

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

THE REGIONAL MUNICIPALITY OF WATERLOO

Applicant

and

PERSONS UNKNOWN AND TO BE ASCERTAINED

Respondents

APPLICATION UNDER Rule 14.05 of the *Rules of Civil Procedure*

FACTUM OF THE APPLICANT/RESPONDING PARTY

(Motion for an Injunction, Returnable to August 8, 2025)

July 31, 2025

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PART I. OVERVIEW

1. Homelessness, all parties agree, is an extraordinarily difficult problem to address.¹ Multiple complex factors lead to people experiencing homelessness, and equally multifaceted solutions are required in response. There is no academic or policy consensus about the best manner of addressing this “wicked” problem. It is agreed, however, that all levels of government, the public and private sectors, and key system partners (healthcare, mental health and addictions, justice, and others) are required to address this challenge.² The Regional Municipality of Waterloo (“**Region**”) cannot solve homelessness alone, or in the short term.

2. Since *Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*³ (“*Persons Unknown*”) was argued in 2022, the Region has more than doubled its operating budget for homelessness programs and services, from \$30.9 million to \$65.5 million, with corresponding increases in capacity.⁴ The Region has made great efforts – perhaps more than any other Ontario municipality – to address the needs of people experiencing homelessness. Despite this, the challenges have continued to grow. In a September 2021 point-in-time count (“**PIT Count**”), 1,085 people were counted as experiencing homelessness in the region, with 75% classified as experiencing chronic homelessness.⁵ By October 2024, those numbers had increased to 2,371 and 78% respectively.

¹ As acknowledged by the Moving Parties’ witness David Alton, “homelessness is a wicked problem meaning that it is highly complex”: Transcript of the Cross-Examination of David Alton, July 10, 2025 [“**Alton Transcript**”], Joint Transcript Book [“**JTB**”], Vol. 1, Tab 3, pp. 112-113 (Q102-106).

² Waterloo Region, *The Plan to End Chronic Homelessness - Navigating Complexity Together: A Roadmap to Functional Zero by 2030* (April 2024) [“**PECH**”], Exhibit “A” to Affidavit of Peter Sweeney, affirmed June 6, 2025 [“**1st Sweeney Affidavit**”], Responding Motion Record [“**RMR**”], Tab 3A, p.161, 168.

³ *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, [2023 ONSC 670](#) [“**Persons Unknown**”].

⁴ 1st Sweeney Affidavit, RMR, Tab 3, para. 67, pp. 79-80.

⁵ 2021 Point in Time Count [“**2021 PIT**”], Exhibit “D” to the 1st Sweeney Affidavit, RMR, Tab 3D, p. 218; 2024 Point in Time Count [“**2024 PIT**”], Exhibit “E” to the 1st Sweeney Affidavit, RMR, Tab 3E, p. 221.

3. The Region has a long-term plan to address chronic homelessness by 2030, together with community partners and other levels of government. This plan, adopted in April 2024, is known as the *Plan to End Chronic Homelessness* (“**PECH**”). The PECH was developed in consultation with stakeholders, calls for action from the other key partners in the fight against homelessness, and has the Region’s full support.

4. The present case, however, is much more limited in scope than *Persons Unknown*. The Region and its contractual partner Metrolinx require 100 Victoria Street North (“**100 Vic**” or the “**Property**”) for the specific purpose of constructing the Kitchener Central Transit Hub (“**KCTH**”) for the benefit of the entire population of the region. Site remediation is scheduled for December 2025, to prepare for construction commencing March 2026. Accordingly, on April 23, 2025, the Region passed a site-specific by-law (“**By-law**”) to provide for vacant possession of 100 Vic by December 1, 2025, accompanied by a plan (“**Plan**”) to provide alternative accommodation for those residing at 100 Vic as of the date notice of the By-law was given (“**Existing Residents**”). Unlike all previous encampment cases, the present case considers a site-specific by-law with a specific purpose, rather than a general by-law.

5. Under the Region’s Plan, the approximately 40 Existing Residents will be offered alternative accommodation over a 7-month period by the Region’s team of licensed professional unsheltered support workers (“**USWs**”), who will work with the residents to develop individual housing plans (“**IHPs**”) for them, tailored to their specific needs. The Region has allocated additional funding to ensure that they have a place to go. The Region is confident that they can be transitioned to alternative accommodations by December 1, 2025. As of July 31st, 20 of the original 40 Existing Residents have made this transition (and 7 of the Existing Residents have left the Encampment of their own accord).

6. This motion is likewise much more limited in scope than the Application, which will be fully heard on the merits in November. At that time, the court will have a much better understanding of the case, based on the full record and full argument of the issues. All that the court must decide now is whether interlocutory injunctive relief is needed pending the November hearing, and if so, on what terms. Issues as to whether the court should grant injunctive relief beyond the November hearing dates are best left to that hearing. No injunctive relief was needed for the 3+ months from enactment of the By-law to the present, and there is no reason why such relief is required in the remaining 3+ months before the November hearing. There is no pressing problem that the court needs to fix.

7. On the *RJR-MacDonald*⁶ test, the Region submits that the Moving Parties have not demonstrated a serious issue as to the By-law's validity. The By-law does not infringe the *Charter*⁷ and is not illegal under s.273 of the *Municipal Act, 2001*.⁸ The By-law has a fundamentally different purpose, scope, and context than the general region-wide Code-of-Use By-law at issue in *Persons Unknown*, which changes the s.7 analysis. Measured against the specific purpose of obtaining possession of 100 Vic for construction of the KCTH, the By-law (in light of the Plan for residents) is neither overbroad nor grossly disproportionate to the substantial public benefit that the KCTH will bring to the entire region. The By-law does not contravene any principle of fundamental justice under s.7. No detailed argument has been put forward that the By-law meets the test for discrimination under *R. v. Sharma*.⁹ It also cannot be bad faith for the Region to enact a By-law that it promptly brings to the court for guidance as to whether it contravenes the *Charter*.

⁶ *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994 CanLII 117](#) (SCC) [*“RJR-Macdonald”*].

⁷ *The Constitution Act, 1982*, [Schedule B to the Canada Act 1982 \(UK\), 1982, c 11](#).

⁸ *Municipal Act, 2001*, [SO 2001, c 25](#).

⁹ *R. v. Sharma*, [2022 SCC 39](#) [*“Sharma”*].

8. The By-law will not cause any irreparable harm to the Existing Residents before the November hearing. Nor – in light of the Region’s commitment to offer services to all unhoused people and the “light touch” approach that the Region has taken to enforcement – will it cause any irreparable harm even to those who have come to the encampment since the By-law was enacted.

9. The balance of convenience favours denying the motion. An injunction is not needed at this point. Many of the Moving Parties’ complaints are about the Region’s management of the site. However, the Region has an obligation to maintain safety and order for the benefit of all residents and the general public. Existing Residents have the right under the By-law to remain until after the November hearing, if they choose. For newcomers who have come to the site since April, the Region’s USWs have worked and will continue to work with them to establish IHPs. Although they have lower priority than Existing Residents for additional resources under the Plan, they are engaged with the Region’s housing stability system and the Region will do whatever it can to find solutions for them. Likewise, unhoused persons who are not at the site remain eligible for the full array of programs and services that the Region offers. They cannot shelter at 100 Vic, but they are in no worse position than they were before the By-law. Further, nothing in the By-law itself prevents them from sheltering elsewhere.

10. On the other hand, if an injunction is granted preventing the Region from enforcing the By-law, the Region will be unable to carry out an orderly wind-down of the encampment. Newcomers will likely come to the encampment up until the last moment, and the Region’s USWs will not have time or resources to develop IHPs with them. The Region will be unable to contain or respond to dangerous activities at the site, exposing its residents to risk. The USWs will be impeded in their work.

11. The Region respectfully requests that the motion be dismissed. An order that allows for a continuing influx of new residents up until the day of closure would not permit the Region to carry out its obligations and find individually tailored solutions for these new residents. Rather, it would create the very harm that the Moving Parties claim they wish to avoid – the possible negative effects of a closure on those residents without proper planning and resources being in place.

PART II. FACTS

A. The Parties, the Property, and the Underlying Dispute

12. The Region is an upper-tier municipality under the *Municipal Act, 2001*. The territory over which the Region has jurisdiction includes the cities of Cambridge, Kitchener, Waterloo, and various townships. The Region's responsibilities include public health, community services, public transit, and waste management. The Region does not have jurisdiction beyond its territory, or over the overall provision of healthcare services, education, social assistance, interest rates/monetary policies, or many other key policy areas which affect homelessness.

13. The Region owns 100 Vic, which is on the corner of Victoria and Weber Streets in downtown Kitchener. Since approximately December 2021, 100 Vic has been the site of a collection of unhoused individuals who have been living on the site in tents and other structures they have erected (the “**Encampment**”).

14. 100 Vic is also the site of activities to be undertaken as part of the construction of the KCTH, a significant public transportation project. Metrolinx requires the Property for construction

set to begin in March 2026,¹⁰ and the Region requires vacant possession of the site by December 1, 2025, to carry out preparatory work, including site remediation.¹¹

15. The Moving Parties are 15 individuals who are or have recently experienced homelessness in the Region.¹² This group includes 5 individuals who are Existing Residents under the By-law, and a number of others who joined the Encampment after April 16, 2025. The Moving Parties argue that the By-law contravenes ss. 7 and 15 of the *Charter* and that it should be quashed pursuant to s. 273 of the *Municipal Act, 2001*.

16. An *amicus curiae* has also been appointed to represent the interests of “those persons living in the encampment whose capacity may be in issue and who have not retained counsel”.¹³ The Amicus’ position on the Application is generally aligned with that of the Moving Parties.

