

Court File No. CV-24-00000526-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

MICHAEL NANOS and JOSEPH MICALLEF

Plaintiffs/Moving Parties

and

THE CORPORATION OF CITY OF CAMBRIDGE

Defendant/Responding Party

**MOVING PARTIES' FACTUM**

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## **MOVING PARTIES' FACTUM**

### **PART I - INTRODUCTION**

1. The Plaintiffs, Michael Nanos and Joseph Micallef, are two homeless individuals who are living in a small encampment in the Branchton area of the City of Cambridge near the intersection of Branchton Road and Dundas Street South behind the Petro-Can station (the "Branchton Encampment").
2. The Defendant, The Corporation of the City of Cambridge (the "City") is the owner of the property where the Branchton Encampment is located.
3. The City has provided the Plaintiffs with Notice that the Plaintiffs will be evicted from the Branchton Encampment on March 28, 2024.
4. The Plaintiffs have nowhere to go if evicted. Being evicted will have physical and psychological adverse consequences for the Plaintiffs. The Plaintiffs will be forced to try to move as many of their belongings as they can carry to another unknown location to live homeless and potentially unsheltered.

### **PART II - SUMMARY OF FACTS**

#### **Background- The Plaintiffs**

5. The Plaintiff Michael Nanos ("Mike") is a 52 year old male who has been homeless for much of his adult life including the last 14 years.

**Affidavit of Michael Nanos ("Mike Nanos Affidavit"), sworn March 24, 2024 at para 9, Tab 3 of the Motion Record Vol I of Moving Parties.**

6. Mike receives Ontario Disability Support Program benefits of \$680.00 per month after FRO child support deductions are taken off at source.

**Mike Nanos Affidavit, sworn March 24, 2024 at para 4, Tab 3, Vol I.**

7. Mike suffers from disabilities including drug addiction, anxiety, depression, and Attention-deficit/Hyperactivity Disorder. He has a grade 8 education and has worked in the past in construction, in janitorial services and as a glazer.

**Mike Nanos Affidavit, sworn March 24, 2024 at paras 6 and 7, Tab 3, Vol I.**

8. Prior to living at the Branchton Encampment, Mike lived at an encampment at 150 Main Street, Cambridge for 4 months until he was evicted by By-law in August 2023. Mike lost most of his belongings including his tent and his clothing during that eviction.

**Mike Nanos Affidavit, sworn March 24, 2024 at paras 10 and 11, Tab 3, Vol I.**

9. Mike has stayed in shelters in the past but has experienced violence, theft and a lack of privacy. His mental health suffered as a result of these adverse experiences.

**Mike Nanos Affidavit, sworn March 24, 2024 at paras 16-20, Tab 3, Vol I.**

10. Mike does not sleep well and often experiences fatigue during the day. Having a tent allows him a place to rest in a private space. There are almost no options to do this in other spaces in Cambridge. In any spaces where he is permitted to go inside in the day, he isn't permitted to fall asleep or he will be ejected.

**Mike Nanos Affidavit, sworn March 24, 2024 at para 25, Tab 3, Vol I.**

11. Past evictions have taken a toll on Mike's mental health. His anxiety increases and his substance use increases. He has serious concerns about losing his belongings including survival items if he is evicted again.

**Mike Nanos Affidavit, sworn March 24, 2024 at paras 28-31, Tab 3, Vol I.**

12. The Plaintiff Joseph Micallef, ("Joe") is a 68 year old male who has been homeless for approximately 8 years. He became homeless after he was divorced. When his matrimonial home was sold, there was very little equity left due to large debts. After running out of places to couch surf he became homeless.

**Affidavit of Joseph Micallef ("Joe Micallef Affidavit"), sworn March 24, 2024 at paras 2 and 9, Tab 4 of the Motion Record Vol I of Moving Parties.**

13. Like Mike, Joe was living at the 150 Main Street, Cambridge encampment until he was evicted from there in August 2023. He had a serious leg infection at the time of the eviction and went to hospital. Upon discharge he moved to the Branchton Encampment. He was not offered a motel space or any housing by outreach workers when he was at the Main Street Encampment.

