CITATION: The Regional Municipality of Waterloo v. Named Respondents and Persons Unknown, 2026 ONSC 2971
COURT FILE NO.: CV-25-00000750-0000 and CV-25-00001341-0000
DATE: 2026/05/21

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
THE REGIONAL MUNICIPALITY OF WATERLOO	
Applicant	Gordon Capern, Andrew Lokan, Kartiga Thavaraj and Greta Hoaken, for the applicant
– and –	
JOSEPHINA DUGAS, TERRA-LYNN WEBER, AVERY AMENT, AARON PRICE, JEREMY LINTON, JEREMY NICHOL, JAMES HAMMOND, JAJOB STUBBS, JAMES DAVIS, JASON PAUL, NOAH HELSBY, JOSEPH BRADLEY, JOSEPH SADLER, JULIE YOUNG, KYLE YORK, MEGAN LOPES, STEPHANIE MCMILLAN, JEFFREY COUTO, JORDAN CAMM, TERRANCE COLE, XANDER HARKER, CHARLES KOCHER, ALINE JEFFERY, MICHAEL JEFFERY, AND PERSONS UNKNOWN	
Respondents/Cross-Applicants	Shannon K. Down, Ashley Schuitema and Joanna Mullen, for the Named Respondents
	Mercedes Perez, Jen Danch and Karen A. Steward, for the *Amicus Curiae*, Mental Health Legal Committee
	Andrea Bolieiro and Sara Badawi, for the intervener, Attorney General of Ontario
	Kristen Allen and Simone Truemner-Caron, for the intervener, The Canadian Civil Liberties Association

) Asha James, Erin McMurray, Emily Hill and
) Christa Big Canoe, for the intervener,
) Aboriginal Legal Services
)
) Professor *emerita* Martha Jackman, for the
) intervener, The Charter Committee on
) Poverty Issues / The National Right to
) Housing Network
)
)
) **HEARD:** April 16, 17 and 20, 2026

GIBSON J.

REASONS FOR DECISION

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Overview

[1] There is a homelessness crisis in Ontario. The number of unhoused people has risen sharply since the COVID-19 Pandemic. Province-wide, it is projected that the homeless population will more than double by 2035.

[2] While no one measure of homelessness is fully reliable, municipal governments are mandated to conduct periodic "point in time" counts ("PiT Counts"). In a September 2021 PiT Count, 1,085 people were counted as experiencing homelessness in Waterloo Region, with 75% classified as experiencing chronic homeless. By October 2024, those numbers had increased to 2,371 and 78% respectively.

[3] The growth in Waterloo Region ("the Region") is consistent with provincial trends, which show significant growth in unhoused populations attributed to a complicated confluence of both national and international factors, but the situation in the Region is even more acute than elsewhere in the province. Between 2021 and 2025, the overall homeless count in the province increased by 49.1%; in Waterloo Region, the PiT Count increased by 118% over the same period. The unhoused population in the Region continues to grow, and significantly exceeds the number of available shelter beds and other housing options.

[4] As I observed in my earlier decision regarding an injunction in this matter, homelessness poses significant challenges to our contemporary society. It is an extraordinarily difficult problem

to grapple with. It presents a complex multi-faceted phenomenon of diverse origins not susceptible to easy resolution. There is no prevailing academic or policy consensus about the best way to address it. It highlights chronic public policy tensions between unhoused individuals who are amongst the most disadvantaged in society (and their advocates), and other citizens who tire of the violence, drug use, squalor and derogation from public order that often attends homeless encampments, the disruption to neighboring residents and businesses, the significant expenditure of public funds in attempting to mitigate these, as well as the impediments to projects of significant public importance and benefit which may arise from them.

[5] It requires a compassionate, empathetic and respectful response, one worthy of the aspirations and values of our Canadian society and duly attentive to the dignity and rights of the unhoused, but also one that is clear-eyed in attempting to achieve the appropriate balance between rights of individuals and the broader public interest. This litigation throws this tension into sharp relief.

[6] Homelessness is a fact on the ground. It is not going away in the proximate future. An ostrich approach will not suffice. Solutions to the homelessness crisis will require increased resources from all levels of government and other stakeholders, time to implement the required strategies, and a clear recognition of and focus upon the constitutional rights involved.

[7] What is clear is that all levels of government, and other actors in the public and private sectors, including healthcare, mental health and addiction supports, the justice system, charitable and religious organizations, and others, are required to work together to address this challenge.

[8] There are sharply diverging views about how best to tackle the issue of homelessness, and the optimal way ahead having regard to practical constraints on resources and the myriad competing alternative demands for the expenditure of public funds, as well as competing interests in advancing public infrastructure projects. The polarization of this debate at times seems to resemble a “dialogue of the deaf”, frequently characterized by the caricaturing of, and unwillingness to listen to, opposing viewpoints. This is not helpful.

[9] Developing solutions to address the growing homelessness issue involves policy and legislative choices that are within the primary purview of government, not the courts. Courts must be mindful of the limits of their institutional competence. However, in *Chaoulli v. Quebec (Attorney General),* 2005 SCC 35, at para. 107, the Supreme Court of Canada has emphasized that constitutional oversight is the court's duty even when faced with complex or contentious issues:

> The fact that the matter is complex, contentious or laden with social values does not mean that the courts can abdicate the responsibility vested in them by our Constitution to review legislation for *Charter* compliance when citizens challenge it. As this Court had said on a number of occasions, "it is the high duty of this Court to ensure that Legislatures do not transgress the limits of their constitutional mandate and engage in illegal exercises of power…"

[10] As I noted in the previous injunction decision in this matter, *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2025 ONSC 4774, I am alive to the inherent public-interest function of the Regional Council as a democratically-elected body and the need to respect decisions made by those bodies in the appropriate balance of the Legislative, Executive and Judicial arms of government in our democratic society in Canada. Each has its proper role, and appropriate ambit of jurisdiction: in popular parlance, its "own lane." Questions of the constitutionality of municipal enactments are clearly within the proper ambit of the Court's jurisdiction to assess. Moreover, it must be noted that in the present case, it was the decision of the Region to proactively seek guidance and a declaration from the Court as to the constitutionality of the Site-Specific By-Law. It initiated the Application that is before the Court.

[11] Homelessness is a public policy issue that engages practical, moral and legal dimensions. The prevalence of encampments reflects Canada's challenges in meeting its human rights obligation to ensure that all individuals have access to adequate housing - housing that is secure, affordable, habitable, accessible, culturally appropriate, and in a suitable location with access to services -, while faced with the practical constraints of available resources and the challenges in resource allocation, as well as planning for projects that aim to advance the public good.

[12] Assessing the issue of homeless encampments from a *Charter* perspective requires consideration of contending factors that often seem to pull in different directions. It is a complex

and contentious task, often fraught with emotion, with no simple solution. But it ultimately needs to be informed by one primary thought: The homeless are not Other. They are Us. They are rights bearers no less entitled than any other Canadian citizens to the full benefit and protection of the *Charter*.

Background

[13] Waterloo Region, along with many other municipalities in Ontario, has experienced the manifestation of these issues on the ground with increasing acuteness. The severity of the problem here may well have come in tandem with the rapid population growth which the Region has experienced in recent years. This has particularly crystallized around the property at 100 Victoria Street West in Kitchener ("100 Victoria" or "the Property"), which has become a flashpoint of controversy. There has been an encampment of unhoused persons on this location since 2021 ("the Encampment"), and it has already been the subject of significant public interest litigation in *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2023 ONSC 670 ("*Persons Unknown 2023*").

[14] In addition to *Persons Unknown 2023*, there have been several other significant cases in Ontario in recent years which have also dealt with the question of homeless encampments: *The Corporation of the City of Kingston v. Doe*, 2023 ONSC 6662; *Poff v. City of Hamilton*, 2021 ONSC 7224; *Heegsma v. Hamilton (City)*, 2024 ONSC 7154; *Church of St. Stephen et al. v. Toronto*, 2023 ONSC 6566; and *Black et al. v. City of Toronto*, 2020 ONSC 6398. The decision on the appeal from the trial decision in *Heegsma*, in which Ramsay J. dismissed an application by 14 homeless individuals who applied for a declaration that the City of Hamilton's enforcement of its parks by-law breached their s.7 and s.15 *Charter* rights, is currently under reserve at the Court of Appeal for Ontario.

[15] There have been cases engaging similar issues in other provinces as well, including *Matsqui-Abbotsford Impact Society v. Abbotsford (City),* 2024 BCSC 1902, and *Clinique juridique itinérante c. Procureur général du Québec - Ministère des Transports et de la Mobilité durable du Québec*, 2025 QCCS 2087.

[16] Since *Persons Unknown 2023* 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. The Region has made significant efforts 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. By October 2024, those numbers had increased to 2,371 and 78% respectively.

[17] 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.

[18] The present case, however, is more limited in scope than *Persons Unknown 2023*, in which the Region sought the approval of the Court for a By-Law which the Region intended to be of general application to all its property in Waterloo Region. The Region and its contractual partner Metrolinx require 100 Victoria Street North for the specific purpose of constructing the Kitchener Central Transit Hub ("KCTH") for the benefit of the entire population of the Region. The schedule for site remediation has evolved. It is now scheduled for October 2026, to prepare for construction commencing later, although this timeline is not fixed.

[19] Accordingly, on April 23, 2025, the Region passed a site-specific by-law ("the Site-Specific By-law") to provide for vacant possession of 100 Victoria by December 1, 2025, accompanied by a plan ("Plan") to provide alternative accommodation for those residing at 100 Victoria 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.

[20] Under the Region's Plan, the approximately 40 Existing Residents will be offered alternative accommodation 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 try to ensure that they have a place to go. The Region indicates that it is confident that they can be transitioned to alternative accommodations. Some of the original 40 Existing Residents have made this transition, and some have left the Encampment of their own accord.

The Region's Application

[21] The Applicant in the present case, the Regional Municipality of Waterloo (the "Region"), initiated an application on June 9, 2025 pursuant to Rule 14.05 of the *Rules of Civil Procedure* seeking various forms of relief, including a declaration that its By-law Number 25-021, *A By-law Respecting the Use of 100 Victoria Street North, Kitchener (as Owned by the Regional Municipality of Waterloo) to facilitate the Kitchener Central Transit Hub and other Transit Development* (the "Site-Specific By-law") complies with the *Canadian Charter of Rights and Freedoms* ("*Charter"*). The By-law contains prohibitions respecting 100 Victoria Street, a vacant lot that is the site of an outdoor encampment of vulnerable unhoused individuals. Prohibitions include a ban on erecting temporary structures (such as tents). Contravening the By-law constituted an offence with a penalty upon conviction of fines up to $5,000.00. The By-law permits immediate enforcement of its provisions by police upon "Non-Residents" of the Encampment, defined as individuals who are assumed to have started residing on the property after April 16, 2025, the Public Notice date of the By-law, regardless of whether such individuals have alternative housing available to them. "Existing Residents" of the Encampment (those persons assumed to have already been residing on the property as of April 16, 2025) could not be removed until December 1, 2025, the date that the prohibition against all persons from entering onto, residing on or occupying 100 Victoria, was to take effect.

[22] The parties requested an adjournment of the dates originally scheduled for the hearing in November 2025, in order to engage in an attempt at mediation. When this proved unsuccessful, on January 9, 2026, Regional Council passed amendments to the Site-Specific By-Law ("the Amended By-Law") to address some of the concerns that had been identified with the April 2025 version of the By-Law. The Amended By-Law seeks to defer the vacant possession date, remove the offence provision and to codify a transition policy.

[23] In its Further Amended Notice of Application, dated March 10, 2026, the Region makes application for a declaration that By-Law Number 25-021 of the Regional Municipality of Waterloo, *A By-Law Respecting the Use of 100 Victoria Street North, Kitchener (as Owned by the Regional Municipality of Waterloo) to facilitate the Kitchener Central Transit Hub and other Transit Development*, as amended January 9, 2026 by By-Law Number 26-001("the Amended By-Law"), complies with the *Charter of Rights and Freedoms*, as well as an interim and final order ("Injunction Order") that any persons having notice of the Injunction Order are restrained and enjoined from breaching the Amended By-Law by remaining on and/or re-entering the property municipally known as 100 Victoria Street North in the City of Kitchener except as in accordance with the Amended By-Law.

[24] Alternatively, if the Court determines that it does not comply with the *Charter*, or is otherwise deficient, the Region seeks this Court's direction as to the steps that it needs to take to close the Encampment at 100 Victoria Street North, so it can proceed with construction activities relating to the KCTH.

The Respondents' Cross-Application

[25] The Respondents resist the Region's application and have initiated a Responding Application and Notice of Constitutional Question seeking, *inter alia*, a declaration that the Site-Specific By-law, as Amended, violates their s. 7 and 15(1) *Charter* rights.

[26] The Respondent's Notice of Constitutional Question is filed with respect to a Cross-Application, Court File No. CV-25-00001341-0000, which was heard together with the Application, CV-2500000750-0000, commenced by the Regional Municipality of Waterloo (the "Region"). The Cross-Applicants in Application CV-25-00001341-0000 are among the Respondents in CV-25-00000750-0000.

[27] The Cross-Applicants are chronically homeless individuals who shelter at an encampment located at 100 Victoria Street, Kitchener during periods when they lack accessible indoor shelter. They are facing eviction from the Encampment as a result of the Site-Specific By-law and the Amended By-law (collectively, the "By-laws") enacted by the Respondent Regional Municipality

of Waterloo. The Cross-Applicants ask the Court to determine whether, in the absence of sufficient accessible shelter beds for the Region's homeless, the Region's efforts to address the individual needs of some of the Cross-Applicants is sufficient to ensure that the By-laws are compliant with the requirements of ss. 7 and 15 of the *Charter*. The material facts giving rise to the constitutional question are set out in the Applicant's Amended Notice of Application, issued on October 22, 2025.

[28] The following are the legal bases for the constitutional question as framed by the Cross-Applicants. They submit that the By-Laws violate the s. 7 right to life, liberty, and security of the person of the Cross-Applicants, and that these violations are not in accordance with the principles of fundamental justice. The Cross-Applicants submit that the By-Laws violate their rights in a multitude of ways that cause deprivations of life, liberty, security of the person, including by:

> a. Preventing the Cross-Applicants from sheltering themselves at the Encampment site when the number of homeless in the Region outnumbers the Region's available and accessible shelter spaces. This leaves the Cross-Applicants unable to protect themselves from the elements in a context where the Region's Code of Use By-law (By-Law Number 13-050 of the Regional Municipality of Waterloo) and the *Trespass to Property Act*, R.S.O. 1990, c. T2, prohibit sheltering in areas not subject to the By-Laws;
>
> b. Failing to include rights-based measures to ensure access to longer-term adequate housing and supports in accordance with the Region's Plan to End Chronic Homelessness;
>
> c. Increasing the Cross-Applicants' risk of hypothermia, sunburn, heatstroke, dehydration, and fatigue;
>
> d. Depriving the Cross-Applicants of the privacy afforded by a tent or tarp, which they require for dignity, autonomy, and the ability to attend to personal hygiene or medical needs without fear of intrusion;
>
> e. Causing or contributing to the loss of the Cross-Applicants' belongings during and after their eviction, including important survival supplies;
>
> f. Requiring the Cross-Applicants to move to remote locations to avoid detection, where they are inaccessible to health and social services, and without assistance if they experience a crisis;

g. Disrupting the Cross-Applicants' connections to food supplies, health care, addiction, housing supports, and other services available at the Encampment;

h. Disrupting the emotional and physical support provided by the Cross-Applicants' community;

i. Increasing the risk that the Cross-Applicants with substance use disabilities will be forced to use substances in isolated circumstances away from community supports, leaving them more vulnerable to fatal overdoses;

j. Increasing the Cross-Applicants' social marginalization and causing them to experience loss of trust in authorities;

k. Increasing the risk that the Cross-Applicants will be subjected to harms such as intimate partner violence, assault, sexual assault, and human trafficking by forcing them into circumstances where those harms are more likely;

l. Increasing the risk that the Cross-Applicants will experience significant stress, destabilization, and trauma, in some cases exacerbating existing mental health conditions; and,

m. In a context where trespass to property is an offence, increasing the risk that the Cross-Applicants will face charges, fines, arrest, or incarceration if they resist eviction under the By-laws.