B. The KCTH

17. The KCTH is a landmark project that will create significant economic and social growth for residents of the Waterloo region. Once completed, the KCTH will act as a gateway to the Waterloo area, serving current and future residents, as well as visitors, and will redefine how people connect, commute, and experience the Waterloo community.

18. The KCTH is vital to the economic and social growth of the Region, and a key part of the Region’s strategic priorities.¹⁴ It will combine numerous services, including ION light rail transit, Grand River Transit, expanded rail and bus GO Transit, VIA Rail, inter-city busy service,

¹⁰ Exhibit “I” to the Affidavit of Douglas Spooner, affirmed June 6, 2025, [“**Spooner Affidavit**”], RMR, Tab 4I, p. 525.

¹¹ Spooner Affidavit, RMR, Tab 4, paras. 7, 45, pp. 398-399, 411.

¹² Counsel for the Moving Parties originally filed a notice of appearance for 16 individuals, but sadly one (Existing Resident Matthew Stefanac) has passed away.

¹³ Order of Justice Gibson dated May 28, 2025, para. 1.

¹⁴ Spooner Affidavit, RMR, Tab 4, para. 16, p. 401.

passenger vehicles and car shares, and cyclists and pedestrians, into one central and convenient transit hub in the heart of the region.¹⁵ A reduction in commuter times across the region will constitute a significant service to its residents. This is especially true for those who rely on public transit daily, including those who commute for work, seniors, students, lower-income residents, and people with disabilities.

19. Metrolinx has advised the Region that it requires use of the Property for construction staging and laydown purposes.¹⁶ Staging and laydown are critical preparation activities for the construction of a physical project.¹⁷ They involve positioning and organizing construction materials (such as steel, concrete, bricks, wood), equipment and tools (including large construction machines and vehicles) and other items such as temporary structures for access during a project, to ensure worker safety and maintain workflow.¹⁸

20. The proximity, size and grade of a staging and laydown site are important factors to consider in choosing such a site.¹⁹ Since large construction equipment and materials are transported from the laydown site to or from the construction site, a laydown site that is even a short distance away from can increase the chance of worker injury by increasing the distance materials or equipment need to travel. On similar rail construction projects, workers have been injured by equipment falling over while traversing a grade raising or on shaky ground.²⁰ This can also, on aggregate, add significant additional time to a project.

¹⁵ Spooner Affidavit, RMR, Tab 4, para. 18, p. 203.

¹⁶ Spooner Affidavit, RMR, Tab 4, para. 37, p. 408; Exhibit "I" to the Spooner Affidavit, RMR, Tab 4I, p. 525.

¹⁷ Spooner Affidavit, RMR, Tab 4, para. 39, p. 408.

¹⁸ Spooner Affidavit, RMR, Tab 4, para. 39, p. 408.

¹⁹ Spooner Affidavit, RMR, Tab 4, paras. 39-40, pp. 408-409.

²⁰ Spooner Affidavit, RMR, Tab 4, para. 40, p. 408.

21. 100 Vic is the only space owned by the Region that is proximate to the construction work to be conducted by Metrolinx, of an adequate size, and on-grade with the construction site.²¹

22. The Region must provide the Property to Metrolinx in a condition fit for use, which means the Region will require time to engage in remediation and preparation of the Property prior to turnover to Metrolinx.²² This may include clean up, investigations, geotechnical testing, soil testing and scraping, removal of hazardous materials, and/or groundwater monitoring. It will take the Region up to three months to complete this work.²³

23. The Region has considered whether it could provide Metrolinx with an alternative site, but has determined that no other site can be used.²⁴ All other properties owned by the Region within 1 kilometre of the work are either properties that are already being used for the KCTH site or the Region's other works, have active ongoing uses, or are not on-grade or large or proximate enough for Metrolinx's purposes.²⁵ The option of purchasing additional land is impractical because the cost of acquiring suitable land that is proximate to the construction site is prohibitively high and the types of land available in close proximity are not suitable for construction purposes.²⁶ Further, the time required to identify, purchase, and prepare new land would delay the project timeline.²⁷

24. Given that construction work will be taking place on all sides of the Property, including rail work, road work, and (most critically) demolition work, the Region is also concerned with the

²¹ Spooner Affidavit, RMR, Tab 4, paras. 41-44, pp. 409-410.

²² Spooner Affidavit, RMR, Tab 4, paras. 45-46, p. 411.

²³ Spooner Affidavit, RMR, Tab 4, paras. 52-55, p. 413.

²⁴ Spooner Affidavit, RMR, Tab 4, para. 44, p. 410.

²⁵ Spooner Affidavit, RMR, Tab 4, para. 41, pp. 409-410.

²⁶ Spooner Affidavit, RMR, Tab 4, para. 44, p. 410.

²⁷ Spooner Affidavit, RMR, Tab 4, para. 44, p. 410.

health and safety risks to anyone residing nearby while construction work is ongoing.²⁸ The risks of heavy machinery or other fatal accidents must be taken into account.

C. The By-Law

25. The Region enacted the By-law on April 23, 2025. Public notice of the By-law was given on April 16, 2025. The By-law only purports to regulate activity on 100 Vic, unlike the Code of Use By-law at issue in *Persons Unknown*. The Region proactively seeks the guidance of this court on its plan to close the encampment. It is unusual, if not unprecedented, for a government to seek a declaration that a duly enacted law complies with the *Charter*.

26. In broad outline, the By-law, in the context of the Region's Plan, has these features:

- (a) The date by which the approximately 40 Existing Residents must leave is set for December 1, 2025, more than 7 months after the By-law was enacted, giving the Region time to work with them to transition them to alternative accommodation.
- (b) In the interim, the Region's team of USWs (licensed professionals comprising social workers, social support workers, and a registered nurse) has been attending the site daily to meet with encampment residents and develop IHPs with them, to tailor their housing solutions to their specific needs.²⁹
- (c) The Region has budgeted an additional \$814,333 in net new funding in 2025 alone, to ensure that there are additional resources for housing solutions for the residents who will need to transition to other accommodations because of the anticipated closure.³⁰ This is intended to ensure that other unhoused people in the Waterloo

²⁸ Spooner Affidavit, RMR, Tab 4, paras. 52-55, p. 413.

²⁹ 1st Sweeney Affidavit, RMR, Tab 3, para. 37, p. 71.

³⁰ 1st Sweeney Affidavit, RMR, Tab 3, para. 41, p. 72.

region are not negatively affected (e.g., displaced or moved further down waiting lists) by the closure.

- (d) While the \$814,333 is nominally allocated specifically among additional rent supplements, motel rooms, and supportive housing, Region staff have the discretion to move funds between these categories to meet the specific needs of residents.³¹

The Region recognizes that the needs of residents are diverse, and some may be more suited to one form of accommodation rather than another.

27. The By-law prohibits the carrying out of defined “Prohibited Activities” on the Property, including residing on the Property. However, the By-law makes two key distinctions which affect its application: first, between Existing Residents and those who are not Existing Residents and, second, between the transitional period of April 16, 2025 to November 30, 2025 (the “**Transitional Period**”) and from December 1, 2025 onwards.

28. The By-law defines an individual who was residing at the Property as of the date of public notice of the By-law (April 16, 2025) as a “Resident”. Only Residents (also referred to as “Existing Residents”) are entitled to remain at the Property during the Transitional Period.³² The Transitional Period and the By-law’s prohibition on new individuals joining the Encampment are motivated by the need to assist Existing Residents, who are already at the Property, to find alternative shelter for when the Property is no longer available.³³

³¹ 1st Sweeney Affidavit, RMR, Tab 3, para. 42, p. 72; Transcript of the Cross-Examination of Peter Sweeney, July 11, 2025 [“**Sweeney Transcript**”], JTB, Vol. 2, Tab 1, pp. 112-113 (Q102-106).

³² Existing Residents may be removed from the Property under the By-law for undertaking a defined Prohibited Activity that “creates or contributes to a serious risk to their own health or safety or the health or safety of another person”. Anyone may be removed under the Code of Use By-law so long as they are not removed for the reason of residing on or erecting temporary shelters without a person, as set out in paragraph [158](#) of the *Persons Unknown Decision*.

³³ 1st Sweeney Affidavit, RMR, Tab 3, para 41, p. 72.

29. As the Moving Parties' own evidence indicates, evictions that are rushed and on short notice can be damaging for individuals living in encampments.³⁴ By providing over 7 months' notice for Existing Residents to find alternative shelter arrangement with the help of USWs – and enabling the Region to prevent newcomers from joining the Encampment in the interim who are not prioritized for the additional resources and would not be able to benefit from this same lengthy period before the Encampment must close – the Region has designed the By-law to be responsive to the very concerns raised by the Moving Parties.

30. After the Transitional Period ends, all unauthorized individuals, be they Existing Residents or not, may be removed from the Property under the By-law. This reflects the fact that the Region requires vacant possession of the Property by December 1, 2025, to ensure that it can deliver the Property to Metrolinx ready for use by March 2026.³⁵

31. The By-law is fundamentally different in its purpose, scope, and context from the Code of Use By-law before Justice Valente in *Persons Unknown*. In particular:

- (a) The Code of Use By-law applies to all Region-owned property throughout the Waterloo region. The By-law in this case applies only to 100 Vic.
- (b) The Region took the position in *Persons Unknown* that it would use the court's order as a precedent for other encampments across the Waterloo region,³⁶ and relied

³⁴ Transcript of the Cross-Examination of Stephen Hwang, July 11, 2025 [“**Hwang Transcript**”], JTB, Vol. 1, Tab 8, pp. 475-483, 488 (Q61-79, 91).

³⁵ Spooner Affidavit, RMR, Tab 4, paras. 29-30, 45-46, pp. 405-406, 411.

³⁶ *Persons Unknown*, para. [6](#), [11](#). The Region had also used the Code of Use By-law in past to clear other encampments.

upon the generic purpose of the Code of Use By-law for the s.7 analysis.³⁷ In this case, the s.7 analysis turns on the specific purpose of the site-specific By-law.

