

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

THE REGIONAL MUNICIPALITY OF WATERLOO

Applicant (Responding Party)

and

PERSONS UNKNOWN AND TO BE ASCERTAINED

Respondents (Moving Parties)

MOVING PARTIES' REPLY FACTUM

Motion for Interlocutory Injunction

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PART I: FACTS

Factual assertion made by the Region is not supported in the motion record

1. The Region has made the following assertion with no factual basis in the motion record: “As of July 31st, 20 of the original 40 existing residents have made this transition [offered alternative accommodation] (and 7 of the Existing Residents have left the Encampment on their own accord).¹ This evidence is in the 3rd Affidavit of Peter Sweeney affirmed on July 31, 2025 in the Region’s Reply Application Record and is untested evidence. As this evidence has not yet been subjected to cross-examination, it is improper for the Region to tender this on the motion.

Light Touch

2. There is nothing obligating the Region to take a light touch approach to enforcing the By-law. Although they claim they will be “unable to contain or respond to dangerous activities”² if the injunction is granted, their own evidence is that to date they haven't initiated any prosecutions and no trespass notices have been issued under the Site Specific By-Law³ and they have allowed more residents to join. The Code of Use By-Law is still operable at this location for any other enforcement measures they may require, as long as it is not to remove someone for the reasons of residing on or erecting temporary shelters.⁴ The Region has not provided evidence of any real prejudice that they will suffer if they are not able to continue using only a light touch to allow this Court time to make a decision on the merits.

The KCTH

3. There is a documented history of delays related to this construction project. At the time of the *Encampment Decision* hearing in fall 2022, the estimate from the Region was that the Project

¹ Factum of The Regional Municipality of Waterloo (“Region’s Factum”), Case Center p. A665 and A686, paras. 5 and 56.

² Region’s Factum, Case Center p. A667, para. 10.

³ Second Affidavit of Peter Sweeney, Affirmed July 2, 2025, (“Second Sweeney Affidavit”), Responding Motion Record Volume 1, (“RMR Vol.1”) Case Center p. A82, para. 6.

⁴ Acknowledged in the Region’s Factum at footnote 32, Case Centre p. A673.

would commence construction in Spring 2023.⁵ The Region’s documents indicate that the work is driven by Metrolinx’s construction schedule.⁶ A Media article dated June 16, 2025 stated that Metrolinx recently cancelled contracts related to GO train service expansion leaving improvements on the Kitchener line “on the back burner”.⁷ The article indicated that a local MPP put out a news release “demanding ‘real answers’ and calling out the ‘years of delays and shifting timelines’”.⁸

4. The Region’s arguments focus on the public interest in the project ultimately proceeding, however the Region has provided no evidence to indicate the prejudice they would suffer if there were a short delay in starting construction. To the contrary, in cross-examination of Angela Allt,⁹ the Region asked Ms. Allt whether she agreed that an extended closure date of an extra month, to January 1, 2026, would be helpful to the residents. The Region has indicated that they “could possibly accommodate a short extension of up to a month”¹⁰, but they have not provided any evidence to indicate why they could accommodate a delay of up to one month, but not two or three, as may be required to allow this Court time to make a decision on the merits.

IHPs do not guarantee accessible or sustainable solutions

5. The context that was before Justice Valente in the *Encampment Decision* and the current context are not fundamentally different.¹¹ Justice Valente found that Region workers, and outreach workers funded by the Region, were engaging in outreach 3 days a week, that “person-centred supports and services” were to be offered to the residents¹², and that Council had directed staff to “develop a plan to establish interim housing solutions” for encampment residents.¹³ That is very

⁵ Answers to Undertakings of Peter Sweeney, Q 4

⁶ Report PDL-LEG-25-017, Exhibit I to the Affidavit of David Alton (“Alton Affidavit”), Supplementary Motion Record (“SMR”), Case Center p. B-1-1138.

⁷ “We’re getting left behind at the GO station”, Exhibit F to the Alton Affidavit, SMR, Case Center p. B-1-1107 - B-1-1110.

⁸ *Ibid.*

⁹ Joint Transcripts Brief Volume 1, Transcript of Angela Allt, Case Center p. B-1-1343, lines 2-10.

¹⁰ Region’s Factum, Case Center p. A701, para. 101.

¹¹ Region’s Factum, Case Center p. A674, para. 31.

¹² *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, [2023 ONSC 670](#) (“the *Encampment Decision*”), para. [33](#).