[29] The Cross-Applicants submit that these deprivations of their rights to life, liberty and security of the person are arbitrary, overbroad, and grossly disproportionate to the purpose of the By-laws and do not accord with the principles of fundamental justice.

[30] The Cross-Applicants also submit that the By-Laws infringe s. 15(1) of the *Charter* by creating a distinction on enumerated grounds (disability, sex, marital status, Indigeneity / race) and/or analogous grounds (receipt of social assistance and homelessness), and imposing a burden or denying a benefit in a manner that reinforces, perpetuates or exacerbates disadvantage. Encampment residents, including the Cross-Applicants, belong to multiple enumerated and analogous groups and struggle with intersecting disadvantages. The By-laws cause disproportionate impact and fail to ensure reasonable accommodation of needs based on enumerated and analogous grounds, both individually and as they intersect. The Respondents say that this is for reasons including that:

a. Women and persons who are gender diverse are less likely than men to be able to access indoor shelter that meets their needs when they are prevented from sheltering outdoors; and they experience unique safety risks arising from being unable to protect themselves by erecting even rudimentary shelter;

b. Persons with disabilities disproportionately experience homelessness and are therefore disproportionately impacted by the By-laws to the extent that the By-laws cause or contribute to disadvantage for persons who are homeless;

c. Persons with physical and mental disabilities are less likely to be able to access indoor shelter if they must leave the Encampment site due to physical barriers and lack of accessibility at emergency shelters, as well as service restrictions, rules and prohibitions on substance use, and barriers to complete intake procedures, and are therefore more likely to face the risks of unsheltered outdoor homelessness if they are prevented from sheltering outdoors;

d. Persons with disabilities are disproportionately impacted by forced relocation, and by relocation to remote locations, to the extent that their disabilities impact their abilities to carry their belongings with them, dissemble shelters, and travel distances to access the food supplies, health care, and other supports and services located at or around the Encampment site;

e. Persons with mental disabilities, such as mental illness and substance use disabilities experience disproportionate effects as described above, including increased psychological stress, exacerbation of existing mental illness, sleep deprivation, risk of starvation, risk of fatal overdose, increased risk of arrest, and loss of the protective effects of community and emotional support;

f. Indigenous persons are disproportionately homeless and therefore disproportionately impacted by the By-laws to the extent that the By-laws cause or contribute to disadvantage for persons who are homeless;

g. Indigenous persons are less able to access indoor shelter and face particular disadvantage from outdoor sheltering prohibitions due to: (1) the lack of culturally appropriate shelter supports, (2) past experiences of racism resulting in mistrust of authorities;

h. Persons who are homeless constitute a socially marginalized and historically disadvantaged group subject to persistent stigmatization, stereotyping, political marginalization and social exclusion on the basis of a personal characteristic analogous to the enumerated grounds of discrimination under s. 15(1). Homelessness is also extremely difficult to change due to the lack of access to affordable housing, inadequacy of social assistance, as well as the stigma attached to being unhoused. The By-laws directly perpetuate and exacerbate the discrimination and disadvantage of homeless individuals and fails to accommodate the distinctive needs of persons

> experiencing homelessness for access to accessible shelter, housing, and related supports necessary to the protection of life, security and substantive equality;
>
> i. Persons who are in receipt of social assistance (as an analogous ground) face discrimination and disadvantage. Receipt of social assistance is extremely difficult to change due to a stigma associated with receiving social assistance and the inadequacy of social assistance. The inadequacy of social assistance and stigma attached to receipt of social assistance create barriers to finding affordable housing and employment. The By-laws exacerbate the discrimination and disadvantage of individuals receiving social assistance. The By-laws have the effect of reinforcing, perpetuating or exacerbating disadvantage of members of the above referenced groups.

[31] The Cross-Applicants submit that violations of ss. 7 and 15 cannot be justified by s. 1 of the *Charter.*

[32] They also submit that ss. 7 and 15 must be interpreted in accordance with the presumption of conformity with Canada's international human rights obligations, including under the *International Covenant on Civil and Political Rights, International Covenant of Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of the Child, International Convention on the Elimination of All Forms of Racial Discrimination*, and the *United Nations Convention on the Rights of Persons with Disabilities*. They contend that the Site-Specific By-law and the Amended Bylaw are inconsistent with ss. 7 and 15 interpreted in conformity with these obligations.

[33] The Cross-Applicants seek a declaration that the By-laws violate ss. 7 and 15 of the *Canadian Charter of Rights and Freedoms* and that they are not saved by s. 1. The Cross-Applicants ask:

> a) that the By-laws be declared of no force and effect under s. 52(1) of the *Constitution Act, 1982*, in whole or in part; and,
>
> b) any appropriate remedies pursuant to s. 24(1) of the *Charter* to prevent infringements.

[34] These countervailing applications raise significant issues of public importance relating to municipal encampment responses and the rights of some of the most vulnerable members of

society under sections 7 and 15 of the *Canadian Charter of Rights and Freedoms* ("*Charter*").

Injunction and the hearing of the applications

[35] The Respondents successfully applied for an interlocutory injunction restraining the Region from enforcing or acting on any part of the Site-Specific By-law until their *Charter* claims are finally determined by the Court. This decision, *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2025 ONSC 4774 ("Injunction Decision") was released in August 2025. Since that time, the parties engaged in an unsuccessful attempt at mediation in December 2025, and the Region amended its By-Law on Jan 9, 2026 ("the Amended By-Law"). The hearing of the contending applications took place over three days in April 2026. The outcome of this hearing is the subject of these Reasons for Decision.

[36] Persons have been sheltering at this location since 2021. In 2023, the Region applied to the Superior Court of Justice for permission to clear the site pursuant to a by-law prohibiting temporary structures on Region-owned lands (the "Code of Use By-Law"). In *Persons Unknown 2023*, Valente J. declined this request. Justice Valente declared that By-Law constitutionally inoperable in relation to the site, "insofar, and only insofar, as it applies to prevent the residents of the encampment from living on and erecting temporary shelters without a permit on the Property when the number of homeless persons exceeds the number of available accessible shelter beds in the Region".

[37] Since then, the Region has provided basic services to the encampment such as waste disposal and portable toilets. Chronically homeless residents could count on it being available for no-barrier shelter of last resort. However, the Region has now enacted a new by-law with the specific objective of clearing this site, so that it can be converted for use as a "lay-down" site for the equipment needed to construct a transit hub (the "Site Specific By-Law"). That construction is tentatively scheduled to begin in late 2026, though the date is subject to change.

[38] The Region does not propose to permit outdoor sheltering anywhere else after the encampment is closed. The Respondents contend that they will be left with nowhere to go when they cannot access indoor shelter that meets their needs. In the compelling words of one

encampment resident: “[we] are at the bottom and now [they] are just taking away the bottom.”

[39] The conditions that led Justice Valente to declare the Code of Use By-Law constitutionally inoperable in relation to this site have only worsened since 2023. The Region is candid that its homeless population continues to exceed its shelter spaces.

[40] The Region says it will offer alternative accommodation to those persons who were physically present at the encampment on April 16, 2025, referred to by the Region as the “Existing Residents”. It is unclear how many of the persons remaining at the Encampment are “Existing Residents”. The By-Law does not make the eviction of Existing Residents contingent on alternative accommodation being achieved, and even they will be left with no shelter of last resort to return to if accommodation offered by the Region is only temporary. The Region has not made any formal commitments to the remaining persons that provided affidavits, who will, they assert, have nowhere to go if evicted.

Participants in the hearing

[41] An *Amicus Curiae*, counsel for the Mental Health Legal Committee, 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”. The *Amicus*’ position on the Applications is generally aligned with that of the Respondents.

[42] The Attorney General of Ontario intervenes as of right pursuant to s.109(4) of the *Courts of Justice Act* to make submissions to the Court in respect of the constitutional questions.

[43] Leave was granted to the Canadian Civil Liberties Association (“CCLA”), Aboriginal Legal Services (“ALS”) and the Charter Committee on Poverty Issues/ National Right to Housing Network (“CCPI/NRHN”) to provide factums and make oral submissions as interveners.

[44] These Reasons for Decision explain why the Region’s application will be dismissed, and the Respondents’ application will be granted in part.

Background Facts

The Regional Municipality of Waterloo

[45] The Region is an upper-tier municipality under the *Municipal Act, 2001*. The total population of Waterloo Region is estimated at 678,170 as of year-end 2024. The territory over which the Region has jurisdiction includes the cities of Cambridge, Kitchener, and Waterloo, and adjacent rural townships. The Kitchener-Waterloo-Cambridge metropolitan area is projected to have a population of 600,000 in 2025. 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 and monetary policies, or many other key policy areas which affect homelessness.

The 100 Victoria Property

[46] The Encampment site is a gravel parking lot located at 100 Victoria Street in the City of Kitchener. The Region owns the Property at 100 Victoria, which is on the corner of Victoria and Weber Streets in downtown Kitchener. VIA Rail/GO Transit and bus stations are to its east, with a commercial plaza to the west, a Metrolinx-owned rail corridor to the north, and a variety of businesses and a church to the south. The property is not a public park, nor a site that is normally open for public use. Despite this, however, since approximately December 2021, it has been the site of the Encampment, comprised of unhoused individuals and the tents and other temporary structures they have erected.

The Kitchener Central Transit Hub

[47] 100 Victoria is also the site of activities to be undertaken as part of the construction of the Kitchener Central Transit Hub ("KCTH"), a significant public transportation project. The Region said that Metrolinx requires the Property for construction set to begin in March 2026, and the Region requires vacant possession of the site by December 1, 2025, to carry out preparatory work, including site remediation. These timelines have shifted.

[48] The Regions says that 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. The Region says that the KCTH is vital to the economic and social growth of the Region, and a key part of the Region's strategic priorities. 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, passenger vehicles and car shares, and cyclists and pedestrians, into one central and convenient transit hub in the heart of the region. 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.

[49] Metrolinx has advised the Region that it requires use of the Property for construction staging and laydown purposes. The Property will not be the location of the KCTH, which will be nearby, but rather is intended to be used in the construction phase. Staging and laydown are critical preparation activities for the construction of a physical project. 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. The proximity, size and grade of a staging and laydown site are important factors to consider in choosing such a site. 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 can increase the chance of worker injury by increasing the distance materials or equipment needed to travel. On similar rail construction projects, workers have been injured by equipment falling over while traversing a grade raising or on shaky ground. This can also, on aggregate, add significant additional time to a project.

[50] The Region submits that 100 Victoria 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. 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. 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.

[51] The Region says that it has considered whether it could provide Metrolinx with an alternative site but says that it has determined that no other site can be used. All other properties owned by the Region within 1 kilometer 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. The option of purchasing additional land is considered 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. Further, the time required to identify, purchase, and prepare new land would delay the project timeline. 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 health and safety risks to anyone residing nearby while construction work is ongoing. The risks of heavy machinery or other fatal accidents must be taken into account.

Encampment and its residents

[52] Homeless persons began erecting tents on the site in or around December 2021. However, the number of persons sheltering at the encampment varies, as chronically homeless persons gain and lose other forms of shelter. Encampment residents rely on essential services near the encampment site. There is a drop-in space across the street where residents can access coffee, water, showers, and laundry. There is also a soup kitchen nearby where residents can have a daily meal and use the telephone. Health and harm reduction services are provided on-site by Sanguen Health Centre. Community volunteers attend regularly to provide clothing, firewood, blankets, food, and water.

[53] The Respondents' backgrounds reflect those of the Region's homeless. All of the Named Respondent affiants have disabilities - mental health or cognitive disabilities, substance use disabilities, or mobility impairments. Four of the affiants are Indigenous. A further four identify

as LGBTQ2S+. Seven of the affiants affirm to having survived childhood physical and sexual abuse, domestic violence, and/or sexual assault. Three shelter together with their partners. Six are women or identify as gender-diverse.

[54] The Respondents live in extreme poverty – some have no income at all, and others receive social assistance. Circumstances that cause the Respondents to rely on the encampment vary.

Court refused Region's previous application to clear the Encampment

[55] This Encampment was the subject of an earlier application in *Persons Unknown 2023*. In January of 2023, Valente J. dismissed the Region's application to evict encampment residents under By-law number 13-050 (the "Code of Use By-law"), which prohibited persons from erecting temporary shelters on Region-owned property without a permit. At that time, the Region advised that it ultimately intended to use the 100 Victoria site as a "laydown" area for equipment during the construction of a transit hub nearby. Justice Valente found that prohibiting sheltering deprived encampment residents of their life, liberty, and security of the person when insufficient sheltering options left them "with no alternative but to sleep outside". At that time, available shelter spaces fell short "by some 50% of what was required to shelter the Region's homeless". In arriving at that count, Valente J. found it was not appropriate to include motel spaces in the count, in part "because their availability is at the discretion of the motel operators". He also held that it was "simply not a matter of counting the number of spaces". Options needed to meet the "diverse needs" of the encampment residents to be accessible to them. Justice Valente directly rejected the Region's argument that it need only establish sufficient capacity to shelter current encampment residents in order to establish it would be constitutional to prohibit sheltering on Region property:

> [94] Finally, I reject the Region's submission that, at the end of the day, in order to grant the relief it seeks, I need only be satisfied that there is sufficient capacity in the system to accommodate the Encampment residents. I reject this proposition because of the fluctuating and variable capacity of the system based on the Region's own numbers. Furthermore, were I to be guided by this principle, and satisfied that there is a sufficient bed capacity for the Encampment residents on any given day, how does this approach respond to the many other vulnerable

> homeless individuals in the Region? It does not. The approach is particularly problematic in my view because the Region intends to be guided by this decision in its treatment of other encampments. Were I to accede to the Region's submission, it seems to me I would be helping to create an immediate disadvantage for those who are homeless and living outside encampments. I am not prepared to do that. […]

[56] Justice Valente held that these deprivations of the s.7 *Charter* rights to life, liberty, and security of the person were not in accordance with the principles of fundamental justice because enforcement of the Code of Use By-Law against residents of this encampment site was overbroad and grossly disproportionate in relation to the By-Law's objectives. Those objectives included preventing disruption to the Region's operations and promoting use and enjoyment of Region premises. Justice Valente declared the By-law constitutionally inoperative insofar as it applied to prevent encampment residents from living on and erecting temporary shelters at the site, under circumstances where the number of people experiencing homelessness exceeded the available and accessible shelter beds in the Region. However, he directed that the Region could apply for an order to terminate the declaration upon it being in a position to satisfy the Court that the Code of Use By-law no longer violated the s. 7 *Charter* rights of the encampment residents. The Region has not done so, nor did the Region appeal the decision.

[57] The Encampment remains in place while other sheltering sites have been cleared. Following that decision, the Region has continued to provide basic services to the encampment, including waste disposal and portable toilets. Meanwhile other encampment sites in the Region have been closed, including sites on Regional land and land owned by lower-tier municipalities. An encampment at 150 Main Street in Cambridge was closed by the Region in August 2023. An additional site at Soper Park in Cambridge was cleared by the City of Cambridge in September of 2023. An encampment at Roos Island in Kitchener was closed by the City of Kitchener in spring of 2023.

Homelessness and accessible shelter in the Region

[58] Homelessness has more than doubled in the Region since the decision in *Persons Unknown*

2023 was released, and the Region's shelter system has not kept pace. One measure of homelessness in a municipality is the "Point in Time Count", which is a count of persons experiencing homelessness on a single night. The September 2021 Point in Time Count that the Court relied on in *Persons Unknown 2023* recorded 1,085 persons experiencing homelessness, including 412 who were "living rough", and 191 who were accessing emergency shelters. However, by October of 2024, the Region recorded 2,371 homeless, 1,009 of whom were "living rough", 446 in emergency shelters, and 153 in Region-funded motels.

[59] Effective June 6, 2025, the Region's Commissioner of Community Services affirmed the Region's emergency shelter capacity was 377. Taking the 2,371 homeless in the Region and the 377-shelter capacity effective June 6, 2025, this only covers 15% of the Region's homeless population, falling short by 85% of what is required. Accordingly, the Region has acknowledged that it cannot ensure that the number of homeless persons will not exceed the number of shelter spaces in 2025, even leaving aside whether available spaces meet the needs of encampment residents.