- (c) The Region had not taken any specific steps to provide for the encampment residents in *Persons Unknown*. The USW team did not yet exist (having been created in 2023),³⁸ and there were no IHPs for the residents. In the present case, the Region is confident that it will be able to transition the willing Existing Residents successfully to alternative accommodation before December 1, 2025.³⁹
- (d) In *Persons Unknown*, the court found that the existing emergency shelter capacity was likely less than the number of encampment residents (53) at the time. In the present case, the Region has provided net new funding to create additional capacity to accommodate the 40 Existing Residents as part of its Plan.⁴⁰
- (e) At the time that *Persons Unknown* was argued, it was anticipated that the Region would require possession of 100 Vic at some future point for KCTH construction, but there was no firm date.⁴¹ In the present case, there is a fixed date by which the Region requires possession of the Property, in order to conduct site remediation and hand over the Property to Metrolinx for construction commencing in March 2026.
- (f) At the time *Persons Unknown* was argued, the Region had taken some significant steps to address homelessness, but not on the scale of its recent efforts. As shown below, between 2022 and 2025, the Region's operating budget for homelessness

³⁷ *Persons Unknown*, para. 9. These were identified as being: (i) to prevent physical damage to the lands owned or occupied by the Region (the 'Designated Premises') (ii) to prevent the disruption of the Region's operations on the Designated Premises; and (iii) to regulate the use and enjoyment of the Designated Premises by other persons.

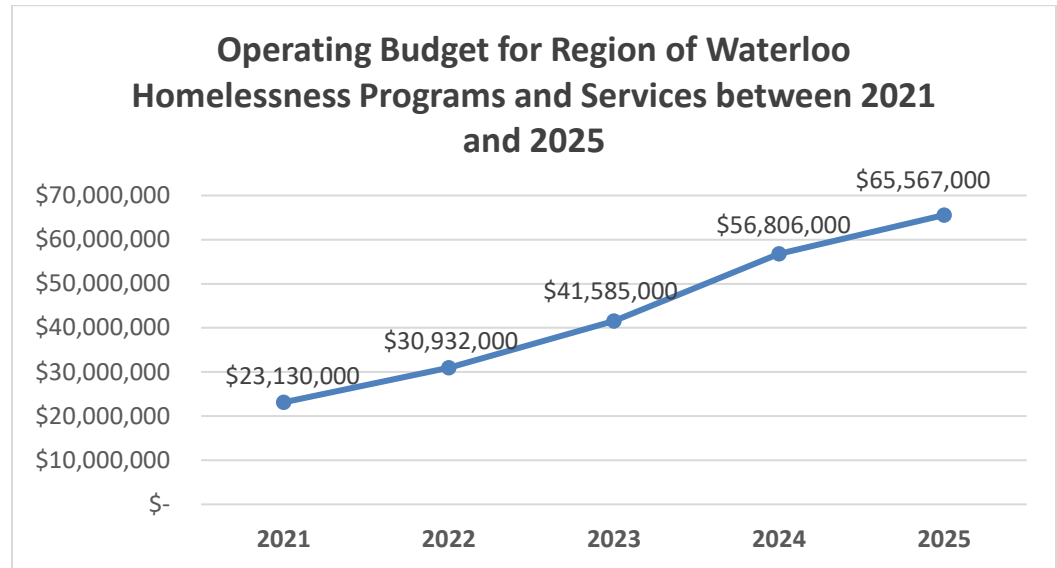
³⁸ 1st Sweeney Affidavit, TMT, Tab 3, para. 92, p. 88.

³⁹ 1st Sweeney Affidavit, RMR, Tab 3, para. 36, p. 71.

⁴⁰ *Persons Unknown*, at para. 66; 1st Sweeney Affidavit, RMR, Tab 3, para. 41, p. 72.

⁴¹ *Persons Unknown*, at para. 15.

programs and services more than doubled, from \$30.9 to \$65.5 million. From the Encampment’s establishment in 2021, it has almost tripled (from \$23.1 million).⁴²



- (g) There have been corresponding increases in capacity for the Region’s programs. In 2024, 212 people with high service needs who were formerly experiencing chronic homelessness were housed through Prioritized Access to Housing Support (“PATHS”).⁴³ This is an increase from 103 people housed through PATHS in 2022.⁴⁴ The PATHS process coordinates services of the Region and its housing system partners to support those with the greatest depth of need and vulnerability.⁴⁵ The combined total of unhoused people staying in emergency shelters, Region-funded motel rooms and transitional shelter increased from 206 in September 2021 to 820 in October 2024, according to PIT Counts conducted at those times.⁴⁶

⁴² 1st Sweeney Affidavit, RMR, Tab 3, para. 67, p. 79.

⁴³ 1st Sweeney Affidavit, RMR, Tab 3, para. 59, p. 77.

⁴⁴ At paragraph 92 of *Persons Unknown*, Justice Valente finds that the Region had a maximum capacity to shelter 553 individuals.

⁴⁵ 1st Sweeney Affidavit, RMR, Tab 3, para. 59, p. 77.

⁴⁶ 2021 PIT Count, Exhibit “D” to the 1st Sweeney Affidavit, RMR, Tab 3D, p. 218; 2024 PIT Count, Exhibit “E” to the 1st Sweeney Affidavit, RMR, Tab 3E, p. 221.

- (h) In *Persons Unknown*, the Region specifically took the position “that it does not require the Court’s assistance in the determination of its legal rights”.⁴⁷ In the present case, the Region expressly seeks the court’s guidance as to whether the By-law is compliant with the *Charter*.⁴⁸

D. The Encampment Environment

32. The Encampment has existed on the Property since approximately December 2021. Given the inherent dangers of Encampment living,⁴⁹ the Region has taken significant steps to ameliorate the living conditions on the site.⁵⁰ This includes hiring on-site security and pest control,⁵¹ arranging for regular cleaning of the Property and waste-bins onsite to address the significant garbage that accumulates at the Encampment,⁵² and installing and servicing onsite portable toilets.⁵³

33. Despite the Region’s significant efforts, the evidence before this court – including that of the Moving Parties themselves – demonstrates that the Encampment continues to be a site of widespread public drug use,⁵⁴ potentially volatile self-policing and physical violence,⁵⁵ and fires.⁵⁶

⁴⁷ *Persons Unknown*, para. 6.

⁴⁸ Notice of Application, para. 2(i). As a corollary, if the court should find that any aspect of the By-law is unconstitutional in the broader context of the Region’s plan to wind down the encampment, the Region will seek the Court’s guidance on what the Region must do in order to proceed with its plan. The Region anticipates that this will be the subject of submissions at the application hearing in November.

⁴⁹ 1st Sweeney Affidavit, RMR, para. 94, pp. 89-90; Hwang Transcript, JTB, Vol. 1, Tab 1, pp. 493-496 (Q101-114).

⁵⁰ 1st Sweeney Affidavit, RMR, Tab 3, para. 88, p. 87.

⁵¹ 1st Sweeney Affidavit, paras. RMR, Tab 3, 88-91, pp. 87-88.

⁵² 1st Sweeney Affidavit, RMR, Tab 3, para. 90, p. 88.

⁵³ 1st Sweeney Affidavit, RMR, Tab 3, para. 91, p. 88.

⁵⁴ Affidavit of Calvin Sharpe, sworn May 30, 2025, Motion Record of the Moving Parties [MRMP], Tab 12, para. 10, p. 87.

⁵⁵ 1st Sweeney Affidavit, RMR, Tab 3, para. 100, 102 p. 91-92; Exhibit “J” to the Hwang Affidavit, MRMP, Tab 17J, p. 337.

⁵⁶ 1st Sweeney Affidavit, RMR, Tab 3, paras. 90, 101, pp. 88, 91-92.

34. Tragically, there have been five reported deaths at the Encampment since January 2022.⁵⁷ This likely underreports the true number of deaths related to the Encampment because it does not include cases where an individual is found at the Encampment but pronounced dead in hospital, or where long-term health effects that contribute to a death are related to the Encampment but the deceased passes away off-site.⁵⁸ Deaths also occur in the shelter system, but it appears that they occur at a much lower rate.⁵⁹ Another encampment at 150 Main St. Cambridge (since closed) had an attempted murder.⁶⁰

35. The Region has documented the following risks to residents and the broader public arising from the Encampment environment:

- (a) Overcrowding and congestion on the site;
- (b) Evidence of drug paraphernalia that has not been properly disposed of, including syringes and needles;
- (c) Barbecues, propane tanks, and the presence of significant debris on the site, which create significant fire risks;
- (d) Security incidents on the site, including violent altercations between residents of the Encampment;
- (e) Significant clutter and garbage on the Property;
- (f) Evidence of rodent activity on the site, including rodent feces;
- (g) The presence of human urine and feces; and

⁵⁷ 1st Sweeney Affidavit, RMR, Tab 3, para. 96, pp. 90.

⁵⁸ 1st Sweeney Affidavit, RMR, Tab 3, para. 98, p. 90-91.

⁵⁹ Answers to Undertakings of Peter Sweeney, [“**Sweeney Undertakings**”], Q11-12.

⁶⁰ 2nd Sweeney Affidavit, RMR, Tab 1, para. 47, p. 15.

- (h) Construction of semi-permanent structures out of sandbags, with no building permits and no apparent adherence to any building standards.⁶¹

36. While the Region has devoted significant resources to improve health outcomes at the Encampment in the interim,⁶² its public position has always been that the Encampment will not be permitted to exist in perpetuity. This is consistent with guidance from the National Working Group on Homeless Encampments, that encampments “should not be understood as a solution to homelessness and should not be permanent”,⁶³ and with the PECH.⁶⁴ This has been underscored by the Region’s publicized need to use the Property for KCTH construction, a fact that has been publicly advertised for years. However, as set out above, the Region only received confirmation from Metrolinx in December 2024 of the date by which it required vacant possession of the site.

