior to commencing the eviction process on June 6, 2022 when the Trespass Notice was posted at the Encampment and prior to the proposed Eviction date of June 30, 2022.

57. Kelly-Anne Salerno, Assistant Director of Housing operations states that starting in April 2022, Regional staff began meeting with staff from Sanguen Health Centre ("Sanguen") and staff from the Working Centre to ensure person-centred support and services were being offered to the Encampment Residents. The Region did not provide affidavits from any of the staff from Sanguen or the Working Centre to provide any direct evidence of the nature and frequency of the supports offered to the Encampment residents.⁴²

58. Ms. Salerno also notes that starting on May 25, 2022, (which was 9 business days before the Trespass Notice was posted) two Region Ontario Works caseworkers attended the Encampment

⁴¹ Exhibit "A", Affidavit of Lynn Kubis (Aug. 31, 2022) **Responding Record Vol I**, p 12-13

⁴² Affidavit of Kelly-Anne Salerno (July 6, 2022), **Application Record pg. 488 at paras 42-44.**

three times a week to offer supports. Again, there are no affidavits from any of the caseworkers in the Region's Application Record providing direct evidence of the supports offered.⁴³

59. Ms. Salerno states that at her direction, caseworkers offered a number of services but again, there is no direct evidence of those services, only hearsay evidence contained in Ms. Salerno's affidavit.⁴⁴

60. A chart provided by the Region in answering an undertaking for the Ontario Works caseworker notes for the period May 25, 2022 to June 30, 2022. The chart provided shows that caseworkers spoke to 36 individuals during that time frame. The chart shows that 22 of those individuals were only spoken to on one occasion by caseworkers during that time- there are no follow up notes showing a repeat attempt to speak to the individuals about providing services or supports.⁴⁵

61. Ms. Salerno also states in her affidavit that 4 service fairs were held on May 18 and 19, 2022 and June 8 and 9, 2022 at the YW's building at 84 Frederick Street to offer the opportunity for people to connect with community services such as Lutherwood, Sanguen and the Working Centre. According to Ms. Salerno's affidavit 40 people attended however there is no indication of how many of those people were living at the Encampment or no direct evidence of what kinds of supports were offered.⁴⁶

62. The evidence in the Region's application shows that minimal effort was made prior to June 6, 2022 to connect individuals living at the Encampment with supports and services in the way that is described in the Encampment Policy.

⁴³ Affidavit of Kelly-Anne Salerno (July 6, 2022), **Application Record pp 488-489, paras 46-49.**

⁴⁴ Affidavit of Kelly-Anne Salerno (July 6, 2022), **Application Record p 489, para 48**

⁴⁵ Tab 2, Undertakings Brief of the Applicant, p. 7

⁴⁶ Affidavit of Kelly-Anne Salerno (July 6, 2022), **Application Record p 490, para 53-54**

63. The Region did not connect at all with almost half of the individuals at the Encampment before commencing the eviction process by posting the Trespass Notice on June 6, 2022.
64. The Region's assertions about services provided by outside agencies are in the nature of hearsay evidence as there is no affidavit evidence or other documentary evidence showing the nature and frequency of the alleged supports.
65. The Region did not attempt to survey the Encampment residents prior to the Trespass Notice being posted, or prior to the proposed Eviction Date or before the Application was commenced.
66. On June 22, 2022, Regional Council approved a motion "that staff develop a plan to establish interim housing solutions for the Regional residents experiencing homelessness including those currently residing in Encampments".⁴⁷
67. In response to that motion, Regional Staff brought forward an Interim Housing plan to Council on August 18, 2022 which recommended a number of actions including developing a proposal for a Hybrid Outdoor/Shelter model.⁴⁸

The Homelessness Crisis and the Lack of Affordable Housing

68. There were approximately **1100 people** experiencing homelessness in Waterloo Region as of the date of the Application according to the Region's evidence.⁴⁹
69. The Region's data on the extent of homelessness is from a Point in Time Count of homelessness that was done on September 21, 2021.⁵⁰

⁴⁷ Affidavit of Lynn Kubis, affirmed August 31, 2022, **Responding Record Vol 1, Exhibit "E", pg. 54.**

⁴⁸ Exhibit "F", Affidavit of Lynn Kubis, affirmed August 31, 2022, **Responding Record Vol 1 pp 57-63**

⁴⁹ Affidavit of Kelly-Anne Salerno (July 6, 2022), **Application Record pg 490, para 56.**

⁵⁰ Exhibit "O" Affidavit of Lynn Kubis, affirmed August 31, 2022, **Responding Record, Volume 1, at pp 94-113**

70. The Point in Time Count (“**PinTC**”) contains data about the demographics of people living homeless in the Region of Waterloo as well as information about the experiences of homelessness.
71. The number of people experiencing homelessness tripled from 2018 (333) to 2021 (1085) in Waterloo Region.⁵¹
72. Of the 1085 individuals experiencing homelessness counted during the PinTC, 412 were living rough, 385 were experiencing hidden homelessness, 191 were accessing emergency shelters and 63 people were in institutions.⁵²
73. 30% of those counted were women, 67% were men and 10 % were trans, Two-Spirit or Non-binary.⁵³
74. 17% of the individuals counted identified as Indigenous or First Nations.⁵⁴
75. 15% of the individuals counted identified themselves as part of a racialized community.⁵⁵
76. Of the individuals who completed a survey during the PinTC, 75% had been experiencing homelessness for more than 6 months in the last year.

Lack of Emergency Shelter spaces and barriers

77. As of the just after the proposed Eviction date, June 30, 2022, the Region averaged 31 open beds in the adult Emergency Shelter System.⁵⁶
78. The Encampment at that time was approximately 74 tents⁵⁷ and approximately 63 residents.⁵⁸

⁵¹ Exhibit “O” Affidavit of Lynn Kubis, affirmed August 31, 2022, **Responding Record, Volume 1**, p. 98, para. c

⁵² Exhibit “O” Affidavit of Lynn Kubis, affirmed August 31, 2022, **Responding Record, Volume 1**, p 115

⁵³ Exhibit “O” Affidavit of Lynn Kubis, affirmed August 31, 2022, **Responding Record, Volume 1**, p 115

⁵⁴ Exhibit “O” Affidavit of Lynn Kubis, affirmed August 31, 2022, **Responding Record, Volume 1**, p 115

⁵⁵ Exhibit “O” Affidavit of Lynn Kubis, affirmed August 31, 2022, **Responding Record, Volume 1**, p 115

⁵⁶ Supplementary Affidavit of Kelly-Anne Salerno, affirmed September 14, 2022, **Applicant’s Responding Record at pg 33, para 13 and at Exhibit “B”, pg 43.**

⁵⁷ Affidavit of Arran Rowles, affirmed July 6, 2022, **Application Record, Exhibit “B”, pg 464**

⁵⁸ Affidavit of Arran Rowles, affirmed July 6, 2022, **Application Record, Exhibit “B”, pg 469**

79. Ryan Pettipiere, the Region's Director of Housing, was quoted in a media article on July 13, 2022 as saying "if the entire current unsheltered population showed up at an emergency shelter, we would not have enough beds".⁵⁹

80. Kelly-Anne Salerno in her cross examination made the following admissions:

- a. The current interim housing spaces have very little turnover of people. There are currently 2 interim housing sites, one at 139 University Avenue West which has 80 beds and is operated by the Working Centre and the Charles Street Interim Housing site operated by the House of Friendship which has 26 beds is the other interim housing site. Ms. Salerno indicated that there would be little chance of someone obtaining a bed at one of these sites if the person called the First Connect system to access shelter.⁶⁰
- b. The hotel/motel room system is largely for families and the capacity of that system is based on whether motels have empty space and is very dynamic and unpredictable.⁶¹
- c. Winter occupancy in the shelter system is typically higher every year and runs close to or at full capacity.⁶²
- d. The Region does not have enough Emergency Shelter capacity to accommodate the 1100 homeless individuals living in the Region at the time the application was commenced.⁶³
- e. The shelter occupancy numbers are not 100% accurate. Shelter beds are counted as full or empty in the morning and shelters have curfew times. If a person accessing shelter does

⁵⁹ Exhibit "N" Affidavit of Lynn Kubis, affirmed August 31, 2022, **Responding Record, Volume 1**, p 92

⁶⁰ Cross Examination of Kelly-Anne Salerno, Transcript Brief of the Applicant, TAB 16, p. 738-739

⁶¹ Cross Examination of Kelly-Anne Salerno, Transcript Brief of the Applicant, TAB 16, p. 761, para 134

⁶² Cross Examination of Kelly-Anne Salerno, Transcript Brief of the Applicant, TAB 16, p. 742-743

⁶³ Cross Examination of Kelly-Anne Salerno, Transcript Brief of the Applicant, TAB 16, p. 747, para 95-96

not show up before the curfew time, that bed would be counted as empty even though staff would not give the bed to anyone if the person was staying for a few days.

The conditions at the Encampment/failure to mitigate risks

81. The Region's risk assessments identified a number of problems and risks at the Encampment.

However, the Region failed to mitigate the identified risks and failed to take steps to protect the health and safety of the Encampment Residents. The Region had the ability to make the Encampment safer for Encampment residents but did not take all reasonable steps to do so.

82. The Public Health inspections noted rat activity as a source of concern at the Encampment on a number of occasions. In response, the Region contracted with Abell Pest Control to set rat traps and bait at the property.⁶⁴

83. A map provided in answer to an undertaking shows that the rat traps and bait were only placed on the border of the Encampment with the adjacent private property and along the back border of the private property. No traps or bait was placed within the Encampment or around the other three sides of the perimeter of the Encampment property.⁶⁵

84. It appears from the evidence that the Region was more concerned about preventing the rats from being on the neighbouring property than controlling the rat infestation at the Encampment.