[60] The majority of the Region's homeless move in and out of homelessness. Of the 2,371 homeless persons captured by the 2024 Point in Time Count, 78% were "chronically homeless", which the Ontario Association of Municipalities defines to include persons in "prolonged or repeated periods of homelessness". This accords with the experience of the Named Respondents, who have moved in and out of the encampment as they lose and gain shelter alternatives.

Region's Plan to End Chronic Homelessness ("PECH")

[61] Approximately 15 months following the decision in *Persons Unknown 2023*, the Waterloo Regional Council passed a Plan to End Chronic Homelessness ("PECH"). Region staff had developed this document over more than a year, in collaboration with a Lived Expertise Prototyping Cohort and a group of "cocreators" consisting of system leaders and service staff. The Report is co-authored by the Region and the Social Development Centre Waterloo Region ("Social Development Centre"), an organization that facilitates inclusion of lived experience in policy development. The contributions of the Social Development Centre were facilitated by David Alton. The PECH prescribes a "human rights approach" to homelessness, where "people

experiencing homelessness are treated as rights holders" and "the Region has a duty of care for their housing needs". It requires the Region to ensure that national and international human rights law are "appropriately prioritized amidst other legal obligations such as those regarding property rights, privacy and liability". This "human rights approach" is set out in detail through the principles articulated in the UN Special Rapporteur on the Right to Adequate Housing's "National Protocol for Homeless Encampments in Canada", including Principle 2: Meaningful engagement and effective participation of homeless encampment residents, which provides that residents are entitled to meaningful participation in the design and implementation of policies, programs, and practices that affect them. Ensuring meaningful participation is central to respecting residents' autonomy, dignity, agency, and self-determination. Engagement should begin early, be ongoing, and proceed under the principle that residents are experts in their own lives. The views expressed by residents of homeless encampments must be afforded adequate and due consideration in all decision-making processes. The right to participate requires that all residents be provided with information, resources, and opportunities to directly influence decisions that affect them.

Region passes Site-Specific By-Law

[62] On April 16, 2025, the Region provided public notice of the Site-Specific By-Law by posting a copy on its website. It did not post notice of the By-Law at the encampment site. The Site-Specific By-Law states that it is intended to "specifically regulate and govern 100 Victoria Street and to obtain vacant possession as of December 1, 2025." A Report to Council upon the introduction of the By-Law specified the By-Law would "facilitate remediation of the property commencing December 1, 2025, and Metrolinx's use of the property by March 2026" for the purpose of constructing the Kitchener Central Transit Hub. Council passed the Site-Specific By-Law on April 23, 2025. Effective upon its April 23, 2025 adoption by Council, the By-Law prohibits anyone who does not meet the definition of "resident" from sheltering at the encampment. It defines "resident" to mean persons "residing at 100 Victoria Street as of the date that notice of this bylaw is provided through the posting of the agenda for the Council meeting at which this By-law will be considered". It further provides that "[c]ommencing on December 1, 2025, no person shall enter onto, reside on, or occupy 100 Victoria Street or any part thereof". Persons contravening that provision would be guilty of an offence and liable for a fine of up to $5,000.

[63] The By-Law authorizes the Region to, among other actions, erect fencing around the site to prevent entry, remove persons' personal property from the site, and take steps under the *Trespass to Property Act* to enforce the By-Law. The Region's Commissioner of Community Services affirms that the Region recognizes "approximately 40" persons as having resided in the encampment on April 16, 2025, ("the Existing Residents") that being the date "notice" of the By-Law was given. This count includes only four of the Named Respondents that provided affidavits.

[64] Council also directed staff to add $814,333 to the regional housing budget in order to "implement a plan for alternative accommodation" for "current residents" of the encampment. Of this new funding, $466,083 would go to "motels with social supports", $77,000 to "site remediation", and $271,250 to new supportive housing units. The funding for "motels with social supports" would be "temporary" and its continuation beyond 2026 is not specified. The Report to Council summarized a "transition plan" for the encampment, entailing Region staff providing "enhanced site support by focusing efforts and resources on current residents for available housing and shelter options and ongoing site management". This "operational effort" will "wind down before November 30th".

[65] Enforcement of the By-Law is not conditional on any encampment resident being offered alternative accommodation. The By-Law may be enforced whether or not residents are housed.

The Amended By-Law

[66] The Region passed an Amended By-Law on January 9, 2026. This adjusted the vacant possession date, removed the offence provision, and provided for a Transition Plan for the Existing Residents.

Current status of the Encampment

[67] The population of the Encampment varies, and the parties differ as to the number of individuals currently staying there. It has varied from the approximately 40 individuals thought to be there in April 2025, and the Region's most recent estimate of 10-12 occupants as of February 2026. The most recent estimate of the Respondents is that 15-20 people stay at the Encampment, and about 10-15 more people visit the Encampment each day. On April 8, 2026, 20 structures were

counted on the site. Smoke was coming from three structures. None of the original 40 Existing Residents remain on site, and the USWs have supported the transition of at least 22 more recent arrivals to alternative housing since May 2025. The parties are agreed that there are seasonal variations in the population of the Encampment, and that there are likely to be more people present with warmer weather in the spring, summer and fall, than in the winter.

Issues

[68] The Applicant Region's application, and the Respondents' Cross-Application and Notice of Constitutional Question requires the Court to consider:

(i) The admissibility of contested expert evidence provided by both parties.

(ii) Is this Court bound by horizontal *stare decisis* arising from Justice Valente's decision in *Persons Unknown 2023*?

(iii) How do Canada's obligations under International Law bear on these questions?

(iv) Does the Amended By-Law infringe s.7 of the *Charter*?

(v) Should homelessness by considered an analogous ground for the purpose of s.15 of the *Charter*?

(vi) Does the Amended By-Law infringe s.15 of the *Charter*?

(vii) If the answer to issues (iv) or (vi) is yes, is the infringement saved by s.1 of the *Charter*?

(viii) Should the Amended By-Law be quashed under s.273 of the *Municipal Act*?

(ix) Should the Region be granted an injunction under s.440 of the *Municipal Act*?

(x) If there is a breach that is not saved under s.1, what should the remedy be?

(xi) Should the current interlocutory injunction be maintained?

Positions of the Parties

Position of the Applicant Region

[69] The Region submits that the Site-Specific By-law is fundamentally different in its purpose, scope, and context from the Code of Use By-law before Justice Valente in *Persons Unknown 2023*. 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 Victoria. (b) The Region took the position in *Persons Unknown 2023* that it would use the court's order as a precedent for other encampments across the Waterloo region, and relied upon the generic purpose of the Code of Use By-law for the s.7 analysis. 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 2023*. The USW team did not yet exist (having been created in 2023), and there were no IHPs for the residents. In the present case, the Region says it is confident that it will be able to transition the willing Existing Residents successfully to alternative accommodation. (d) In *Persons Unknown 2023*, 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. (e) At the time that *Persons Unknown 2023* was argued, it was anticipated that the Region would require possession of 100 Victoria at some future point for KCTH construction, but there was no firm date. 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 2023* was argued, the Region had taken some significant steps to address homelessness, but not on the scale of its recent efforts. Between 2022 and 2025, the Region's operating budget for homelessness 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).

[70] The Region enacted the Site-Specific 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 Victoria, unlike the Code of Use By-law at issue in *Persons Unknown 2023*. The Region proactively seeks the guidance of this Court on its plan to close the encampment. It is unusual, if not unprecedented,

the Region says, for a government to seek a declaration that a duly enacted law complies with the *Charter*.

[71] 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 was 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 to meet with encampment residents and develop IHPs with them, to tailor their housing solutions to their specific needs. (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. This is intended to ensure that other unhoused people in the Waterloo 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. The Region recognizes that the needs of residents are diverse, and some may be more suited to one form of accommodation rather than another.

[72] 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. 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. 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.

[73] The Encampment has existed on the Property since approximately December 2021. Given

the inherent dangers of Encampment living, the Region has taken significant steps to ameliorate the living conditions on the site. This includes hiring on-site security and pest control, arranging for regular cleaning of the Property and waste-bins onsite to address the significant garbage that accumulates at the Encampment, and installing and servicing onsite portable toilets. Despite the Region's significant efforts, the evidence before this court, the Region submits – including that of the Respondents themselves – demonstrates that the Encampment continues to be a site of widespread public drug use, potentially volatile self-policing and physical violence, and fires.

[74] There have been five reported deaths at the Encampment since January 2022. 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. Deaths also occur in the shelter system, but it appears that they may occur at a lower rate.

[75] 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 (h) construction of semi-permanent structures out of sandbags, with no building permits and no apparent adherence to any building standards.

[76] While the Region has devoted significant resources to improve health outcomes at the Encampment in the interim, its public position has always been that the Encampment will not be permitted to exist in perpetuity. This is consistent, the Region submits, 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", and with the PECH. 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.

[77] The Region contends that given the specific purpose of obtaining possession of 100 Victoria 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. It also cannot be bad faith, the Region submits, for the Region to enact a By-law that it promptly brings to the court for guidance as to its constitutionality.

[78] In its submissions on the hearing of the applications, the Region emphasized that the issues raised by the Amended By-Law are more limited and discrete than those before Valente J. in *Persons Unknown 2023*. From the outset, it says, the Region has taken a "light touch" approach to enforcement. In oral submissions, counsel for the Region submitted that the Region can be trusted to take a "responsible" approach to clearing the Encampment. The Region submits that the Amended By-Law strikes an acceptable balance on the issues that arise from the need to use 100 Victoria for construction purposes. It does not need to be perfect, or reflect the optimal approach, as long as it is *Charter*-compliant.

[79] The Region emphasizes that the Encampment poses significant health and safety risks. These include overcrowding, improperly disposed of drug paraphernalia, fire hazards, violence between residents, significant garbage accumulation, rodent activity, the presence of human urine and fees, and construction of semi-permanent structures with no apparent adherence to building standards. Surrounding residents and businesses have experienced significant disruption to the enjoyment of their property, including theft and a pervasive sense of insecurity. There have been several major fires. There have been reports of weapons, including one person waving a machete at a passersby. There are also significant costs. The Region currently spends approximately $66,200 per month maintaining the Encampment, exclusive of staffing costs for social supports, outreach facilities, or bylaw staff who regularly attend the property.

[80] The Region contends that the original and Amended By-Law were developed in the broader context of years of engagement and consultation with stakeholders, advocates and experts on the issue of addressing homelessness.

[81] The Region submits that the By-Laws do not infringe s.7 of the *Charter*, as there is no deprivation of life, liberty or security of the person, and that the Bylaw does not contravene the principles of fundamental justice, as it is not overbroad nor grossly disproportionate. It also submits that the By-Law does not contravene s.15 of the *Charter*, as it does not create a distinction, and any distinction does not reinforce, perpetuate or exacerbate disadvantage.

[82] The Region further submits that if an infringement of either s.7 or s.15 is found, that it is demonstrably justified under s.1 of the *Charter.* The limit is prescribed by law that has a pressing and substantial objective, and there is proportionality between the law's objectives and its mean, minimally impairing the Respondents' rights, and that the salutary effects of the Bylaw outweigh its deleterious effects.

[83] The Applicant Region insists that the Bylaw was passed in good faith and should not be quashed under s.273 of the *Municipal Act*.

[84] The Region also submits that it should be granted a statutory injunction under s.440 of the *Municipal Act* permitting it to enforce the Bylaw as required.

[85] The Region seeks a Declaration that the Amended Bylaw complies with the *Charter*, the dismissal of the Respondents' Cross-Application to declare the Bylaw invalid under the *Charter* and quash the Amended Bylaw under s.273 of the *Municipal Act*, and a grant to the Region of an injunction under s.440 of the *Municipal Act*.

Position of Respondents (Cross-Applicants)

[86] Even leaving aside the issue of s. 15, the Respondents contend, in *Persons Unknown 2023* Valente J. has already held that application of a municipal By-Law to restrict sheltering at this very site deprived encampment residents of their life, liberty, and security of the person in a manner

that was overbroad and grossly disproportionate, and therefore not in accordance with the principles of fundamental justice, and that he further found that the resulting infringement of s. 7 of the *Charter* was not justified by s. 1 of the *Charter*. Since that time, the conditions that led the Court to find a deprivation of life, liberty, and security of the person have only worsened. It is true, they note, that the principles of fundamental justice at issue - overbreadth and gross disproportionality - turn on assessing the infringement to life, liberty, or security of the person against the objectives of the By-Law. The Respondents recognize that the Region's new By-Law has a differently stated objective. It specifies that it is enacted "to specifically regulate and govern 100 Victoria Street and to obtain vacant possession as of December 1, 2025", whereas the Code of Use By-Law was intended to "prevent disruption to the Region's operations", among other purposes. But the Respondents insist that the objective is only superficially different. At issue in the *Persons Unknown 2023* decision was whether the Code of Use By-Law permitted the Region to obtain vacant possession of the site so that it could ultimately be used as an equipment lay-down site for construction of the transit hub. This is the very use that is before this Court in the underlying application. The Region should not be permitted, the Moving Parties insist, to use an unconstitutional By-Law to remove vulnerable persons from their shelter of last resort.

[87] The Respondents also contend that there is a serious issue in relation to the By-Laws' illegality under s. 273 of the *Municipal Act, 2001*. A by-law is "illegal" for the purpose of s. 273 if it is passed in "bad faith", which will be indicated where the by-law is enacted "without the degree of fairness, openness, and impartiality required of a municipal government". Indicia of bad faith may include a failure to consult on the by-law, and a failure to provide meaningful notice to affected stakeholders. The Respondents assert that these indicia are established here based on, among other factors, the Region's failure to advise encampment residents of the By-Law in a manner sufficient for them to provide meaningful input, and the Region's failure to comply with the consultation processes approved by Council.

Evidence

[88] A very substantial Application Record has been provided by both parties, including many affidavits and transcripts of cross-examinations. The parties have each tendered expert evidence. At a high level, the parties' medical experts agree that being unhoused, including in encampments,

is associated with significant risks and negative health outcomes as compared to being housed, but they differ on the preferability of the Encampment as compared to indoor shelter options such as emergency shelters and motels. The Region put forward Dr. Sharon Koivu. The Respondents put forward Dr. Hwang, Dr. Gupta, and Bernadette Pauly, a registered nurse with a PhD in nursing. The Region submitted that she should not be qualified as an expert witness and, if she is so qualified, that her evidence be given little weight by the Court. The Respondents also lead affidavit evidence from persons outside the medical sphere, the Federal Housing Advocate Marie Josee Houle, and Drs. Laura Pin, Kaitlin Schwan and Gaetz. The Region objects to their evidence, saying that it is unbalanced and unreliable. The Region says that the Respondents' other witnesses, Sara Escobar, Jacara Droog, David Alton and Angela Alt speak to the difficulties in providing services and options to the unhoused population, but that while their evidence is sympathetic, it is tainted by advocacy and strays into impermissible argument or opinion. The Respondents also provided affidavits from current or former residents of the Encampment.

Analysis

First Preliminary Issue: Expert Evidence

[89] There are two preliminary issues that should be addressed prior to turning to a more fulsome consideration of the s.7 and s.15 issues at the heart of this litigation. The first preliminary issue is the admissibility of the parties' expert evidence. The Named Respondents challenge the admissibility of Dr. Koivu's evidence. The Region challenges the admissibility of the evidence of Dr. Pauly, Dr. Pin, and Canada's Federal Housing Advocate Marie Josee Houle. They also describe the evidence of Drs. Schwan and Gaetz as "purportedly 'expert'".

[90] To be admissible, expert evidence must be (a) relevant; (b) necessary; (c) not subject to an exclusionary rule; and (d) proffered by a properly qualified expert. Where these threshold criteria are met, judges retain a discretionary gatekeeping role to ensure that the probative value of the expert evidence does not outweigh its risks. The necessity of expert evidence is not to be judged by too strict a standard; what is required is that the opinion is necessary because it provides information "which is likely to be outside the experience and knowledge of a judge or jury" and allows them to form an independent judgment. Expert witnesses provide the trier of fact with

ready-made inferences and opinions typically based on second-hand evidence. The most significant risks in admitting expert evidence are the danger that a jury will be unable to make an effective and critical assessment of the evidence and/or that experts might usurp the function of the trier of fact. These concerns are lessened in judge-alone trials.