**Joe Micallef Affidavit, sworn March 24, 2024 at paras 11-13, Tab 4, Vol I.**

14. Joe has not stayed at a shelter but has heard stories of theft and assault and is not willing to risk being assaulted at his age.

**Joe Micallef Affidavit, sworn March 24, 2024 at para 16, Tab 4, Vol I.**

15. Joe feels exhausted by being constantly displaced and from his leg infection. He does not know where he would go if evicted. He fears losing all his belongings and believes his health will get worse if he is evicted.

**Joe Micallef Affidavit, sworn March 24, 2024, paras 22, 26 and 27, Tab 4, Vol I.**

**Adverse Impact of Displacement/Eviction**

16. Studies have shown that encampment evictions are harmful to people experiencing homelessness because:

- (a) evictions force people into more remote places which increases the difficulty to get to pharmacies, get medical care, access food programs, and counselling services. Displacements therefore lead to enhanced health risk and vulnerability particularly for people with disabilities, mental health conditions and people using substances;
- (b) forced evictions deprive people of survival supplies required to survive unhoused which affects their ability to look after their own health; and
- (c) forced evictions increase the likelihood for negative encounters between homeless people and law enforcement, which worsens social exclusion and increases their reluctance to seek health and social supports.

**Affidavit of Dr. Stephen Hwang, sworn March 23, 2024 at paras 11-13 Tab 5 of the Motion Record Vol I of Moving Parties.**

**Affidavit of Dr. Erin Dej (“Erin Dej Affidavit”), sworn March 26, 2024 at paras 10, 11 and 16, Tab 1 of the Motion Record Vol II of Moving Parties.**

17. A recent report authored by the Federal Housing Advocate identified serious, negative and immediate consequences of evictions for people experiencing homelessness including, but not limited to, exposure to greater risk of violence, loss of survival equipment, exacerbation of pre-existing mental health issues, an increased risk of becoming chronically homeless and displacement into increasingly hidden and precarious spaces.

**Erin Dej Affidavit, sworn March 26, 2024 at para 12, Tab 1, Vol II.**

### **Issues Accessing Shelter in Cambridge**

18. Cambridge has only one male-only emergency shelter. The Bridges Shelter located at 26 Simcoe St, Cambridge has capacity for 80 people. Bridges often operates at, or above, capacity.

**Affidavit of Marjorie Knight (“Marjorie Knight Affidavit”), sworn March 25, 2024 at paras 5 and 8, Tab 4 of the Motion Record Vol II of Moving Parties.**

**Affidavit of Shawna Bator (“Shawna Bator Affidavit”), sworn March 25, 2024 at para 6, Tab 5 of the Motion Record Vol II of Moving Parties.**

**Affidavit of Lindsay Sprague (“Lindsay Sprague Affidavit”), sworn March 25, 2024 at para 7, Tab 3 of the Motion Record Vol II of Moving Parties.**

19. Cambridge has been characterized as a “service desert”. Cambridge holds just 15% of the Region of Waterloo’s adult shelter beds. There is no emergency shelter in Cambridge for women. Bridges is an abstinence only shelter and it is not accessible for



people with substance use disorder. Bridges does not allow youth, couples, families or people with pets. Bridges has difficulty accommodating people with physical disabilities. Some homeless people are service restricted from accessing Bridges. Also there are regularly issues with thefts and violence and people do not feel safe there.

**Marjorie Knight Affidavit, sworn March 25, 2024 at para 6, Tab 4, Vol II.**

**Shawna Bator Affidavit, sworn March 25, 2024 at para 5 & 7, 11, Tab 5, Vol II.**

**Erin Dej Affidavit, sworn March 26, 2024 at paras 23 and 25, Tab 1, Vol II.**

20. People staying in emergency shelter experience severe sleep deprivation. There are often fights and police are constantly there. Many people in Cambridge have given upon on attempting to access the shelter system because it is entirely inaccessible or harmful, which necessitates people living outdoors.