E. The PECH and the Region’s Extensive Community Engagement

37. In 2024, the Region adopted the PECH as part of its efforts to address homelessness and its associated social challenges.⁶⁵ The PECH lays out the Region’s proposed approach to achieving functional zero homelessness in Waterloo Region by 2030. The PECH follows through on the Region’s approval of a staff recommendation in 2022 to develop a “Homelessness Master Plan”.

38. The PECH and its implementation have been the focus of significant community consultation. The PECH is co-authored by the Social Development Centre Waterloo Region

⁶¹ 1st Sweeney Affidavit, RMR, Tab 3, para. 94, p. 89.

⁶² The Region spends approximately \$66,200 per month maintaining the Encampment, not including staffing costs for social supports, outreach facilities, or by-law staff who regularly attend the Property: 1st Sweeney Affidavit, para. 92, RMR, Tab3, p. 88-89.

⁶³ “Homeless Encampments: Municipal Engagement Guide”, Exhibit 3 to the Cross Examination of Sara Escobar, JTB p. 451.

⁶⁴ 2nd Sweeney Affidavit, RMR, Tab 1, para. 32, p. 10, citing PECH, Exhibit “A” to the 1st Sweeney Affidavit, RMR, Tab 3, p. 102.

⁶⁵ PECH, Exhibit “A” to the 1st Sweeney Affidavit, RMR, Tab 3, p. 102.

(“SDC”), a Region-funded organization with a mandate to ensure that lived experience is the basis for collective action.⁶⁶ Two other groups, the Co-Creator’s Group and the Lived Experts Prototyping Cohort, have provided significant input on the PECH and represent the experiences of those experiencing homelessness and their allies, as well as service providers in the field.⁶⁷ The Co-Creator’s Group meets monthly.⁶⁸

39. The Region has also engaged in *ad hoc* consultation about the closure of the Encampment. On March 7, 2024, following the Region’s advice that the time when 100 Vic would be needed for the KCTH was drawing closer, David Alton (“Alton”) of the SDC convened a meeting between Region staff and 5 stakeholders groups that Alton selected.⁶⁹ At that meeting, however, the stakeholder groups presented maximal demands and one (FightBack, discussed below) called Region staff “Nazis”.⁷⁰

40. Public notice was provided of the By-law in accordance with the Region’s usual procedures, and the By-law was considered by Council at a public meeting. Delegations were received from Alton, Jacara Droog, and Aaron Price (witnesses for the Moving Parties, including Mr. Price who is a resident) as well as Ashley Schuitema and Shannon Down (counsel for the Moving Parties).⁷¹

⁶⁶ PECH, Exhibit “A” to the 1st Sweeney Affidavit, RMR, Tab 3, p. 102.

⁶⁷ PECH, Exhibit “A” to the 1st Sweeney Affidavit, RMR, Tab 3, p. 102.

⁶⁸ PECH, Exhibit “A” to the 1st Sweeney Affidavit, RMR, Tab 3, p. 109; 2nd Sweeney Affidavit, RMR, Tab 1, para. 36, p. 12.

⁶⁹ Affidavit of David Alton, affirmed June 23, 2025 [“Alton Affidavit”] Supplementary Motion Record [“SMR”], Tab 11, paras 10-11, pp. 102-103; Alton Transcript, JTB, Vol. 1, Tab 3, p 124. (Q133).

⁷⁰ Alton Transcript, JTB, Vol. 1, Tab 3, p. 129-131, (Q144, 147, 149).

⁷¹ Minutes of Council Meeting held April 23, 2025, Exhibit “A” to the Cross-Examination of David Alton, JTB, pp. 138-173.

41. Most importantly, the Region is in an ongoing process of consultation with the Existing Residents, and others who have come to 100 Vic since April, through its USWs, as to their individual housing needs. This will continue in the coming months.

42. The Region has had the benefit of considering input from the following sources in developing and implementing the By-law and Plan:

- The evidence, arguments, and judicial commentary in *Persons Unknown*
- The extensive and ongoing consultations leading to and following the PECH, including the Co-Creators Group meetings
- *Ad hoc* consultations such as the meeting held March 7, 2024
- Delegations to Council in its consideration of the By-law
- Consultations between residents and the USW team
- Suggestions made in the course of this litigation⁷²

F. Organized Activist Opposition to the Region's Plan

43. Some activists have engaged in conduct that the Region's Commissioner of Community Services Peter Sweeney describes as "highly antagonistic and obstructionist".⁷³ One group, FightBack KW ("**FightBack**"), describes itself as "an intersectional leftist activist group of community members what works at a grassroots level to fight systemic inequities and violence in Waterloo Region".⁷⁴ On May 1, 2025, shortly after the By-law came into effect, FightBack posted

⁷² For example, Angela Allt expressed the view that an extra month would help in developing IHPs, and that some flexibility in the rules for Region-operated shelters could assist in placing some residents (see: Transcript of the Cross-Examination of Angela Allt, July 14, 2025 ["**Allt Transcript**"], JTB, Vol. 1, Tab 2, p. 63 (Q121); Dr. Hwang opined that a system for storage of residents' belongings could ameliorate the harms of a closure (Hwang Transcript, JTB, Vol. 1, Tab 8, p. 483 (Q78-80)).

⁷³ 2nd Sweeney Affidavit, RMR, Tab 1, para. 38, p. 13.

⁷⁴ 2nd Sweeney Affidavit, RMR, Tab 1, para. 37, p. 12.

on Instagram that “the Region of Waterloo has demonstrated their disdain for human rights numerous times” and that “FightBack will be on site at the 100 Victoria Street Encampment 24 hours a day”.⁷⁵ Since then, FightBack has maintained a continuous presence on the site.

44. FightBack’s conduct has included the following:

- At a previous encampment, encouraging unhoused individuals to set up tents there and representing that the Region could not remove them due to litigation⁷⁶
- Encouraging unhoused individuals at 100 Vic to resist working with the Region’s USWs and to remain at the Encampment⁷⁷
- Regularly interfering with the provision of services at the Encampment, such as servicing the garbage bins and port-a-potties⁷⁸
- Calling Region staff “Nazis”, “fascists”, and “murderers” in public settings (as confirmed by Moving Parties’ witnesses Alton and Jakob Stubbs)⁷⁹
- Posting pictures of Region staff involved with the By-law on social media and telephone poles around downtown Kitchener⁸⁰

45. FightBack is a non-hierarchical collection of individuals without formal membership, but with shared values described by one witness associated with FightBack, Jakob Stubbs (“**Stubbs**”)

⁷⁵ Exhibit “A” to the 2nd Sweeny Affidavit, RMR, Tab 1A, p. 31.

⁷⁶ 2nd Sweeny Affidavit, RMR, Tab 1, para. 45, p. 14.

⁷⁷ 2nd Sweeny Affidavit, RMR, Tab 1, para. 40, p. 13.

⁷⁸ 2nd Sweeny Affidavit, RMR, Tab 1, para. 41, p. 13; “Maintenance workers blocked from accessing garbage bins at Kitchener encampment”, Exhibit 5 to the Cross-examination of Jacara Droog, JTB, p. 298.

⁷⁹ 2nd Sweeny Affidavit, RMR, Tab 1, para. 42, pp.13-14; Alton Transcript, JTB, Vol. 1, Tab 3, p. 131 (Q149); Transcript of the Cross Examination of Jakob Stubbs [“**Stubbs Transcript**”], JTB, Vol. 1, Tab 6, pp. 369-307 (Q105-107).

⁸⁰ 2nd Sweeny Affidavit, RMR, Tab 1, para. 43, p. 14; and Exhibit “C” to the 2^{ns} Sweeny Affidavit, RMR, Tab 1C, p. 44.

as “anti-fascist” and “concerned with power structures in society”.⁸¹ He regards the Region’s security guards on site and the Region itself as largely an “abusive authority structure”, and as having “fascist tendencies”.⁸² Other members of FightBack prefer to remain anonymous.

46. The presence of activists who have come to 100 Vic since the By-law was passed complicates the process of monitoring resident numbers and matching the needs of residents to available resources through IHPs.⁸³

G. The Range of Options under the Region’s Housing Stability System

47. The Region has continued to expand its shelter and transitional housing capacity since *Persons Unknown*. As of March 2025, the Region had capacity to house 575 individuals across emergency shelter, winter warming, and transitional housing.⁸⁴ In addition to these options, the Region funds and operates a program that stabilizes individuals experiencing homelessness by transitioning them from encampments by providing motel accommodation and connecting them to essential human and housing services alongside IHP and housing search support.⁸⁵

48. The Region also funds, monitors, and oversees a supportive housing program providing wrap-around support services to participants. This program is delivered in fixed site and scattered site models. There are currently 407 scattered site units and 401 fixed site units.⁸⁶ The Region also operates a rent-subsidy program,⁸⁷ supportive housing units,⁸⁸ and funds two housing loss

⁸¹ Stubbs Transcript, JTB, Vol. 1, Tab 6, p. 361 (Q72).

⁸² Stubbs Transcript, JTB, Vol. 1, Tab 6, pp. 363-364 (Q79-81).

⁸³ 2nd Sweeney Affidavit, RMR, Tab 1, para. 12, 4.

⁸⁴ 1st Sweeney Affidavit, RMR, Tab 3, para. 75, p. 83.

⁸⁵ 1st Sweeney Affidavit, RMR, Tab 3, para. 78, p. 84.

⁸⁶ 1st Sweeney Affidavit, RMR, Tab 3, para. 81, p. 85.

⁸⁷ 1st Sweeney Affidavit, RMR, Tab 3, para. 19, p. 66.