85. Another example of the failure to mitigate known risks is with respect to fire concerns. Public Health Reports identified the presence of fire risks at the Encampment. When questioned about those risks, Chris Komorowski said he referred the task of contacting fire prevention to other regional staff including Arran Rowles.⁶⁶

⁶⁴ Exhibit "A", Affidavit of Chris Komorowski (June 28, 2022), **Application Record**, pp. 425-433

⁶⁵ Cross Examination of Chris Komorowski, **Answer to Undertaking 2**

⁶⁶ Transcript of Cross Examination of Chris Komorowski (Oct. 4, 2022) p.29, paras 114-122

86. When Arran Rowles was asked about who would have had contact with fire prevention, she advised that Chris Komorowski would be the person who had the contacts with fire prevention.⁶⁷
87. With respect to the problems with feces on the Encampment site, there is evidence that Encampment residents were barred from using the washrooms at St. John's Kitchen's for extensive periods of time without alternative options being provided. This was in the timeframe prior to the installation of the portable toilets at the Encampment.⁶⁸

PART IV- ISSUES and ARGUMENT

88. The Encampment Residents will address the following issues in this factum:
- a. Infringement of S. 7 of the Charter
 - b. Infringement of s. 15 (1) of the Charter
 - c. Section 1 of the Charter
 - d. Is the Region entitled to a statutory injunction pursuant to s. 440 of the Municipal Act?

a. Section 7 and History of "Right to Shelter" Cases

89. Section 7 of the Canadian Charter of Rights and Freedoms (the "*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.

90. Establishing a breach of s. 7 of the *Charter* involves a two-step assessment. First, claimants must prove that the impugned laws deprive them of the right to life, liberty, or security of the person.

⁶⁷ Transcript of Cross Examination of Arran Rowles (Oct.3, 2022) p.26, line 3

⁶⁸ Exhibit "M", Affidavit of Lynn Kubis (Aug. 31, 2022) p.89

Second, claimants must show that any such infringements are not in accordance with the principles of fundamental justice.⁶⁹ Three primary principles of fundamental justice have emerged from the jurisprudence: arbitrariness, overbreadth, and gross disproportionality.⁷⁰

91. The history of the evolving s.7 case law regarding the right to shelter is succinctly summarized in *Bamberger v. Vancouver (Board of Parks and Recreation)*.⁷¹ In the seminal decision in *Victoria (City) v. Adams* Ross J. found a bylaw prohibiting homeless persons from erecting temporary shelters in Victoria parks infringed their right to life, liberty, and security of the person, as guaranteed by s. 7 of the Charter.⁷² In this case, which was upheld by the Court of Appeal with slight refinement to the order, there were inadequate indoor shelter spaces to accommodate those experiencing homelessness.⁷³ In *Adams* the constitutional right to shelter oneself was circumscribed in two respects: (1) the right is exercisable when the number of homeless outnumbered the available indoor sheltering spaces, and (2) the right to erect temporary shelter is confined to overnight hours. In *Adams* and in many right to shelter cases, the land at issue was a public park, which is different than the land in dispute here.

92. In *Bamberger*, Kirchener J. writes that the basic constitutional right as framed in *Adams* has remained largely unchanged. However, “it is now recognized that it is not just the number of available indoor sheltering spaces that frames the right but also whether those spaces are truly accessible to those sheltering in parks. [Emphasis in Original]”⁷⁴ Kirchener J. cites *Shantz* as follows:

⁶⁹ *Carter v. Canada (Attorney General)*, [2015 SCC 5](#) (CanLII), [2015] 1 SCR 331 paras. 54 and 55 [“*Carter*”]

⁷⁰ *Carter*, at para. 72.

⁷¹ *Bamberger v. Vancouver (Board of Parks and Recreation)*, [2022 BCSC 49](#) from paras 11-20 [“*Bamberger*”]

⁷² *Victoria (City) v. Adams*, [2008 BCSC 1363](#) [“*Adams BCSC*”]

⁷³ *Victoria (City) v. Adams*, [2009 BCCA 563](#), para 166 [“*Adams BCCA*”]

⁷⁴ *Bamberger*, para 15.

Given the personal circumstances of the City's homeless, the shelter spaces that are presently available to others in the City are impractical for many of the City's homeless. They simply cannot abide by the rules required in many of the facilities that I have discussed above, and lack the means to pay the required rents at others.⁷⁵

93. More recently, in *Stewart*, Hinkson C.J.S.C. stated:

It is apparent that very few of the emergency shelter beds are low barrier, and it appears that many of the homeless persons in the City are ineligible to stay in at least some of the shelters. While the City contends that the availability of 81 shelter beds in the City is sufficient to house the encampment occupants, I am not satisfied that these shelter spaces are in fact accessible to all of the occupants of the encampments. [Emphasis Added]⁷⁶

94. The question of sheltering in public parks during daytime hours has also arisen in the cases since *Adams*, but the jurisprudence, thus far, has not expressly extended the s. 7 *Charter* right to include it. In *Adamson No. 1*⁷⁷ and *Stewart*, Hinkson C.J.S.C. declined to grant injunctions to close specific homeless encampments and made no specific qualification that those sheltering in the parks could only do so during overnight hours. In *Adamson No. 1*, Hinkson C.J.S.C. did not squarely address the issue of daytime sheltering but nor did he tailor a remedy to require the encampment to be removed at sunrise.

95. In *Stewart*, Hinkson C.J.S.C. addressed the issue more directly, noting that the closure of shelter spaces due to COVID-19 resulted in scores of people having nowhere to shelter "in either the daytime or the nighttime."⁷⁸ He observed that these persons did not remove their tents or vacate the encampment each morning. In declining to grant the injunction, at least in respect of one encampment, he did not consider or grant a more limited injunction to restrict sheltering to

⁷⁵ *Abbotsford (City) v. Shantz*, [2015 BCSC 1909](#), para 82 [“*Shantz*”]

⁷⁶ *Prince George (City) v. Stewart*, [2021 BCSC 2089](#), paras 74 [“*Stewart*”]

⁷⁷ *British Columbia v. Adamson*, [2016 BCSC 584](#) [*Adamson No. 1*]

⁷⁸ *Stewart*, at para. 73

overnight hours. He took judicial notice of the fact that "Prince George can be very cold in the fall and winter, and that people with nowhere warm to stay must find ways of keeping warm to stay alive".⁷⁹

96. In *Bamberger*, Kirchner J. granted the application for judicial review made by those sheltering in a public park, and declined to grant the injunction which would have required those sheltering in the parks to remove their tents and belongings.⁸⁰

Section 7 of the *Charter* is engaged

97. Section 32(1) of the *Charter* reads as follows:

32. (1) This Charter applies

(a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and

(b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

98. The *Charter* applies to "government", "governmental entities" and "government action" including the actions of municipalities and municipal by-laws.⁸¹

99. The Bylaws at issue prohibit the need of the Encampment Residents to provide adequate shelter for themselves. The enforcement of the Code of Use By-law and related trespass notice clearly constitutes a state action and is the cause of the deprivation, which directly falls within the scope of s. 7.

⁷⁹ *Stewart*, at para. 64

⁸⁰ *Bamberger*, at para. 10

⁸¹ *Godbout*, paras. 50 to 51; *Charter*, ss.32(1)

100. Despite the Region's position, this case is not about the allocation of resources, it is about the constitutionality of a prohibition contained in a bylaw, a determination of which falls clearly within the role and responsibility of the courts.⁸²

101. Similarly, this case is not a claim about property rights. Although a number of the Respondents have stated that they prefer staying at the Encampment because it, *inter alia*, allows for easy access to a variety of services they regularly use, like the Soup Kitchen and the Consumption and Treatment site⁸³, they are not claiming a right to this property or this location. The Respondents prefer to stay at an Encampment in comparison to shelters for important reasons, and ultimately there is insufficient room for the Encampment Residents to stay in the shelters. Moreover, there are insufficient accessible spaces for the various needs of the Encampment Residents. Many of the Respondents have stated that they have been turned away from shelters in the past due to being at capacity.⁸⁴ The reality is that in Waterloo Region there is insufficient space for every person currently experiencing homelessness to seek shelter.

102. Given the current situation in the Region, some of the people experiencing homeless must sleep on public property, it is unavoidable. As stated by Ross J. in *Adams*:

Public properties are held for the benefit of the public, which includes the homeless. The government cannot prohibit certain activities on public property based on its ownership of that property if doing so involves a deprivation of the fundamental human right not

⁸² *Adams BCSC*, para 123

⁸³ Affidavit of Jordan Aylott (Aug. 15, 2022), **Responding Record, Vol. I, para 23, pg 274**; Affidavit of Drew Zekai (Aug. 16, 2022), **Responding Record, Vol. I, para 13, pg 333**; Affidavit of Kathryn Bulgin (Aug. 16, 2022), **Responding Record, Vol. I, paras 24-25, pg 280**; Affidavit of Jennifer Draper (Aug. 15, 2022), **Responding Record, Vol. I, para 24, pg 288**; Affidavit of Liam Flanagan (Aug. 11, 2022), **Responding Record, Vol. I, paras 11(a), pg 299**; Affidavit of Andrew Mandic (Aug. 11, 2022), **Responding Record, Vol. I, para 12, pg 304**; Affidavit of Lee-Anne Mason (Aug. 24, 2022), **Responding Record, Vol. I, para 15, pg. 309**; Affidavit of Albert Tugwood (Aug. 15, 2022), **Responding Record, Vol. I, para 22, pg. 322**; Affidavit of Michael Wosik (Aug. 11, 2022), **Responding Record, Vol. I, paras 15-16, pg. 328**.