[91] Expert evidence is often especially necessary in *Charter* litigation to ensure that courts avoid deciding important systemic issues in a factual vacuum. The Supreme Court of Canada has been vigilant to ensure that a proper factual foundation exists before measuring legislation against the provisions of the *Charter,* particularly where the effects of impugned legislation are the subject of the attack.

[92] There are two categories of facts in *Charter* litigation: "adjudicative facts" which are specific ("who did what, where, when, how and with what motive"); and "legislative facts" which establish the purpose and background of legislation, including the social, economic, cultural, political, and legal context in which legislation was enacted; the latter are more general in nature and therefore subject to less stringent admissibility requirements. "Social facts" are "cousins" of "legislative facts, and are defined as social science research that is used to construct a frame of reference or background context for deciding factual issues; both social and legislative facts may involve policy considerations. Legislative and social fact evidence is best presented through expert witnesses so that it can be tested through cross-examination.

[93] In *Charter* challenges seeking remedies under s. 52(1) of the *Constitution Act, 1982*, legislative facts are often the most relevant, as illustrated by the Supreme Court's acceptance that reasonable hypotheticals or reasonable foreseeability can establish a *Charter* claim. Legislative and social facts are likely to be dispositive in some cases, even where these facts are of a general nature or cannot be demonstrated with greater precision than the subject matter permits. At its core, the present application implicates systemic challenges rather than the circumstances of any one claimant. Expert evidence on legislative and social facts is therefore indispensable to ensure that the court has a complete record.

[94] I conclude that the evidence of all of these witnesses is of assistance to the Court, and

should be admitted, subject to weight.

[95] Dr. Pauly's expert opinion evidence should be admitted because it meets each of the four *Mohan* factors (relevance, necessity, absence of an exclusionary rule and a properly qualified expert): *R. v. Mohan*, 1994 CanLII 80 (SCC), [1994] 2 S.C.R. 9; See also: *White Burgess Langille Inman v. Abbott and Haliburton Co*., 2015 SCC 23. Dr. Pauly is a registered nurse and public health researcher with more than a decade of experience in the field of homelessness. She has published extensively in this area and been part of numerous publicly funded research teams defining and enumerating homelessness and evaluating responses to homelessness. Her evidence on the demographics of encampments provides relevant and necessary context for this Court's analysis under both ss. 7 and 15 of the *Charter*, and her evidence on the impact of encampment evictions and displacements is relevant and necessary to the assessment of whether there is a deprivation of s. 7. While parts of one of her previous affidavits were found not to comply with British Columbia's Civil Rules in *Brett*, there is no indication that her affidavit in this case has similar defects, and she has provided expert evidence in nine other cases. In any event, Dr. Pauly has signed an acknowledgment of her duty to the Court, which "will generally be sufficient" to establish "independence and impartiality".

[96] This Court should also admit the evidence of Canada's Federal Housing Advocate, Marie Josée Houle. The Region's objection to her evidence is that she is an advocate on encampment issues. However, courts have been clear that advocacy alone does not undermine the admissibility of expert evidence because many experts are advocates and, particularly in public interest litigation, it would be surprising not to have experts who have expressed points of view and advocated for particular outcomes. That Ms. Houle had previously written publicly to the Region to express the same view she now expresses in her affidavit – that its Site-Specific By-Law is inconsistent with the human rights approach – merely reinforces that this is her opinion. Ms. Houle, too, has signed the acknowledgement of her duty of "independence and impartiality" to this Court.

[97] The Region's objection that Dr. Pin lacks qualification is unfounded. Dr. Pin has engaged in research and published extensively on the issues with respect to which she offers her opinions. The Region itself has deemed her expertise on these topics sufficient to hire her as its consultant.

The Region also objects that whether the By-Law is consistent with the "human rights approach" is not proper subject for opinion evidence. Regardless of whether this is the case, this Court may admit evidence as to what the "human rights approach" requires, just as in negligence cases, an expert may opine on what the standard of care requires.

[98] The Region's objections to the evidence of Drs. Schwan and Gaetz is equally unfounded on the record. Both have published extensively on the issues for which they give evidence and Dr. Schwan was lead researcher on the largest ever Canadian study "examining women and gender diverse people's distinct housing experiences, challenges, and service needs". The evidence of Dr. Schwan provides relevant and necessary context for the Named Respondents' sex-based s. 15 argument. The evidence of Dr. Gaetz regarding the definition and causes of homelessness is also relevant and necessary to this Court's s. 15 analysis, having regard to the Supreme Court's instructions in *Kanyinda,* described below, that courts must consider such context in assessing disadvantage.

[99] I also consider that the evidence of Dr. Koivu is of assistance to the Court.

Second Preliminary Issue: Horizontal Stare Decisis

[100] The second issue concerns the application of the doctrine of horizontal *stare decisis*. The conditions under which a legal determination is binding on courts of coordinate jurisdiction were addressed by a unanimous Supreme Court in *R. v. Sullivan*, 2022 SCC 19. Horizontal *stare decisis* dictates that a Superior Court decision is binding on coordinate judges, who may only depart from it if an exception from *Re Hansard Spruce Mills,* 1954 CanLII 253 (BC SC), [1954] 4 D.L.R. 590 (B.C.S.C.) applies. These are:

> a. subsequent decisions have affected the validity of the impugned judgment;
>
> b. it is demonstrated that some binding authority in case law, or some relevant statute was not considered (*in percuriam*);
>
> c. the judgment was unconsidered, a *nisi prius* judgment given in circumstances familiar to all trial Judges, where the exigencies of the trial require an immediate decision without opportunity to fully consult authority.

[101] None of these exceptions apply here with regard to the s. 7 issues. Nor can the Region's current application be distinguished on its facts. To the contrary, the conditions that led Justice Valente to find a deprivation of life, liberty, and security of the persons have only worsened since *Persons Unknown*. The Region's provision of IHPs for 40 persons, most of whom are not Named Respondents, does not change that its chronically homeless have no place but this site to shelter when they lose other options. As the Region has conceded, it is not in a position to ask the Court to lift its declaration pursuant to the terms set by *Persons Unknown*. The By-Laws are new in form but not in substance. It is the substance - the purpose and effect of legislation - that determines whether *stare decisis* applies. Horizontal *stare decisis* binds this Court to follow Justice Valente's previous determination that it is unconstitutional to prohibit sheltering on this site when "the number of homeless persons exceeds the number of available and accessible shelter beds in the Region." The fact that the By-Laws are different in name from the Code of Use By-Law does not prevent the application of *stare decisis*. This is because the By-Laws' object and impact are substantively identical as those already considered by this Court. There is no meaningful distinction between prohibiting loitering and sheltering in order to "prevent […] the disruption of the Region's operations on the Designated Premises" and restricting sheltering to "specifically regulate and govern 100 Victoria Street and to obtain vacant possession" where the purpose of vacant possession in either case is the same - supporting construction of the Region's transit hub.

[102] In any event, if I am wrong in this assessment and horizontal *stare decisis* does not apply, it is of little practical consequence in this instance because Justice Valente's decision in *Persons Unknown 2023* is persuasive authority, and I agree with his conclusions regarding the law concerning the application of s.7 of the *Charter* in this context.

[103] While this Court is bound by *Persons Unknown 2023's* legal determinations with respect to s. 7, it is not so bound with respect to s. 15. This is because the Supreme Court's March 6, 2026, decision in *Kanyinda* has rendered the *Persons Unknown 2023* s. 15 analysis invalid, such that, if *stare decisis* does apply, the first *Hansard Spruce Mills stare decisis* exception permits this Court to determine the issue for itself. In *Persons Unknown 2023*, Justice Valente rejected the s. 15 claim of homeless persons who were women, gender diverse, and/or disabled on the basis that "homelessness" itself was not an enumerated or analogous ground. However, the majority reasons

in *Kanyinda* now make clear that a s. 15 violation may be established in relation to an enumerated/analogous subset of a broader group that is not, in itself, identified by an enumerated or analogous ground. Justice Valente's basis for finding no breach of s. 15 is therefore invalid after *Kanyinda*.

Proper approach to Charter Interpretation

[104] *Charter* rights must be interpreted in a generous, purposive, and contextual manner to secure the full benefit of the *Charter*'s protections: *Quebec (Attorney General) v. 9147-0732 Quebec Inc.*, 2020 SCC 32, at para. 7. This means that the right at issue must be informed by the specific purposes of that right, the larger purposes that animate the *Charter* as a whole, and the social realities in which the alleged *Charter* breaches occurred. Further, courts are required to presume that the *Charter* provides protections at least as broad as those afforded by similar international human rights documents ratified by Canada; that is, they provide a constitutional floor, not a ceiling: *Taylor v. Newfoundland and Labrador*, 2026 SCC 5, at paras. 76 - 85. Federal, provincial, territorial, and municipal governments are all equally bound by international human rights instruments ratified by Canada: *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5, at para 303.

[105] The presumption of conformity is an established interpretive principle in *Charter* litigation. The text of binding international instruments reflect Canada's international human rights obligations and are an important indicia of the meaning of the full benefit of the *Charter*'s protection. The presumption of conformity is an interpretive tool in delineating the "breadth and scope of *Charter* rights" and defining the principles of fundamental justice: "[o]ur *Charter* is the primary vehicle through which international human rights achieve domestic effect" and that in particular, ss. 7 and 15 "embody the notion of respect of human dignity and integrity": *R v. Ewanchuk*, [1999] 1 S.C.R. 330, at para. 73.

[106] Canada has voted in favour or ratified several international instruments that recognize adequate housing as a fundamental human right that is inextricably linked to other rights, including the rights to life, security of the person, and equality. In addition to the *Universal Declaration of Human Rights* and the *International Covenant on Economic, Social and Cultural Rights*, Canada has ratified the *Convention on the Elimination of All Forms of Discrimination Against Women,* the

International Convention on the Elimination of All Forms of Racial Discrimination, and the *Convention on the Rights of Persons with Disabilities*, all of which recognize housing as a fundamental human right. The UN has further recognized that all individuals should possess "a degree of security of housing tenure that guarantees legal protection against forced eviction", that security of tenure can include informal settlements such as occupations of land, and further that "forced eviction constitutes a gross violation of human rights": *Victoria (City) v Adams*, 2008 BCSC 1363, at para. 89, aff'd 2009 BCCA 563.

The Application of International Law

[107] Canada uses a dualist system for the reception of international law, meaning that treaties ratified by the Executive require legislative implementation to be binding domestically. Ratified treaties do not automatically become part of Canadian law. They must be implemented by federal or provincial legislation to be enforceable in domestic courts. Customary International Law (laws recognized through state practice and *opinion juris*) is automatically adopted into Canadian law unless it conflicts with existing legislation. Canadian courts interpret domestic laws in a manner that conforms with international obligations, often utilizing international law to interpret the *Charter*. This means that when a statute or enactment is ambiguous, courts prefer the interpretation that aligns with Canada's international obligations.

[108] Canadian courts possess a robust ability to rely upon international legal instruments to interpret the content or scope of any *Charter* right or principle: *Quebec (Attorney General) c 9147-0732,* 2020 SCC 32, at para. 37 ("*Quebec*"). While courts must pay attention to whether a source of international law is binding or non-binding, both sources may be relevant and persuasive in *Charter* interpretation. Binding sources refer to international human rights obligations that Canada has ratified. They carry more interpretative weight. Non-binding sources include non-ratified declarations, covenants, conventions, judicial and quasi-judicial decisions of international tribunals and customary norms. Non-binding sources may be treated as "relevant and persuasive, but not determinative, interpretive tools": *Quebec,* at paras. 30 - 38.

[109] These applications raise significant issues of public importance relating to municipal encampment responses and the rights of some of the most vulnerable members of society under

sections 7 and 15 of the *Charter*. Section 7 must be interpreted in a manner that fully recognizes the inherent dignity and autonomy of those experiencing homelessness. Such an approach is consistent with the *Charter*'s foundational values and Canada's international human rights obligations which have been adopted into domestic law through the *National Housing Strategy Act,* SC 2019, c29 *("NHSA").*

[110] Canada's international obligations, as adopted through the *NHSA*, establish a basic human right to adequate shelter centered in human dignity. These obligations require state actors to treat those experiencing homelessness as right-holders entitled to effective remedies, due process, and genuine and meaningful consultation in any encampment response. The By-laws' failure to afford these rights to all who rely on the encampment as a shelter of last resort is relevant to assessing (i) the severity of the liberty infringement; and (ii) whether the By-Laws accord with the principles of fundamental justice.

[111] Adopting a dignity-centric approach to section 7 requires evaluating whether alternative shelter space is truly "adequate", "accessible", or "safe" based on the needs of each individual. This requires engaging with their personal history, lived experience, and identification with one or multiple intersecting grounds. The Supreme Court of Canada in *Kanyinda* affirmed that an intersectional approach must be adopted in interpreting equality rights under section 15(1) of the *Charter.* The Court should recognize the acute effects that flow from the interaction between the protected grounds and the social and economic realities of chronic homelessness.

[112] Canada's international and domestic obligations relating to the right to adequate housing and protections against forced evictions are persuasive and relevant considerations in interpreting the scope and content of section 7 of the *Charter*.

[113] The most powerful interpretive tool relating to international human rights obligations is the presumption of conformity. The presumption of conformity provides that *Charter* rights should be interpreted to provide at least as broad protection as that afforded by Canada's binding international legal obligations: *Taylor v. Newfoundland and Labrador*, 2026 SCC 5, at para. 82. The international instruments that Canada chooses to ratify are therefore important interpretive

tools in understanding what the *Charter* protects.

[114] Canada has ratified several binding international instruments that give rise to obligations where a state action deprives shelter, including the *International Covenant on Economic, Social and Cultural Rights ("ICESCR"*) and the *Universal Declaration of Human Rights* ("*UDHR*"). As Canada's ratification of the ICESCR and UDHR pre-date the *Charter*, these obligations are also part of the *Charter's* historical context and therefore may carry additional interpretive weight: *Quebec,* at para. 41-42.

The Right to Adequate Housing in International Law

[115] Canada signed the UDHR when it was adopted by the United Nations General Assembly in 1948. The UDHR provides that Member States shall commit to progressive measures to help secure the universal and effective observance of its rights for all peoples under their jurisdiction. Article 25(1) of UDHR provides that "everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including… housing".

[116] Canada acceded to the ICESCR in 1976. Article 11(1) of the ICESCR also recognizes the right to adequate housing as a necessary component of an adequate standard of living. The rights contained in the ICESCR are subject to interpretation by the UN Committee on Economic, Social and Cultural Rights (CESCR), which is a body of independent experts tasked with monitoring implementation of the ICESCR by State Parties. In 1991, the CESCR issued *General Comment #4: The Right to Adequate Housing* to identify the principal issues important to the realization of the right to adequate housing under Article 11(1) of the ICESCR. The *General Comments* are considered sources of non-binding international law, which should be treated as relevant and persuasive authority to the issues addressed in this case.

[117] *General Comment #4* articulates an enriched concept of the right to adequate housing, recognizing it "is of central importance for the enjoyment of all economic, social and cultural rights." The CESCR instructs that the right to adequate housing should not be narrowly construed as a right to a roof over one's head, but rather as "the right to live somewhere in security, peace and dignity." It is a right afforded to all persons "irrespective of income or access to economic

resources".

[118] *General Comment #4* sets out several factors relevant to the actualization of the right to adequate housing under Article 11(1). These factors include, amongst others: (i) legal security of tenure (which encompasses legal protection against forced evictions from informal settlements), (ii) access to services and facilities (e.g. healthcare, schools, food and water), (iii) habitability (e.g. adequate protection from cold, heat, rain, disease), and (iv) accessibility and cultural adequacy.

[119] In 1991, the CESCR released *General Comment #7*: *The Right to Adequate Housing: Forced Evictions. General Comment #7* provides guidance on why forced evictions violate international human rights obligations and outlines the very narrow circumstances in which a state-initiated eviction may be consistent with international human rights obligations.