⁸⁸ 1st Sweeney Affidavit, RMR, Tab 3, para. 19, p. 66.

prevention centres and a street outreach program.⁸⁹ In the longer term, the Region has a capital budget of \$500 million to add 2,500 new affordable housing units over 5 years. The Region has actually exceeded that target and is now extending that.⁹⁰

49. Across these programs and sites, there are options that cater to different populations and distinct needs, including youth, women, gender diverse individuals, individuals with disabilities, couples, seniors, people with pets, Veterans, and families with dependents.⁹¹

50. As noted, the Region has also allocated funding specifically to create additional capacity to accommodate the Existing Residents of the Encampment. This funding can be used for supportive housing units, affordable housing units, and/or motels with social supports for a transitional period.⁹²

H. The Role of the USWs

51. On the ground, a significant change since *Persons Unknown* in the way the Region provides support to unhoused individuals has been the establishment of its team of USWs in 2023.⁹³ This team has grown from two USWs in 2023⁹⁴ to a current size of six.⁹⁵ All of the Region's USWs are licensed professionals.⁹⁶

⁸⁹ 1st Sweeney Affidavit, RMR, Tab 3, paras. 79-80, p. 85.

⁹⁰ Sweeney Transcript, JTB, Vol. 2, Tab 1, p. 45 (Q98).

⁹¹ 1st Sweeney Affidavit, RMR, Tab 3, paras. 71, 80, pp. 81, 85.

⁹² 1st Sweeney Affidavit, Tab 3, para. 42, RMR, p. 72.

⁹³ 1st Sweeney Affidavit, RMR, Tab 3, para. 92, p. 88.

⁹⁴ Sweeney Undertakings Q8-9.

⁹⁵ 1st Sweeney Affidavit, RMR, Tab 3, para. 92, p. 88.

⁹⁶ 1st Sweeney Affidavit, RMR, Tab 3, para. 12, p. 65.

52. The core work of the Region’s team of USWs is the development and implementation of IHPs for – and in collaboration with – unhoused individuals.⁹⁷ IHPs are personalized action plans that are designed to match individuals with housing options which reflect their specific needs and preferences, to the greatest extent possible. IHPs need to be developed over time, as the plans themselves are tailored to the individuals’ needs and the availabilities of various shelter and accommodation.⁹⁸ The required trust between USWs and individuals is also built over time. Sometimes, initial steps must be completed before an individual is willing to accept a shelter or other accommodation placement. For example, one’s belongings must sometimes be stored appropriately, or a pet may need to be placed temporarily with a trusted person, which can affect the timeline for implementing IHPs.⁹⁹

53. While the Region’s team of USWs does not limit its activities to the Encampment, the USW team is in regular contact with Encampment residents and works hard to build relationships and trust with these individuals.¹⁰⁰ From April 2024-April 2025, the USW team successfully supported 43 individuals from the Encampment obtaining referrals to housing.¹⁰¹

54. Despite the significant efforts of the Region to address homelessness, the number of unhoused individuals continues to increase in the Region and across Canada, and the number of unhoused individuals in the Region remains higher than the number of available shelter spaces.¹⁰² The Region is not alone in facing these increased challenges. Although the Region’s level of commitment to homelessness and affordable housing is “unique when compared to other Regional

⁹⁷ 1st Sweeney Affidavit, RMR, Tab 3, para. 13, p. 65.

⁹⁸ 1st Sweeney Affidavit, RMR, Tab 3, para. 46, p. 73.

⁹⁹ 1st Sweeney Affidavit, RMR, Tab 3, para. 46, p. 73.

¹⁰⁰ 1st Sweeney Affidavit, RMR, Tab 3, para. 21, p. 67.

¹⁰¹ 1st Sweeney Affidavit, RMR, Tab 3, para. 92, p. 88.

¹⁰² 1st Sweeney Affidavit, RMR, Tab 3, paras. 60-61, p. 77

governments and System Service Managers in Ontario”,¹⁰³ it has faced increases in homelessness comparable to the challenges elsewhere. For example, Toronto’s unhoused population more than doubled between April 2021 and October 2024, from 7,300 to 15,400.¹⁰⁴

I. The Region has taken a light touch approach to enforcing the By-law

55. The Region has taken a light-touch approach to enforcement of the By-law to date.¹⁰⁵ For the first several weeks, Region staff simply explained the By-law to persons on site, including the residents. No prosecutions have been initiated and no trespass notices have been issued under the By-law to date.¹⁰⁶

56. The Region has not taken steps to date to enforce the prohibition against new Encampment residents who have come to the site since April. As of June 23, approximately 17 new individuals had joined the Encampment since April. Approximately 40 Existing Residents were residing at the Encampment as of April 16.¹⁰⁷ However, between April 16 and June 23, the Region transitioned 13 individuals from 100 Vic to alternative accommodation,¹⁰⁸ leaving a population of approximately 44 as of June 23. The Region’s updated information is that as of July 31, the Region has transitioned 20 of the original 40 residents to alternative accommodation, and 7 others have left of their own accord, leaving only about 13 of the Existing Residents. However, 30 (net) new residents have now joined, meaning that the population is now approximately 43.

¹⁰³ PECH, Exhibit “A” to the 1st Sweeney Affidavit, RMR, Tab 3, p. 102.

¹⁰⁴ Exhibit 3 to the Cross-Examination of Stephen Hwang, JTB, pp. 553-555.

¹⁰⁵ 2nd Sweeney Affidavit, RMR, Tab 1, para. 5, p. 2.

¹⁰⁶ 2nd Sweeney Affidavit, RMR, Tab 1, para. 6, p.2.

¹⁰⁷ 1st Sweeney Affidavit, RMR, Tab 3, paras. 25, 116, pp. 67, 96.

¹⁰⁸ 2nd Sweeney Affidavit, RMR, Tab 1, para. 9, p. 3.

57. The Region's USW team has been working hard to assist all individuals at the Encampment experiencing homelessness to find alternate shelter arrangements, not only Existing Residents.¹⁰⁹ However, the Existing Residents have priority accessing the additional resources that were allocated under the Plan.

J. The Moving Parties' Evidence

58. The Moving Parties have varying status under the By-law. From the record before the court, it appears that five of the Moving Parties are Existing Residents under the By-law.¹¹⁰ The remainder are individuals residing at the Encampment who have come since April 16 and are not Existing Residents. The majority of the Moving Parties appear to be newcomers to the site.

59. The Region did not cross-examine any of the Moving Parties, except for Stubbs (who came to the Encampment as a FightBack volunteer but has since become unhoused). The Region wished to avoid exacerbating mental health challenges and did not want to undermine the necessary relationship of trust between residents and USWs. However, the Region does not necessarily accept all of their assertions, particularly where they conflict with evidence from the Region – for example, that all residents have been provided with at least the opportunity to discuss accommodation options with the USWs.¹¹¹

60. Several of the Moving Parties' witnesses (Sara Escobar and Jacara Droog) describe themselves as "advocates".¹¹² While advocacy for those experiencing homelessness fulfills a

¹⁰⁹ 2nd Sweeney Affidavit, RMR, Tab 1, para. 17, p. 5.

¹¹⁰ 2nd Sweeney Affidavit, RMR, Tab 1, para. 16, p. 5.

¹¹¹ 2nd Sweeney Affidavit, RMR, Tab 1, paras. 18-21, pp. 5-7.

¹¹² Transcript of the Cross-Examination of Jacara Droog, July 14, 2025, ["**Droog Transcript**"], JTB, Vol. 1, Tab 5, pp. 207-208, 216-217, 238 (Q7, 34, 37, 122); Transcript of the Cross-Examination of Sara Escobar, July 11, 2025, JTB, Vol. 1, Tab 7, p. 384 (Q13-14).

valuable function, these witnesses are not solution-oriented. Nor, with respect, are the witnesses associated with FightBack.¹¹³

61. However, this much is not in issue: the lay evidence put forward by the Moving Parties – both from residents and their allies – demonstrates an unfortunate and uncontested truth: it is harmful to an individual’s health to be homeless. It is also uncontested that the reasons an individual becomes unhoused are complex and multifaceted, and the various policy responses to address homeless must be similarly so.

62. Unhoused individuals can have various needs and preferences that no “one size fits all” approach will accommodate. This is precisely why the Region’s USWs work with individual residents to developed IHPs that are based on that person’s specific experiences and needs.

63. The Moving Parties’ expert evidence from Dr. Stephen Hwang is general in nature, and largely focused on the harms of homelessness itself, which are uncontested.¹¹⁴ Dr. Hwang confirmed on cross-examination that his definition of “homelessness” includes residing at an encampment. He has never visited the Encampment nor treated any of the individuals present at the Property.¹¹⁵ Consequently, Dr. Hwang’s evidence¹¹⁵ was largely confined to providing an opinion that homelessness is associated with negative health outcomes, and that homelessness itself “is the result of a complex interaction of factors” at both the individual and societal levels for which “the cooperation of all three levels of government” is required to address.¹¹⁶

¹¹³ Transcript of the Cross-Examination of Aaron El Sabrou, July 14, 2025, JTB, Vol. 1, Tab 1, p. 9 (Q6); Affidavit of Eddy Gringon, sworn May 12, 2025, MRMP, Tab 14, para. 2, p. 98; Stubbs Transcript, JTB, Vol. 1, Tab 6, p. 180 (Q14); Droog Transcript, JTB, Vol. 1, Tab 5, p. 208 (Q7).

¹¹⁴ Hwang Affidavit, MR, Tab 17, paras. 7-8, pp. 133-137.

¹¹⁵ Hwang Transcript, JTB, Vol. 1, Tab 8, pp. 462-463 (Q12-13).

¹¹⁶ Exhibit 1 to the Cross Examination of Stephen Hwang, JTB, p. 509; Hwang Transcript, JTB, Vol. 1, Tab 8, pp. 465, 468 (Q22, 32).

