

**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*

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**BOOK OF AUTHORITIES OF THE INTERVENER,  
THE ATTORNEY GENERAL OF ONTARIO**

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April 9, 2026

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## PART I – OVERVIEW

1. The Attorney General of Ontario [“Ontario”] intervenes pursuant to s. 109(4) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 to make submissions to the Court in respect of the constitutional question.
2. Ontario intervenes to make submissions on the proper approach to ss. 7, 15, and s. 1 of the *Charter* in this case, and specifically the ways in which the analysis in this case differs from the Court’s analysis in the previous application, *Persons Unknown 2023*.<sup>1</sup>
3. Ontario’s submissions on s. 7 focus on the role of shelter space accessibility in determining whether a claimant is deprived life, liberty, and security of the person. Section 7 does not create a positive right to shelter, including the right to live permanently in an encampment or to prefer encampment living over other shelter options. Nor do Ontario courts agree that s. 7 requires municipalities to guarantee alternative and accessible shelter before taking steps to remove an encampment. Even if the availability and accessibility of alternative shelter is relevant to s. 7, it is the claimants who bear the onus to prove that they must live in the encampment as a last resort because the conditions of the alternative shelter being offered to them deprive them of life, liberty, or security of the person.
4. This case is unlike *Persons Unknown 2023*. The Region is offering alternative shelter that is tailored to the individual circumstances of the claimants and other encampment residents before the by-law can be enforced. Moreover, the by-law at issue in this case has a different, more limited purpose which requires the Court to conduct a fresh analysis of fundamental justice.

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<sup>1</sup> *The Regional Municipality of Waterloo v Persons Unknown and to be Ascertained*, [2023 ONSC 670](#) [*Persons Unknown 2023*].

5. Courts have correctly held that by-laws prohibiting encampments do not violate s. 15.<sup>2</sup> Homelessness is not an analogous ground, and “[m]erely proving overrepresentation” of certain groups affected by homelessness is insufficient to show that a by-law prohibiting encampments causes an adverse impact.<sup>3</sup>

6. Finally, if the by-law is found to infringe ss. 7 or 15 of the *Charter*, this Court must conduct a meaningful justification analysis under s. 1. The Supreme Court has held that societal interests must be considered under s. 1 and that courts must defer to policy choices that attempt to reconcile the claims of competing groups.<sup>4</sup> A failure to meaningfully consider s. 1 will result in the rights of individual claimants being “set above any potentially competing societal or individual rights, interests, or values.”<sup>5</sup>

## PART II – STATEMENT OF ISSUES

7. Ontario makes submissions on the following issues:

1. Does the by-law engage section 7 of the *Charter*?
2. Does the by-law infringe section 15 of the *Charter*?
3. In the event the by-law is found to infringe ss. 7 or 15, is it justified as a reasonable limit under section 1 of the *Charter*?

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<sup>2</sup> See e.g. *Heegsma v Hamilton (City)*, 2024 ONSC 7154 [*Heegsma*] at [paras 80-82](#); *Persons Unknown 2023* at [paras 125-127](#); *Abbotsford (City) v Shantz*, 2015 BCSC 1909 [*Abbotsford (City)*] at [paras 234-236](#).

<sup>3</sup> *Ontario Health Coalition and Advocacy Centre for the Elderly v Ontario*, 2025 ONSC 415 [*Ontario Health Coalition*] at [para 317](#); *Fair Change v Ontario*, 2024 ONSC 1895 [*Fair Change*] at [paras 326-327](#), [383](#); *Symes v Canada*, [1993] 4 SCR 695 [*Symes*] at [764-765](#); *R v Sharma*, 2022 SCC 39 [*Sharma*] at [paras 31-32](#), [44](#).

<sup>4</sup> *Canada (Attorney General) v Bedford*, [2013 SCC 72](#) [*Bedford*]; *Irwin Toy Ltd. v Quebec (Attorney General)*, [\[1989\] 1 SCR 927](#) [*Irwin Toy*].

<sup>5</sup> Debra M. Haak, “Revisiting the Analytical Distinction Between Section 7 and Section 1 of the Charter: Legislative Objectives, Policy Goals and Public Interests” (2023) 112 SCLR (2d) 115 [*Haak*] at para 27, Intervener’s Book of Authorities [*IBOA*], Tab 2, p 44.

## PART III – STATEMENT OF ARGUMENT

### I. The By-Law does not engage Section 7 of the *Charter*

#### A. *Section 7 does not protect a preference to live in an encampment*

8. Section 7 does not create a positive right to shelter. This includes living permanently in an entrenched encampment or preferring to stay in an encampment over other available shelter options.<sup>6</sup> In *Victoria (City) v Adams*, the issue was whether prohibiting “temporary overhead shelter at night” that was “taken down every morning” violated s. 7.<sup>78</sup> The claimants in that case did not seek the right to remain in a semi-permanent encampment on an indefinite basis.

9. Nor do Ontario courts agree that s. 7 requires municipalities to guarantee alternative, accessible shelter options before taking steps to remove an encampment.<sup>9</sup>

10. In considering whether s. 7 is even engaged, courts must distinguish between claimants living in an encampment as a last resort and claimants living in an encampment because they prefer to live there even when alternative shelter is available. The eviction of individuals who are exercising a preference to live in an encampment, rather than living there as a last resort to protect themselves from the elements, does not engage s. 7 interests.