[120] The concept of 'forced evictions' articulated in *General Comment #7* is broad, applying to evictions from temporary informal settlements on public land, even where the individual being subject to eviction does not have a legal right to occupy the land. Like *General Comment #4, General Comment #7* unequivocally establishes that forced evictions are *prima facie* inconsistent with the rights contained in the ICESCR, including Article 11(1), and will only be justified in the most exceptional circumstances where "all legal resources and remedies are available to those affected." *General Comment #7* recognizes that forced evictions can compound other sources of inequality and particularly have a disproportionate impact on marginalized groups, like women:

> 10. Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction. Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless.

[121] *General Comment #7* provides that at a minimum, prior to carrying out any eviction, State Parties are required to explore all feasible alternatives in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. An eviction cannot comply

with the ICESCR without appropriate due process and procedural protections being provided to the affected persons, including an opportunity for genuine and meaningful consultation, a process for recourse, and the provision of remedies to those being evicted. *General Comment #7* explicitly prohibits evictions that render those affected homeless or vulnerable to other human rights violations. *General Comment #7* at para. 3 defines the term "forced evictions" as "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection."

[122] On April 30, 2020, the UN Special Rapporteur on the Right to Housing released a National Protocol for Homeless Encampments in Canada (the "Protocol"). The Protocol summarizes the ICESCR obligations relating to forced evictions as follows:

> International human rights law does not permit governments to destroy peoples' homes, even if those homes are made of improvised materials and established without legal authority. Governments may not remove residents from encampments without meaningfully engaging with them and identifying alternative places to live that are acceptable to them. Any such removal from their homes or from the land which they occupy, without the provision of appropriate forms of legal protection, is defined as a 'forced eviction' and is considered a gross violation of human rights...

[123] The Protocol outlines eight principles to guide Canadian governments on how to take a human rights-based approach to encampment responses. The human-rights based approach articulated in the Protocol is anchored in Canada's international obligations relating to housing under the ICESCR, as interpreted through *General Comment #4* and #7. The first principle requires treating those living in an encampment as rights-holders. Per the UN Special Rapporteur, this means shifting away from an approach of "criminalizing, penalizing, or obstructing homeless encampments" to "an approach rooted in rights-based participation and accountability."

[124] Principle 4 requires state actors to explore all viable alternatives prior to eviction from an encampment, ensuring meaningful and effective participation of residents in discussions regarding the future of an encampment and their needs in sheltering alternatives. The Protocol centers meaningful engagement and effective participation of encampment residents as key to respecting

dignity, agency and self-determination. In terms of what constitutes meaningful engagement, the Protocol provides:

> … Engagement should begin early, be ongoing, and proceed under the principle that residents are experts in their own lives. The views expressed by residents of homeless encampments must be afforded adequate and due consideration in all decision-making processes. The right to participate requires that all residents be provided with information, resources, and opportunities to directly influence decisions that affect them…

[125] Principle 5 specifically addresses relocation from an encampment. It provides that meaningful, robust, and ongoing engagement with encampment residents is required for relocation decision-making. Relocation must not result in the continuation or exacerbation of homelessness or fracture families or partnerships. Adequate alternative housing, with all necessary amenities, must be provided to all residents prior to any eviction.

International Obligations Adopted by Canada and the Region

[126] Canada's decision to enact the *NHSA* in 2019 necessarily strengthens the force that Canada's international obligations should play in interpreting the scope and content of section 7. The *NHSA* codifies Canada's commitment to housing as a fundamental human right and recommitted Canada to the progressive realization of the right to adequate housing as defined in the ICESCR.

[127] Section 4 of the *NHSA* explicitly recognizes that housing is essential to the inherent dignity and well-being of the person. It provides:

> 4. It is declared to be the housing policy of the Government of Canada to
>
> (a) Recognize that the right to adequate housing is a fundamental human right affirmed in international law;
>
> (b) Recognize that housing is essential to the inherent dignity and well-being of the person and to build sustainable and inclusive communities;
>
> (c) Support improved housing outcomes for the people of Canada; and

> (d) Further the progressive realization of the right to adequate housing as recognized in the International Covenant on Economic, Social and Cultural Rights.

[128] Section 13 of the *NHSA* establishes the Federal Housing Advocate as the housing rights accountability mechanism in Canada.

[129] The Federal Housing Advocate's 2024 Final Report called on all levels of government to commit to end forced evictions of encampments on public lands. As explained by the Federal Housing Advocate in her Affidavit in these applications, some of the specific recommendations made to municipal stakeholders in the Final Report include (i) adopting human rights-based solutions to addressing the needs of encampment residents, (ii) ensuring the development of bylaws include meaningful engagement with people with lived experiences, and (iii) allowing encampment residents to play a meaningful role in decision-making processes that affect them.

[130] In June 2025, the Federal Housing Advocate released a *Guide to Meaningful Engagement and Integrating a Human Rights-Based Approach to Encampment Responses* (the "Guide"), which "articulates eight key principles that are necessary to guide municipal decision-makers and staff in ensuring meaningful engagement is carried out and to implement a human-rights based approach to encampment responses." Each principle is accompanied by required actions. The Guide explains the human-rights based approach to encampment response as follows:

> As the name suggests, a human rights-based approach requires a commitment to upholding and being accountable for all human rights for all people, without discrimination. It is also founded on the principles of participation, empowerment and accountability and requires the investment of time and resources in ensuring meaningful engagement with people living in encampments…
>
> A human rights-based approach does not criminalize people experiencing homelessness. It takes care to ensure that responses do not inflict additional harm on people living in encampments. It respects autonomy and choice and attempts to meet people where they are and to support them in accessing adequate housing while respecting their dignity, autonomy and human rights.

[131] The Guide affirms that excluding people living in encampments from decision-making

about encampment responses perpetuates their marginalization and undermines autonomy and trust. A human rights-based approach requires meaningful consultation that begins before a decision is already made by the municipality. It requires a process which provides people with real choices and an opportunity to make informed decisions. In other words, engaging with affected groups only after decisions have been made does not constitute meaningful consultation, as it denies those groups a genuine opportunity to influence outcomes.

[132] The Region's Plan to End Chronic Homeless ("PECH") states that the Region "will be compliant with national and international human rights law and ensure it is appropriately prioritized amidst other legal obligations such as those regarding property rights, privacy, and liability." The PECH embraces many of the concepts set out in the *General Comments* as described by the UN Special Rapporteur and Federal Housing Advocate. Most fundamentally, the PECH explicitly commits to take a human-rights based approach, including by treating people experiencing homelessness as rights holders with agency. The Lived Experience Prototyping Report, which was also adopted by Region Council along with the PECH, highlights many of same principles as *General Comment #4* and *#7* including security of tenure.

[133] The international human rights commitments that Canada has made should inform the assessment of the principles of fundamental justice under s.7 which are applicable to these applications. Section 7 of the *Charter* requires that laws that interfere with life, liberty and security of the person conform with the principles of fundamental justice, the basic principles that underlie our legal system. These principles can be both procedural and substantive.

[134] The standards used by the UN Rapporteur and the Federal Housing Advocate to develop principles underlying a human rights-based approach to encampment responses, including robust and meaningful involvement of the chronically homeless in any decision-making around relocation, are relevant and persuasive criteria in assessing any mitigation of harm in the s. 7 gross disproportionality analysis. An individualized approach recognizes that those experiencing homelessness are not a homogeneous group. Many marginalized and vulnerable groups are disproportionately represented in the unhoused population, including indigenous peoples, racialized individuals, women, and people with disabilities.

Section 7

[135] I turn now to a more detailed examination of the s. 7 issues in this litigation.

[136] The Region is an "occupier" for the purpose of the *Trespass to Property Act* and it accordingly has the power to exclude persons from its properties. However, because the Region is a branch of "government", it must exercise that power in accordance with the *Charter*. This means it may not require persons to leave its property if doing so would violate the *Charter*.

[137] The Named Respondents are clear that they do not assert property rights. It is important to appreciate this distinction. This is not a case about property rights. The Named Respondents do not claim a right to control this particular piece of land. They have not acquired "squatter's rights" in any sense. Rather, they seek not to be deprived of the ability to erect the shelters they need to protect their own health and safety when they lack indoor alternatives. There is no unconstrained right to live wherever one pleases (just as there is no unconstrained right to be free from arrest or detention); it only means that the liberty interest, a component of the s. 7 inquiry, is engaged.

[138] Enforcement of a negative right may require a government to take positive steps. In this sense, the distinction between positive and negative rights can be a "false dichotomy" because "no right can exist without some form of corresponding obligation … to do or not do something": *La Rose* v. *Canada*, 2023 FCA 241 at para. 103. The Named Respondents are not seeking to impose free-standing positive obligations on the Region. However, similar to the Ontario Court of Appeal's finding in *Mathur,* the Region has committed itself to the obligations set out in its PECH, which include taking a human rights-based approach to decision-making regarding homelessness. The question is whether, through the lens of that voluntarily imposed obligation, the By-Laws are *Charter* compliant and will not lead to a deprivation of rights. The Named Respondents seek for the Region to follow the standards it has set for itself through its PECH. The By-Laws might not result in a deprivation of s. 7 interests if the Region were to use the PECH consultation processes it committed itself to develop a "safe tenting protocol" to permit and regulate outdoor sheltering at other locations.

[139] On the evidentiary record, the Respondent's s. 7 *Charter* rights are clearly engaged in ways

that are not in keeping with the principles of fundamental justice. Section 7 protects foundational and fundamental human rights. I agree with the submission of *Amicus* that the *Charter* accords rights which can only be fully enjoyed by people who are fed, are clothed, are sheltered, have access to necessary health care, to education, and to a minimum level of income.

[140] Section 7 of the *Charter* provides:

> 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.

[141] The s. 7 right to life is engaged where the law or state action imposes death or an increased risk of death on a person, either directly or indirectly. Liberty is engaged when state compulsions or prohibitions affect fundamental life choices and extends beyond mere freedom from physical restraint. It includes the right to an irreducible sphere of personal autonomy wherein individuals may make inherently private choices free from state interference and relates to matters that are fundamentally or inherently personal such that they implicate basic choices going to the core of what it means to enjoy individual dignity and independence. The right to security of the person protects both the physical and psychological integrity of the individual. This right is infringed by "serious state-imposed psychological stress", objectively measured, that need not rise to the level of nervous shock or psychiatric illness.

[142] Prohibiting homeless persons from taking measures to shelter themselves by erecting temporary structures in circumstances where there are no practical housing alternatives has been found to engage the right to life (due to exposure to risks of serious harm including death); the right to liberty (due to a significant interference with dignity and independence); and with security of the person (triggering or exacerbating anxiety, physical and psychological distress, and endangering health).

[143] In the present case, I agree with *Amicus* that the expert evidence of Dr. Stephen Hwang, an expert on the health impacts of homelessness and interventions to improve the health of unhoused individuals, raises a serious prospect that life, liberty, and security of the person are engaged: (a)

homeless individuals who are prohibited from erecting rudimentary shelter from the elements will suffer clear and direct adverse impacts on their health, such as a risk of hyperthermia (which can lead to death), serious skin and foot diseases, respiratory diseases, severe sunburn and heatstroke, and severe disturbed and fragmented sleep; (b) forced evictions from encampments contribute to the declining health of homeless individuals by leaving them with little choice but to seek outdoor shelter in more remote public spaces. This makes it difficult for them to access pharmacies, attend medical appointments or methadone clinics, and obtain food; (c) forced removal can lead to the loss of critical survival items, such as medical supplies, food, and clothing; (d) additionally, negative interactions with law enforcement cause emotional distress and build distrust, which exacerbates social exclusion and increases reluctance to seek health and social supports; and (e) moving people against their will from encampments, even with notice and engagement (such as preparing individual housing plans) can have adverse impacts. Forced evictions, or even the prospect of forced eviction, are traumatizing.

[144] A comparison of Point in Time counts from September 2021 (1,085 persons experiencing homelessness including 412 “living rough”) and October 2024 (2,371 experiencing homelessness, with 1,009 “living rough”) demonstrates that the problem of homelessness, including unsheltered chronic homelessness, has significantly exacerbated over the past three years.

[145] As of June 6, 2025, the Region’s overall emergency shelter capacity was 377 beds, a number that falls well short of the unhoused population’s needs. The capacity of 377 also needs to be contextualized since not all shelter beds are available to every individual, some for example may only be accessible to youth or women. It was acknowledged by one of the Region’s witnesses that very few of the 1,009 people “living rough” would be able to readily access a shelter bed, interim housing, or motels because these shelter options are already at high capacity. Emergency shelters are not always appropriate or available for people who lack capacity, have serious mental health, and/or substance use issues. Shelters can be destabilizing (by requiring people to move their belongings every morning) and overwhelming or overstimulating (by causing people with delusions to feel frightened or threatened). Risks in shelters include transmission of pathogens like tuberculosis and COVID-19, bed bugs, sleep deprivation, and violence. Further, if someone has previously been barred from a shelter (i.e. for behavioural issues or drug use) it is extremely

difficult for them to regain access. Similarly, motels are not suitable nor safe for some people, particularly those who lack capacity, have serious cognitive, mental health, and/or substance use issues. Motels do not provide the levels of support required for high-needs individuals; behavioural issues frequently lead to eviction and unsupervised drug use can lead to overdose with no one nearby to notice or assist (a risk that may be mitigated by the "buddy system" in the Encampment). Risks at motels include sex trafficking, drugs, and violence.

[146] The evidence supports the proposition that the By-laws deprive the Respondents' rights to life, liberty, and security of the person in ways that are not in accordance with the principles of fundamental justice, specifically in a manner that is grossly disproportionate to the By-law's object. The s. 7 analysis is only concerned with the question of whether the impugned law or State action infringes – or risks infringing – the *Charter* claimant's rights. As stated by the Supreme Court, "[t]he question of justification on the basis of an overarching public goal is at the heart of s.1 but it plays no part in the s. 7 analysis": *Canada (Attorney General) v. Bedford*, 2013 SCC 72, at para. 125. Further, gross disproportionality is not concerned with the number of people who experience grossly disproportionate effects; a grossly disproportionate effect on just one individual is sufficient to violate the norm: *Bedford*, at para. 122. The inquiry into the purpose of the law therefore focuses on the nature of the object, not on its efficacy.

[147] The primary purpose of the Region's By-law is to obtain vacant possession of the Property where Existing Residents of the Encampment, vulnerable homeless individuals, have erected temporary shelters in circumstances where housing options are unavailable and/or inaccessible to them. Another purpose of the By-law is to prohibit Non-Residents, who are also vulnerable homeless individuals, from erecting temporary shelters at the property after April 16, 2025. As noted above, the risks to the Encampment residents include lack of stability, difficulty accessing services, increased health problems, exacerbation of mental health challenges, and risk of death. *Amicus* submits, and Justice Valente in *Persons Unknown 2023* accepted, and I agree, that these consequences are more severe for Encampment residents who suffer from mental illness or substance abuse to the extent that they may lack capacity to understand the legal consequences of the By-law's enforcement.

[148] Justice Valente's ruling included an order that the Region could apply to terminate the declaration "upon it being in a position to satisfy this Court that the By-law no longer violates the section 7 rights of the Encampment residents." The Region has not applied to terminate the previous declaration of inoperability in the *Persons Unknown 2023* decision. It acknowledges that the number of homeless individuals continues to significantly exceed available and accessible housing and related supports and that this in turn has fueled an increase in encampments since the decision was rendered.

[149] The encampment at 100 Victoria Street North in Kitchener serves as a shelter of last resort for chronically homeless residents of the Regional Municipality of Waterloo. They rely on it when they cannot access indoor shelter. They must do so because the Region has insufficient indoor shelter to accommodate its homeless, but its Code of Use By-Law prohibits outdoor sheltering on all other Region-owned lands. However, two new By-Laws, the "Site-Specific" and "Amended Site-Specific" By-Laws, together "the By-Laws") now provide for the Encampment to be closed so that it can be used as a "lay-down" site during construction of a transit hub. The Region is not prepared to allow its homeless to shelter anywhere else after the Encampment is closed. The Respondents pose an apt question: where are the Region's chronically homeless expected to go when they cannot access indoor shelter?