**Marjorie Knight Affidavit, sworn March 25, 2024 at para 7, Tab 4, Vol II.**

**Affidavit of Jesse Burt (“Jesse Burt Affidavit”), sworn March 25, 2024 at paras 6 and 7, Tab 2 of the Motion Record Vol II of Moving Parties.**

**Lindsay Sprague Affidavit, sworn March 25, 2024 at para 7, Tab 3, Vol II.**

21. The City of Cambridge has engaged in a systemic pattern of displacing people experiencing homelessness. In August 2023, an encampment at 150 Main Street was closed, which housed approximately 50 people. In September 2023, an encampment at Soper Park was closed, which housed approximately 30 people. These closures were at a time when the Bridges was overburdened due to an influx of refugee claimants seeking shelter services in Cambridge.

**Marjorie Knight Affidavit, sworn March 25, 2024 at paras 10 and 12, Tab 4, Vol II.**

### **PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES**

#### **Overview of the Issues**

22. The Plaintiffs seek a narrow interlocutory injunction restraining the Defendants from evicting the Plaintiffs from the encampment while the decision on the merits of the constitutional arguments are pending.

23. The Plaintiffs respectfully submit that the requested relief should be granted based on the considerations set out in *RJR MacDonald*: (i) there is a serious issue to be tried; (ii) the Plaintiffs will suffer irreparable harm if the injunction is denied; and (iii) the balance of convenience favors the Plaintiffs.

24. Section 7 *Charter* rights to life, liberty and security of the person are precious, inalienable rights and the Plaintiffs will suffer grave injustices if these rights are lost before the hearing on the merits. It is in the public interest to prevent violations of these important *Charter* rights.

#### **Law and Authorities**

#### ***Procedural Considerations***

25. Should this Honourable Court issue a form of interim injunction Order?

26. Where it appears just and convenient to do so, the Court may grant an interlocutory injunction or mandatory order on such terms as are considered just.

**Section 101, Courts of Justice Act, R.S.O. 1990, c. C.43, as amended.**

27. In appropriate circumstances, this Honourable Court may grant an order abridging or dispensing with the service of the Statement of Claim, Motion Record and Factum and allowing a motion to be heard on short notice or without notice.

**Rules of Civil Procedure, R. 3.02, 16.04**

***The RJR test***

28. On an application wherein injunctive relief is requested, the common law test requires the moving party to establish three essential elements (the “RJR Test”):

- (a) that the case presents a serious question to be determined;
- (b) that if an injunction is not granted the applicant will suffer irreparable harm that cannot be compensated by damages;
- (c) that where a doubt exists as to the adequacy of remedies and damages, the balance of convenience favours the applicant in granting injunctive relief.

***RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at para. 43; *Automotive Parts Manufacturers’ Association v. Jim Boak*, 2022 ONSC 1001 (S.C.J., Morawetz, C. J.), at para 5-8, 33-34, 37, 42, 47.**

**A. There is a Serious Issue to Be Tried**

29. The first element of the RJR test involves a preliminary and superficial assessment of the merits of the moving party's case. The threshold is a low one. Once satisfied that the claim is neither frivolous nor vexatious, the motions judge should proceed to consider the second and third tests, even if of the opinion that the plaintiff is unlikely to succeed at trial. A prolonged examination of the merits is neither necessary nor desirable.

30. In most cases, there is no need for an applicant to demonstrate "a probability" of eventual success, "a prima facie case", or "a strong prima facie case". There may be exceptions to this general rule, such as in cases where the injunction may finally determine the claims of the action, in which case the Court may ask whether there is a serious issue to be tried.

***RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at para. 49, 50, 51.**

31. The record in the present case and binding precedents demonstrate that there is a serious issue to be tried. In this very jurisdiction in 2023 a proposed eviction pursuant to a By-law of the Regional Municipality of Waterloo was found to breach the *Charter* rights of the encampment residents due to a lack of accessible shelter spaces for those experiencing homelessness. In *The Corporation of the City of Kingston v. Doe*, 2023 ONSC 6662, the municipality conceded that a city-wide enforcement of an absolute prohibition on erecting temporary overnight shelter in municipal parks would violate s. 7 of the *Charter*.