11. If this Court concludes that the availability and accessibility of alternative shelter is relevant to s. 7, it is the claimants in this case who bear the onus to show that the

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<sup>6</sup> *Tanudjaja v Attorney General (Canada)*, 2013 ONSC 5410 [*Tanudjaja ONSC*] at [para 59](#), aff'd in *Tanudjaja v Canada (AG)*, [2014 ONCA 852](#); *The Corporation of the City of Kingston v Doe*, 2023 ONSC 6662 [*Kingston*] at [para 67](#); *Johnston v Victoria (City)*, 2011 BCCA 400 at [paras 10-13](#); *Victoria (City) v Adams*, 2009 BCCA 563 [*Adams BCCA*] at [para 74](#).

<sup>7</sup> *Adams BCCA* at [paras 1, 52, 99-100](#); *Victoria (City) v Adams*, 2008 BCSC 1363 at [paras 129-130, 138, 207](#).

<sup>8</sup> *Adams BCCA* at [paras 52, 99-100](#).

<sup>9</sup> *Kingston* at [paras 129-133](#); *Heegsma* at [paras 14, 72-73](#); *Poff v City of Hamilton*, [2021 ONSC 7224](#); *Black et al. v City of Toronto*, [2020 ONSC 6398](#) [*Black*]; *Church of Saint Stephen et al. v Toronto*, [2023 ONSC 6566](#).

alternative shelter deprives them of life, liberty or security of the person, thereby forcing them to continue living in the encampment. To meet this onus, the claimants must lead evidence of their personal circumstances, their efforts to find shelter space, any offer of alternative shelter, and the harmful conditions of that alternative shelter.

12. Justice Valente did not conduct this analysis in the previous application. Instead, he held that any alternative shelter offered by the Region had to be “truly accessible” to comply with s. 7.<sup>10</sup> While he did not define the term “truly accessible”, he identified examples of shelter spaces that are “impractical” for unhoused individuals.<sup>11</sup> However, “impracticality” cannot be the standard to engage s. 7 of the *Charter*. This Court properly noted in *Heegsma* that making compliance with s. 7 conditional on removing common barriers to accessibility in shelters would impose an impossible burden on municipalities.<sup>12</sup>

13. Instead, “accessibility” should be understood with specific reference to the interests that s. 7 is designed to protect. Claimants must establish that the conditions of the shelter space being offered to them deprive them of life, liberty, or security of the person such that their only alternative is seeking shelter outdoors in an encampment.

***B. The evidence does not establish a breach of section 7***

14. In any event, this case is distinguishable from *Persons Unknown 2023* because the Region has provided ample evidence of its proactive efforts to assist existing residents at the encampment. Since the first application, the Region has taken considerable steps to meet the residents’ short and long-term needs. Support workers have routinely visited the

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<sup>10</sup> *Persons Unknown 2023* at [para 93](#).

<sup>11</sup> *Persons Unknown 2023* at [para 93](#).

<sup>12</sup> *Heegsma* at [paras 70-72](#).

encampment over many months to build relationships with encampment residents, understand their circumstances, identify their needs, and connect them with the appropriate resources.<sup>13</sup>

15. The site-specific by-law requires the Region to work with existing residents to develop personalized housing action plans and offer them alternative accommodation. If existing residents lose their accommodation due to non-compliance with the rules, the Region further endeavours to reconnect residents with support workers to assist them in finding another suitable accommodation. Furthermore, the Region offers to store the personal belongings of existing residents who accept offers for alternative accommodations for up to six months.<sup>14</sup> The by-law also offers to work with individuals who joined the encampment after April 16, 2025 to provide them with appropriate housing options.<sup>15</sup>

16. The relevant question in this case is whether the claimants have been offered alternative shelter, not whether there are enough shelter spaces in the entire Region to house the total number of unhoused persons. This Court need not and should not compare these figures on an aggregate basis. While Justice Valente did this in *Persons Unknown 2023*, he did so because he was considering the validity of a general by-law that prohibited the erection of any structure on any municipal property. By contrast, the site-specific by-law in this case applies only to the encampment at 100 Victoria Street and its residents. Requiring

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<sup>13</sup> Affidavit of Peter Sweeny Affidavit affirmed June 6, 2025 [**1<sup>st</sup> Sweeny Affidavit**] at paras 14-17, 20-21, Applicant's Application Record [**AAR**], Tab 2, pp 18-20.

<sup>14</sup> Schedule "C": Transition Protocol, Consolidated version of By-Law #25-021 showing the tracked amendments [**Amended By-Law**], Affidavit of Dilupneet Kang affirmed January 9, 2026 [**Kang Affidavit**] at 116, Applicant's Supplementary Application Record [**ASAR**], Tab 4B, Appendix B.

<sup>15</sup> Amended By-Law s. 6(2), Kang Affidavit at 112, ASAR, Tab 4B, Appendix B.

the Region to have an aggregate surplus of available shelter spaces for the entire unhoused population would be incongruent with the limited scope of this by-law.

17. The impugned by-law does not engage *Charter* s. 7. The evidence demonstrates the Region’s efforts to mitigate the consequences of homelessness and eviction on the encampment residents. The existing residents at the encampment will be offered an alternative accommodation that is appropriate for their individual circumstances and needs before the by-law is enforced. The impugned by-law does not negatively impact the claimants’ life, liberty, and security of the person.

## **II. The By-law Accords with the Principles of Fundamental Justice**

18. A law that engages the interests protected by s. 7 may still be consistent with fundamental justice. As the Supreme Court held in *Carter*, “[s]ection 7 does not promise that the state will never interfere with a person’s life, liberty or security of the person – laws do this all the time – but rather that the state will not do so in a way that violates the principles of fundamental justice.”<sup>16</sup>

### ***A. This Court must conduct a fresh analysis of fundamental justice***

19. Whether a law accords with the principles of fundamental justice can only be assessed with a clear and precise articulation of the purpose of the provisions at issue. Because the purpose of the site-specific by-law in this case is different from the purpose of the general by-law considered in *Persons Unknown 2023*, this Court must conduct a fresh analysis of fundamental justice.