[150] The Region has given assurances of alternate shelter to only those Cross-Applicants/Named Respondents ("Named Respondents") who are among 40 persons it counted as present at the Encampment on April 16, 2025. However, this shelter is, for the most part, temporary motel or emergency shelter space, and the Region has made no provision for where persons may go if/when they lose these spaces. It has offered nothing to most of the Named Respondents, who are not among the counted 40, other than to "bring them within the Region's housing stability system" - effectively, adding them to the waitlists they are already on.

[151] The Respondents assert, and I agree, that the Court has heard the Region's arguments for closing this Encampment before. In *Persons Unknown 2023*, Justice Valente refused permission to clear this very site for the same proposed use. Then, as now, the Region asserted it would find temporary shelter for those then at the Encampment. Then, as now, the Region asserted

construction on the transit hub was to commence imminently. Then, as now, the Region asserted the Encampment posed health and safety risks. Nonetheless, Justice Valente declared that closing the Encampment would be contrary to s. 7 of the *Charter*, inviting the Region to apply for that declaration to be lifted upon "being in a position to satisfy this Court that the By-Law no longer violates the section 7 rights of the Encampment residents". This has not been done.

[152] The Respondents insist that they do not assert an "unfettered right to seek shelter on publicly owned land." Rather, they seek to hold the Region to the declaration the Court has already made. So long as insufficient indoor shelter requires the Region's homeless to shelter outdoors, and so long as the Region maintains that they may not do so anywhere else, the Region cannot gain possession of the site.

[153] Closing the Region's sheltering location of last resort continues to pose serious risk to the lives and health of the chronically homeless Named Respondents and Persons Unknown, who will have no sheltering location of last resort to catch them when they fall. This deprivation continues to be grossly disproportionate to the objective of closing the site so that it can be used for equipment lay-down. Enforcement of the By-Laws continues to violate s. 7 of the *Charter* where the conditions for this Court's previous declaration continue to exist.

[154] There are also new issues before the Court. The first is how the Supreme Court's decision in *Quebec (Attorney General) v Kanyinda*, 2026 SCC 7 ("*Kanyinda"),* issued March 6, 2026, impacts s. 15 equality rights arguments that Valente J. rejected in *Persons Unknown 2023*. The impacts of the By-Laws are particularly severe for those homeless who are women, gender diverse, disabled and/or Indigenous because persons from these *Charter*-protected groups are less likely to be able to access indoor shelter that meets their needs. In *Persons Unknown 2023*, Valente J. found no s. 15 infringement for those groups because homelessness itself was not a *Charter*-protected ground of discrimination. Following *Kanyinda,* it is now clear that homelessness need not be a *Charter*-protected ground for the Court to find a discriminatory impact on *Charter*-protected subsets of the homeless. In light of this fresh guidance, it is now apparent that removing shelter of last resort from the Region's chronically homeless violates the s. 15 equality rights of those homeless who are least likely to be able to access indoor shelter - women, gender diverse, disabled

and/or Indigenous persons. Moreover, as discussed in detail below, I consider that the time has now come for homelessness to be recognized as an analogous ground for the purposes of s.15 of the *Charter.*

[155] Persons who rely on the Encampment for last resort shelter are citizens who may have made some bad decisions or experienced bad luck. Their backgrounds reflect those of the Region's homeless. All have disabilities - 18 have mental health or cognitive disabilities, 17 have substance use disabilities, and at least 4 have mobility impairments. Six are Indigenous. A further four identify as LGBTQ2S+. Nine affirm to having survived childhood physical and sexual abuse, domestic violence, and/or sexual assault. Six shelter together with their partners. Seven are women or identify as gender-diverse. They all live in extreme poverty – some have no income at all, and others receive social assistance. Circumstances that have caused the Named Respondents to rely on the Encampment vary.

[156] This Encampment was the subject of an earlier application to the Court in *Persons Unknown 2023.* In January of 2023, the Court dismissed the Region's application to close the Encampment under its "Code of Use By-Law", which prohibits persons from loitering on Region-owned property or erecting temporary shelters without a permit. Justice Valente found a purpose of the By-Law was to "prevent the disruption of the Region's operations on the Designated Premises". The Regional "operation" then at issue was transit construction. Then, as now, the Region advised that it intended to use the site initially as a "laydown" area for equipment during the construction of a transit hub, and later as a parking lot for the hub. Just as the Region now advises that construction is to commence imminently, the Region then advised that construction would commence in the spring of 2023. Just as the Court found there was no firm construction start date during litigation in 2022, here too the timelines for the project are continually shifting and it remains unclear when vacant possession is actually required, notwithstanding the latest information provided by the Applicant Region from Metrolinx. At the commencement of litigation, the date was December 1, 2025, then it shifted to April 1, 2026, then to the end of October 2026, but correspondence from Metrolinx indicates this "might be subject to further change". Having regard to that purpose, Justice Valente found that prohibiting sheltering deprived the Region's homeless of their life, liberty, and security of the person in a context where insufficient indoor sheltering options left them "with no alternative but to sleep outside". At that

time, available shelter spaces fell short "by some 50% of what was required to shelter the Region's homeless".

[157] The Region had also entered into contracts with motel operators to permit motels to be used for shelter, but Valente J. found it was not appropriate to include motel spaces in the count, in part "because their availability is at the discretion of the motel operators".

[158] Then, as now, the Region asserted public health and safety concerns arising from the Encampment. It asserted that, in the months leading up to the hearing, there had been a significant increase in incidents involving police at the site. It cited rodent infestations, feces and urine on the site, fire hazards, physical altercations, and consumption of alcohol and drugs. Justice Valente accepted that these issues created risk, but questioned: "does not closing the Encampment simply move[…] all of these risks elsewhere. Furthermore, does not the Region have some responsibility to take further steps to mitigate these risks?" The Court held that in assessing whether persons sheltering at the Encampment had indoor sheltering alternatives, it was "simply not a matter of counting the number of spaces".

[159] Justice Valente also directly rejected the Region's argument that it need only find space for the persons then at the Encampment in order to establish it would be constitutional to clear the Encampment. Then, as now, the Region had offered assurances that it would find shelter space for each person then sheltering at the Encampment. In response, Valente J. held:

> [94] Finally, I reject the Region's submission that, at the end of the day, in order to grant the relief it seeks, I need only be satisfied that there is sufficient capacity in the system to accommodate the Encampment residents. I reject this proposition because of the fluctuating and variable capacity of the system based on the Region's own numbers. Furthermore, were I to be guided by this principle, and satisfied that there is a sufficient bed capacity for the Encampment residents on any given day, how does this approach respond to the many other vulnerable homeless individuals in the Region? It does not. The approach is particularly problematic in my view because the Region intends to be guided by this decision in its treatment of other encampments. Were I to accede to the Region's submission, it seems to me I would be helping to create an immediate disadvantage for those who are homeless and living outside encampments. I am not prepared to do that. […]

[160] The Court found that closing the Encampment would put the lives of the Region's homeless at risk, constituting a "deprivation" of life for the purpose of s. 7 because exposure to the elements without shelter could create serious harm, inducing death. It also found that closing the Encampment amounted to a deprivation of liberty, and of security of the person because it would "expose[…] the homeless of the Region to risk of significant health problems, both physical and psychological in nature". These deprivations were not in accordance with the principles of fundamental justice, in part because they were grossly disproportionate to the By-Law's objectives, which included preventing disruption to Regional operations.

[161] Rather than declaring the Code of Use By-Law generally inapplicable to homeless residents of the Region, Justice Valente issued a narrow declaration that it was inapplicable "only insofar[...] as it applies to prevent the residents of the Encampment from living on and erecting temporary shelters without a permit on the Property when the number of homeless persons exceed the number of available accessible shelter beds in the Region". This left the Encampment as the only space in the Region where sheltering is not prohibited under the Code of Use By-Law. Justice Valente ordered "that the Region may apply to terminate" the declaration upon being in a position to satisfy the Court that the By-Law no longer violated the s. 7 rights of Encampment residents. The Region has not done so, nor did it appeal the decision, which remains in effect.

[162] The Code of Use By-Law continues to apply outside of the Encampment. The Region chose not to amend its Code of Use By-Law after *Persons Unknown*. Due to the Encampment-specific scope of Justice Valente's declaration, the Code of Use By-Law therefore continues to restrict sheltering by the homeless on all other Region-owned land. Therefore, while the Encampment is not the only location in the Region where persons do shelter outside, it is the only location where they may do so lawfully without the risk of eviction. The Region's Commissioner of Community Services has been clear that the Region is not prepared to permit sheltering anywhere else on its lands if the Encampment is cleared.

[163] Since *Persons Unknown 2023*, other encampment sites in the Region have been cleared, including sites on Region-owned land and land owned by lower-tier municipalities. For instance, an encampment at 150 Main Street in Cambridge was closed by the Region in August 2023. An

additional site at Soper Park in Cambridge was cleared by the City of Cambridge in September of 2023. An encampment at Roos Island in Kitchener was closed by the City of Kitchener in spring of 2023.

[164] Homelessness has more than doubled in the Region since Persons Unknown was released. The Region's housing stability system has not kept pace with this increase. In *Persons Unknown 2023*, Valente J. found the Region's shelter system could accommodate only 50% of the Region's homeless population. However, the Region's shelter capacity can now accommodate only 15% of the Region's total homeless. Another way of looking at this is that 43% of the Region's homeless live outdoors. Accordingly, the Region has acknowledged that it is not in a position to ask the Court to lift its declaration of invalidity – it cannot ensure that the number of homeless persons will not exceed the number of shelter spaces in 2026, even leaving aside whether available spaces are accessible to persons who depend on the Encampment site.

[165] The PiT Count is a count of persons experiencing homelessness on a single night. The Association of Ontario Municipalities describes this as an "undercount". The September 2021 PiT Count that Valente J. referred to in *Persons Unknown 2023* recorded 1,085 homeless, including 412 "living rough", and 191 accessing emergency shelters. By October of 2024, the PiT Count recorded 2,371 homeless, 1,009 of whom were "living rough", 446 in emergency shelters, and 153 in motels. The majority of the Region's homeless move in and out of homelessness. Of the 2,371 homeless captured by the 2024 PiT, 78% were "chronically homeless", defined as persons in "prolonged or repeated periods of homelessness". This accords with the experience of the Named Respondents, who move in and out of the Encampment as they lose and gain indoor shelter.

[166] The Region's emergency shelter system has not kept pace with this increase in homelessness. As the Region's Commissioner for Community Services put it: this complex situation where the number of homeless individuals vastly exceeds the housing supports that the region can provide, has in turn caused an increase in encampments over the last few years. The Region's shelters can accommodate only 15% of Region's homeless. The Region's emergency shelter system consists of shelters and the motel spaces that Valente J. previously excluded from its shelter space count because availability was "at the discretion of motel operators". Effective

February 27, 2026, the Region had 356 spaces in the emergency shelter system, across eight shelters. These spaces regularly operate at or near capacity. The Region's Commissioner of Community Services has been candid that the system has "capacity challenges". For instance, Region shelters turned persons away 171 times between October and December 2025, either due to being at capacity or due to service restrictions. Of the 356 spaces:

a. 50 at Erb's Road shelter, are "tiny house" spaces. These spaces are "generally full". A person must meet criteria and complete a referral process to qualify for a space.

b. 20 at YWCA Cambridge, are reserved for women and persons who are gender diverse. These operate 24 hours a day. In December, January, and February they operated over capacity.

c. 22 at SHIP 84 Frederick Street, are reserved for women and persons who are gender diverse, but operate only overnight.

d. 24 at oneROOF, are reserved for youth. These operate only overnight, though there is also a daytime drop-in program.

e. 80 at Cambridge Shelter Corporation Bridges shelter, operate 24 hours per day, but are reserved for men.

f. 10 at Safe Haven, are reserved for youth ages 12 - 17.

g. 20 at Bridgecare shelter, are "primarily" for persons with complex medical needs. This shelter stopped accepting intakes as of September 2025.

h. The remaining spaces, at ShelterCare ("House of Friendship") (100 spaces) and SHIP Edith MacIntosh (30 spaces), are for men only. SHIP Edith MacIntosh operates only overnight.

[167] The Region also offers 60 "winter warming" spaces between December and March. Of these, 30 are reserved for men, and 30 are for all genders. These are congregate spaces open overnight, with no beds. They operate over capacity. A third warming space had 100 co-ed warming spaces between January 26 and March 31, 2026, but it does not receive operational

funding from the Region. It, too, is a congregate space with no beds and has operated over-capacity.

[168] The Region also operates transitional housing that is not available on an emergency basis. Persons must qualify for transitional housing, and it is subject to waitlists. It is therefore not an option for a person who requires immediate shelter at a given moment.

[169] While many Named Respondents are on a waitlist for affordable housing, the anticipated wait is 8 to 10 years, with 11,421 households on the list as of November 6, 2025.The average wait for supportive housing units is 13.5 months.

[170] The existing shelter spaces are not accessible to all homeless persons. Some are inaccessible for obvious reasons: women cannot access spaces reserved for men; adults cannot access spaces reserved for youth; opposite sex couples cannot access single sex shelters without forced separation. However, there are also more nuanced access barriers relating to disability. Dr. Sahil Gupta, a physician whose clinical practice and research focuses on people experiencing homelessness, identified the following disability-related barriers to shelter access:

> • Crowded congregate settings can destabilize persons with some mental health disabilities;
>
> • Some persons' mental health impairments prevent them from complying with shelter rules;
>
> • Many shelters cannot meet specific accessibility needs, such as accessibility for people with physical disabilities, allowance for pets, or proximity to an individual's usual pharmacy (for persons who require daily dispensed medications) or social supports.

[171] In addition to emergency shelter spaces, the Region funds motel stays for some persons. However, as Valente J. found in *Persons Unknown 2023*, these are subject to operator discretion. They are also typically funded for finite periods. Because motel spaces are subject to operator discretion, they are not reliable shelter for persons with mental health disabilities that cause

challenging behaviours.

[172] Approximately 15 months after Persons Unknown, the Region passed a new Plan to End Chronic Homelessness ("PECH"). The PECH mandates four "interventions" for Region housing and homelessness services: (1) Broadening our Current Housing/Prevention support continuum; (2) Community-Driven System Leadership; (3) Centering Lived Expertise and Equity-Owed Groups; and (4) Defining and Combining Housing First and Human Rights Approaches.

[173] The second of these, "Community-driven system leadership, sets out a leadership model revolving around a "Whole Community Leadership Table", or "Co-Creator's Table", with "decision-making power over the implementation of the PECH": "[t]he role of the Region as the Service System Manager remains, but would move from singularly driving these decisions to collaborating and supporting - working alongside the new leadership tables to guide PECH implementation". The Table's decision-making responsibility extends to decisions regarding "Unsheltered Homelessness & Encampments". The Table is comprised of over 60 community organizations and individuals. It meets once a month.

[174] The third PECH intervention of "centring lived expertise and equity-owed groups" commits the Region to working together with a "Lived Expert Prototyping Cohort". That Cohort consists of "Lived Experts" and representatives from mutual aid groups, advocacy groups, and agencies, along with some Region and City staff.

[175] The fourth PECH intervention requires the Region to take a "human rights approach" to ending homelessness. It defines this as an approach where: [p]eople experiencing homelessness are treated as rights holders, where their agency is respected, and where the Region has a duty of care for their housing needs. The Region will be compliant with national and international human rights law and ensure it is appropriately prioritized amidst other legal obligations such as those regarding property rights, privacy, and liability.

[176] This approach is set out more fully through the 8 principles of the United Nations Special Rapporteur on the Right to Adequate Housing's "National Protocol for Homeless Encampments

in Canada: A Human Rights Approach".

[177] On April 16, 2025, the Region posted notice of the Site-Specific By-Law on its website. It did not post notice at the Encampment site. Council passed the By-Law on April 23, 2025. Effective upon its adoption, the By-Law prohibited anyone who did not meet the definition of "Resident" from sheltering at the Encampment. It defined "Resident" to mean persons "residing at 100 Victoria Street" as of the April 16, 2025 notice date. It further provided that "[c]ommencing on December 1, 2025, no person shall enter onto, reside on, or occupy 100 Victoria Street". Persons contravening either provision would be guilty of an offence and liable for a fine of up $5,000, but the By-Law also specified that the Region could take enforcement steps under the *Trespass to Property Act*. The By-Law further authorized the Region to, among other actions, erect fencing around the site to prevent entry, and remove persons' personal property from the site.