***The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2023 ONSC 670**

***The Corporation of the City of Kingston v. Doe*, 2023 ONSC 6662, at para 68**

32. The Plaintiffs have a strong *prima facie* case that the bylaw at issue — By-law 162-10, and the *Trespass to Property Act* insofar as they are relied upon as legal authority for the eviction, breach s. 7 of the *Charter* and cannot be saved under s. 1. Since the determination of this motion effectively determines the rights of the parties, this factor of the injunction test takes on significantly more weight in the analysis. The strength of the constitutional challenge colours the rest of the *RJR Macdonald* test. The City should not be allowed to use an unconstitutional bylaw to clear the unhoused residents from the encampment. This strength of the case should be a predominate consideration.

**Robert J. Sharpe, *Injunctions and Specific Performance* (Toronto: Thompson Reuters Canada) at para. 2:6.50; *Black et al. v. City of Toronto*, [2020 ONSC 6398](#), at para. 41.**

**B. The Plaintiffs Will Suffer Irreparable Harm**

33. The second element of the RJR test, "irreparable harm" refers to the nature of the harm suffered rather than its magnitude; this is harm which either cannot be quantified in monetary terms or which cannot be cured.

***RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at para. 59 and 79**

34. The Court of Appeal has instructed that taking a narrow view of irreparable harm should be avoided. According to the Saskatchewan Court of Appeal it is sufficient that a party seeking an interlocutory injunction establish a meaningful risk of irreparable harm or, to put it another way, a meaningful doubt as to the adequacy of damages if the

injunction is not granted. The Court described this as a relatively low standard which will serve to fairly easily move the analysis into the balance of convenience stage of the decision-making.

***Livent Inc. v. Deloitte & Touche*, [2016 ONCA 395](#), at para 10.**

***Potash Corp. of Saskatchewan Inc. v. Mosaic Potash Esterhazy Limited Partnership (2011)*, [341 D.L.R. \(4th\) 407](#), (SKCA) [*Potash*], at paras 61 and 60.**

35. Here, the motion is time sensitive and will effectively determine the rights of the Plaintiffs and potentially other unhoused people living in Cambridge. The clearing was scheduled for March 28, 2024. If the City is entitled to enforce its unconstitutional bylaw, the Plaintiffs will be displaced. They have nowhere to go due to the Region of Waterloo's insufficient emergency shelter system and they have not been offered an accessible shelter space.

36. The Plaintiffs submit that they will suffer the following irreparable harm if the interlocutory injunction is not granted:

- (a) Severe psychological harm
- (b) Loss of emotional and physical support of their community
- (c) Loss of access to mental health, addiction and housing supports
- (d) Loss of survival items like a tent, sleeping bag, heat sources and/or clothing
- (e) Forced to sleep outdoors without shelter / tents could lead to risk of assault, frostbite, sunstroke, and loss of life and limb

- (f) Forced to relocate further in the forest or outskirts of town to avoid detection, increases the risks of suffering an overdose, and risks of dehydration/starvation due to being further away from available community services and supports.

**Mike Nanos Affidavit, sworn March 24, 2024 at paras 11, 18-21, 22, 24, 27, 28, Tab 3, Vol I.**

**Joe Micallef Affidavit sworn March 24, 2024 at paras 12, 15, 18-21, 22, 25-27, Tab 4, Vol 1.**

**Shawna Bator Affidavit, sworn March 25, 2024 at paras 16-19, Tab 5, Vol II.**

**Jesse Burt Affidavit, sworn March 25, 2024 at paras 8-9, Tab 2, Vol II.**

**Lindsay Sprague Affidavit, sworn March 25, 2024 at paras 8-10, Tab 3, Vol II.**

37. In the *Black et al. v. City of Toronto* case, which dealt with a proposed encampment eviction, the Applicants established irreparable harm.

***Black et al. v. City of Toronto*, [2020 ONSC 6398](#), at paras. 70-71, 75.**

38. Additionally, in a variety of contexts, courts have recognized psychological and emotional stress can give rise to irreparable harm, as long as that stress is not trifling or insignificant.

***Metropolitan Toronto Condominium Corp. No. 747 v. Korolekh*, [2010 ONSC 4448](#), at para 71.**

39. Impoverishment, social stigma and the loss of dignity and enjoyment of life associated with poverty can constitute irreparable harm. In allowing an injunction

requiring the insurer to continue paying an insured's benefits until trial, Justice Molloy accepted that "the loss of enjoyment of life resulting from a subsistence level existence pending trial is not calculable in money."