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<sup>16</sup> *Carter v Canada (Attorney General)*, 2015 SCC 5 [*Carter*] at [para 71](#); see also *Matsqui-Abbotsford Impact Society v Canada (Attorney General)*, 2026 FC 268 at [paras 15-16](#).

20. The Supreme Court has held that the analysis of fundamental justice requires courts to examine “the relationship between the law’s purpose and what it actually does”.<sup>17</sup> It is therefore necessary at the outset to identify the purpose of the law being challenged.<sup>18</sup> The law’s purpose must be articulated “at an appropriate level of generality” which “resides between the statement of an ‘animating social value’ – which is too general – and a narrow articulation, which can include a virtual repetition of the challenged provision.”<sup>19</sup> The purpose should also be stated in a way that is both precise and succinct, and focused on the particular provisions being challenged.<sup>20</sup>

21. The purpose of the site-specific by-law being challenged in this case is different than the purpose of the general by-law considered in *Persons Unknown 2023*. In that case, Justice Valente held that the purpose of the general by-law was to “prevent physical damage to the lands owned or occupied by the Region”, to “prevent disruption of the Region’s operations” on the lands, and to “prevent the disruption of the use and enjoyment” of the lands by other people.<sup>21</sup> By contrast, the purpose of the site-specific by-law at issue in this case is much narrower: “to specifically regulate and govern 100 Victoria Street and to obtain vacant possession” so as to facilitate construction of the new transit hub.<sup>22</sup> This purpose is clear on the face of the by-law and “firmly anchored” in the text of the preamble.<sup>23</sup>

22. The scope of the two by-laws is also different. The general by-law prohibits various activities on *any* lands owned or occupied by the Region, including erecting any

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<sup>17</sup> *R v Moriarity*, 2015 SCC 55 [*Moriarity*] at [paras 27-31](#).

<sup>18</sup> *R v Safarzadeh-Markhali*, 2016 SCC 14 [*Safarzadeh-Markhali*] at [para 24](#); *Sharma* at [para 87](#).

<sup>19</sup> *Moriarity* at [paras 27-31](#); *Safarzadeh-Markhali* at [paras 24, 27](#); *R v Ndhlovu*, 2022 SCC 38 [*Ndhlovu*] at [paras 61-62](#).

<sup>20</sup> *Moriarity* at [para 29](#), *Safarzadeh-Markhali* at [para 28](#); *Sharma* at [para 87](#); *Ndhlovu* at [para 62](#).

<sup>21</sup> *Persons Unknown 2023* at [paras 9, 112](#).

<sup>22</sup> Amended By-Law, Kang Affidavit at 110, ASAR, Tab 4B, Appendix B.

<sup>23</sup> *Moriarity* at [para 32](#).

unauthorized form of structure or bringing any dangerous, illegal or flammable goods on the lands.<sup>24</sup> As held by Justice Valente, the general by-law “prohibits any form of shelter regardless of the circumstances”, including circumstances where the Region “has no immediate need for the Property”.<sup>25</sup> By contrast, the site-specific by-law prescribes the specific circumstances to which it applies, namely that there is now an immediate need for the Property, and that several pre-conditions must be met before the by-law can be enforced, including an offer of alternative accommodation and social service supports. The site-specific by-law is not concerned with any other land owned or occupied by the Region.

23. The fact that both by-laws may apply to the same property, e.g. 100 Victoria Street, does not mean they have the same purpose. Instead, the Court must look at the purpose of each by-law independently from its effect in order to determine whether the by-law employs rational means to achieve its own purpose.<sup>26</sup>

24. The claimants do not allege that the impugned by-law is arbitrary. Given the narrow purpose and scope of the by-law, it is also not overbroad or grossly disproportionate.

***B. The by-law is not overbroad***

25. Overbreadth arises when a law goes further than reasonably necessary to achieve its objective.<sup>27</sup> A law is overbroad where it “sweep[s] conduct into its ambit that bears no relation to its objective.”<sup>28</sup>

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<sup>24</sup> *Persons Unknown 2023* at [para 8](#).

<sup>25</sup> *Persons Unknown 2023* at [paras 113-114](#).

<sup>26</sup> *Bedford* at [para 107](#).

<sup>27</sup> *Safarzadeh-Markhali* at [para 50](#), citing *Bedford* at [para 101](#).

<sup>28</sup> *Bedford* at [para 117](#).

26. The finding in *Persons Unknown 2023* that the general by-law was overbroad does not mean the site-specific by-law is overbroad. Justice Valente found that the general by-law was overbroad because it prohibited any form of shelter “regardless of the circumstances”, sweeping conduct into its ambit that bore no relation to its objective of preventing damage to the property, disruption to the Region’s operations, or disruption of the use and enjoyment of the property.<sup>29</sup> Justice Valente concluded that the encampment had not caused damage of any significance to 100 Victoria, had not disrupted the Region’s operations, and had not disrupted the use of the property by “other persons” because the Region “has no immediate need for the Property”.<sup>30</sup>

27. The purpose of the site-specific by-law, however, is to obtain vacant possession of 100 Victoria Street and facilitate construction of the transit hub. The by-law goes no further than reasonably necessary in pursuit of this goal. It only prohibits conduct that interferes with the use of the property for construction purposes, including the erection of structures on the property or residing on the property.<sup>31</sup> The site-specific by-law does not prevent individuals currently living at the encampment from sheltering elsewhere.