¹³ *Ibid.*, [para. 34](#).

similar to what is happening now, although now staff are allegedly attending 5 days a week.

6. The actual amount of funding the Region has reallocated¹⁴ is \$737,333, and a portion of this funding that will not extend beyond 2026.¹⁵ Although motels, rental subsidies and transitional / supportive housing units sound like great investments, a number of the Moving Parties have been unable to successfully be housed with similar supports:

- Calvin Sharpe has a rent subsidy but can't find a place to rent;¹⁶
- Jeremy Nichol, Josephina Dugas, and Calvin Sharpe have been kicked out of motels in the past or funding ran out and they were evicted;¹⁷
- Kyle York was evicted from transitional shelter at University Ave;¹⁸
- Jason Paul was illegally evicted from a subsidized rental unit;¹⁹
- Julie Young was evicted from rent geared to income housing²⁰

7. Although Mr. Sweeney would not agree that encampment residents are being prioritized relative to the supportive housing waitlist²¹, no new units are being built²² and the average wait time to access supportive housing is currently 13.5 months.²³

Encampment Environment & Fight Back

8. The Region has tendered evidence that there have been five documented deaths at the Encampment since January 2022, with suspected overdose noted in three of these.²⁴ The Region has

¹⁴ Reallocation is more accurate than describing this funding as “net new funding” as described by P. Sweeney in Transcript of Cross Examination of Peter Sweeney, Joint Transcripts Brief Volume 2, Case Center p. B-1-1881, Q 96-97, because the Region currently allocates \$793,944 annually to maintain services at the encampment.

¹⁵ Report PDL-LEG-25-017, Exhibit I to the Affidavit of David Alton (“Alton Affidavit”), Supplementary Motion Record (“SMR”), Case Center p. B-1-1127 - B-1-1128.

¹⁶ Affidavit of Calvin Sharpe (“Sharpe Affidavit”), Motion Record (“MR”), Case Center p. B-1-563, para. 4.

¹⁷ Affidavit of Jeremy Nichol (“Nichol Affidavit”), MR, Case Center p. B-1-534, para. 13; Affidavit of Josephina Dugas, (“Dugas Affidavit”) MR, Case Center p. B-1-504, para. 22; Sharpe Affidavit, MR, Case Center p. B-1-565, para. 11.

¹⁸ Affidavit of Kyle York (“York Affidavit”), SMR, Case Center p. B-1-861, para. 14.

¹⁹ Affidavit of Jason Paul, (“Paul Affidavit”), SMR, Case Center p. B-1-844, para. 18.

²⁰ Affidavit of Julie Young (“Young Affidavit”), SMR, Case Center p. B-1-851, para. 13.

²¹ Transcript of Cross Examination of Peter Sweeney, Joint Transcripts Brief Volume 2, Case Center p. B-1-1881, Q 94.

²² Transcript of Cross Examination of Peter Sweeney, Joint Transcripts Brief Volume 2, Case Center p. B-1-1882, Q 99.

²³ Answers to Undertakings of Peter Sweeney, Q 1

²⁴ Affidavit of Peter Sweeney, Affirmed June 6, 2025 (“First Sweeney Affidavit”), RMR Vol 1., Case Center p. A170, para. 96; ; Major Incident Notifications, Exhibit G to First Sweeney Affidavit, RMR Vol. 1, Case Center p. A441.

stated that deaths occur in the shelter system but at a much lower rate,²⁵ but the data we have on the record does not allow for this comparison. In the calendar year of 2024 alone, there were 11 reported deaths in the emergency shelter system, transitional housing system and motels program.²⁶ Additionally, at least two of the five deaths noted as suspected overdoses occurred after the closure of the Safe Injection Site on April 1, 2025.²⁷ Further, the motion record demonstrates that violence is prevalent in the emergency shelter system, and against persons sheltering alone on the streets, which is a reason several of the Moving Parties affirm to feeling safer in the encampment.²⁸

9. The allegations by the Commissioner of Community Services, who has only attended the encampment “from time-to-time”,²⁹ that members of Fightback are “encouraging people to resist working with the Region” is a bald assertion and untested hearsay, unsupported by any cogent evidence on the record.³⁰ The Court should give it little weight.