***El-Timani v. Canada Life Assurance Co.*, [2001] OJ No 2648 (ONSC) at para 9**

### **C. The Balance of Convenience Favours Granting the Injunction**

40. The third element of the RJR test is a consideration of the balance of convenience, or, in other words, which of the two parties will suffer the greater harm from granting or refusing the requested Order. The factors will vary with each case.

***RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at para. 62, 63.**

41. The balance of convenience involves weighing the harms to each party.

***Black v. Alberta*, 2023 ABKB 123, at para. 140**

42. The Plaintiffs' need for shelter, safety, and stability will suffer if the injunction is not granted. The potential harm to the City that will be caused by not enforcing the bylaw on this specific site does not outweigh the risks to the Plaintiffs from the proposed eviction.

43. At the balance of convenience part of the test, the Court can consider broader factors of public interest. The broader interests of the homeless population at large can be a consideration in the analysis at this stage of the test.

***Poff v. City of Hamilton*, 2021 ONSC 7224 at para 141.**



44. In terms of balancing, there is public interest in favour of granting an interim remedy and protecting constitutional rights. Particularly giving the depth of the housing crisis, the inadequacy of the indoor emergency shelter and pronouncements from the Federal Housing Advocate calling “Canada’s homeless encampments a national human rights crisis” and calling for the end of forced encampment evictions.

***Hogan v Newfoundland (School Boards for Ten Districts) (1997), 149 DLR (4th) 468 (Nfld)***

**Exhibit “F” of the Erin Dej Affidavit, at para 12, Tab 1, Vol II.**

45. It is unclear what the City’s public interest considerations are in this case, aside from the desire to regulate the property. This is a vacant, grassy lot that is far removed from the sidewalk, from the gas station and from public view. There have been no fire risks at this location and the encampment is relatively small and well-kept.

46. Given the insufficient public interest considerations on the side of the City and the significant emotional, mental, and physical harms caused by displacing unhoused residents from the encampment where there is no shelter available for them, the balance of convenience favours granting the injunction.

**The Undertaking as to Damages**

47. The Plaintiffs seek an exemption to the requirement that the moving party seeking injunctive relief provide an undertaking as to damages in the event that the claim fails. The Plaintiffs seek this exemption as they are homeless and clearly not in a viable pecuniary position.

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

***Cardinal v. Cleveland Indians Baseball Company Limited Partnership*, 2016 ONSC 6929, at para. 28; *Batty v. City of Toronto*, 2011 ONSC 6785, 342 D.L.R. (4<sup>th</sup>) 121; *Poff v. City of Hamilton*, 2021 ONSC 7224, para 51**

#### **PART IV - ORDER REQUESTED**

49. On the return of the Motion, the Plaintiffs request the following Orders:

(a) An ex parte interlocutory Order or interim injunction restraining the Defendant, its servants, employees, agents, assigns, officers, directors and anyone else acting on its behalf from:

(i) directly or indirectly evicting the Plaintiffs' from the Branchton Encampment;

(ii) preventing the Plaintiffs' entry to or use of the Branchton Encampment site;

(iii) disposing of or removing any personal belongings, real or personal property belonging to the Plaintiffs and located at the Branchton Encampment; and

(iv) engaging in any harassing behaviour towards the Plaintiffs;

- (b) An Order regarding the procedural aspects of this Motion, including, but not limited to, waiving or dispensing with the time for delivery of the Notice of Motion and Motion Record, or waiving, shortening, validating or dispensing with the service of the Statement of Claim herein, the Notice of Motion and Motion Record on any party, and directions with regard to the procedural aspects of this Motion, including, but not limited to, a timetable, delivery of responding materials, scheduling of cross examinations, a hearing in person or by video attendance or trial of the issues as counsel may advise and this Honourable Court permit;
- (c) An Order abridging the time for service and filing of this motion, further supporting affidavit(s) and factum, if necessary;
- (d) Costs of this motion on a substantial indemnity basis; and

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 27th day of March 2024



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Shannon Down and Ashley Schuitema

-20-

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**LAWYERS FOR THE PLAINTIFFS**