⁸⁴ Affidavit of Kathryn (Katie) Bulgin (Aug. 16, 2022), **Responding Record, Vol. I, para 13, pg 278**; Affidavit of Liam Flanagan (Aug. 11, 2022), **Responding Record, Vol. I, para 7, pg 298**; Affidavit of Sean Simpall (Aug. 15, 2022), **Responding Record, Vol. I, para 9, pg 313**; Affidavit of Michael Wosik (Aug. 11, 2022), **Responding Record, Vol. I, para 9, pg 313**; Transcript of Cross Examination of Jordan Aylott (Oct. 4, 2022) pg. 19-20, paras 83-86

to be deprived of the ability to protect one's own bodily integrity: see *Committee for the Commonwealth of Canada v. Canada*, [1991] 1 S.C.R. 139; Jeremy Waldron, "Homelessness and Community" (2000) 50 U.T.L.J. 371.⁸⁵

103. The Encampment Residents are unable to comply with the Trespass Notice without continuing to violate the Code of Use By-Law on other Regional owned land, or similar such By-Laws for the Cities of Kitchener, Cambridge or Waterloo. The Encampment Residents equally do not have the right to camp on other privately owned land. This has the effect of making it impossible for people experiencing homeless in the Region to merely exist.

The enforcement of the Code of Use By-law and related trespass notice infringe s. 7 of the Charter

104. The effect of the Code of Use By-law and related trespass notice impair the ability of the Respondents and others living at the Encampment to adequately address their need for shelter. The result is to criminalize being homeless, causing a continual displacement of people experiencing homelessness, which has severe impacts on the health and safety of those experiencing homelessness.

105. In the present circumstances, where the number of people experiencing homelessness in the Region far exceeds available shelter space, it is a breach of s. 7 for the Region to use its Bylaws to prohibit people experiencing homelessness from taking steps to provide themselves with adequate shelter. This was recognized and accepted by the courts in *Adams* and *Shantz*.⁸⁶

106. Further, the spaces that are available in the Region's emergency shelter system are not accessible to the Encampment Residents for a variety of reasons. These reasons include, *inter alia*, that:

⁸⁵ *Adams BCSC*, para 131

⁸⁶ *Adams BCSC*; *Shantz*

- there are insufficient options for couples which forces survival partners to choose between separating in shelter or remaining together on the street,⁸⁷
- there are insufficient options for people with pets,⁸⁸
- the physical burden and toll of having to leave and re-enter the shelter every day with one's belongings,⁸⁹
- the uncertainty of knowing if a space will be available in the shelter on any given night,⁹⁰
- conflict with staff and other tenants, including service restrictions⁹¹
- issues with substances - either wanting to use and there being abstinence only rules and stigma, or wanting to abstain and being surrounded by people using⁹²

107. If the Code of Use By-law is enforced, the outcome is that the Encampment Residents are forced to move to other, potentially more remote locations, to tent (which would also be in contravention of the Bylaw) or to sleep rough on the street without a tent. The detrimental impacts of being forced into increasingly remote locations were discussed by Dr. Sereda a physician in London, Ontario. For twelve years her focus has been providing health care to unhoused and precariously housed people. In her evidence Dr. Sereda stated that remote locations create many

⁸⁷ Affidavit of Jennifer Draper (Aug. 15, 2022), **Responding Record, Vol. I, para 15, pg 286**; Affidavit of Albert Tugwood (Aug. 15, 2022), **Responding Record, Vol. I, para 13, pg. 319**; Exhibit "A" of Affidavit of Kelly-Anne Salerno (Sept. 14, 2022), **Applicant's Responding Record, pg 38** [Jordan Aylott stated "wants to access with spouse"], Affidavit of Dr. Sereda (August 26, 2022), **Responding Record, Vol. II, para 62-63, pgs. 29-30**

⁸⁸ Affidavit of Dr. Sereda (August 26, 2022), **Responding Record, Vol. II, para 64, pg. 30**

⁸⁹ Affidavit of Andrew Mandic (Aug. 11, 2022), **Responding Record, Vol. I, para 9, pg 303**; Affidavit of Sean Simple (Aug. 15, 2022), **Responding Record, Vol. I, para 9, pg 313**; Affidavit of Michael Wosik (Aug. 11, 2022), **Responding Record, Vol. I, para 9, pg 326-327**; Affidavit of Dr. Sereda (August 26, 2022), **Responding Record, Vol. II, para 67, pg. 32**

⁹⁰ Affidavit of Jordan Aylott (Aug. 15, 2022), **Responding Record, Vol. I, para 16, pg. 27**; Affidavit of Kathryn Bulgin (Aug. 16, 2022), **Responding Record, Vol. I, para 13, pg. 278**; Affidavit of Liam Flanagan (Aug. 11, 2022), **Responding Record, Vol. I, paras 7 & 11, pg. 298**; Affidavit of Sean Simple (Aug. 15, 2022), **Responding Record, Vol. I, para 9, pg 313**; Affidavit of Michael Wosik (Aug. 11, 2022), **Responding Record, Vol. I, para 9, pg 326-327**; Affidavit of Dr. Sereda (August 26, 2022), **Responding Record, Vol. II, para 65, pg 31**

⁹¹ Affidavit of Mark Duke (Aug. 11, 2022), **Responding Record, Vol. I, para 12-13, pg 293**; Affidavit of Liam Flanagan (Aug. 11, 2022), **Responding Record, Vol. I, para 9, pg. 298**; Affidavit of Andrew Zekai (Aug. 16, 2022), **Responding Record, Vol. I, para 9, pg 332-333**

⁹² Affidavit of Sean Simple (Aug. 15, 2022), **Responding Record, Vol. I, para 10, pg 313**; Affidavit of Albert Tugwood (Aug. 15, 2022), **Responding Record, Vol. I, para 17, pg 320**; Affidavit of Andrew Zekai (Aug. 16, 2022), **Responding Record, Vol. I, para 9, pg 332-333**; Affidavit of Dr. Sereda (August 26, 2022), **Responding Record, Vol. II, paras 48, 66 & 68, pg. 18, 31-33**; Affidavit of Dr. Kaitlin Schwan (August 31, 2022), **Responding Record, Vol. II, para 15 & 20 ,pg 103 & 106**

barriers including “mak[ing] it difficult to get to pharmacy, get to probation, make housing viewings, make medical appointments, access food programs, and attend court.”⁹³

108. The impugned provisions infringe each element of the s. 7 right: life, liberty, and security of the person. These deprivations violate the principals of fundamental justice in that they are overbroad and grossly disproportionate.

The impugned provisions deprive Encampment residents, in extreme situations, of life

109. The section 7 right to life is engaged where “the law or state action imposes death or an increased risk of death on a person, either directly or indirectly”.⁹⁴ Further, a deprivation is made out where the law creates a risk to safety by preventing access to safety enhancing measures.⁹⁵ Ross J. concluded in *Adams* “the ability to provide oneself with adequate shelter is a necessity of life that falls within the ambit of the s. 7 provision “life”.⁹⁶ The overwhelming evidence on this application is that the effect of the impugned provisions make Encampment residents unsafe.⁹⁷ Undoubtedly, the enforcement of the impugned provisions increase the risk of serious harm to the Respondents, including death.⁹⁸

110. As noted by Martha Jackman in her article, "The Protection of Welfare Rights Under the *Charter*" (1988) 20 *Ottawa Review* 257 at 326:

... [A] person who lacks the basic means of subsistence has a tenuous hold on the most basic of constitutionally guaranteed human rights, the right to life, to liberty, and to personal security. Most, if not all, of the rights and freedoms set out in the *Charter* presuppose a person who has moved beyond the basic struggle for existence. The *Charter* accords rights which can only be fully enjoyed by people who

⁹³ Affidavit of Dr. Sereda (August 26, 2022), **Responding Record, Vol. II, para 34, pg 13**

⁹⁴ *Carter*, para. 62; *Canada (Attorney General) v. PHS Community Services Society*, [2011 SCC 44](#) (CanLII), para. 93 [“*PHS*”]

⁹⁵ *PHS*, para 93

⁹⁶ *Adams BCSC*, para 145

⁹⁷ *Sereda* paras 41-49 (pages 15-19) and paras 57 & 58, pages 21-27

⁹⁸ *Black et. al. v. City of Toronto*, [2020 ONSC 6398](#) (CanLII), paras. 50 to 52; *Adams BCSC*, paras. 143 to 145; aff’d *Adams BCCA*; *Shantz*, para. 132

are fed, are clothed, are sheltered, have access to necessary health care, to education, and to a minimum level of income. As the United Church's brief to the Special Joint Committee declared: "other rights are hollow without these rights".⁹⁹

111. The most common themes of harm associated with encampment evictions include:

- a) Environmental/weather related ailments – frost bite, heat stroke, burns
- b) Loss of survival possessions – tents
- c) Food Insecurity and starvation
- d) Increased substance use
- e) Fatal overdose
- f) Medical destabilization
- g) Increased Sexual and physical violence¹⁰⁰

112. Survival items like tents, cooking and warmth tools, and clothing and “are almost always lost during encampment evictions and clearing”.¹⁰¹ When encampments are cleared, people are “at high risk of losing” those survival possessions, which “directly negatively impacts their health”.¹⁰²

113. “The weather in November is harsh and I’m not sure where I will go [if evicted].”¹⁰³ In *Stewart*, Hinkson C.J.S.C. took judicial notice of the fact that “Prince George can be very cold in the fall and winter, and that people with nowhere warm to stay must find ways of keeping warm to stay alive”.¹⁰⁴ It is the Respondent’s submission that the court should take similar judicial notice here.