PART II: ARGUMENT

Status Quo and Non “Existing Residents”

10. The status quo to be preserved by the injunction is the Declaration from the *Encampment Decision* where the Code of Use By-Law is invalid as it prevents unhoused people from residing on or erecting temporary shelters at the encampment. The Region cannot arbitrarily take a snapshot at

²⁵ Region’s Factum, Case Centre p. A678, para. 34.

²⁶ Answers to Undertakings of Peter Sweeney, Q 11-12

²⁷ First Sweeney Affidavit, RMR Vol. 1, Case Center p. A442-444, Exhibit G – Sudden Death dated May 1, 2025 and Sudden Death dated April 20, 2025;

²⁸ See, for example: Dugas Affidavit, MR, Case Center p. B-1-502, para. 13; Affidavit of Matthew Stefanac (“Stefanac Affidavit”), MR, Case Center p. B-1-541, para. 11; Affidavit of Aaron Price (“Price Affidavit”), MR, Case Center p. B-1-516, para. 10; Paul Affidavit, SMR, Case Center p. B-1-845, paras. 32-33; Young Affidavit, SMR, Case Center p. B-1-852, para. 18; Affidavit of Megan Lopes (“Lopes Affidavit”), SMR, Case Center p. B-1-876 - B-1-877, paras. 12, 15; Affidavit of Jeremy Linton (“Linton Affidavit”), MR, Case Center p. B-1-528, para. 13; Affidavit of Terra-Lynn Weber (“Weber Affidavit”), MR, Case Center p. B-1-510 - B-1-511, paras. 22-24; Nichol Affidavit, MR, Case Center p. B-1-534, para. 12.

²⁹ First Sweeney Affidavit, RMR Vol. 1, Case Center p. A147, para 22.

³⁰ Second Sweeney Affidavit, RMR Vol. 1, Case Center p. A93, para 40 (“I have also been informed by my team”); see also 2nd Affidavit of Eddy Grignon, Affirmed July 7, 2025, Reply Motion Record, Case Centre p. B-1-1175, para 10 and Affidavit of Aaron El Sabrou, Affirmed July 7, 2025, Reply Motion Record, Case Centre p. B-1-1238, paras 4.

a fixed point in time and determine that to be the status quo to be preserved, this does not reflect the lived realities of people experiencing chronic homelessness. There is no legal basis for making this arbitrary distinction about who is an Existing Resident and who is not based on a random point in time determined in secret by the Region. By their own admission, they need to do this because they do not have enough resources and they need to arbitrarily determine where to draw the line. However on cross examination, Mr. Sweeney couldn't say when would be the last possible date for the Region to be able to develop an IHP for an individual especially since for some people he acknowledged it could be done quickly.³¹

Nothing in By-law itself prevents people from sheltering elsewhere but the entire statutory context must be considered

11. To suggest that this Court ought to only consider the Site Specific By-law without also considering the broader legislative enforcement framework completely ignores the reality faced by the Region's unsheltered population. The Code of Use By-Law remains operative across the Region.³² Additionally, the [Trespass to Property Act](#)³³, allows municipalities to prohibit or regulate entry onto various premises.³⁴ The Region's evidence is that an alternative encampment site is not desirable or feasible.³⁵ Both the Region and Area Municipalities, including the City of Kitchener and the City of Cambridge, continue to regularly engage in encampment evictions.³⁶ On June 23, 2025, the date Sara Escobar affirmed her affidavit, she attested that there was an encampment eviction taking place that very day in Cambridge.³⁷

³¹ Transcript of Cross Examination of Peter Sweeney, Joint Transcripts Brief Volume 2, Case Center p. B-1-1861, Q 54.

³² As noted at footnote 32 of the Region's Factum.

³³ *Trespass to Property Act*, [R.S.O. 1990, c.T21](#), as amended, [ss. 3](#) to 8 (the 'TPA').

³⁴ *Encampment Decision*, [para 7](#).

³⁵ First Sweeney Affidavit, Case Center pp. A155 - A156, paras. 52-55.

³⁶ Alton Affidavit, Case Center pp. B-1-921, B-1-927, paras. 7, 25; Affidavit of Sara Escobar, Affirmed June 23, 2025 ("First Escobar Affidavit"), Case Center p. B-1-897 - B-1-898, paras. 15-18.

³⁷ First Escobar Affidavit, Case Center p. B-1-898, para. 18.