***C. The by-law is not grossly disproportionate***

28. The rule against gross disproportionality only applies in “extreme cases” where “the seriousness of the deprivation is totally out of sync with the objective of the measure”:

This idea is captured by the hypothetical of a law with the purpose of keeping the streets clean that imposes a sentence of life imprisonment for spitting on the sidewalk. The connection between the draconian impact of the law and its object must be entirely outside the norms accepted in our free and democratic society.<sup>32</sup>

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<sup>29</sup> *Persons Unknown 2023* at [paras 112-114](#).

<sup>30</sup> *Persons Unknown 2023* at [para 114](#); see also [para 105](#).

<sup>31</sup> Schedule “B”: Prohibited Activities, Amended By-Law, Kang Affidavit at 115, ASAR, Tab 4B, Appendix B.

<sup>32</sup> *Bedford* at [para 120](#).

29. The site-specific by-law does not approach the “draconian impact” of a law that imprisons people for life for spitting on the sidewalk. It is not “totally out of sync” to require individuals to vacate a specific piece of property so that it can be used to construct a specific and important public project for the benefit of the community as a whole. To find otherwise would trivialize the important protections of the *Charter*.

30. The harms alleged by the claimants relate to being removed from encampments generally, not to being removed from this encampment specifically. There is no evidence that the claimants must shelter at 100 Victoria Street to protect their life or security of the person. Nothing in the site-specific by-law limits their ability to seek shelter in an alternative location. In any event, the by-law greatly mitigates the potential negative impacts on the claimants by requiring that they be offered alternative accommodation and social service supports before they are required to leave.

31. By contrast, the Region’s evidence is that it has an immediate and important need for the property, because 100 Victoria Street is the only space owned by the Region that is both proximate to the construction site and big enough to be used as a staging and laydown site. The Region’s inability to access 100 Victoria Street will significantly delay a landmark public project and increase the cost to prohibitively high levels that may ultimately render the project infeasible.<sup>33</sup> The result will be the loss of the benefit of improved transit for all residents of the Region, including environmental benefits and reduction in commuter times, as well as more accessible transit for vulnerable community members such as seniors, lower income residents, and persons with disabilities.

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<sup>33</sup> Affidavit of Douglas John Spooner affirmed June 6, 2025 [**Spooner Affidavit**] at para 44, AAR, Tab 3, p 363.

### III. The By-Law does not infringe Section 15 of the *Charter*

#### A. *Homelessness is not an analogous ground*

32. Courts in Ontario and British Columbia have repeatedly recognized that homelessness is not an analogous ground.<sup>34</sup> This Court held in *Tanudjaja* that homelessness cannot be established as an analogous ground under *Charter* s. 15 without an understanding of the common characteristics which define the group.<sup>35</sup>

33. The Supreme Court held in *Corbiere* that “s. 15 targets the denial of equal treatment on grounds that are actually immutable, like race, or constructively immutable, like religion.”<sup>36</sup> Constructively immutable characteristics are “changeable only at unacceptable cost to personal identity” and “the government has no legitimate interest in expecting us to change [them] to receive equal treatment under the law.”<sup>37</sup> Immutability, actual or constructive, is the defining feature of enumerated grounds, and informs the approach to recognizing new analogous grounds.<sup>38</sup>

34. Being without adequate or accessible housing is not a shared quality, characteristic or trait, or a fact that can be determined on objective criteria.<sup>39</sup> Changing that characteristic does not impose an unacceptable cost to personal identity; on the contrary, governments consistently invest taxpayer dollars to reduce and eliminate poverty.<sup>40</sup> As this Court found in *Persons Unknown 2023*:

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<sup>34</sup> *Tanudjaja* ONSC at [para 130-31](#); *Persons Unknown 2023* at [para 126](#); *Abbotsford (City)* at [para 231](#); *R v Ferkul*, 2019 ONCJ 893 at [para 29](#).

<sup>35</sup> *Tanudjaja* ONSC at [para 134](#).

<sup>36</sup> *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203 [*Corbiere*] at [para 13](#).

<sup>37</sup> *Corbiere* at [para 13](#).

<sup>38</sup> Peter W. Hogg and Wade K. Wright, *Constitutional Law of Canada* 5th ed (Toronto: Thomson Reuters Canada, 2007) (loose-leaf 2025 supplement), ch 55:26 at 54-55, IBOA, Tab 5, p 109.

<sup>39</sup> *Tanudjaja* ONSC at [para 130](#); see also *Abbotsford (City)* at [para 231](#).

<sup>40</sup> *Boulter v Nova Scotia Power Incorporation*, 2009 NSCA 17 at [para 42](#).