**SCHEDULE “A”  
LIST OF AUTHORITIES**

*Ausman v Equitable Life Insurance Co. of Canada*, [2002] O.J. No. 3066

*Automotive Parts Manufacturers’ Association v. Jim Boak*, [2022 ONSC 1001](#)

*Batty v. City of Toronto*, 2011 ONSC 6785, 342 D.L.R. (4<sup>th</sup>) 121

*Black v. Alberta*, [2023 ABKB 123](#)

*Black et al. v. City of Toronto*, [2020 ONSC 6398](#)

*Cardinal v. Cleveland Indians Baseball Company Limited Partnership*, 2016 ONSC 6929

*Carter v. Canada (A.G.)*, [2015 SCC 5](#)

*El-Timani v. Canada Life Assurance Co.*, [2001] OJ No 2648 (ONSC)

*Hogan v. Newfoundland School Boards*, [\[1997\] N.J. No. 154](#)

*Livent Inc. v. Deloitte & Touche*, [2016 ONCA 395](#)

*Melanson v. N.B.*, [2006 NBQB 73](#)

*Metropolitan Toronto Condominium Corp. No. 747 v. Korolekh*, [2010 ONSC 4448](#)

*Poff v. City of Hamilton*, [2021 ONSC 7224](#)

*Simon v. Canada (Attorney General)*, [2012 FC 387](#); upheld on appeal *Canada (Attorney General) v. Simon*, [2012 FCA 312](#).

*The Corporation of the City of Kingston v. Doe*, [2023 ONSC 6662](#)

*The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, [2023 ONSC 670](#)

*Toronto (City) v. Ontario (Attorney General)*, [2018 ONCA 761](#)

*R. v. Safarzadeh-Markhali*, [2016 SCC 14](#)

Robert J. Sharpe, *Injunctions and Specific Performance* (Toronto: Thompson Reuters Canada) at para. 2:6.50

*RJR-MacDonald Inc. v. Canada (Attorney General)*, [\[1994\] 1 S.C.R. 311](#)

*Potash Corp. of Saskatchewan Inc. v. Mosaic Potash Esterhazy Limited Partnership* (2011), [341 D.L.R. \(4th\) 407](#)

As Justice Sharpe also states at p. 2-40 of his seminal text, *Injunctions and Specific Performance*, "... irreparable harm has not been given a definition of universal application: its meaning takes shape in the context of each particular case."

**SCHEDULE “B”  
RELEVANT STATUTES, REGULATIONS AND BYLAWS**

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

**Injunctions and receivers**

**101** (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

**Terms**

**(2)** An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2)

2. *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 r. 3.02, 16.04

**Extension or Abridgment**

**General Powers of Court**

**3.02** (1) Subject to subrule (3), the court may by order extend or abridge any time prescribed by these rules or an order, on such terms as are just. R.R.O. 1990, Reg. 194, r. 3.02 (1).

(2) A motion for an order extending time may be made before or after the expiration of the time prescribed. R.R.O. 1990, Reg. 194, r. 3.02 (2).

**Substituted Service or Dispensing with Service**

**Where Order May be Made**

**16.04** (1) Where it appears to the court that it is impractical for any reason to effect prompt service of an originating process or any other document required to be served personally or by an alternative to personal service under these rules, the court may make an order for substituted service or, where necessary in the interest of justice, may dispense with service. R.R.O. 1990, Reg. 194, r. 16.04 (1).

**Effective Date of Service**

(2) In an order for substituted service, the court shall specify when service in accordance with the order is effective. R.R.O. 1990, Reg. 194, r. 16.04 (2).

(3) Where an order is made dispensing with service of a document, the document shall be deemed to have been served on the date of the order for the purpose of the computation of time under these rules. R.R.O. 1990, Reg. 194, r. 16.04 (3).

3. [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, 8, 12, 24(1), 52(1)
4. [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)
5. [Trespass to Property Act](#), R.S.O. 1990, c. T.21, as amended



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MICALLEF**  
Plaintiffs

and

**THE CORPORATION OF THE CITY OF  
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Defendant

Court File No.: CV-24-0000526-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at KITCHENER

**FACTUM OF THE PLAINTIFF/MOVING PARTIES**

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