64. Dr. Hwang also clearly stated on cross-examination that he is “not an expert in the nature or the adequacy of the efforts that are being made on the ground” in respect of the Encampment and the By-law.¹¹⁷ He further acknowledged that while he has published extensively on the issue of the negative health effects of being homeless, he has never conducted or participated in any research regarding the adverse effects of forced encampment evictions.¹¹⁸

65. Despite his acknowledged lack of direct expertise in this area, Dr. Hwang’s affidavit attaches an article which he described on cross-examination as “the best and most representative article” on the harms of encampment evictions.¹¹⁹ However, he agreed that the “encampment sweeps” that were the article’s focus – being forced evictions with no/minimal notice and without accompanying supports or offers of alternative shelter – are in many key ways distinct from the provisions of the By-law and its related Plan.¹²⁰

66. There is no expert evidence before the Court on how the Region’s specific By-law and accompanying Plan – or anything closely resembling it – would affect those living in an encampment, either positively or negatively.

67. Finally, the Moving Parties present no evidence to challenge the Region’s *bona fide* need for the Property for the KCTH as set out in the affidavit of Douglas Spooner, who was not cross-examined.

¹¹⁷ Hwang Transcript, JTB, Vol. 1, Tab 8, pp. 479 (Q69).

¹¹⁸ Hwang Transcript, JTB, Vol. 1, Tab 8, p. 473 (Q52).

¹¹⁹ Hwang Transcript, JTB, Vol. 1, Tab 8, p. 473 (Q53).

¹²⁰ Hwang Transcript, JTB, Vol. 1, Tab 8, pp. 477, 481, 482, 483 (Q64, 75, 76, 79).

PART III. ISSUE

68. The issue before the court is whether the Moving Parties satisfy the *RJR-Macdonald* test for injunctive relief.¹²¹ The Region submits that the injunctive relief sought should be denied, as the Moving Parties fail to satisfy each branch of the test:

- (a) They have not demonstrated that there is a serious issue to be tried;
- (b) the Moving Parties will not suffer irreparable harm if the injunction is granted; and
- (c) the balance of convenience does not favour granting the injunction.

PART IV. LAW & ARGUMENT

A. *No serious issue to be tried*

69. The Moving Parties have not demonstrated a serious issue to be tried. Even on a preliminary evaluation of the merits, the claims under ss. 7 and 15 of the *Charter* or ss. 272 and 273 of the *Municipal Act* are non-specific and ignore key doctrinal requirements. Alternatively, even if the serious issue threshold is met, the case is weak on the merits. Strength or weakness in one branch of the test can compensate/detract from weakness or strength in the others.

1. **Any deprivation under s. 7 is not inconsistent with the principles of fundamental justice**

(a) *The Test under s.7*

70. The analysis under s. 7 proceeds in two parts. First, the claimant must demonstrate a deprivation of their life, liberty, or security of the person interest that is caused by the impugned legislation. Second, the claimant must prove that this deprivation was not in accordance with the principles of fundamental justice.¹²² At this second stage, a claimant must demonstrate that the law

¹²¹ *Black et al. v. City of Toronto*, [2020 ONSC 6398](#) at para 39 [“*Black*”], citing *RJR-MacDonald*, at pp. [332-333](#).

¹²² *Carter v. Canada (Attorney General)*, [2015 SCC 5](#) at para. 55.

conflicts with basic constitutional values, including the values against a law being overbroad or grossly disproportionate.

71. At the first stage, insofar as the By-law prevents individuals who are not currently residing on the Property from erecting a tent there, it does not deprive them of any constitutionally protected interest. There is no freestanding right to housing,¹²³ or to erect a tent or other dwelling and seek shelter on publicly owned land in Canadian law. Rather, some cases (including *Persons Unknown*) have found that s.7 interests may be engaged where existing encampment residents are forbidden by law to shelter at the encampment in circumstances where they have no other alternative. It is highly debatable, to say the least, whether this logic would apply when encampment residents are offered accommodation alternatives through IHPs. However, assuming without conceding that a s.7 interest is engaged, the Moving Parties must still show that there is a deprivation that is inconsistent with the principles of fundamental justice.

72. At the second stage of the s. 7 analysis, these principles are evaluated in relation to the object of the impugned law. In this case, the object of the By-law is to obtain vacant possession of 100 Vic by December 1, 2025, as part of the broader KCTH project.¹²⁴ The Moving Parties rely upon the principles of overbreadth and gross disproportionality, as in *Persons Unknown*.

73. A law is overbroad where its scope includes some conduct that bears no relation to its purpose.¹²⁵ In *Persons Unknown*, Justice Valente found that the Code of Use By-Law's purpose was to prevent physical damage to the Region's premises, disruption to the Region's operations,

¹²³ *Tanudjaja v. Canada (Attorney General)*, [2014 ONCA 852](#), at paras. [19](#), [30](#).

¹²⁴ This is reflected in the By-law's preamble, which states: "AND WHEREAS the Region is enacting this By-law to specifically regulate and govern 100 Victoria Street and to obtain vacant possession as of December 1, 2025".

¹²⁵ *R. v. Kloubackov*, [2025 SCC 25](#), at para. [139](#) ["*Kloubackov*"] citing *Canada (Attorney General) v. Bedford*, [2013 SCC 72](#) at para. [112](#) ["*Bedford*"].

and disruption of the use and enjoyment of the Region’s premises by other people.¹²⁶ He then held that the Code of Use By-law was overbroad because these purposes could have been achieved “without punishing everyone who erects a shelter when there is no accessible shelter alternative”.¹²⁷ By contrast, the By-law at issue in this case has a narrow, singular purpose: to allow the Region to obtain vacant possession of the Property by December 1, 2025. The Region cannot fulfill this very specific purpose without all individuals leaving the site. The By-law cannot therefore be overbroad in relation to that purpose. The Moving Parties allude to this difference, but do not account for it in their analysis.

74. Second, the principle against gross disproportionately is infringed in “extreme cases” where the seriousness of the deprivation is “totally out of sync with the objective of that measure”.¹²⁸ The oft-repeated example of grossly disproportionate legislation is “a law with the purpose of keeping streets clean that imposes a sentence of life imprisonment for spitting on the sidewalk”.¹²⁹ In *Persons Unknown*, Justice Valente concluded that the By-Law’s complete prohibition on an unhoused person erecting a temporary shelter on any Region-owned premises was grossly disproportionate to the generic purposes of the Code of Use By-law.¹³⁰

75. By contrast, in the case at hand, the By-law does not prevent sheltering on all Region-owned land – only at 100 Vic, after December 1. The impact on the individual is therefore far more limited than that of the Code of Use By-law. The objective of the By-law is also far more substantial than in *Person Unknown*, as it protects a specific and tangible public interest – allowing

¹²⁶ *Persons Unknown*, at para. [112](#).

¹²⁷ *Persons Unknown*, at para. [114](#).

¹²⁸ *Kloubakov* at para. [140](#), citing *Bedford* at para. [120](#) and *R. v. Malmo-Levine*; *R. v. Caine*, [2003 SCC 74](#), at para. [143](#).

¹²⁹ *Kloubakov* at para. [140](#), citing *Bedford* at para. [120](#).

¹³⁰ *Persons Unknown Decision*, at para. [119](#).

a monumental public transportation project to proceed entailing significant economic investment and social benefits to all residents of the Waterloo region. The weighing between the law's object and the impact on Existing Residents – who have been or will be offered alternative accommodation through IHPs - cannot reasonably be argued to rise to an “extreme case” of gross disproportionality. Even for newcomers to the site, who came knowing of the impending closure, the Region will work with them to create IHPs and will do whatever it can to find solutions for them, and the By-law does not preclude them from camping elsewhere than at 100 Vic.

(b) Comments on Persons Unknown and other encampment cases

76. In *Persons Unknown*, the Region sought the Court's assistance in obtaining vacant possession of the Property pursuant to its Code of Use By-Law,¹³¹ which applies broadly to “grounds or other premises...that are owned or occupied by the Region”, with some exceptions.¹³²

77. As noted above, at the time of *Persons Unknown*, the Region did not yet have a firm start-date for the construction on the Project, nor a date by which the Property specifically would be needed in connection with the Project. At that time, the Region only knew that vacant possession of the site would be needed as part of the KCTH construction at some point.¹³³ More importantly, the Region did not put forward the KCTH as the purpose of the Code-of-Use By-law, which is what the s.7 analysis must be based on. Rather, it relied on the generic purposes described above.

78. Justice Valente declined to enforce the Code of Use By-Law against residents of the Encampment. Instead, he held that insofar as the Code of Use By-Law prevented the Encampment

¹³¹ 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 Region* [“Code of Use By-law”], Exhibit “B” to 2nd Sweeney Affidavit, RMR, Tab 1B, p. 33.

¹³² Code of Use By-law, Exhibit “B” to 2nd Sweeney Affidavit, RMR, Tab 1B, p. 33.

¹³³ *Persons Unknown Decision*, at paras. [15-16](#).

residents from living on and erecting temporary shelters without a permit on the Property when the number of homeless persons in the Region exceeds the number of available accessible shelter beds in the Region, the Code of Use By-law contravened s. 7 of the Charter in a manner that was not saved under s. 1 and declared that it was to that limited extent inoperative.¹³⁴

79. Not surprisingly, when presented with a region-wide by-law, to be used as region-wide precedent, defended with reference to region-wide purposes, he analyzed the issues accordingly, and expressed both the violation of the *Charter* that he found and the limitation on the violation in terms of region-wide statistics. He also invited the Region to return to terminate the declaration “upon it being in a position to satisfy this Court that the [Code-of-Use] By-Law no longer violates the section 7 rights of the Encampment residents”.¹³⁵ However, a site-specific by-law with a different purpose, scope, and context drives a different constitutional analysis.