...I am particularly persuaded by the reasoning that homelessness is not a personal characteristic, nor is it a fact that can be determined objectively. To my mind, there is inevitably a subjective element in determining what may or may not be accessible housing given an individual's particular circumstances.<sup>41</sup>

35. A challenge based on s. 15 must be clearly anchored in a recognized ground of discrimination.<sup>42</sup> Like the challenge in *Tanudjaja*, the challenge to the by-law in this case is not based on any recognized ground, but rather on “a general concern for those who live in poverty and without appropriate housing.”<sup>43</sup> The claimants argue that they are members of various protected groups based on race, indigeneity, sex, disability, marital status or receipt social assistance.<sup>44</sup> However, the fact that the claimants belong to various protected groups is not itself sufficient to meet the burden at the first step of s. 15.<sup>45</sup> A group that is disparate and heterogenous cannot be treated as analogous and does not obtain the protection of s. 15 of the *Charter*.<sup>46</sup>

36. Contrary to the Respondents' assertion, *Kanyinda* does not alter the *Charter* s. 15 analysis, nor remove the need to ground a s. 15(1) distinction in a recognized enumerated or analogous ground.<sup>47</sup> As the Supreme Court noted, “the recognition of a particular claimant's intersecting identities and realities...is not novel in the s. 15(1) analysis.”<sup>48</sup> Intersecting identities and realities can provide context but, ultimately, the s. 15 claim “must be clearly anchored in a recognized ground of discrimination”.<sup>49</sup>

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<sup>41</sup> *Persons Unknown 2023* at [para 126](#); also see *Abbotsford (City)* at [para 231](#).

<sup>42</sup> *Quebec (Attorney General) v Kanyinda*, 2026 SCC 7 [*Kanyinda*] at [paras 50-51](#).

<sup>43</sup> *Tanudjaja ONSC* at [para 135](#).

<sup>44</sup> Notice of Cross-Application at para 2(a).

<sup>45</sup> *Sharma* at [para 40](#); *Ontario Health Coalition* at [para 317](#). See also *Kanyinda* at [paras 50-51](#); *Fair Change* at [para 327](#); *Heegsma* at [para 81](#).

<sup>46</sup> *Tanudjaja ONSC* at [paras 135-136](#); *Fair Change* at [paras 348, 356, 369, 385](#) and [398](#).

<sup>47</sup> *Kanyinda* at [para 43](#).

<sup>48</sup> *Kanyinda* at [para 40](#).

<sup>49</sup> *Kanyinda* at [para 51](#).

**B. *In any event, the by-law does not cause or contribute to a disproportionate impact***

37. The by-law does not cause or contribute to the harm alleged by the claimants. The Supreme Court of Canada has repeatedly held that it is important to distinguish between adverse impacts “caused” or “contributed to” by the impugned law and those social circumstances which “exist independently of” it.<sup>50</sup> Here, the claimants have not shown a causal link between the alleged harms and the by-law.<sup>51</sup> The disadvantages they face are caused by homelessness, not by enforcement of the by-law, particularly in light of the Region’s extensive efforts in this case to offer alternative accommodation to residents.

**IV. Any violation is saved by Section 1**

**A. *Section 1 plays an important role in encampments cases***

38. The Supreme Court in *Bedford* clarified that the principles of fundamental justice are concerned with the law’s effect on the individual, and not “the beneficial effects of the law for society.”<sup>52</sup> It follows that societal interests and the beneficial impact of the law are central to the justification analysis under s. 1.<sup>53</sup>

39. Prior to *Bedford*, cases like *Motor Vehicle Reference, New Brunswick v G(J)*, and *Charkaoui* cautioned against justifying a s. 7 infringement under s. 1, holding that such an infringement could only be justified in exceptional circumstances such as natural disasters, war, or epidemics.<sup>54</sup> But the Supreme Court in *Bedford* noted the different

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<sup>50</sup> *Sharma* at [paras 44-45](#); *Symes* at [764-65](#); *Withler v Canada (Attorney General)*, 2011 SCC 12 at [para 64](#); *Kanyinda* at [paras 57-59](#); *Fair Voting BC v Canada (Attorney General)*, 2025 ONCA 581 [*Fair Voting BC*] at [para 71](#); *Fair Change* at [para 327](#).

<sup>51</sup> *Abbotsford (City)* at [para 236](#).

<sup>52</sup> *Bedford* at [paras 121-123](#).

<sup>53</sup> *Bedford* at [paras 123-125](#); *Carter* at [paras 82, 94-99](#); *R v Michaud*, 2015 ONCA 585 [*Michaud*] at [para 62](#).

<sup>54</sup> *Re B.C. Motor Vehicle Act*, [1985] 2 SCR 486 at [518](#); *New Brunswick (Minister of Health and Community Services) v G. (J.)*, [1999] 3 SCR 46 [*G. (J.)*] at [para 99](#); *Charkaoui v Canada (Citizenship and Immigration)*, 2007

analyses under s. 7 and s. 1 and acknowledged that “the possibility that the government could establish that a s. 7 violation is justified under s. 1 of the *Charter* cannot be discounted.”<sup>55</sup> As observed by Professor Hamish Stewart,

The highly individualistic focus of the section 7 analysis is complemented by an apparent willingness to consider societal interests at the section 1 stage, thus opening up the possibility of justifying a violation of a principle of fundamental justice.<sup>56</sup>

40. Legal scholars have argued that *Bedford*'s heightened focus on the individual in the s. 7 analysis necessitates a more robust and meaningful consideration of societal interests in the s. 1 analysis. As explained by Professor Debra Haak,

A failure to meaningfully consider both societal and individual interests, rights, or values other than those of the rights' claimant (especially where they were relevant to Parliament in enacting impugned laws) suggests that concern for the public good, including balancing rights, interests and values in tension, “may be pushed out of the Court's conception of what justice means in Canadian society”.<sup>57</sup>

41. The Court of Appeal in *Michaud* similarly observed that s. 7's “relentless” focus on the individual risks losing sight of the benefits of the law “across a population”, and that some infringements of s. 7 must be capable of justification under s. 1:

The Supreme Court noted in *Carter*...that it would be difficult to justify an infringement of s. 7 under s. 1, but added, at para. 95: “in some situations the state may be able to show that the public good -- a matter not considered under s. 7, which looks only at the impact on the rights claimants -- justifies depriving an individual of life, liberty or security of the person under s. 1 of the *Charter*”. This, in my view, is one such situation. More are predictable in light of *Bedford*'s instruction that the

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SCC 9 at [para 66](#); Hamish Stewart, *Fundamental Justice: Section 7 of the Canadian Charter of Rights and Freedoms*, 2nd ed (Toronto, ON: Irwin Law, 2019) at 351-352, IBOA, Tab 4, pp 85-86.