[178] The Region's Commissioner of Community Services affirms that the Region recognizes "approximately 40" persons as "residents". The Region has not advised how many of the Named Respondents are included in this count, but at least 12 are not. On the same day that Council passed the By-Law, it directed staff to add $814,333 to its housing stability budget. The new funding was made up of $466,083 for "motels with social supports" and $271,250 for new supportive housing units, with the remaining funds designated for site remediation. The funding for "motels with social supports" is only "temporary". It "will not extend beyond 2026".

[179] On August 20, 2025, this Court issued an interim injunction restraining the Region from acting on any part of the By-Law until the conclusion of this hearing. On December 18, 2025, the Region posted notice on its website that it intended to amend the By-Law, with a meeting scheduled for January 7, 2026. It passed the Amended By-Law on January 9, 2026. The Amended By-Law called for the Encampment to be closed on April 1, 2026.

[180] The Amendments included a new "Transition Protocol" outlining steps the Region would take prior to removing those persons it deemed "Residents". Under that Protocol, "Residents" would be offered "alternative accommodation" as set out in Individual Housing Plans ("IHPs"), which the Region would make "best efforts" to develop.

[181] The Region characterizes these IHPs as "personalized plans designed to match individuals with housing options reflecting their specific needs and preferences". However, the three IHPs on the record do not support this contention. Two offer emergency shelter spaces, one of which the recipient could not accept because the spaces did not accommodate couples. The third offered a motel space. All three are undated, consist of only a few lines, and offer no information as to what the unnamed recipient's "specific needs and preferences" are.

[182] The Protocol further provides that USWs will make "best efforts" to find "Alternative Accommodation" where a resident loses "Alternative Accommodation due to non-compliance with the rules". However, there is no provision for how such situations would come to the Region's attention, nor how the Region would find "Alternative Accommodation" where its shelter system is consistently at capacity and the wait list for subsidized housing is eight to ten years.

Section 7 analysis framework

[183] A claim that a state action breaches s. 7 proceeds in two steps. First, a claimant must establish that the impugned law or state action deprives them of life, liberty, or security of the person. This requires showing a "sufficient causal connection" between the law or action and the alleged interference with the s. 7 interest. A risk of such a deprivation suffices: *Canadian Council for Refugees v. Canada (Citizenship and Immigration),* 2023 SCC 17, at para. 56 ("*CCR*"); *Carter v. Canada (Attorney General),* 2015 SCC 5, at para. 62. A court "may consider 'reasonable hypotheticals' to determine whether a law is consistent with the *Charter*": *R. v. Kloubakov*, 2025 SCC 25, at para. 143.

[184] Second, the claimant must show that this deprivation is not in accordance with the principles of fundamental justice. To establish a "sufficient causal connection" between a state action and a deprivation of life, liberty, or security of the person, the impugned law or state action need not be the only or the dominant cause of the prejudice suffered by the claimant. That other factors also have a causal connection to the harms alleged does not prevent a finding of causation. This means that even where risks faced by the Named Respondents are also caused by homelessness, poverty, violence, weather, and discrimination, state interference with their ability to protect themselves from those risks will still give rise to a sufficient causal connection.

Similarly, a "sufficient causal connection" between an impugned law and harm will exist even where the impugned law interacts with other laws to contribute to risk or harm: *CCR*., at para. 64.

[185] The court must interpret the impact of an impugned law in the context of the legal scheme as a whole. This means that this Court must interpret the impact of the By-Laws in context with the restrictions arising from the Code of Use By-Law. While the By-Laws do not directly restrict the Named Respondents from sheltering elsewhere in the Region, they do when applied in context with the Code of Use By-Law. Here, the By-Laws contribute to the harms described below because they prevent the chronically homeless Named Respondents from taking steps to protect themselves from the dangers of unsheltered homelessness. When those persons that the By-Laws do not deem to be "Residents" are evicted from the Encampment with no place to go, when the temporary spaces the Region has offered to those it does deem "Residents" end, when chronically homeless Persons Unknown who are currently sheltering elsewhere face eviction and cannot access indoor shelter, they will be left with no space of last resort to catch their fall.

[186] The right to life is engaged where a law or state action creates an increased risk of death, either directly or indirectly. Just as Valente J. held in *Persons Unknown 2023* that preventing persons from sheltering at this site engaged their "life" interest, Canadian courts have repeatedly held that outdoor sheltering engages the s. 7 "life" interest of homeless persons when they lack accessible indoor alternatives. As this Court recognized in its earlier injunction decision, at para. 88, this is because "[p]rohibiting homeless persons from taking measures to shelter themselves by erecting temporary structures in circumstances where there are no practical housing alternatives has been found to engage the right to life (due to exposure to risks of serious harm including death)." This finding is supported on the record in this hearing. Dr. Hwang's evidence is that "[t]here is no question that the lack of shelter for people living outside causes severe adverse effects on their health". This is because "[h]omeless people who are prohibited from erecting even rudimentary shelter from the elements — such as tents, tarps, or cardboard barriers — will suffer clear and direct adverse impacts on their health". While there is no question that outdoor homelessness is dangerous, with or without a tent, particular risks of unsheltered outdoor homelessness, or "sleeping rough" without any shelter, include:

• A lack of protection from wind and rain increases the wind chill effect, greatly increasing the risk of hypothermia.

• Prolonged exposure to wet and cold can lead to serious skin and foot diseases as well as respiratory diseases.

• The lack of protection from the sun greatly increases homeless people's risk of severe sunburn and heatstroke during the summer months.

• Lack of shelter leads to disturbed and fragmented sleep, causing serious health conditions.

[187] The right to liberty is engaged when state compulsions or prohibitions affect fundamental life choices. The right to liberty "protects an irreducible, core sphere of personal autonomy wherein individuals may make fundamental and inherently private choices free from state interference": *Drover v. Canada (Attorney General),* 2025 ONCA 4868, at para. 129. It protects an individual's choice of residence because the right to decide where to live is "essential to maintain personal autonomy and dignity": *Drover*, at para. 131. The By-Laws engage the Named Respondents' liberty interests because they permit them to be arrested without warrant if they shelter on the property. However, multiple courts have also held that restricting the homeless from sheltering themselves engages the right to liberty because shelter is a matter "critical to any individual's dignity and independence": *Persons Unknown 2023*, at para. 101. These determinations are consistent with the evidence in this case. Dr. Gupta explains how, for some residents, encampments provide a sense of "autonomy and self-determination": "Encampments offer a sense of control over one's life and decisions, which is critical for psychological well-being".

[188] The right to security of the person protects individuals' physical and psychological integrity. It is infringed by serious state-imposed psychological stress: *Carter*, at para. 64. As this Court has already found in relation to this very Encampment, "security of the person" is engaged by both by-laws restricting the homeless from sheltering, and forced encampment evictions.

[189] The Region's Transition Protocol does not follow the obligations of a human rights-based approach in PECH and does not adequately mitigate the s.7 deprivations. The Transition Protocol is underinclusive, does not address systemic issues and is time limited. The Transition Protocol applies only to a minority of the Named Respondents and encampment residents, those arbitrarily

deemed by the Region to be "Residents".

[190] It leaves the remaining encampment residents with few if any options of alternative shelter once the Encampment is closed. A human rights-based approach requires that all residents be provided with resources. Second, it does not address the systemic issues related to rising homelessness. It does not address the underlying issues of insufficient shelter space and the lack of affordable housing. Transitioning Encampment residents into existing emergency shelter spaces means that other chronically homeless residents of the Region will be unable to access those same spaces, leading those persons to require a space where they can lawfully shelter outdoors. The Region's addition of an imprecise number of motel rooms to its system until 2026 does not resolve this issue. As Valente J. put it in *Persons Unknown 2023*: "Were I to accede to the Region's submission, it seems to me I would be helping to create an immediate disadvantage for those who are homeless and living outside encampments. I am not prepared to do that."

[191] Third, even for the minority of Named Respondents included in the Protocol, supports are only temporary. The Protocol provides for storage of belongings for up to six months, but the waitlist for subsidized housing is 8 to 10 years. A human rights-based approach requires that relocation must not result in the continuation or exacerbation of homelessness.

[192] These deprivations are not in accordance with the principles of fundamental justice. The second branch of s. 7 requires a claimant to establish that an impugned provision conflicts with basic constitutional values, including that the impact of a law must not be grossly disproportionate to its objects. Gross disproportionality balances the negative effect on the individual against the purpose of the law, not against societal benefit that might flow from the law. It is "not concerned with the number of people who experience grossly disproportionate effects; a grossly disproportionate effect on one person is sufficient to violate the norm.": *Bedford,* at para. 122. In *Persons Unknown 2023*, Justice Valente found that closing the Encampment was grossly disproportionate to the Region's objectives, which included preventing disruptions to Regional operations. The operation at issue was the same proposed new transit hub that remains at issue. The Region's intent, then, as now, was to use the site for equipment lay-down in the short-term, though it also advised that it would use it for parking in the longer term. The Region then advised

that construction on the transit hub would commence in the spring of 2023, just months after *Persons Unknown 2023* was released.

[193] The Court's previous determination continues to apply. Contrary to the Region's submission, the gross disproportionality analysis is not now "fundamentally different from Persons Unknown" on the basis that in that case, "the Region did not put any plan for the occupants of 100 Vic before Valente J.". The Region did put such a plan before Justice Valente in *Persons Unknown 2023*. In the months leading up to that decision, Council had moved to develop a "plan to establish interim housing solutions for the regional residents experiencing homelessness including those currently residing in the encampment". Pursuant to that plan, the Region advised the Court that it was implementing multiple "interim housing solutions", including expanded transitional housing, homebased supports, emergency shelter, and a managed hybrid/outdoor shelter model. Justice Valente accepted the Region's assurance that the Region was "committed to reserving spots for the Encampment residents at its emergency shelter locations": *Persons Unknown 2023*, at para. 64. While the Region is now using a new term for these assurances – IHPs – the substance of its assurances are the same. There being no fundamental difference between either the By-Laws' object or their "multiple and severe negative consequences" for the Named Respondents, the By-Laws remain grossly disproportionate to their goal in a context where the Region has chosen not to permit outdoor sheltering anyplace else.

[194] I find that the s.7 *Charter rights* of the Respondents are infringed by the By-Laws. It remains to consider whether the infringement is saved under s. 1.

Section 15

[195] Section 15(1) of the *Charter* provides:

> 15(1) Every individual is equal before and under the law and has the right to 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.

[196] In *Quebec (Attorney General) v. Kanyinda*, 2026 SCC 7, the Supreme Court of Canada

recently considered whether exclusion of refugee claimants from eligibility for subsidized daycare infringed their s.15 *Charter* right to equality. The majority of the Court found that the regulation at issue infringed s.15(1) of the *Charter* because it discriminates against women refugee claimants based on sex.

[197] Writing for a majority of the Court, Karakatsanis J. discussed the framework of s.15 analysis with a particular emphasis on intersectionality. Section 15(1) of the *Charter* protects individuals not only from laws which directly discriminate but also from adverse effects of discrimination. People in the same protected group may have very different experiences and face unique challenges based on their intersecting identities and realities. An intersectional approach is not novel in the s. 15(1) analysis. Intersecting group membership tends to amplify discriminatory effects or can create unique discriminatory effects not visited upon any group viewed in isolation. Consideration of a claimant group's intersecting identities is relevant at both stages of the s. 15(1) analysis.

[198] In the first step, which focuses on identifying a distinction based on an enumerated or analogous ground, consideration of a claimant group's intersecting identities and realities may assist in understanding how a government decision disproportionately impacts a particular claimant group. Differential treatment can occur on the basis of an enumerated or analogous ground despite the fact that not all persons belonging to the relevant group are equally mistreated.

[199] Claimants can satisfy step one of the s. 15(1) analysis even if they only make up a subgroup experiencing adverse effects.

[200] Consideration of a claimant group's intersecting identities and realities is similarly relevant under the second step of the s. 15(1) analysis, where courts must assess whether the distinction has the effect of reinforcing, perpetuating or exacerbating a claimant's disadvantage. Disadvantage can be intimately related to, if not rooted in, the specific identities and realities shared by a particular group.

[201] To prove an infringement of s. 15(1), a claimant must show the challenged law or state

action: (1) on its face or in its impact, creates a distinction based on listed or analogous grounds; and (2) imposes burdens or denies a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage.

[202] At the first step of the test, where a measure does not explicitly distinguish based on a protected ground, the claimant can still show that the law creates a distinction in effect because of the law's disproportionate impact on the protected group. While the claim must be clearly anchored in a recognized ground of discrimination, the claimant may also point to additional characteristics that contribute to establishing a disproportionate effect on the claimant group. Where discrimination affects only a subgroup, the failure to account for intersecting identities in step one of the s. 15(1) inquiry could effectively obscure the specific adverse effects experienced by that subgroup. Two types of evidence can help a claimant establish these impacts: (a) evidence about the claimant group's situation, including physical, social, cultural, or other barriers faced by the claimant group; and (b) evidence about the results produced by the challenged law in practice. However, no specific form of evidence is required.

[203] In some cases, a court may reasonably infer an adverse effect on a claimant group, or the disproportionate impact on a claimant group may be apparent and immediate and judicial notice can be taken when appropriate. While the evidentiary burden at the first step should not be undue, it must be fulfilled. The second step focuses on the protection of groups that have experienced exclusionary disadvantage based on group characteristics. Even if a law treats people differently based on a protected ground, it does not necessarily follow that the law increases or reinforces a disadvantage. The broader legislative context may also be relevant to the analysis at step two, but the emphasis on context must not conflate an analysis of the discriminatory impact of a measure on a disadvantaged group with a consideration of whether the distinction is justified based on legislative objectives. Courts should not ignore infringements of s. 15(1) merely because the law is ameliorative, non-arbitrary, or only perpetuates the disadvantage of some members of the protected group.

Homelessness as an analogous ground under s.15 of the Charter

[204] In my view, the time has come that homelessness should be recognized as an analogous

ground for the purposes of s.15 of the *Charter.* I draw support for this conclusion from the concurring reasons of Wagner CJC at paras. 216-228 in *Kanyinda*:

> [216] **In my view, s. 15 of the Charter protects refugee claimant status as an analogous ground. This status is "of a kind similar" to the enumerated grounds, in that it shares "many similarities" with them** (*Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143, at p. 195, per La Forest J.). It is a ground that "s. 15 of the Charter is designed to protect" (*R. v. Turpin*, [1989] 1 S.C.R. 1296, at p. 1333). **This conclusion flows from a generous approach to the right to equality that reflects "the 'continuing framework' of the constitution and the need for 'the unremitting protection' of equality rights**" (*Miron v. Trudel*, [1995] 2 S.C.R. 418, at para. 145, per McLachlin J., as she then was, quoting *Andrews*, at p. 175, per McIntyre J., dissenting in part, but not on this point). **This inquiry takes into account the dual purpose assured by s. 15, that is, protecting human dignity and building a society in which everyone is recognized as being worthy of respect and consideration** (*Corbiere v. Canada (Minister of Indian and Northern Affairs),* [1999] 2 S.C.R. 203, at para. 5). Recognizing every person's right to dignity and freedom to lead the life they want, in keeping with their full potential and in a manner respectful of collective interests, implies a duty to counter the disadvantages imposed on certain members of society on the basis of stereotyping and prejudice (*ibid.; Miron*, at paras. 145-46).
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> [217] Over time, this Court has developed a number of criteria and indicators that can be used to identify an analogous ground and screen out claims "having nothing to do with substantive equality", in order to "keep the focus on equality for groups that are disadvantaged in the larger social and economic context" (*Kahkewistahaw First Nation v. Taypotat,* 2015 SCC 30, [2015] 2 S.C.R. 548, at para. 19, and *Dickson v. Vuntut Gwitchin First Nation*, 2024 SCC 10, at para. 193, both quoting L. Smith and W. Black, "The Equality Rights" (2013), 62 S.C.L.R. (2d) 301, at p. 336). On this non-exhaustive list, **the violation of human dignity and freedom resulting from a distinction based on a stereotype, rather than on individual capacity, worth or circumstances, is a first indicator** (*Miron*, at para. 148). Next, **the fact that a group has suffered historical disadvantage** (*ibid.; Andrews*, at p. 152; *Turpin*, at pp. 1331-32) or that it represents a "discrete and insular minority" (*Miron,* at para. 148, quoting *Andrews*, at p. 152, per Wilson J., and at p. 183, per McIntyre J.) may also be a relevant factor. **The vulnerability and marginalization of a group within society are other indicators. In addition, the "immutable" nature of an individual's personal characteristics, including those that are "constructively immutable", that is, changeable only at an unacceptable cost to personal identity, such as religion or citizenship** (*Corbiere,* at para. 13; *Dickson*, at para. 193), **is generally a common denominator for all analogous grounds. Lastly, recognition by legislators and jurists that a ground is discriminatory** is another helpful indicator for determining whether it is analogous to the enumerated grounds.