114. The loss of survival items, results in more acute health conditions such as frostbite or exposure. The loss of medications creates challenges in managing chronic and acute health conditions.¹⁰⁵ Further, evictions exacerbate mental health conditions such as depression, anxiety,

⁹⁹ *Adams BCSC*, para 143

¹⁰⁰ Affidavit of Dr. Sereda (August 26, 2022), **Responding Record, Vol. II, para 56, pg 21-22**

¹⁰¹ Affidavit of Dr. Sereda (August 26, 2022), **Responding Record, Vol. II, para 23 & 44, pg 9 & 17**

¹⁰² Affidavit of Dr. Sereda (August 26, 2022), **Responding Record, Vol. II, para 23 & 24, pg 10**

¹⁰³ Affidavit of Andrew Mandic (Aug. 11, 2022), **Responding Record, Vol. I, para 15, pg. 305**

¹⁰⁴ *Stewart*, para 19

¹⁰⁵ Affidavit of Dr. Sereda (August 26, 2022), **Responding Record, Vol. II, para 44, pg 17**

PTSD and panic disorders.¹⁰⁶ As Dr. Sereda explains, “People who have nowhere safe to sleep commonly have profound sleep deprivation, which can impact physical and mental health, but also contribute to greater risk of death through mechanisms like overdose”.¹⁰⁷

The impugned provisions deprive Encampment residents of the right to liberty and security of the person

115. A liberty infringement exists where the state has invaded “the irreducible sphere of personal autonomy wherein individuals may make inherently private choices”.¹⁰⁸ The impugned provisions impact personal autonomy so fundamentally that “by their very nature, they implicate basic choices going to the core of what it means to enjoy individual dignity and independence.”¹⁰⁹

116. Security of the person includes the right to control one’s bodily integrity and make inherently personal and private decisions.¹¹⁰ In *Black*, Schabas J. noted that concerns regarding the right to security of the person “clearly arise in this case”.¹¹¹ Similarly, the Bylaws if enforced require the Encampment Residents to remove their tents and other items, leaving the encampment where they live and feel relatively safe and a sense of stability.¹¹²

117. The eviction will increase the trauma and potential for physical and mental harm experienced by the Encampment Residents, who are already vulnerable and suffer from ongoing trauma and harm to their health as a result of being unhoused. The act of evicting the Encampment Residents could cause an increased risk of conflict with the law and the potential to be incarcerated.

¹⁰⁶ Affidavit of Dr. Sereda (August 26, 2022), **Responding Record, Vol. II, para 45**

¹⁰⁷ Affidavit of Dr. Sereda (August 26, 2022), **Responding Record, Vol. II, paras 6 & 21, pgs 3 & 9**

¹⁰⁸ *Godbout*, at para. 66

¹⁰⁹ *Godbout*, at para. 66; *R. v. Malmo-Levine*; *R. v. Caine*, [2003 SCC 74](#) (CanLII), [2003] 3 SCR 571, at para. 85

¹¹⁰ *R v Morgentaler*, [\[1988\] 1 SCR 30](#), at para 56; *Carter*, at para 64.

¹¹¹ *Black*, at para 46

¹¹² Affidavit of Kathryn (Katie) Bulgin (Aug. 16, 2022), **Responding Record, Vol. I, para 19, pg 279**; Affidavit of Liam Flanagan (Aug. 11, 2022), **Responding Record, Vol. I, para 11(c), pg 299**; Affidavit of Lee-Anne Mason Aug. 24, 2022), **Responding Record, Vol. I, para 16, pg 309**; Affidavit of Albert William Patrick (“Will”) Tugwood (Aug. 15, 2022), **Responding Record, Vol. I, para 21, pg 321-322**; Affidavit of Michael Wosik (Aug. 11, 2022), **Responding Record, Vol. I, para 13, pg 327**; Affidavit of Andrew Zekai (Aug. 16, 2022), **Responding Record, Vol. I, para 16, pg 334**;

118. Creating shelter to protect oneself from the elements and allowing for privacy is a matter critical to an individual's dignity and independence. Courts have held that the s. 7 *liberty* interest is engaged when a local government interferes with the "fundamentally important personal decision to shelter oneself in circumstances *where there is no practical shelter alternative.*"¹¹³ This includes the requirement that those shelter spaces be truly accessible to those requiring them.

119. Some of the Respondents were offered emergency shelter largely after the eviction notice was already posted. The Region is attempting to characterize the Respondents as "choosing" or "preferring" to live at the Encampment, ignoring that the minimal available shelter spaces are not truly accessible for many of the Respondents. Many of the Encampment Residents either live with their survival partners,¹¹⁴ have service restrictions at various shelters¹¹⁵, suffer from disabilities including mental health, physical disabilities and addiction¹¹⁶, or a combination of all of the above. The existing emergency shelter system cannot accommodate the Encampment Residents needs and is not truly low barrier.¹¹⁷

¹¹³ *Shantz*, at para 188; *Adams BCCA*, at para 109

¹¹⁴ Affidavit of Jennifer Draper (Aug. 15, 2022), **Responding Record, Vol. I, para 8, pg 284**; Affidavit of Albert Tugwood (Aug. 15, 2022), **Responding Record, Vol. I, para 7, pg 318**; Affidavit of Kathryn Bulgin (Aug. 16, 2022), **Responding Record, Vol. I, para 19, pg 279**; Exhibit "A" of Affidavit of Kelly-Anne Salerno (Sept. 14, 2022), **Applicant's Responding Record, pg 38** [Jordan Aylott stated "wants to access with spouse"]

¹¹⁵ Affidavit of Liam Flanagan (Aug. 11, 2022), **Responding Record, Vol. I, para 9, pg 298**; Affidavit of Andrew Zekai (Aug. 16, 2022), **Responding Record, Vol. I, para 9, pgs 332-333**

¹¹⁶ Affidavit of Jordan Aylott (Aug. 15, 2022), **Responding Record, Vol. I, para 8, pg 272**; Affidavit of Kathryn Bulgin (Aug. 16, 2022), **Responding Record, Vol. I, para 9, pg 278**; Affidavit of Jennifer Draper (Aug. 15, 2022), **Responding Record, Vol. I, para 10, pg 285**; Affidavit of Mark Duke (Aug. 11, 2022), **Responding Record, Vol. I, para 5, pg 292**; Affidavit of Liam Flanagan (Aug. 11, 2022), **Responding Record, Vol. I, para 13(a), pg 299**; Affidavit of Andrew Mandic (Aug. 11, 2022), **Responding Record, Vol. I, para 5, pg 303**; Affidavit of Lee-Anne Mason (Aug. 24, 2022), **Responding Record, Vol. I, para 5, pg. 308**; Affidavit of Sean Simple (Aug. 15, 2022), **Responding Record, Vol. I, para 6, pg 313**; Affidavit of Michael Wosik (Aug. 11, 2022), **Responding Record, Vol. I, para 6, pg. 326**; Affidavit of Andrew Zekai (Aug. 16, 2022), **Responding Record, Vol. I, para 6, pg 332**

¹¹⁷ Affidavit of Sara Escobar (August 29, 2022), **Responding Record, Vol. II, paras 8 & 14-15, pgs 281-283**

120. Regarding the use of substances, the evidence is clear that rules vary from shelter to shelter and, there are inconsistent practices around substance use in shelters. Substance use may be a reason for a shelter to restrict service.¹¹⁸ Sara Escobar writes “For example, I have observed substance use that was tolerated at a shelter and also have seen examples of substance use in the same shelter that resulted in a service restriction of a year”.¹¹⁹ It is estimated that 95% of Encampment Residents are substance dependant.¹²⁰ This estimation aligns with Dr. Sereda’s clinical experience, and is also supported by the Respondents evidence where 10 of the 11 Respondents indicate they have current or past substance use issues.¹²¹

121. Emergency shelters that are abstinence based create critical health problems. The inconsistency in shelter practice regarding substance use creates uncertainty for residents and a culture of hiding drug use to avoid eviction and service restrictions. In a 2020 survey conducted by the Waterloo Region Crime Prevention Council of people who regularly consume drugs and lack stable housing, 91% of the participants indicated that permitting substance use on site in shelters is essential or important. One participant is quoted as saying “Many of my friends have died in shelters. They didn’t have to if they didn’t have to hide their drug use”.¹²² The significantly

¹¹⁸ Affidavit of Sara Escobar (August 29, 2022), **Responding Record, Vol. II, paras 10 & 19, pgs 282 & 284**

¹¹⁹ Affidavit of Sara Escobar (August 29, 2022), **Responding Record, Vol. II, paras 19, pg 284**

¹²⁰ Affidavit of Dr. Sereda (Aug. 26, 2022), **Responding Record, Vol. II, pp. 18 and 19, paras. 48 and 49**

¹²¹ Affidavit of Jordan Aylott (Aug. 15, 2022), **Responding Record, Vol. I, para 8, pg 272**; Affidavit of Kathryn Bulgin (Aug. 16, 2022), **Responding Record, Vol. I, para 9, pg 278**; Affidavit of Jennifer Draper (Aug. 15, 2022), **Responding Record, Vol. I, para 10, pg 285**; Affidavit of Mark Duke (Aug. 11, 2022), **Responding Record, Vol. I, para 5, pg 292**; Affidavit of Liam Flanagan (Aug. 11, 2022), **Responding Record, Vol. I, para 13(a), pg 299**; Affidavit of Andrew Mandic (Aug. 11, 2022), **Responding Record, Vol. I, para 5, pg 303**; Affidavit of Lee-Anne Mason (Aug. 24, 2022), **Responding Record, Vol. I, para 5, pg. 308**; Affidavit of Sean Simple (Aug. 15, 2022), **Responding Record, Vol. I, para 6, pg 313**; Affidavit of Michael Wosik (Aug. 11, 2022), **Responding Record, Vol. I, para 6, pg. 326**; Affidavit of Andrew Zekai (Aug. 16, 2022), **Responding Record, Vol. I, para 6, pg 332**

¹²² Exhibit “V” of Affidavit of Lynn Kubis (Aug. 31, 2022), **Responding Record, Vol. I, pg 258**

limited “choice” to shelter at the encampment rather than in emergency shelters is because the spaces available (when they are available) are not accessible to the Respondent’s needs.