80. Justice Valente specifically noted that the Region was already making “impressive efforts to accommodate its homeless population”¹³⁶ at the time of *Persons Unknown*. Those efforts have increased exponentially since his ruling. Unfortunately, so too has the scale of the Region’s homelessness problem. Justice Valente did not have this essential context, which is critical to the present case. His ruling cannot (reasonably or doctrinally) be taken as holding that the Region cannot make use of 100 Vic for a specific purpose in the public interest unless shelter spaces exceed the homeless population on a region-wide basis. That would be to intrude deeply into the budgetary and policy priorities of a duly elected government – if tripling the budget to address homelessness

¹³⁴ *Persons Unknown Decision*, at para. [158](#).

¹³⁵ *Persons Unknown Decision*, at para. [159](#).

¹³⁶ *Persons Unknown Decision*, at para. [92](#).

to \$65 million is not enough, how much is required? \$100 million or \$150 million? Such an inquiry goes against the separation of powers between the judiciary and government.

81. Further, two other Superior Court judges have expressed doubt with respect to Justice Valente's ruling.¹³⁷

82. In general terms, the Moving Parties' factum relies heavily on s. 7 caselaw that is readily distinguishable from the facts of this case. Crucially, however, there is no Canadian jurisprudence which establishes an unfettered right to shelter on public property. What was at stake in *Black, Adams*,¹³⁸ *Persons Unknown*, and other cases on the issue of prohibitions on sheltering was the ability for unhoused individuals to erect temporary shelters on public land in a general sense, not the right to do so on a given property in perpetuity in the face of specific compelling public interest in a specific use of that site. Similarly, all the cases which find that individuals' rights under s. 7 have been infringed by prohibitions on sheltering have involved by-laws of general application.

2. There is no discrimination under s. 15

83. Under s. 15, a claimant must also satisfy a two-part test. First, the claimant must demonstrate that an impugned law creates a distinction based on enumerated or analogous grounds, on its face or in its impact. Next, the claimant must also demonstrate that the impugned law imposes a burden or denies a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage. The Moving Parties cannot demonstrate either step of the analysis.

¹³⁷ In *Heegsma v. City of Hamilton*, [2024 ONSC 7154](#), at para. 14, Ramsay J. noted his disagreement with *Persons Unknown*, while in *City of Kingston v. Doe*, [2023 ONSC 6662](#), at para 129, Carter J. questioned whether a court would ever be able to determine whether there were sufficient accessible shelter spaces in a municipality.

¹³⁸ *Victoria (City) v. Adams*, [2009 BCCA 563](#).

84. First, the By-law does not create any distinction (other than between Existing Residents and others, which is unrelated to any enumerated or analogous ground). The By-law applies to all individuals present at the Encampment, regardless of their personal characteristics. Although certain enumerated or analogous groups may be overrepresented at the Encampment, “[m]erely proving overrepresentation is insufficient” to make out a distinction under s. 15.¹³⁹ Canadian caselaw – including *Persons Unknown* and other cases upon which the Moving Parties rely – is also resoundingly clear that homelessness is not an analogous ground under s. 15.¹⁴⁰

85. Second, if there is a distinction caused by the By-law, it is not one that reinforces, perpetuates, or exacerbates disadvantage. The By-law is not based on any prejudice about any particular class of people, nor does it draw a distinction that is arbitrary: any unauthorized individual on the Property interferes with its purpose, and as a practical matter, renders the object unachievable.¹⁴¹ There has therefore been no *prima facie* showing of discrimination under s. 15.

3. The By-law and this Application demonstrate the Region’s significant, good-faith efforts to balance competing priorities of its constituents

86. The By-law’s very design and this proactive Application demonstrate the Region’s good faith. Public notice of the By-law was posted according to the requirements of the *Municipal Act, 2001*. It was openly debated at a Regional Council meeting on April 23, 2025, where duly elected

¹³⁹ *Ontario Health Coalition and Advocacy Centre for the Elderly v. His Majesty the King in Right of Ontario*, [2025 ONSC 415](#), at para. [317](#).

¹⁴⁰ *Persons Unknown*, at para. [123](#), *Abbotsford (City) v. Shantz*, [2015 BCSC 1909](#) at para. [321](#), *Tanudjaja v. Attorney General (Canada) (Application)*, [2013 ONSC 5410](#) at para. [137](#) (appeal dismissed, [2014 ONCA 852](#), although the Court of Appeal did not consider this issue, as per para. [37](#)).

¹⁴¹ *Sharma*, at para. [53](#).

Councillors passed it according to the Region's procedures. There is no hint of bad faith or illegality in the record before this court.¹⁴²

87. The By-law was passed for a compelling and real public purpose: to facilitate a significant transit construction project that will bring significant benefits and opportunity to the Region and its residents.

88. In developing the By-law, the Region – already a leader in addressing homelessness – considered what it had heard from years of consultation with unhoused individuals and their advocates and service providers. The By-law consequently provides over seven months' notice before Existing Residents must vacate, and the Region has allocated over \$814,000 in 2025 alone to create capacity in its shelter and transitional housing systems to accommodate those living at the Encampment. During the Transitional Period, the Region's USWs will work with those living at the Property to design tailored IHPs that reflect individuals' specific needs. The Region has also sought to maintain a light touch approach to enforcement of the By-law.

89. None of these actions are hallmarks of bad faith – to the contrary, the Region has shown significant restraint and goodwill as it balances competing public priorities. The Region also strongly disagrees with the assertions that it has not complied with the PECH, though that issue is of limited relevance to the present motion.

B. The Moving Parties will not suffer irreparable harm if the injunction is denied

90. There is no irreparable harm to the Moving Parties arising from this Court denying injunctive relief. What is relevant at this stage is whether the Moving Parties themselves will suffer

¹⁴² As noted in *Tiny Township Association v Township of Tiny*, [2025 ONSC 1578](#), at para. 36, just because “the applicants clearly believe that the [Region] is wrong, that does not mean that the [Region] acted in bad faith”.

irreparable harm, not whether there is harm (or benefit) that results to the broader public from denying the injunction.¹⁴³

91. Whether harm is irreparable is a question of its nature, not its magnitude.¹⁴⁴ Put differently, a harm that is significant will not necessarily be irreparable. Instead, irreparable harm is that which “cannot be remedied if the eventual decision on the merits does not accord with the result of the interlocutory application” because it either cannot be quantified in monetary terms or one party cannot collect damages from the other.¹⁴⁵

92. No such harm will result from the Region implementing the By-law between the date of this motion and the application hearing scheduled for November 19-21, 2025.

93. For Existing Residents, the By-law (if anything) likely improves their situation by allowing for more targeted support in accessing alternative shelter. However, if they are not ready to move, they are not required to do so prior to the hearing.

94. For individuals who are not living at the Encampment, the By-law does not change their situation. The By-law is, at worst, neutral for these individuals. Preventing new individuals from joining the Encampment is necessary to prevent a situation where an individual comes to the Encampment and then is forced to relocate shortly thereafter without adequate time to engage with the USW team and develop an IHP to find alternate accommodation. The Moving Parties themselves characterize such a scenario as being particularly harmful.¹⁴⁶

¹⁴³ *Cardinal v Cleveland Indians Baseball Company Limited Partnership*, [2016 ONSC 6929](#), at paras. [68](#), [74](#).

¹⁴⁴ *RJR-MacDonald*, p. [341](#).

¹⁴⁵ *RJR-MacDonald*, p. [341](#).

¹⁴⁶ Exhibit “J” to the Hwang Affidavit, MRMP, Tab 17J, p. 337.

C. *The balance of convenience favours denying the injunction*

95. It is presumed that the operation of a validly enacted but challenged law will produce a public good.¹⁴⁷ Given this presumption, the Moving Parties “must convince the court that granting the interlocutory injunction will do more for the public interest” than allowing the By-law to be enforced.¹⁴⁸ This is a high bar, as the assumption of the public interest in enforcing the law “weighs heavily in the balance” and courts “will not lightly order that laws [that are] duly enacted for the public good are inoperable in advance of complete constitutional review”.¹⁴⁹

96. Recent cases relied upon by the Moving Parties where this presumption have been overcome are distinguishable. In *Cycle Toronto 2*, Schabas J. concluded that the government’s own evidence led in support of the constitutionality of the impugned legislation “raises concerns about whether the removal of the targeted bike lanes [which the impugned legislation would require] will serve the public good” and whether the legislation would have any meaningful impact on the objects of the impugned legislation.¹⁵⁰ In such an extreme case, the presumption that the impugned legislation produced a public good was overcome. In the case at hand, there is no such evidence – the impugned By-law is finely tailored, and the Region has presented evidence demonstrating that many of the claimants themselves will be better off for the enactment of the By-law as opposed to its non-enforcement.

97. In *TNG*, Callaghan J. declined to order that the impugned legislation was entirely inoperable. Instead, His Honour crafted a more tailored remedy in granting injunctive relief which exempted only existing supervised consumption sites from the operation of the impugned

¹⁴⁷ *Harper v. Canada (Attorney General)*, [2000 SCC 57](#) at para 9 [“*Harper*”].

¹⁴⁸ *Cycle Toronto et al. v. Attorney General of Ontario et al.*, [2025 ONSC 1650](#) at para. 78 [“*Cycle Toronto I*”].

¹⁴⁹ *Harper*, at para 9.

¹⁵⁰ *Cycle Toronto et al. v. Attorney General of Ontario et al.*, [2025 ONSC 2424](#), at para. 24 [“*Cycle Toronto 2*”].

provision which would have forced many such sites to close.¹⁵¹ In doing so, he explained that “public interest considerations will carry less weight in exemption cases than in suspension cases”.¹⁵² In the case at hand, however, the Moving Parties seek a full suspension of the By-law, not merely an exemption for those currently residing on the Property.