<sup>55</sup> *Bedford* at para [129](#); *Carter* at [para 95](#); see also *Safarzadeh-Markhali* at [para 57](#).

<sup>56</sup> Hamish Stewart, “*Bedford* and the Structure of Section 7” (2015) 60:3 McGill Law J 575–594 at 588-589, IBOA, Tab 3, pp 75-76.

<sup>57</sup> Haak at para 27, IBOA, Tab 2, p 44.

public good sought to be achieved by the challenged law can be considered only in the s. 1 analysis.<sup>58</sup>

42. Despite the Supreme Court’s guidance in *Bedford* and the ongoing expansion of individual interests protected by s. 7, some encampment decisions, including *Persons Unknown 2023*, have continued to find that s. 7 infringements are “difficult to justify” under s. 1.<sup>59</sup> But if societal interests have no place in the s. 7 analysis post *Bedford*, then they must be central to the justification analysis under s. 1. Otherwise, as Professor Haak observes, “the individual claimant’s rights are set above any potentially competing societal or individual rights, interests, or values.”<sup>60</sup>

43. The failure to meaningfully consider societal interests at either the s. 7 or s. 1 stages results in governments being constitutionally prohibited from legislating in the complex policy area of homelessness where competing individual and societal interests are in tension. In those cases, the interests of certain individuals occupying public spaces have been prioritized over the equally legitimate interests of other community members.

***B. Courts must defer to policy choices that reconcile the claims of competing groups***

44. The Supreme Court has distinguished between *Charter* cases where the government is best characterized as the “singular antagonist” and cases involving the government’s “reconciliation of claims of competing individuals or groups”.<sup>61</sup> In the latter category, courts have no superior expertise or legitimacy as compared to elected governments in making complex policy decisions:

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<sup>58</sup> *Michaud* at [paras 78-79, 150-151](#).

<sup>59</sup> *Persons Unknown 2023* at [para 129](#); *Kingston* at [para 116](#); *Abbotsford (City)* at [para 237](#).

<sup>60</sup> Haak at para 27, IBOA, Tab 2, p 44.

<sup>61</sup> *Irwin Toy* at [994](#).

When striking a balance between the claims of competing groups, the choice of means, like the choice of ends, frequently will require an assessment of conflicting scientific evidence and differing justified demands on scarce resources. Democratic institutions are meant to let us all share in the responsibility for these difficult choices. Thus, as courts review the results of the legislature’s deliberations, particularly with respect to the protection of vulnerable groups, they must be mindful of the legislature’s representative function.<sup>62</sup>

45. The Supreme Court has held in numerous cases including *Irwin Toy*, *RJR-McDonald*, and *Hutterian Brethren* that where the government is mediating between claims of competing groups, deference is owed to the government’s legislative choices.<sup>63</sup> A law should not fail under s. 1 because a court can conceive of alternative means that appear to be less restrictive.<sup>64</sup> The question is not whether the impairment of the individual claimant’s rights is minimal, but whether it is one which “reasonably balances the competing social demands which our society must address.”<sup>65</sup> A law that balances competing interests and falls within a reasonable range of policy choices is minimally impairing.<sup>66</sup>

46. In devising policy responses to homelessness (including laws that regulate encampments) governments must reconcile the individual claims of unhoused persons with broader societal interests, which involves the allocation of scarce resources, mitigating risks to public safety, and preserving public spaces for the public benefit.<sup>67</sup> Faced with this difficult balance, courts must engage in a meaningful justification analysis that properly

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<sup>62</sup> *Irwin Toy* at [993-994](#).

<sup>63</sup> *Irwin Toy* at [994](#); *RJR-MacDonald Inc. v Canada (Attorney General)*, [1995] 3 S.C.R. 199 [*RJR*] at [para 135](#); *Alberta v Hutterian Brethren of Wilson Colony*, 2009 SCC 37 [*Hutterian Brethren*] at [para 37](#); see also *Carter* at [para 97](#).

<sup>64</sup> *Hutterian Brethren* at [para 54](#) citing *RJR*; see also *Committee for the Commonwealth of Canada v Canada*, [1991] 1 S.C.R. 139 at [248](#).

<sup>65</sup> *McKinney v University of Guelph*, [1990] 3 S.C.R. 229 at [314](#).

<sup>66</sup> *Michaud* at [paras 127, 136](#).

<sup>67</sup> *Black* at [paras 7-8](#); *City of Grants Pass v Johnson*, 144 S.Ct. 2202 at 2226, IBOA, Tab 1, pp. 19-20.

defers to the policy choices of elected governments and gives adequate weight to societal interests under s. 1.

**C. Justice Valente’s section 1 analysis is not binding on this Court**

47. This Court is not bound by horizontal *stare decisis* to follow the s. 1 analysis in *Persons Unknown 2023* because the analysis in that case did not apply the Supreme Court’s principles on s. 1 as set out in *Bedford*.<sup>68</sup> The s. 1 analysis in *Persons Unknown 2023* consists of three short paragraphs and relies on pre-*Bedford* case law for the proposition that a s. 7 breach may only be justified “in cases arising out of exceptional conditions, such as disasters, the outbreak of war, epidemics and the like.”<sup>69</sup> Justice Valente’s analysis does not consider societal interests or exercise judicial deference respecting the Region’s policy choices. Societal interest is only briefly considered and dismissed under the Court’s analysis of security of the person.<sup>70</sup> Justice Valente ruled out societal interests and the benefits of the by-law when analyzing the principles of fundamental justice under s. 7, yet also disregarded them at s. 1.