The deprivations are not in accordance with the principles of fundamental justice

122. Breaches of the Encampment Residents’ s. 7 *Charter* rights to life, liberty and security of the person are not in accordance with the principles of fundamental justice. Specifically, these breaches are grossly disproportionate to any legitimate State interest.

123. The analysis of arbitrariness, overbreadth and gross disproportionality is “qualitative not quantitative”, meaning its impact on one person suffices to establish a breach.¹²³ Similarly, at this stage of the analysis courts are not concerned with competing social interests or public benefits that might be conferred by the impugned law or State action. Any competing moral claims and societal benefits must instead be considered at the justification stage under section 1 of the *Charter*.¹²⁴

124. The Respondents accept and adopt the definition of the Objective of the Code of Use Bylaw of *amicus curiae*, as follows:

The preamble to the Code of Use By-Law makes clear that its purpose is to regulate the conduct of persons on buildings, grounds and public transportation vehicles owned or operated by the Region (“Designated Premises”) in order to prevent (1) physical damage to the Designated Premises, (2) disruption to Regional operations, or (3) the use and enjoyment of Designated Premises by other persons.¹²⁵

Breaches of the rights to life, liberty and security of the person are overbroad

¹²³ *Canada (Attorney General) v Bedford*, [2013 SCC 72](#), at para 123 [“*Bedford*”]

¹²⁴ *Carter*, at para. 80

¹²⁵ By-Law Number 13-050, *A By-law Respecting the Conduct of Persons Entering Upon Buildings, Grounds and Public Transportation Vehicles Owned or Occupied by the Regional Municipality of Waterloo* (“Code of Use By-Law”), Preamble, Exhibit “A” to the Affidavit of Ellen McGaghey (July 5, 2022), **Application Record, p. 18**. See also: Affidavit of Ellen McGaghey (July 5, 2022), **Application Record, p. 8**

125. The overbreadth analysis asks whether a law that takes away rights in a way that generally supports the object of the law goes too far by denying the rights of some individuals in a way that bears no relation to the object.¹²⁶ Whether a law is overbroad within the meaning of s. 7 turns on the relationship between the law’s purpose and its effect.¹²⁷ The focus of the analysis “is not on broad social impacts, but on the impact of the measures on the individuals whose life, liberty, or security of the person is trammelled.”¹²⁸
126. In *Adams*, Ross J. applied the test in *Heywood* for overbreadth and the Court of Appeal approved of the use this test.¹²⁹ If the State, in pursuing a legitimate objective, uses means which are broader than is necessary to accomplish that objective, the principles of fundamental justice will be violated. In both *Adams* and *Shantz*, the impugned bylaws which prohibit erecting shelter were found to be overbroad by the courts.¹³⁰
127. A narrower prohibition would be effective. This is evident by the fact that the Region created an Encampment Policy to supplement the impugned Code of Use By-Law. The Bylaws alone go too far and prohibit any form of shelter to be erected regardless of the circumstances. The Bylaw has the potential to punish (in a manner that “d[oes] not reflect the dignity of those living at the encampment”)¹³¹, everyone who erects shelter when there is *no reasonable practicable shelter alternative*. The impugned Bylaws go too far by sweeping conduct into its ambit that bears no relation to its objective.

¹²⁶ *Bedford*, at paras 101, 112-113

¹²⁷ *R v Moriarity*, [2015 SCC 55](#), at para 24; *R v Safarzadeh-Markhali*, [2016 SCC 14](#) at para 24

¹²⁸ *Carter*, at para 85

¹²⁹ *Shantz*, at para 202

¹³⁰ *Shantz*, at para 203; *Adams BCSC*, at para 194

¹³¹ Exhibit “A” to the Affidavit of Lynn Kubis (Aug. 31, 2022), **Responding Record, Vol. I, pp. 7 to 11**

Gross Disproportionality

128. The Respondents accept and adopt the submissions made by *amicus curiae* that the breaches are grossly disproportionate to the objectives.

International Obligations

129. The interpretation of sections 7 and 15(1) of the *Charter* must comply with Canada's international legal obligations including under the *International Covenant of Economic, Social and Cultural Rights*.

130. The Respondents adopt the submissions made by *amicus curiae* regarding International Obligations pursuant to *Charter* interpretation.

b. Section 15(1) of the Charter

131. The effect of the impugned Code of Use By-law provisions as they relate to the eviction of the Encampment Residents is to have a disproportionate adverse impact on women, particularly women who have intersecting protected grounds of race and disability.

132. Section 15(1) of the *Charter* states:

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

133. Section 15 is an expression of the commitment to “the equal worth and human dignity of all persons.”¹³² It stems from our “awareness that certain groups have been historically

¹³² *Eldridge v British Columbia (Attorney General)*, [\[1997\] 3 SCR 624](#) [“*Eldridge*”], at para 54

discriminated against, and that the perpetuation of such discrimination should be curtailed.”¹³³ The guarantee of equality is one that is substantive, rather than formal.¹³⁴

134. The Supreme Court of Canada has evolved its understanding of equality beyond formal equality to substantive equality. Unlike a formal equality analysis, which uses mirror comparator groups to assess the impact of a law on a claimant, a substantive equality analysis requires attention to the “full context of the claimant group’s situation”, to the “actual impact of the law on that situation”, and to the “persistent systemic disadvantages [that] have operated to limit the opportunities available” to that group’s members.”¹³⁵

135. To prove a prima facie violation of s. 15, the onus is on the claimant to establish that:

- a. The impugned law, on its face or in its impact, creates a distinction based on enumerated or analogous grounds;
- b. and the impugned law imposes burdens or denies a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating the disadvantage of the group.¹³⁶

136. It is unnecessary for the moving parties to prove that the discrimination affects all members of a protected group in the same manner. Policies or laws that do not affect all members of a protected group may still be discriminatory.¹³⁷ What must be determined is whether the distinction raised by the moving parties relates to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations or disadvantages on such individual or group not

¹³³ *Quebec (Attorney General) v A*, [2013 SCC 5](#) [“*Quebec v A*”], at para 332.

¹³⁴ *R v Kapp*, [2008 SCC 41](#) [“*Kapp*”], at para 15.

¹³⁵ *Fraser v Canada (Attorney General)*, [2020 SCC 28](#), at para. 42 [“*Fraser*”], citing *Withler v Canada (Attorney General)*, [2011 SCC 12](#) at para. 2.

¹³⁶ *Kahkewistahaw First Nation v Taypotat*, [2015 SCC 30](#), at paras 19-20; Québec (Procureure générale) c. Alliance du personnel professionnel et technique de la santé et des services sociaux, [2018 SCC 17](#), at para 25; *Fraser*, at para 27

¹³⁷ *Fraser*, at paras. 72-75

imposed upon others, or which withholds or limits access to opportunities, benefits and advantages available to other members of society.¹³⁸

The provisions discriminate on the basis of gender, with intersecting grounds of race and disability

137. We support the submissions of the Intervenor that the rights in s. 7 must be interpreted through the lens of s. 15, and suggest that these s. 15 submissions should also inform this courts analysis of the s. 7 arguments.

138. If a law has a disproportionate impact on members of a protected group, the first step of the s. 15 analysis has been met.¹³⁹ At the first stage of this test, the applicant must demonstrate that the impugned law or state action imposes differential treatment based on protected grounds, either explicitly or through adverse impact.¹⁴⁰ To evaluate the adverse impact of an impugned law or policy, courts are to look beyond the facially neutral criteria on which the law or policy is based and examine whether, in practice, the law or policy operates as “built-in headwinds” or fails to provide accommodation for members of protected groups.¹⁴¹

139. In *Fraser*, Justice Abella indicated the two types of evidence that are especially helpful in proving that the law has a disproportionate impact on members of a protected group is firstly, evidence about the situation of the claimant group, and secondly, evidence about the results of the law.¹⁴² We submit that there is ample evidence in both of these categories for the Respondents.