12. The Supreme Court of Canada held:

Following *PHS*, courts must consider legislative provisions in their entire statutory context, irrespective of how the parties frame their challenge of a legislative scheme. Indeed, a failure to consider a relevant related provision can “undermine the legitimacy” of constitutional analysis (*R. v. Parker* (2000), [2000 CanLII 5762 \(ON CA\)](#), 49 OR (3d) 481 (CA), at para. [171](#), per Rosenberg JA).³⁸

The Site Specific By-law is not *truly* different than the Code of Use By-Law. It seeks to achieve the same purpose. Given the unique nature of why the Site Specific By-Law was created, it is imperative for the Court to consider the Code of Use By-Law as part of the statutory context when conducting its constitutional analysis.

Suspension vs. Exemption

13. The Region states³⁹ that the *TNG* injunction case⁴⁰ is distinguishable because Callaghan J. declined to suspend the impugned legislation and instead ordered an exemption for all existing supervised consumptions sites (“SCSs”) from s. 2 of the CCRA legislation. Callaghan J states that in exemption cases the public interest considerations carry less weight than in suspension cases.⁴¹ However, Callaghan J goes on to state⁴² that he will deal with the balance of convenience part of the test as if the case was a suspension case given the limited number of SCSs that were affected by the CCRA. In other words, Callaghan J applies the higher standard as the injunction would have broader implications.

14. In the motion before the court, the Site Specific By-law does not have broad application and as such should be treated as an exemption case where the public interest will carry less weight. The Site Specific By-law only applies to the Encampment at 100 Victoria Street.

15. However, whether the current case is treated as a suspension case or an exemption case,

³⁸ *Canadian Council for Refugees v. Canada (Citizenship and Immigration)*, [2023 SCC 17](#), at paras. [60-69](#).

³⁹ Region’s Factum, Case Center p. A748, para. 97.

⁴⁰ *The Neighbourhood Group et al. v. HMKRO*, [2025 ONSC 1934](#) (“*TNG*”).

⁴¹ *TNG* [para. 47](#).

⁴² *TNG* [para. 48](#).

TNG is persuasive support for the proposition that in this case the public interest in the By-Law being enforced does not outweigh the public interests of the homeless population who will be harmed by the enforcement of the By-Law.

16. In TNG, the public interest that the legislation is presumed to be addressing is protecting children and youth from the public disorder associated with SCSs. Nevertheless, the Court finds that allowing the SCSs to stay open was associated with a greater public good of preventing serious health risks and deaths, which tipped the balance of convenience in favour of granting the injunction.⁴³

17. In the current case, the public interest in favour of granting the injunction is preventing similar harms related to displacement from the Encampment including the increased risks of assault, frostbite, sunstroke and loss of life and limb from sleeping outdoors without the benefit of survival equipment such as tents.⁴⁴ The public interest in having the construction of a transit hub potentially start in March 2026 versus a delay of a month or two does not outweigh the harms which can foreseeably be expected to occur if people are evicted from the Encampment under the enforcement of the Site Specific By-law.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of August 2025.



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⁴³ TNG [para. 57](#).

⁴⁴ Affidavit of Dr. Stephen Hwang, Motion Record, Case Center p. B-1-616, para. 11.

**ONTARIO
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B E T W E E N:

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Applicant/Responding Party

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PERSONS UNKNOWN AND TO BE ASCERTAINED

Respondents/Moving Parties

CERTIFICATE

1. I certify that I am satisfied as to the authenticity of every authority cited in the factum.

Dated this August 5th, 2025.



Ashley Schuitema, Joanna Mullen, and Shannon Down

Lawyers for the Respondents (Moving Parties)

SCHEDULE “A”**List of Authorities in order of reference:**

1. *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, [2023 ONSC 670](#)
2. *Canadian Council for Refugees v. Canada (Citizenship and Immigration)*, [2023 SCC 17](#)
3. *The Neighbourhood Group et al. v. HMKRO*, [2025 ONSC 1934](#)

SCHEDULE “B”

Statutes, Regulations and By-laws in alphabetical and numerical order:

1. [By-law Number 13-050 of The Regional Municipality of Waterloo, A By-law Respecting the Conduct of Persons Entering Upon Buildings, Grounds and Public Transportation Vehicles Owned or Occupied by The Regional Municipality of Waterloo](#)
2. [Trespass to Property Act](#), R.S.O. 1990, c. T.21, as amended

**THE REGIONAL MUNICIPALITY OF
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Court File No.: CV-25-00000750-0000

ONTARIO
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Proceeding commenced at KITCHENER

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