98. In addition to the presumed public interest in allowing the By-law to be enforced up until the date of Application hearing, there is also significant public interest for all residents of the Waterloo region in allowing the KCTH to proceed without delay. As recognized in *Persons Unknown*, both *Black* and *Poff*¹⁵³ (injunctive relief denied in both cases) were distinguishable from the facts before Justice Valente on that record because “there was significant public interest in ensuring that everyone had access to the parks”, but no such interest in the Property at that time given there was no firm date by which the Region required the site for the KCTH.¹⁵⁴

99. By contrast, the Region now has a specific timeframe for the construction activities on the Property. The *bona fides* of the Region’s and Metrolinx’ selection of these dates has not been meaningfully challenged by the Moving Parties on this motion. The Region has led compelling and unchallenged evidence that it cannot use an alternative site, but that it requires the Property specifically as part of the construction of the KCTH.¹⁵⁵

100. The relief sought by the Moving Parties would treat the Encampment as a revolving door, that would dilute the resources available to assist residents in transitioning to alternative accommodations. Already, more newcomers have come to the Encampment than have been

¹⁵¹ *The Neighbourhood Group et al. v. HMKRO*, [2025 ONSC 1934](#) [“*TNG*”] at para. [60](#).

¹⁵² *TNG* at para. [47](#), citing *RJR*, at p. [348-349](#).

¹⁵³ *Poff v. City of Hamilton*, [2021 ONSC 7224](#).

¹⁵⁴ *Persons Unknown Decision*, at para. [91](#).

¹⁵⁵ Spooner Affidavit, RMR, paras. 41-44, pp. 409-410.

successfully transitioned to other housing. Just like a situation where the Region stops accepting new shelter occupants when a shelter is slated for closure, the Region must be able to limit newcomers to be able to conduct an orderly wind-down that devotes sufficient resources and attention to the individuals residing there.

101. The Moving Parties suggest that there is only minimal cost to the public benefit in “delaying construction by at most a few months”. With respect, that ignores the very substantial benefits that the KCTH will bring to the entire population of the Waterloo region. The Region respectfully submits that any delay to the start of construction would entail a substantial cost to the public. The Region could possibly accommodate a short extension of up to a month (to December 31) before it obtained possession, without delaying construction, by shortening the site remediation period, if this was necessary to find solutions for the remaining Existing Residents. However, any delay in starting construction should weigh heavily against the Moving Parties.

102. The Moving Parties’ attempt to distinguish encampment cases where injunctions were denied, on the basis that residents were provided alternatives in those cases, is unpersuasive. Here, as in *Church of St. Stephen*,¹⁵⁶ the evidence is that all Existing Residents have been or will be offered alternative accommodation through the USWs, if they choose. The fact that the Region has provided more time for this to play out, because there are more options in recognition of residents’ varied needs, should not count against the Region. Further, the evidence in *Church of St. Stephen* as to the risks of encampments and the harms flowing from homelessness is remarkably similar¹⁵⁷

¹⁵⁶ *Church of Saint Stephen et al. v. Toronto*, [2023 ONSC 6566](#), at para. 2 [“**Church of St. Stephen**”].

¹⁵⁷ *Church of St. Stephen*, at paras. [7](#), [15-18](#), [29](#), [38-49](#).

– if anything, stronger in the present case, where there is evidence of fires, violence, and even deaths related to encampment living.

103. Finally, unlike in *Cycle Toronto 2* and *TNG*, declining to grant the injunctive in this case will preserve the status quo, rather than change it. In *Cycle Toronto 2*, declining to grant the injunction as sought would have enabled the removal of bike lanes that had been in place for years, whereas in *TNG*, it would have allowed a new and not yet operative statute to shutter many existing supervised consumption sites when it was set to come into force shortly after the release of that decision. In this case, the By-law actually seeks to preserve the status quo until December 1, 2025 by preserving the rights of Existing Residents and preventing new individuals from arriving at the Property who would make it more difficult for the Region’s USWs to support the Encampment’s existing population. This further militates in favour of declining injunctive relief in this case.

D. If injunctive relief is appropriate at this stage, it should only be until the hearing

104. In *Cycle Toronto 1*, while Firestone RSJ. declined to grant an interim injunction pending the hearing of application on the merits, he did so without prejudice to a further request for injunctive relief beyond the date of the hearing.¹⁵⁸ While hearing the merits, Schabas J., granted interim injunctive relief pending his final decision on the merits. Schabas J. emphasized that his status as application judge put him “in a very different position from Firestone RSJ when he heard the [previous] motion for an injunction”.¹⁵⁹ Schabas J. did so despite the significant overlap between the record before him and that which was before Firestone RSJ on the injunction motion argued a month prior. It was Schabas J.’s status as application judge – not only the record before His Honour – which explained this different result. Similarly, in *TNG*, Callaghan J. granted an

¹⁵⁸ *Cycle Toronto 1*, at para. [14](#).

¹⁵⁹ *Cycle Toronto 1*, *Cycle Toronto 2*.

interlocutory injunction while sitting as the application judge, with the full benefit of the record amassed on that case.¹⁶⁰

105. These authorities support deferring any issues as to injunctive relief to the November hearing, but they also suggest that if any relief is granted on this motion, it should only be until November. A case can look very different when it is fully argued on a full record. The materials filed on this motion are not the full record that will be before the court on the Application, nor has all the evidence been fully tested through cross-examination.

PART V. ORDERS SOUGHT

106. The Region respectfully requests that this court dismiss the motion. The Region does not seek costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 31st day of July, 2025.



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¹⁶⁰ *TNG*, at para. [27](#).

CERTIFICATE

I, Andrew Lokan, lawyer for the Applicant, certify that I am satisfied as to the authenticity of every authority cited in this factum.



July 31, 2025

Andrew Lokan
Paliare Roland Rosenberg Rothstein LLP

SCHEDULE “A” - LIST OF AUTHORITIES

1. *Abbotsford (City) v. Shantz*, [2015 BCSC 1909](#).
2. *Black et al. v. City of Toronto*, [2020 ONSC 6398](#).
3. *Canada (Attorney General) v. Bedford*, [2013 SCC 72](#).
4. *Cardinal v Cleveland Indians Baseball Company Limited Partnership*, [2016 ONSC 6929](#).
5. *Carter v. Canada (Attorney General)*, [2015 SCC 5](#).
6. *Church of Saint Stephen et al. v. Toronto*, [2023 ONSC 6566](#).
7. *City of Kingston v. Doe*, [2023 ONSC 6662](#).
8. *Cycle Toronto et al. v. Attorney General of Ontario et al.*, [2025 ONSC 1650](#).
9. *Cycle Toronto et al. v. Attorney General of Ontario et al.*, [2025 ONSC 2424](#).
10. *Harper v. Canada (Attorney General)*, [2000 SCC 57](#).
11. *Heegsma v. City of Hamilton*, [2024 ONSC 7154](#).
12. *Ontario Health Coalition and Advocacy Centre for the Elderly v. His Majesty the King in Right of Ontario*, [2025 ONSC 415](#).
13. *Poff v. City of Hamilton*, [2021 ONSC 7224](#).
14. *R. v. Kloubakov*, [2025 SCC 25](#).
15. *R. v. Malmö-Levine; R. v. Caine*, [2003 SCC 74](#),
16. *R. v. Sharma*, [2022 SCC 39](#).
17. *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994 CanLII 117](#) (SCC).
18. *Tanudjaja v. Attorney General (Canada)*, [2013 ONSC 5410](#).
19. *Tanudjaja v. Canada (Attorney General)*, [2014 ONCA 852](#).
20. *The Neighbourhood Group et al. v. HMKRO*, [2025 ONSC 1934](#).
21. *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, [2023 ONSC 670](#).
22. *Tiny Township Association v Township of Tiny*, [2025 ONSC 1578](#).
23. *Victoria (City) v. Adams*, [2009 BCCA 563](#).

SCHEDULE “B” - TEXT OF STATUTES, REGULATIONS & BY-LAWS

The Constitution Act, 1982, [Schedule B to the Canada Act 1982 \(UK\), 1982, c 11](#), ss. 7 and 15

Life, liberty and security of person

7 Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Equality before and under law and equal protection and benefit of law

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.

Affirmative action programs

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Municipal Act, 2001, [SO 2001, c 25](#). ss. 272, 273

Restriction on quashing by-law

272 A by-law passed in good faith under any Act shall not be quashed or open to review in whole or in part by any court because of the unreasonableness or supposed unreasonableness of the by-law. 2001, c. 25, s. 272.

Application to quash by-law

273 (1) Upon the application of any person, the Superior Court of Justice may quash a by-law of a municipality in whole or in part for illegality. 2001, c. 25, s. 273 (1).

Definition

(2) In this section,
“by-law” includes an order or resolution. 2001, c. 25, s. 273 (2).

Inquiry

(3) If an application to quash alleges a contravention of subsection 90 (3) of the *Municipal Elections Act, 1996*, the Superior Court of Justice may direct an inquiry into the alleged contravention to be held before an official examiner or a judge of the court, and the evidence of the witnesses in the inquiry shall be given under oath and shall form part of the evidence in the application to quash. 2001, c. 25, s. 273 (3).

Other cases

(4) The court may direct that nothing shall be done under the by-law until the application is disposed of. 2001, c. 25, s. 273 (4).

Timing

(5) An application to quash a by-law in whole or in part, subject to section 415, shall be made within one year after the passing of the by-law. 2001, c. 25, s. 273 (5).

THE REGIONAL MUNICIPALITY OF WATERLOO
Applicant

-and-

PERSONS UNKNOWN AND TO BE ASCERTAINED
Respondents

Court File No. CV-25-00000750-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
WATERLOO REGION

**FACTUM OF THE APPLICANT/RESPONDING PARTY
(Motion for an Injunction, Returnable to August 8, 2025)**

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