¹³⁸ *Law Society of British Columbia v. Andrews*, [1989] 1 S.C.R. 143, at para. 19; *Fraser*, at para 70

¹³⁹ *Fraser*, at para 52

¹⁴⁰ *Fraser*, at para 81

¹⁴¹ *Fraser*, at paras 53- 54

¹⁴² *Fraser*, at para 56

140. The provisions of the Code of Use By-Law are facially neutral, but in practice they disproportionately affect people on the basis of gender with intersecting grounds of race and disability. The Code of Use By-Law places women and gender-diverse people experiencing homelessness at a heightened risk of gender-based violence, harassment and abuse when they are displaced. The effect of the provisions is to displace women from the Encampment and restrict or hinder their ability to be safe (acting as “headwinds” in the parlance of *Fraser* 2020).
141. When women and gender-diverse people experiencing homelessness are displaced/evicted they are forced to either attempt to access a space within the emergency shelter system (potentially including the co-ed spaces), shelter outdoors in potentially more remote locations (like the bush), or re-establish potentially harmful domestic relationships to seek shelter (these are situations commonly associated with hidden-homelessness such as couch surfing).
142. In the Region’s 2021 Point in Time Count, 30% of the 609 participants identified as women, and 10% identified as trans, two-spirit or non-binary.¹⁴³ Of the 53 Encampment residents surveyed on July 27 by the Region, 18 identified as women, 1 identified as trans, 1 identified as non-binary, and 2 people preferred not to say.¹⁴⁴ The Region only has 64 Emergency Shelter beds in a facility that is exclusively designed for women.¹⁴⁵
143. The reality of a lack of shelter beds for women and gender diverse persons is sadly not unique to Waterloo Region, but is reflected across the nation. Throughout Canada, there are fewer women-specific emergency shelter beds – 68% of shelter beds are co-ed or dedicated to men, compared to 13% dedicated to women. Men’s shelters also have more than double the number of

¹⁴³ Exhibit “P” of Affidavit of Lynn Kubis (Aug. 31, 2022), **Responding Record, Vol. I, pg. 114-116**

¹⁴⁴ Survey conducted by the Region on July 27, 2022 referred to in Cross examination of Kelly-Anne Salerno and attached with undertakings

¹⁴⁵ Exhibit “C” in Affidavit of Kelly-Anne Salerno (July 6, 2022), **Application Record, pg. 506**

beds that women’s emergency shelters have (4,280 beds compared to 2,092 beds).¹⁴⁶ Women and gender diverse people reported significant barriers to accessing emergency services, with almost a third unable to access a bed when they needed one.¹⁴⁷

144. Research indicates that women, transwomen, and gender-diverse persons commonly experience harassment or violence within large mainstream homeless shelters, particularly co-ed and congregate shelters.¹⁴⁸ In a study of women experiencing homelessness in Waterloo Region, 73% of respondents stated they felt unsafe in co-ed shelters and so avoided them. One participant shared about the violence they faced while staying in the co-ed shelter “I went there once and the first night I was there I was unfortunate to be raped.”¹⁴⁹ For some participants, the women’s emergency shelter also felt unsafe, which led them to choose camping and other rough sleeping options instead.¹⁵⁰ This is the reality of our female clients who noted experiencing assaults while staying in the women’s only shelter.¹⁵¹

145. In the research conducted by Dr. Kaitlin Schwan, overwhelmingly women state that residing in an encampment is a *safer* option than the other options available to them (e.g., accessing a shelter, returning to an abusive relationship, etc.).¹⁵² Dr. Schwan writes:

My engagements with women residing in encampments across Ontario suggest that encampments can buffer women from exposure to violence, harassment, or abuse that they might

¹⁴⁶ Affidavit of Dr. Kaitlin Schwan (Aug 31, 2022), **Responding Record, Vol. II, para 26, pg 108**

¹⁴⁷ Exhibit “B”, Affidavit of Dr. Kaitlin Schwan (Aug 31, 2022), **Responding Record, Vol. II, pgs 148-207**; Affidavit of Dr. Kaitlin Schwan (Aug 31, 2022), **Responding Record, Vol. II, para 5(b), pg 98**

¹⁴⁸ Affidavit of Dr. Kaitlin Schwan (Aug 31, 2022), **Responding Record, Vol. II, para 21, pg 107**

¹⁴⁹ Affidavit of Dr. Kaitlin Schwan (Aug 31, 2022), **Responding Record, Vol. II, para 18, pg 105**; Exhibit “C” of Affidavit of Dr. Kaitlin Schwan (Aug 31, 2022), **Responding Record, Vol. II, pg 229**

¹⁵⁰ Affidavit of Dr. Kaitlin Schwan (Aug 31, 2022), **Responding Record, Vol. II, para 18, pg 105**

¹⁵¹ Affidavit of Jennifer Draper (Aug. 15, 2022), **Responding Record, Vol. I, para 13, pg 285**; Affidavit of Lee-Anne Mason (Aug. 24, 2022), **Responding Record, Vol. I, para 12, pg. 309**

¹⁵² Affidavit of Dr. Kaitlin Schwan (Aug 31, 2022), **Responding Record, Vol. II, para 28, pg 109**

otherwise experience when residing outdoors alone, or within situations of hidden homelessness. For example, I have met numerous women encampment residents in Toronto who described how their relationships with other people living in encampments was a protective factor because they could ‘look out for each other,’ warn each other of dangerous or exploitive men, watch over each other’s tents and possessions, and remain with partners or pets (e.g., dogs) who provided physical safety.¹⁵³

146. This is also the opinion of Dr. Sereda who writes “Encampments also decrease risk of sexual violence because community members look out for each other.”¹⁵⁴ This is echoed in the evidence of our female clients.¹⁵⁵

147. Dr. Sereda has provided numerous examples of female patients supported by her team who experienced sexual violence as a result of previous encampment evictions, including a patient who “was gang raped while sleeping behind a dumpster, and then subsequently raped multiple more times.”¹⁵⁶ As well as a patient who “after numerous encampment evictions was forcibly sexually trafficked for 18 months.”¹⁵⁷ Dr. Sereda also notes that for women living rough “going to sleep is a dangerous practice” and that women can “can use crystal meth to stay awake for days, to reduce their risk of sexual assault.”¹⁵⁸

¹⁵³ Affidavit of Dr. Kaitlin Schwan (Aug 31, 2022), **Responding Record, Vol. II, para 30, pg 110**

¹⁵⁴ Affidavit of Dr. Sereda (Aug. 26, 2022), **Responding Record, Vol. II, para 60 (c), pg 28**

¹⁵⁵ Affidavit of Kathryn Bulgin (Aug. 16, 2022), **Responding Record, Vol. I, paras 19 & 28, pgs 279 & 281 280**; Affidavit of Jennifer Draper (Aug. 15, 2022), **Responding Record, Vol. I, paras 22-23, pg 288**

¹⁵⁶ Affidavit of Dr. Sereda (Aug. 26, 2022), **Responding Record, Vol. II, para 57 (g), pg 24**

¹⁵⁷ Affidavit of Dr. Sereda (Aug. 26, 2022), **Responding Record, Vol. II, para 58 (e), pg 26**

¹⁵⁸ Affidavit of Dr. Sereda (Aug. 26, 2022), **Responding Record, Vol. II, para 37, pg 14**

148. The Code of Use By-Laws act as a headwind; in displacing the Encampment force women and gender diverse persons into further danger and precarity caused by the failure of the shelter system to provide safe spaces.

The provisions exacerbate and perpetuate disadvantage

149. In the second step of the s. 15 analysis, the court must look at the harm that has been caused to the affected group, which may include: economic exclusion or disadvantage, social exclusion, psychological harms, physical harms, or political exclusion, viewed in light of any historical or systemic disadvantages faced by the claimant group.¹⁵⁹ The analysis must be “contextual, not formalistic, grounded in the actual situation of the group and the potential of the impugned law to worsen their situation.”¹⁶⁰

150. A key marker of discrimination and denial of human dignity under subsection 15(1) is whether the affected individual or group has suffered from pre-existing disadvantage, vulnerability, stereotyping, or prejudice. Historic patterns of discrimination that have marginalized a group’s members or prevented them from participating fully in society raise the strong possibility that current differential treatment of the group may perpetuate these same discriminatory views.¹⁶¹

151. While the Respondents submit that this discrimination claim could be allowed on either ground of gender, race or disability, this analysis will focus on these intersecting grounds of discrimination because it presents a fuller picture of the historical disadvantage and stereotyping at play.

¹⁵⁹ *Fraser*, at para 76

¹⁶⁰ *Withler*, at paras 35-37

¹⁶¹ *Withler*, paras 66 and 38

152. Women experience disproportionate rates of deep poverty in comparison to men.¹⁶²

Women and gender diverse people experiencing homelessness also report “high exposure to trauma and violence, with 75% identifying as a survivor of trauma or abuse”.¹⁶³ Similarly, “79% of women and gender diverse people experiencing housing need or homelessness report having a disability. This group reports significant inequities and discrimination on the basis of ability, with severe consequences for many.”¹⁶⁴ Many women and gender diverse people who are experiencing homelessness, have intersecting grounds of race, Indigeneity and/or disability. They have been historically disadvantaged and the impugned provisions only serve to exacerbate and perpetuate that disadvantage.

153. Data from Statistics Canada, Employment and Social Development Canada, parliamentary reports, and municipal data and research consistently indicate that emergency shelters across the country are operating at (or over) capacity with a severe lack of gender-specific housing that meets the needs of women and gender diverse people.¹⁶⁵ As demand for shelter beds increases, women and gender diverse peoples face some of the greatest disadvantage.¹⁶⁶

154. The unfortunate reality of increased risks of gender based violence experienced by women and gender-diverse people experiencing homelessness is well documented in the literature cited by Dr. Schwan. The Report on NIMMIWG, states that in being displaced, attempting to relocate,

¹⁶² Affidavit of Dr. Kaitlin Schwan (Aug 31, 2022), **Responding Record, Vol. II, para 8, pg 100**

¹⁶³ Affidavit of Dr. Kaitlin Schwan (Aug 31, 2022), **Responding Record, Vol. II, para 5 (a), pg 98**

¹⁶⁴ Affidavit of Dr. Kaitlin Schwan (Aug 31, 2022), **Responding Record, Vol. II, para 5 (c), pg 99**

¹⁶⁵ Affidavit of Dr. Kaitlin Schwan (Aug 31, 2022), **Responding Record, Vol. II, para 11, pg 101**

¹⁶⁶ Affidavit of Dr. Kaitlin Schwan (Aug 31, 2022), **Responding Record, Vol. II, para 26, pg 108**

and moving from one place to another, Indigenous women, girls, and 2SLGBTQQIA people face significant risks for violence.¹⁶⁷ The report finds:

Seventeen existing reports spanning from 1991 to 2016 address this theme, with approximately 39 recommendations also calling for greater interjurisdictional action on this issue. These reports identify precarious housing and a lack of access to shelters as factors that contribute to violence against Indigenous women for two reasons: 1) homelessness or overcrowded housing can put women at higher risk of violent interactions; and 2) the threat of homelessness or otherwise inadequate housing makes Indigenous women and children less able to leave violent living situations.¹⁶⁸

155. The impugned provisions impose disadvantage on the basis of gender, and intersecting grounds or race and disability which serves to undermine the dignity of those individuals and reinforce longstanding prejudice, contrary to s. 15(1).