48. In particular, Justice Valente took note of the risks associated with the encampment, such as human feces, fire risks due to the presence of barbeques and propane tanks, and consumption of alcohol and drugs.<sup>71</sup> He also acknowledged the Region’s burden in mitigating these risks, including security, garbage pick-up and janitorial services.<sup>72</sup> Yet, he did not contend with any of these concerns in the s. 1 analysis. The decision focused on

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<sup>68</sup> *R v Sullivan*, 2022 SCC 19 at [para 75](#).

<sup>69</sup> *Persons Unknown 2023* at [para 129](#) citing *G. (J.)* at [para 99](#).

<sup>70</sup> *Persons Unknown 2023* at [para 105](#).

<sup>71</sup> *Persons Unknown 2023* at [para 47](#).

<sup>72</sup> *Persons Unknown 2023* at [para 21](#).

the needs of the individual claimants without considering the impact on scarce public resources.

***D. In any event, the section 1 analysis in this case is distinguishable***

49. This Court must conduct a fresh analysis under s. 1 due to the material differences between the impugned by-laws and the evidentiary record in this application as compared to *Persons Unknown 2023*.

50. The objective of the site-specific by-law, which is to regulate and govern 100 Victoria Street and obtain vacant possession in order to facilitate construction of the new transit hub, is pressing and substantial.

51. Additionally, the Region's choice of means is rationally connected and well-tailored to the objective. The by-law is minimally impairing; it is narrowly circumscribed to cover only the property at 100 Victoria Street and, in turn, only applies to the individuals residing at the encampment on that property. Furthermore, the Region implemented various measures to facilitate the transition out of the encampment and minimize the disruptions associated with evictions. The by-law contemplates a transition plan over many months to avoid the negative impacts of sudden, forced evictions on encampment residents.<sup>73</sup> The Region's social workers have been working with the individuals at the encampment to develop a personalized housing plan that is suited to each individual's needs and preferences to the greatest extent possible.<sup>74</sup> The by-law guarantees alternative accommodations and equivalent social service supports to the encampment residents who resided at the encampment on the date of public notice of the by-law and offers to store

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<sup>73</sup> 3<sup>rd</sup> Affidavit of Peter Sweeny affirmed July 31 2025 at para 36, Applicant's Reply Application Record, Tab 3, p 76.

<sup>74</sup> 1<sup>st</sup> Sweeny Affidavit at paras 14, 20, AAR, Tab 2, pp 18, 19.

their belongings for up to six months. It also endeavours to work with and find suitable alternative accommodations for the individuals that subsequently joined the encampment. The alternative accommodation will be an improvement to the living conditions of the encampment, which can be a source of injury due to continued exposure to the elements, as well as the presence of infectious and communicable diseases.<sup>75</sup>

52. The benefits of the by-law outweigh any deleterious effects. The effect of the encampment is to appropriate the public space and prevent any other public use of that space.<sup>76</sup> The Region has put forward detailed and cogent evidence explaining why it needs vacant possession of this particular property to facilitate the construction of the new transit hub.<sup>77</sup> The transit hub will reduce commute times, connect multiple transportation services in one location, and help connect the Region to the Greater Toronto Area and other urban areas in southwestern Ontario.<sup>78</sup> It is expected to benefit residents and visitors alike and promote business development in the Region.<sup>79</sup>

53. The Region and other municipalities in Ontario are not “singular antagonists” against the claimants or other unhoused persons by virtue of being responsible for regulating and directing the use of public spaces for the public benefit, and their enforcement activities in pursuit of this valid objective are entitled to judicial deference. The by-law represents a reasonable attempt by the Region to reconcile the competing interests of these claimants with the legitimate interests of the broader public in a landmark

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<sup>75</sup> Affidavit of Dr. Sharon Koivu Affirmed September 11, 2025 at paras 34-38, 43-46, 48-49, 52, ASAR, Tab 2, pp 22-26.

<sup>76</sup> *Bracken v Niagara Parks Police*, 2018 ONCA 261 at [para 71](#), citing with approval *Batty v City of Toronto*, 2011 ONSC 6862 at [para 91](#); *Calgary (City) v Bullock (Occupy Calgary)*, 2011 ABQB 764 at [para 44](#).

<sup>77</sup> Spooner Affidavit at para 6, AAR, Tab 3, p 351.

<sup>78</sup> Spooner Affidavit at paras 17-20, AAR, Tab 3, p 354.

<sup>79</sup> Spooner Affidavit at paras 16, 17, 22, AAR, Tab 3, p 354.

transit project that will improve economic outcomes for many residents. Municipalities are not constitutionally obligated to allow public property to be turned into residential spaces, depriving the rest of the community of the use of the property for its intended and publicly-funded purpose.

**PART IV – ORDER REQUESTED**

54. Ontario takes no position on the order to be granted in the application.
55. Ontario does not seek costs and asks that no order as to costs be made against it.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 9<sup>TH</sup> DAY OF APRIL  
2026**



\_\_\_\_\_  
Andrea Bolieiro



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Sara Badawi

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**CERTIFICATE**

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1. I am satisfied as to the authenticity of every authority listed in Schedule A.

