

Court File No. CV-24- 0000526-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MICHAEL NANOS and JOSEPH MICALLEF

Plaintiffs

and

THE CORPORATION OF THE CITY OF CAMBRIDGE

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.


If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL

FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date March 26, 2024 Issued by 
Local Registrar

Address of court office: 85 Frederick Street
Kitchener ON N2H 0A7

TO: The Corporation of the City of Cambridge
Attention: Danielle Manton, City Clerk
Cambridge City Hall
50 Dickson Street
P.O. Box 669
Cambridge, Ontario N1R 8S1

Tel: 519-623-1340
Fax: 519-740-4637

Email: mantond@cambridge.ca

CLAIM

1. The Plaintiffs, Michael Nanos and Joseph Micallef, seek:
 - (a) General damages in the amount of \$10,000.00 for the loss of property of the Plaintiffs;
 - (b) A declaration pursuant to section 52 of the *Constitution Act, 1982*, that subsections 3 (b), (j), (m), (n), and section 10 of The Corporation of the City of Cambridge By-law No. 162-10, section 2 (1) of the *Trespass to Property Act*, R.S.O. 1990, c. T.21 violate section 7 and 12 of the *Charter of Rights and Freedoms* (the "*Charter*") in a manner that cannot be justified under section 1, and are inoperative insofar as they are relied upon as lawful authority to evict the Plaintiffs from the encampment located at in the Branchton area of Cambridge, Ontario near the intersection of Dundas Street and Branchton Road (the "Branchton Encampment") under circumstances where the Plaintiffs have no available and accessible alternative housing or accommodation;
 - (c) A declaration pursuant to section 24(1) of the *Charter* or the common law that the proposed eviction of the Plaintiffs from the Branchton Encampment would breach the Plaintiffs' rights under sections 7, 8 and 12 and are not justified under section 1;

- (d) An interlocutory, interim and permanent injunction Order restraining the Defendant, and 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;

 - (e) A Declaration that the Defendant has taken the Plaintiffs' personal property without:
 - (i) the consent of the Plaintiffs;
 - (ii) lawful authority for doing so; and
 - (iii) compensating the Plaintiff's for their lost property;
- all of which constitutes the tort of conversion and trespass to chattels and is a breach of the section 8 Charter rights of the Plaintiffs;

- (f) punitive damages in the amount to be determined this Honourable Court;
- (g) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (h) postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (i) the costs of this proceeding and all motions payable on a substantial indemnity basis together with applicable taxes and disbursements; and
- (j) such further and other relief as to this Honourable Court may seem just.

The Parties

2. The Plaintiff, Michael Nanos, is a 52 year old man who is homeless and is living in a tent in the Branchton Encampment.

3. The Plaintiff, Joseph Micallef, is a 68 year old man who is homeless and is living in a tent in the Branchton Encampment.

4. The Defendant, The Corporation of the City of Cambridge (the "City"), is a lower-tier municipality located within the Regional Municipality of Waterloo and is the owner of the land upon which the Branchton Encampment is located.

The Encampment and the Proposed Eviction

5. The Branchton Encampment is located in a field a few hundred yards behind a Petro-Canada gas station at the civic address of 1071 Dundas Street South, Cambridge. This property is owned by the City of Cambridge and at all material times was an unused, vacant grassy field.

6. The Plaintiffs have both lived at the encampment for approximately eight months. They moved to the Branchton Encampment after they were evicted from an encampment at 150 Main Street, Cambridge in and around August of 2023.

7. Since August of 2023, approximately thirteen individuals have stayed at the Branchton Encampment for various periods of time.

8. The Branchton Encampment is regularly visited by local agencies providing health and social supports to the encampment residents.

9. On March 18, 2023, bylaw officers arrived at the property to clear the Branchton Encampment. Outreach workers for the Aids Committee of Cambridge, Kitchener, Waterloo and Area ("ACCKWA") worked with bylaw to request an extension of the eviction until Thursday, March 28, 2024. Eviction stickers were placed on the tents at the encampment with an eviction date of March 28, 2024.

10. When bylaw officers attended at the property on March 18, 2023, various items of Plaintiffs personal property were removed and disposed of by the bylaw officers.