156. The disadvantage imposed is further exacerbated for women who belong to multiple intersecting enumerated and analogous grounds. In particular, women from Indigenous, racialized, disabled and trans and 2Spirit communities experiencing homelessness are disproportionately negatively impacted by the impugned provisions as they face the highest risk of experiencing violence once evicted or displaced.

157. The proposed evictions of the Encampments Residents by the Region pursuant to the Code of Use By-Law breaches s. 15(1) of the *Charter* by the disproportionate and discriminatory impact of the eviction action on specific sub-populations within the homeless population. The proposed evictions will place women in the Encampment in situations of danger, losing the dignity and security they have found in the community they created.

¹⁶⁷ National Inquiry into Missing and Murdered Indigenous Women and Girls, [Final Report Vol. 1a](#), at p. 552 [“NIMMIWG Final Report”], as cited at Affidavit of Dr. Kaitlin Schwan (Aug 31, 2022), **Responding Record, Vol. II, pg 108-109**

¹⁶⁸ NIMMIWG Final Repor, pg 586

c. Section 1 of the Charter

158. These violations of sections 7 and 15 cannot be justified under section 1 of the *Charter*. For the section 1 analysis, the government bears the burden of proving that a law that breaches section 7 rights can be justified having regard to the government objective. Where section 7 has been found to have been breached in circumstances not in accordance with the principles of fundamental justice, the breach will only be justified under section 1 “in cases arising out of exceptional conditions, such as natural disasters, the outbreak of war, epidemics, and the like.”¹⁶⁹

159. The Respondents adopt the submissions made by amicus curiae regarding section 1. of the Charter.

d. Is the Region entitled to a statutory injunction pursuant to s. 440 of the Municipal Act?

160. The Region is seeking declarations and orders from this Court to enforce the Code of Use By-law against the Encampment Residents.

161. S. 440 of the Municipal Act allows a municipality or ratepayer to apply to the Court for an order restraining the contravention of any by-law.¹⁷⁰

162. The traditional test for an injunction does not apply to an application for a statutory injunction under s. 440. Rather the test is as follows:

- a. The Applicant must establish a clear breach of the by-law;
- b. The burden shifts to the respondent to establish that there are “exceptional circumstances” to show that an injunction is not warranted;

¹⁶⁹ *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999 CanLII 653](#) (SCC), para 99; *Bedford*, at para 129

¹⁷⁰ [Municipal Act, s. 440](#)

c. The court may issue the statutory injunction or exercise its residual discretion to decline to issue the injunction.¹⁷¹

163. A permanent restraining order is not automatically granted where the applicant is successful in showing that the by-law has been breached, and the court retains discretion in ordering an injunction.¹⁷²

164. While the jurisprudence on what constitutes exceptional circumstances is not extensive or exhaustive there is some guidance from the courts on this issue. Where a municipality expressly approved of the by-law contravention, the court has held that those circumstances would be considered exceptional and declined to issue the injunction.¹⁷³

165. Courts have also held that exceptional circumstances would also include circumstances where:

- a. The offending party has ceased the activity and/or has provided clear and unequivocal evidence that the unlawful conduct will cease;
- b. The injunction is moot and would serve no purpose;
- c. There is a right that pre-existed the enactment that was breached;
- d. There is uncertainty regarding whether the offending party is flouting the law;
- e. The conduct at issue is not the type of conduct that the enactment was intended to prevent.¹⁷⁴

166. In the current application, the Region is asking the court to enforce the Code of Use By-law and the Trespass Notice without any reference to the policy duly passed by Council on

¹⁷¹ [Allied Properties v 1064249 Ontario Inc., 2016 ONSC 6665 \(CanLII\), at para 7](#)

¹⁷² [The Corporation of the Township of South Frontenac and 360788 Ontario Ltd., 2018 ONSC 1344 \(CanLII\), at para 26, and 27, citing *IPCF Properties Inc. v. Sevendon Holdings Ltd.* \[1993\], 19 M.P.L. R. \(2nd\) 2010 \(Ont. Gen. Div.\) *Weatherall and Betzner v Lennox*, \[1949 CanLII 293\]\(#\) \(ON CA\).](#)

¹⁷³ [Gobalian v. Poxon, 2020 ONSC 6750 \(CanLII\), at paras 55-59.](#)

¹⁷⁴ [Her Majesty the Queen in Right of Ontario v. Adamson Barbecue Limited, 2020 ONSC 7679 \(CanLII\), at paras 34-36](#)

December 15, 2022¹⁷⁵, entitled “Homeless Encampments on Region-owned or occupied lands” PDL=LEG-21-69 (the “Encampment Policy”).¹⁷⁶

167. The Region’s affidavit witnesses acknowledged that the Encampment Policy was required to be followed when the Region was dealing with encampments.¹⁷⁷

168. The Region did not refer to the Encampment Policy in the Notice of Application, nor is there a copy of the Encampment Policy in the Region’s Application record. The only mention of the policy is in one paragraph of the Affidavit of Ryan Pettipiere where he mentions that “Regional Council approved a policy decision regarding unauthorized use of Region-owned or occupied land” but does not provide any discussion of the policy.¹⁷⁸

169. The Encampment Policy is a critical part of the analysis of whether the Region is entitled to a statutory injunction. Further, the issue of whether the Region has followed the mandatory requirements of the Encampment Policy are critical to the disposition of this application. The Encampment Policy is a properly enacted by-law which supplements or amends the Code of Use By-law.

170. Further, the Encampment Residents submit that the Encampment Policy as it amends or supplements the Code of Use By-law creates an exceptional circumstance which would cause the Court to exercise its discretion to not issue the statutory injunction.

¹⁷⁵ Exhibit “A” to the Affidavit of Lynn Kubis (August 31, 2022) pp 22-25

¹⁷⁶ Exhibit “A” to the Affidavit of Lynn Kubis (August 31, 2022) pp 12-13

¹⁷⁷ Transcript of Ellen McGaghey (October 3, 2022) p. 37, paras 141-142, Transcript of Ryan Pettipiere (October 3, 2022) pp 12-13, paras 33-36, Transcript of Arran Rowles, (October 3, 2022) p.33, paras. 117-118

¹⁷⁸ Affidavit of Ryan Pettipiere (September 14, 2022), **Applicant’s Responding Record**, para. 13

171. Municipal powers shall be exercised its council and by by-law unless the municipality is specifically authorized to do so otherwise.¹⁷⁹
172. By-laws do not need to be in any particular form and the practice of using a confirmatory by-law to confirm the actions of council is a proper one provided that the confirmatory by-law satisfies the legal requirements for municipal by-laws.¹⁸⁰
173. In this case, Council approved a motion that “the Regional Municipality of Waterloo approve a policy for responding to unauthorized use of Region-owned or occupied lands attached as Appendix to Report PDL-LEG-21-69 dated December 15, 2021”. Council then passed a confirmatory by-law to confirm the actions of Council at that meeting.¹⁸¹
174. The process by which Council considered and approved the Encampment Policy culminated in Council formalizing the adoption of the Encampment policy as a by-law which supplements the Code of Use By-law.
175. In passing the Encampment policy what the Region did in substance was either create a new stand- alone by-law or amend the existing by-law to include mandatory requirements to be applied in the specific case of “individuals living in the rough and experiencing homelessness on lands owned and occupied by the Region of Waterloo”.
176. The Encampment Policy by-law should be construed using the principles of statutory interpretation. It clear from the policy itself that the Region did not intend to “replace” the existing

¹⁷⁹ [Municipal Act, 2001, SO 2001, c 25, s 5.](#)

¹⁸⁰ [Metropolitan Toronto v. Atkinson, 1976 CanLII 43 \(ON CA\)](#)

¹⁸¹ Exhibit “A”, Affidavit of Lynn Kubis, **Responding Record Volume 1** p 23-25

bylaw, however the Region clearly articulated its intention to “supplement” the existing bylaw. In its grammatical and ordinary sense, to “supplement” something is to add something in order to improve it or complete it.¹⁸² Likewise, a “supplement” is something that completes or makes an addition or a part added or issued as a continuation of a book or periodical to correct errors or make additions.¹⁸³

177. The Code of Use By-law does not set any parameters that must be followed before enforcement. However, the Encampment Policy mandates the application of the four key principles through the use of the word “will” in the policy. The policy mandates that “Enforcement **will** only occur after all reasonable support efforts have been attempted without success”. The policy mandates Regional staff to work with affected individuals and mandates the Region to engage in ongoing proactive communication with individuals experiencing homelessness. The policy repeats in Step 2 that “[e]nforcement **will** only occur after all reasonable outreach and support efforts have been provided without success and with reasonable advance notice of the requirement to vacate a public space”. The language used in these sections is mandatory (“will”) not discretionary (“may”).