April 9, 2026



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**Andrea Bolieiro** (LSO# 60034I)  
**Sara Badawi** (LSO # 87480W)

Of counsel for the Intervenor,  
His Majesty the King in Right of Ontario

## SCHEDULE A – AUTHORITIES CITED

### CASES

1. *Abbotsford (City) v Shantz*, [2015 BCSC 1909](#)
2. *Alberta v Hutterian Brethren of Wilson Colony*, [2009 SCC 37](#)
3. *Batty v City of Toronto*, [2011 ONSC 6862](#)
4. *Black et al v City of Toronto*, [2020 ONSC 6398](#)
5. *Boulter v Nova Scotia Power Incorporation*, [2009 NSCA 17](#)
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7. *Bracken v Niagara Parks Police*, [2018 ONCA 261](#)
8. *Calgary (City) v Bullock (Occupy Calgary)*, [2011 ABQB 764](#)
9. *Canada (Attorney General) v Bedford*, [2013 SCC 72](#)
10. *Carter v Canada (Attorney General)*, [2015 SCC 5](#)
11. *Charkaoui v Canada (Citizenship and Immigration)*, [2007 SCC 9](#)
12. *Church of Saint Stephen et al. v Toronto*, [2023 ONSC 6566](#)
13. *City of Grants Pass v Johnson*, 144 S.Ct. 2202
14. *Committee for the Commonwealth of Canada v Canada*, [\[1991\] 1 SCR 139](#)
15. *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [\[1999\] 2 SCR 203](#)
16. *Fair Change v His Majesty the King in Right of Ontario*, [2024 ONSC 1895](#)
17. *Fair Voting BC v Canada (Attorney General)*, 2025 ONCA 581
18. *Heegsma v Hamilton (City)*, [2024 ONSC 7154](#)
19. *Irwin Toy Ltd. v Quebec (Attorney General)*, [\[1989\] 1 SCR 927](#)
20. *Johnston v Victoria (City)*, [2011 BCCA 400](#)
21. *Matsqui-Abbotsford Impact Society v Canada (Attorney General)*, [2026 FC 268](#)
22. *McKinney v University of Guelph*, [\[1990\] 3 S.C.R. 229](#)
23. *New Brunswick (Minister of Health and Community Services) v G. (J.)*, [\[1999\] 3 SCR 46](#)
24. *Ontario Health Coalition and Advocacy Centre for the Elderly v Ontario*, [2025 ONSC 415](#)
25. *Poff v City of Hamilton*, [2021 ONSC 7224](#)
26. *Quebec (Attorney General) v Kanyinda*, [2026 SCC 7](#)
27. *R v Michaud*, [2015 ONCA 585](#)
28. *R v Sharma*, [2022 SCC 39](#)
29. *R v Ferkul*, [2019 ONCJ 893](#)
30. *R v Moriarity*, [2015 SCC 55](#)

31. *R v Ndhlovu*, [2022 SCC 38](#)
32. *R v Safarzadeh-Markhali*, [2016 SCC 14](#)
33. *R v Sullivan*, [2022 SCC 19](#)
34. *Re B.C. Motor Vehicle Act*, [\[1985\] 2 SCR 486](#)
35. *RJR-MacDonald Inc. v Canada (Attorney General)*, [\[1995\] 3 S.C.R. 199](#)
36. *Symes v Canada*, [\[1993\] 4 SCR 695](#)
37. *Tanudjaja v Attorney General (Canada)*, [2013 ONSC 5410](#)
38. *Tanudjaja v Canada (Attorney General)*, [2014 ONCA 852](#)
39. *The Corporation of the City of Kingston v Doe*, [2023 ONSC 6662](#)
40. *The Regional Municipality of Waterloo v Persons Unknown and to be Ascertained*, [2023 ONSC 670](#)
41. *Victoria (City) v Adams*, [2008 BCSC 1363](#)
42. *Victoria (City) v Adams*, [2009 BCCA 563](#)
43. *Withler v Canada (Attorney General)*, [2011 SCC 12](#)

### ***Secondary Sources***

44. Debra M. Haak, “Revisiting the Analytical Distinction Between Section 7 and Section 1 of the Charter: Legislative Objectives, Policy Goals and Public Interests” (2023) 112 SCLR (2d) 115
45. Hamish Stewart, “Bedford and the Structure of Section 7” (2015) 60:3 McGill Law J 575–594
46. Hamish Stewart, *Fundamental Justice: Section 7 of the Canadian Charter of Rights and Freedoms*, 2nd ed (Toronto, ON: Irwin Law, 2019) at 351
47. Peter W. Hogg and Wade K. Wright, *Constitutional Law of Canada*, 5th ed (Toronto: Thomson Reuters Canada, 2007) (loose-leaf 2025 supplement), ch 55:26 at 54-55.

## SCHEDULE B – LEGISLATION CITED

### Canadian Charter of Rights and Freedoms

#### *Guarantee of Rights and Freedoms* **Rights and freedoms in Canada**

1 The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

#### *Legal Rights* **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 Rights* **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.

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

**Right of Attorneys General to be heard**

**109** (4) Where the Attorney General of Canada or the Attorney General of Ontario is entitled to notice under this section, he or she is entitled to adduce evidence and make submissions to the court in respect of the constitutional question.

**THE REGIONAL MUNICIPALITY  
OF WATERLOO**

- and -

**PERSONS UNKNOWN AND TO  
BE ASCERTAINED**

Applicant

Respondents

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
  
Proceedings commenced at Kitchener

**FACTUM OF THE INTERVENER,  
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