11.

Homelessness in the City of Cambridge

12. There are approximately 1,700 people without permanent housing in Waterloo Region. Of those, 579 people are chronically homeless.

13. Waterloo Region's emergency shelter system is consistently operating at or above capacity. The Bridges Shelter, operated by the Cambridge Shelter Corporation, is the only emergency shelter in Cambridge and it regularly operates at capacity.

14. The Bridges emergency shelter operates as an abstinence only shelter, which excludes people that are suffering from substance use disorder. It does not allow women, couples or people with pets.

15. People living unhoused in the Region of Waterloo, and particularly those living in the City of Cambridge have no where to go.

Encampment Displacements in Cambridge

16. In and around August of 2023, The Region of Waterloo cleared an encampment at 150 Main Street, Cambridge. At certain points, this encampment housed approximately 50 people.

17. In and around September of 2023, the City of Cambridge cleared an encampment at Soper Park, Cambridge that was housing approximately 30 people.

18. In and around December of 2023, City of Cambridge bylaw attended at the Branchton encampment and issued eviction notice stickers to the residents living there.

Although a formal eviction process did not take place, a number of residents scattered and relocated to other encampments in Cambridge.

No available and accessible shelter space

19. There are no available or accessible shelter spaces in the Region of Waterloo to accommodate the Plaintiffs.

20. The Plaintiff, Michael Nanos, has previously accessed the Bridges shelter and was violently assaulted while living there. He experienced theft, sleep deprivation and an increase in mental health symptoms while staying at Bridges. He has not been offered a space at Bridges, but even if there was a space he is reasonable fearful about returning there.

21. The Plaintiff, Joseph Micallef, has not been offered a space at Bridges, but even if there was a space he does not believe it is accessible for him. The Plaintiff has substance use disorder and is a senior. He has reasonable fears about assault, violence and theft that is known to take place at Bridges.

22. An eviction from the Branchton encampment will constitute a breach of the Plaintiff's section 7 and 12 *Charter* rights.

Conclusion

23. As a result of the Defendant's proposed eviction, the Plaintiffs will suffer physical and psychological harm. The Plaintiffs will also suffer property loss. The Plaintiffs therefore claim that their Charter rights are being infringed and accordingly Charter

declarations are being sought as remedies as well as monetary damages and permanent injunctive relief as claimed above.

24. The Plaintiffs propose that this action be tried in the City of Kitchener.

March 25, 2024

WATERLOO REGION COMMUNITY LEGAL SERVICES

450 Frederick Street, Unit 101
Kitchener, ON N2H 2P5

Shannon Down (LSO# 43894D)

Shannon.down@wrcls.clcj.ca

Tel: 519-743-0254 x. 20

Fax: 519-743-1588

Ashley Schuitema (LSO# 68257G)

Ashley.schuitema@wrcls.clcj.ca

Tel: 519-743-0254 x. 17

Fax: 519-743-1588

Lawyers for the Plaintiffs,
Michael Nanos and Joseph Micallef

TO: Defendant
The Corporation of the City of Cambridge
Attention: Danielle Manton, City Clerk
Cambridge City Hall
50 Dickson Street
P.O. Box 669
Cambridge, Ontario N1R 8S1

Tel: 519-623-1340

Fax: 519-740-4637

Email: mantond@cambridge.ca

MICHAEL NANOS AND JOSEPH MICALLEF
Plaintiffs
and
THE CORPORATION OF THE CITY OF CAMBRIDGE
Defendant

Court File No.: CV-24-0000 526-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at KITCHENER

STATEMENT OF CLAIM

WATERLOO REGION COMMUNITY LEGAL SERVICES
450 Frederick Street, Unit 101
Kitchener, Ontario N2H 2P5

Shannon K. Down LSO #43894D,
Tel: 519.743.0254 x 20
Fax: 519.743.1588
Email: shannon.down@wrcls.clcj.ca

Ashley Schuitema LSO #68257G
Tel: 519.743.0254 x 17
Email: ashley.schuitema@wrcls.clcj.ca

Lawyers for the Plaintiffs, Michael Nanos and
Joseph Micallef