178. In approving the Encampment Policy, Council recognized that the Code of Use By-law required a supplemental by-law to direct the actions of Regional staff when dealing specifically with encampments while the Code of Use By-law has broad application to a wide range of prohibited activities.¹⁸⁴ The issue of whether the Encampment Policy was followed is therefore

¹⁸² <https://dictionary.cambridge.org/dictionary/english/supplement>

¹⁸³ <https://www.merriam-webster.com/dictionary/supplement>

¹⁸⁴ Exhibit “A”, Affidavit of Lynn Kubis, **Responding Record Volume 1** p9 para 5

an important consideration for the court when deciding whether or not to exercise its discretion in exceptional circumstances.

179. The Region commenced the eviction process on June 6, 2022 by posting the Trespass Notice at the Encampment. The Trespass Notice stipulated that the any persons on the site were required to leave by 9:00 a.m. on June 30, 2022 (the “Eviction Date”. Therefore, the actions of the Region prior to June 30, 2022 are relevant to a determination of whether or not the Region followed the Encampment Policy. The policy states that enforcement will occur *only* after all reasonable outreach and support efforts have been made.

180. The evidence related to the Region’s outreach and support efforts is that:

- d. Many individuals did not have any contact with the Region prior to Eviction Date¹⁸⁵;
- e. Most of the supports offered by the Region’s OW outreach workers were for shelter spaces, despite the fact that many of the Encampment Residents reported feeling unsafe in shelters, having been kicked out of shelters and/or had restrictions in place preventing them from accessing shelters.¹⁸⁶

¹⁸⁵ Affidavit of Kathryn Bulgin (August 16, 2022) **Responding Record Volume I**, para 15; Affidavit of Andrew Zekai (Aug. 16, 2022), **Responding Record Volume I**, para. 12; Affidavit of Albert William Tugwood,(Aug. 15, 2022), **Responding Record Volume I**, para. 24; Affidavit of Lee-Anne Mason,(Aug. 24, 2022), **Responding Record Volume I**, para. 19

¹⁸⁶ Affidavit of Jennifer Draper (Aug.15, 2022) **Responding Record Volume I**, para. 17; Affidavit of Lee-anne Mason (Aug. 24, 2022) **Responding Record Volume I**, p. 309, paras.12-13; Affidavit of Andrew Mandic (Aug. 11 15, 2022) **Responding Record Volume I**, p. 305, paras.9-10

- f. OW outreach workers only began going to the site on May 25, 2022 and met with only 38 of the approximately 70 individuals at the Encampment before the Eviction date. OW outreach workers met with most of the individuals only once.¹⁸⁷
- g. There is no direct evidence showing the nature and extent of the services provided by other community agencies as the Region chose to not submit any affidavit evidence from any of the other agencies attending the Encampment.

181. The actions taken by the Region prior to the Eviction date do not show that all reasonable support and outreach efforts were made prior to commencing the eviction process. The Region had started the outreach and support efforts but the actions taken before the Eviction date fell well short of constituting all reasonable support efforts.

182. The Region presented an Interim Housing Plan to Regional Council on August 18, 2022 that included a recommendation for the Region to permit and fund a Hybrid/Shelter/Outdoor Model.¹⁸⁸ Essentially the Region is recommending a sanctioned encampment. This option might provide a reasonable alternative option for the Encampment Residents, however it has not been implemented yet. This is an example of a step the Region might have taken, but failed to take prior to enforcement of the Code of Use By-Law that would have been consistent with the Encampment Policy.

183. The Region's Application before this Court asking for a permanent injunction before using all reasonable efforts to support the Encampment residents and before exploring reasonable

¹⁸⁷ Chart provided in answer to Undertaking 1 of the Cross Examination of Kelly-Anne Salerno (Oct. 3, 2022)

¹⁸⁸ Exhibit "F", Affidavit of Lynn Kubis, **Responding Record Volume 1** p61-62

alternatives to evicting the Encampment residents is premature. As a result, the Court ought to exercise its discretion to refuse the statutory injunction.

PART IV – REMEDIES SOUGHT

ORDER REQUESTED

184. The Respondents request that pursuant to s. 52 of the *Constitution Act, 1982*, that this Honourable Court finds that the Code of Use By-laws are either inapplicable or of no force and effect to the extent that they are applied to the Encampment Residents, and other individuals living in the Encampment as the provisions violate sections 7 and 15(1) of the *Charter*.

185. The Respondents adopt and support the submissions made by *Amicus Curiae*, that the court should declare the Code of Use By-Law inoperable with respect to this Encampment which currently sits on unused and vacant land pursuant to section 52(1).

186. The Respondents ask the Court to refuse to issue the statutory injunction which the Region has sought in its Application using the discretionary power of the Court to do so in exceptional circumstances.

187. In addition to the above-noted remedies being sought, such further and other relief as the Respondents may advise, and this Honourable Court may permit.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 31st day of October 2022.



Shannon Down,
Lawyer for the Respondent

SCHEDULE “A”

LIST OF AUTHORITIES

1. *Abbotsford (City) v. Shantz*, [2015 BCSC 1909](#), para 82
2. *Allied Properties v 1064249 Ontario Inc.*, [2016 ONSC 6665](#) (CanLII), at para 7
3. *Bamberger v. Vancouver (Board of Parks and Recreation)*, [2022 BCSC 49](#) from paras 11-20
4. *Black et. al. v. City of Toronto*, [2020 ONSC 6398](#) (CanLII), paras. 50 to 52
5. *British Columbia v. Adamson*, [2016 BCSC 584](#)
6. *Canada (Attorney General) v Bedford*, [2013 SCC 72](#), at paras 101, 112-113, 123, 129
7. *Canada (Attorney General) v. PHS Community Services Society*, [2011 SCC 44](#) (CanLII), para. 93
8. *Carter v. Canada (Attorney General)*, [2015 SCC 5](#), paras. 54 and 55
9. *Eldridge v British Columbia (Attorney General)*, [\[1997\] 3 SCR 624](#), at para 54
10. *Fraser v Canada (Attorney General)*, [2020 SCC 28](#), at para. 42, 70, 72-75
11. [Gobalian v. Poxon, 2020 ONSC 6750 \(CanLII\), at paras 55-59](#)
12. *Godbout v. Longueuil (City)*, [\[1997\] 3 S.C.R. 844](#), paras. 50 to 51, (*LaForest J.*).
13. [Her Majesty the Queen in Right of Ontario v. Adamson Barbecue Limited, 2020 ONSC 7679 \(CanLII\), at paras 34-36](#)
14. *Kahkewistahaw First Nation v Taypotat*, [2015 SCC 30](#), at paras 19-20
15. *Law Society of British Columbia v. Andrews*, [\[1989\] 1 S.C.R. 143](#), at para. 19
16. [Metropolitan Toronto v. Atkinson, 1976 CanLII 43 \(ON CA\)](#)
17. *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999 CanLII 653](#) (SCC), para 99
18. *Prince George (City) v. Stewart*, [2021 BCSC 2089](#), paras 74

19. *Quebec (Attorney General) v A*, [2013 SCC 5](#), at para 332.
20. Québec (Procureure générale) c. Alliance du personnel professionnel et technique de la santé et des services sociaux, [2018 SCC 17](#), at para 25
21. *R v Kapp*, [2008 SCC 41](#) [“Kapp”], at para 15
22. *R. v. Malmö-Levine; R. v. Caine*, [2003 SCC 74](#) (CanLII), [2003] 3 SCR 571, at para. 85
23. *R v Morgentaler*, [\[1988\] 1 SCR 30](#)
24. *R v Moriarity*, [2015 SCC 55](#), at para 24
25. *R v Safarzadeh-Markhali*, [2016 SCC 14](#) at para 24
26. *The Corporation of the Township of South Frontenac and 360788 Ontario Ltd.*, [2018 ONSC 1344 \(CanLII\)](#), at para 26, and 2 citing *IPCF Properties Inc. v. Sevendon Holdings Ltd.* [1993], 19 M.P.L. R. (2nd) 2010 (Ont. Gen. Div.)
27. *Victoria (City) v. Adams*, [2008 BCSC 1363](#)
28. *Victoria (City) v. Adams*, [2009 BCCA 563](#), para 166
29. *Weatherall and Betzner v Lennox*, [1949 CanLII 293](#) (ON CA)
30. *Withler v Canada (Attorney General)*, [2011 SCC 12](#) at para. 2

SECONDARY SOURCES

1. Jackman, Martha, "The Protection of Welfare Rights Under the *Charter*" (1988), 20 Ottawa L. Rev. 257, cited in *Black et al. v. City of Toronto*, 2020 ONSC 6398 (CanLII)
2. <https://www.merriam-webster.com/dictionary/supplement>
3. National Inquiry into Missing and murdered Indigenous Women and Girls, Final Report Vol. 1a, https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1a-1.pdf

SCHEDULE "B"

RELEVANT PROVISIONS OF STATUTES, REGULATIONS AND BYLAWS

1. [By-law Number 13-050 of The Regional Municipality of Waterloo, A By-law Respecting the Conduct of Persons Entering Upon Buildings, Grounds and Public Transportation Vehicles Owned or Occupied by The Regional Municipality of Waterloo](#)
2. [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, ss. 1, 7, 15, 24(1), 32(1)
3. [Constitution Act](#), 1982, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, reprinted R.S.C. 1985, App. II, No. 44, s. 52(1)
4. [Courts of Justice Act](#), R.S.O. 1990, c. C.43, s.106
5. [Municipal Act, 2001](#), S.O. 2001, c. 25, as amended, ss. 11 and 440
6. [Trespass to Property Act](#), R.S.O. 1990, c. T.21, as amended

**THE REGIONAL MUNICIPALITY OF
WATERLOO**
Applicants

and

**PERSONS UNKNOWN AND TO BE
ASCERTAINED**
Respondents

Court File No.: CV-22-00000717-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at KITCHENER

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