[218] Côté J. notes in her reasons that some of the indicators set out and adopted in our jurisprudence are not relevant to the analysis, notably because they are unrelated to the central criterion of immutability (paras. 355-58). With respect, **I am of the view that consideration of all of these factors not only assists in identifying the groups that the Charter is meant to protect but also favours a more flexible and progressive approach in the application of s. 15, one that is capable of recognizing contemporary forms of discrimination, beyond only its historical manifestations** (*Miron*, at para. 149; D. Gibson, "Analogous Grounds of Discrimination Under the Canadian Charter: Too Much Ado About Next to Nothing" (1991), 29 Alta. L. Rev. 772, at p. 788; J. Sealy Harrington, "Assessing Analogous Grounds: The Doctrinal and Normative Superiority of a Multi-Variable Approach" (2013), 10 J.L. & Equality 37, at pp. 52-55). 2026 SCC 7 (CanLII)

[219] In the present case, an analysis of these criteria leads to the conclusion that refugee claimant status is an analogous ground.

[220] First, a distinction based on refugee claimant status **may violate the dignity of the members of this group, because this migration status is apt to give rise to "stereotypical reasoning" and "distinctions which violate the dignity and freedom of the individual, on the basis of some preconceived perception about the attributed characteristics of a group rather than the true capacity, worth or circumstances of the individual**" (*Miron*, at para. 149). **This is a first indicator, even the "unifying principle", for identifying an analogous ground** (ibid.). I must acknowledge that there is a great deal of prejudice against people who enter Canada in the hope of finding refuge here from persecution. Refugee claimants are accused of being cheats and queue-jumpers and of trying to take advantage of the generosity of Canadians by making fraudulent claims (*Canadian Doctors for Refugee Care v. Canada (Attorney General),* 2014 FC 651, [2015] 2 F.C.R. 267, at paras. 13 and 837; Dr. J. Hanley, The labour implications of the exclusion of refugee claimants from Quebec's subsidized childcare program (2020) (reproduced in A.R., vol. II, at pp. 68-90), at para. 54). Refugee claimant status thus **shares this common denominator; it may "serve as a basis for unequal treatment based on stereotypical attributes ascribed to the group, rather than on the true worth and ability or circumstances of the individual**" (*Miron*, at para. 147; see also *Corbiere*, at para. 13.

[221] I emphasize the similarity that can be observed between, on the one hand, the ground of refugee claimant status and, on the other, the grounds of non-citizenship, race and national or ethnic origin. Like discrimination on the basis of non-citizenship, discrimination on the basis of refugee claimant status is a "companion of discrimination on the basis of race and national or ethnic origin, which are listed in s. 15" (*Andrews*, at p. 195, per La Forest J.; see T. Rahimian, "Parental Undocumented Status as an Analogous Ground of Discrimination" (2020), 16 J.L. & Equality 93, at pp. 125-26). The application of a distinction based on refugee claimant status — for example to deny a person a right or benefit

— may lead the person to have a sense of inferiority regarding their place in the community. Judging a person on the basis of an administrative or migration status, rather than according to their merit or attributes, could well negate the person's dignity and worth. **A distinction based on refugee claimant status may therefore be incompatible with the respect owed to all human beings for who they are and may violate the fundamental principles of individual recognition and equality that every democratic society must guarantee**. These points confirm the similarity between refugee claimant status and the grounds currently protected by s. 15.

[222] Second, another characteristic associated with analogous grounds is the *immutability of the group members' personal characteristics*. In this case, I am of the view that refugee claimant status **is an immutable characteristic because it is a situation that, like citizenship, is "not within the control of the individual", as it is "not alterable by conscious action" by the individual** (*Andrews*, at p. 195, per La Forest J.). In *Miron*, McLachlin J., as she then was, found that the ground of marital status is an immutable characteristic because it "often lies beyond the individual's effective control" and because the individual "exercises limited but not exclusive control over the designation" (para. 153). Here, a refugee claimant does not have exclusive control over the status of their claim (Hogg and Wright, at § 55:26). **They cannot alter this status on their own initiative by conscious unilateral action.** The exercise of state power is what can change a refugee claimant's situation. Moreover, it is important to note that a refugee claimant's decision to flee their country of origin is, in principle, not a choice made by that person, but rather a constraint imposed upon them (see, by analogy, *Taypotat,* at para. 26). A person waiting for refugee status exercises no control over the potential risk to their life or freedom in their country of origin. The person is also in limbo from the time their claim for refugee protection is filed (R.F., at paras. 100-103; I.F., Association québécoise des avocats et avocates en droit de l'immigration, at paras. 36-39; I.F., FCJ Refugee Centre and Madhu Verma Migrant Justice Centre, at para. 23). **Finally, the transitory nature of migration status does not prevent this status from being considered an immutable characteristic for the purposes of analysis, just like the ground of discrimination on the basis of age. It is one of those characteristics that, "while they last", are "considered beyond the individual's conscious control"** (Gibson, at p. 786; see also Sealy-Harrington, at pp. 54-55).

[223] My colleague Côté J. notes that the mere fact that a status depends on a government decision does not suffice to make it immutable. In her view, this logic could lead to the recognition of analogous protection for anyone who has submitted an application to the state, regardless of the nature of the application. However, the proposed analogy seems to stray from the realities faced by refugee claimants. **These realities can be better grasped by considering a set of contextual factors when identifying a new analogous group**. Rejecting a formalistic analysis in fact helps to prevent the discrimination inquiry from resting on artificial distinctions.

[224] Third, refugee claimants **are a historically disadvantaged group. They have experienced considerable historical disadvantage, stereotyping, marginalization and stigmatization in Canadian society** (R.F., at paras. 98 and 117; I.F., *Canadian Association of Black Lawyers and Black Legal Action Centre,* at paras. 21-25; I.F., FCJ *Refugee Centre and Madhu Verma Migrant Justice Centre*, at paras. 17-21; see also L. Taylor, "Designated Inhospitality: The Treatment of Asylum Seekers Who Arrive by Boat in Canada and Australia" (2015), 60 McGill L.J. 333, at pp. 361-64; Rahimian, at pp. 125-26; Sealy-Harrington, at pp. 55-56; A. Neve and T. Russell, "Hysteria and Discrimination: Canada's harsh response to refugees and migrants who arrive by sea" (2011), 62 U.N.B.L.J. 37). Similarly, refugee claimants form a "'discrete and insular minority' who come within the protection of s. 15" (*Andrews*, at p. 183, per McIntyre J., quoting Graham v. Richardson, 403 U.S. 365 (1971), at p. 372; see pp. 151-53, per Wilson J.; R.F., at para. 98). They are **"a group lacking in political power and as such vulnerable to having their interests overlooked and their rights to equal concern and respect violated"** (*Andrews*, at p. 152, per Wilson J.; see also p. 195, per La Forest J.; R.F., at para. 98; see also *Rahimian*, at p. 119).

[225] Fourth, refugee claimants **are a vulnerable and marginalized group in society** (R.F., at paras. 98-99 and 117; I.F., *Canadian Civil Liberties Association*, at para. 8; see also *Rahimian*, at pp. 120-24; Sealy-Harrington, at p. 56). **A number of factors contribute to increasing their vulnerability, including: the situation of poverty or economic precarity in which they** find **themselves; mental and physical health issues** related to exile, to integration difficulties or to uncertainty around their migration status and their future; the language barrier; **isolation and the lack of a family or support network; and difficulty accessing the labour market and social services** (see N. Dolan and C. Sherlock, "Family Support through Childcare Services: Meeting the Needs of Asylum-seeking and Refugee Families" (2010), 16 Child Care in Practice 147; G. Morantz et al., "Resettlement challenges faced by refugee claimant families in Montreal: lack of access to child care" (2013), 18 Child & Family Social Work 318). All of these factors act as barriers to their integration into Canadian society.

[226] Fifth, **international instruments and international organizations support the conclusion that refugee claimant status should be identified as an analogous ground**. For example, the United Nations Committee on Economic, Social and Cultural Rights expressly noted in its General Comment No. 20 that "[t]he Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers . . ., regardless of legal status and documentation" (General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), U.N. Doc. E/C.12/GC/20, July 2, 2009, at para. 30). Similarly, the United Nations Committee on the Elimination of Racial 2026 SCC 7 (CanLII) Discrimination stated, in its General recommendation XXX, that "differential treatment based on citizenship or immigration status will constitute

> discrimination" and that states parties must "[e]nsure that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status" (General recommendation XXX on discrimination against non-citizens, U.N. Doc. CERD/C/64/Misc.11/rev.3, August 5, 2004, Articles 4 and 7).
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> [227] As my colleague Côté J. rightly points out, **these international instruments are, of course, not binding in themselves, but they may play a persuasive role in the interpretation of Charter rights. The Charter's provisions and principles often bear similarities to those of international human rights instruments, which makes such instruments relevant interpretive tools for clarifying the meaning to be given to our own norms, drafted in general language** (Reference re Public Service Employee Relations Act (Alta.), [1987] 1 S.C.R. 313, at pp. 348-49, per Dickson C.J., dissenting). **As this Court recently reaffirmed, the use of non-binding international sources remains legitimate and instructive** (Quebec (Attorney General) v. 9147-0732 Québec inc., 2020 SCC 32, [2020] 3 S.C.R. 426, at paras. 35-38). **Here, without being determinative, these sources provide support for my analysis on the existence of a new analogous ground, in light of the other factors examined.**
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> [228] **All of these considerations, taken cumulatively, confirm that refugee claimant status should be recognized as an analogous ground.** It is among the "jurisprudential markers for suspect distinctions" and "constant markers of suspect 2026 SCC 7 (CanLII) decision making or potential discrimination" (*Corbiere,* at paras. 8 and 11). Refugee claimants are a group that is "disadvantaged in the larger social and economic context" (*Taypotat,* at para. 19, quoting Smith and Black, at p. 336; see also *Corbiere*, at para. 8). This conclusion takes into account the "context of the law which is subject to challenge" as well as the arguments made and evidence adduced concerning "the place of the group [of refugee claimants] in the entire social, political and legal fabric of our society" (*Andrews*, at p. 152; see also p. 154; *Turpin*, at pp. 1331-33; *Law v. Canada (Minister of Employment and Immigration),* [1999] 1 S.C.R. 497, at paras. 29 and 93). **Recognizing refugee claimant status as an analogous ground therefore serves "to advance the fundamental purpose of s. 15(1)"** (*Law*, at para. 93). (Emphasis added).

[205] Homelessness clearly shares many of the attributes identified by Wagner CJC. The following considerations, taken cumulatively, confirm that homelessness should be recognized as an analogous ground.

[206] First, a distinction based on homeless status may violate the dignity of members of the group, because this status is apt to give rise to stereotypical reasoning. Judging a person on the basis of this status, rather than according to their merit or attributes, could well negate a person's

dignity and worth.

[207] Second, homelessness is a constructively immutable characteristic, because it is not a situation that is within the individual's control; it is not readily alterable by conscious action by the individual. The constellation of factors that may result in a person becoming and remaining homeless are many, but it can be extraordinarily difficult to extricate oneself from that situation, and it is not amenable to mere aspiration or simple choices: as the ancient folk aphorism succinctly observes, "if wishes were horses, beggars would ride." The transitory nature of homelessness does not prevent this status from being considered an immutable characteristic. It is one of those characteristics that, while they last, are considered beyond an individual's conscious control.

[208] Third, the homeless are a historically disadvantaged group, in addition to being a discrete and insular minority. They lack political power, which makes them vulnerable to having their interests overlooked and their rights to equal concern and respect violated.

[209] Fourth, the homeless are a vulnerable and marginalized group in society. A number of factors contribute to increasing their vulnerability, including a situation of poverty or economic precarity in which they find themselves as well as difficulty accessing the labour market and social services.

[210] Fifth, international instruments and international organizations support the conclusion that homeless status should be identified as an analogous ground.

[211] The first step of the test is satisfied. The Amended By-Law, on its face, creates a distinction based on the analogous ground of homeless status. At the second step of the s. 15 test, the claimant must demonstrate that the impugned provision imposes a burden or denies a benefit in a manner that has the effect of reinforcing, perpetuating or exacerbating a disadvantage suffered by the members of the protected group (*Taypotat*, at para. 20; *Sharma*, at paras. 28 and 51; *R. v. C.P.,* 2021 SCC 19, [2021] 1 S.C.R. 679, at para. 141, per Wagner C.J., concurring). This step itself has two parts. First, the claimant must establish that the distinction imposes a burden or denies a benefit. Second, the claimant must prove that the burden is imposed, or the benefit denied, in a

discriminatory manner, that is, in a manner that has the effect of reinforcing, perpetuating or exacerbating a disadvantage. The second step is satisfied in this case. It has been shown (1) that the distinction created the Amended By-Law denies a benefit, and (2) that this benefit is denied in a discriminatory manner.

Application of Kanyinda

[212] In *Kanyinda,* the Supreme Court of Canada found that Quebec's daycare subsidy scheme discriminated on the basis of sex by excluding refugee claimants. In coming to this determination, the majority emphasized that courts must take an intersectional approach to the discrimination analysis, having regard to a claimant's full context, including factors that are not enumerated or analogous grounds in and of themselves. *Kanyinda* did not alter the two-step test for discrimination under s. 15(1). The test continues to require a claimant to show that a challenged law or state action: (1) on its face or in its impact, creates a distinction based on listed or analogous grounds; and (2) imposes burdens or denies a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage. However, *Kanyinda* clarified how these steps apply where a claimant's disadvantage is caused by multiple factors, not all of which are *Charter*-protected.

[213] Ms. Kanyinda asserted discrimination as a female refugee claimant. The fact that refugee claimant status itself was not an enumerated or analogous ground did not defeat her claim of sex-based discrimination. Rather, it shifted the framework to the specific context of refugee claimants, and it required the Court to consider the pre-existing disadvantage Ms. Kanyinda faced both as a refugee claimant and as a woman. While the impugned law caused disadvantage to both male and female refugee claimants, the question for the Court was whether this disadvantage was disproportionately experienced by female refugee claimants. It was not necessary for Ms. Kanyinda to establish that the impugned law disproportionately disadvantaged all women, or that its adverse impact was only felt by refugee claimants who were women, or that refugee status itself was *Charter* protected.

[214] Having regard to the majority's analytical framework in *Kanyinda*, the s. 15 claim here does not hinge on whether homelessness itself is an enumerated or analogous ground (although I

consider that it now should be recognized as such, as I have explained). Rather, the question is whether the By-Laws disproportionately impact those homeless who are women, gender-diverse, disabled, and Indigenous.

[215] The first branch of the s. 15 test is intended "to exclude claims that have 'nothing to do with substantive equality'": *Kanyinda*, para. 60. It is not meant to be "an onerous hurdle designed to weed out claims on technical bases". Similar to s. 7, a claimant must only establish that the impugned law is one factor that contributes to an adverse impact to establish a sufficient causal connection. The first branch of the s. 15(1) test may be satisfied either where the impugned law gives rise to "built-in headwinds" for members of protected groups, or where it fails to accommodate members of protected groups: *Fraser v. Canada (Attorney General*), 2020 SCC 28, at paras. 53 - 54. Instead of asking whether a law explicitly targets a protected group for differential treatment, a court must explore whether it does so indirectly through its impact on members of that group. While no specific form of evidence is required, a disproportionate impact amounting to a "distinction" for the purpose of step one may be established through (a) evidence about the claimant group's situation, including barriers it faces; and (b) evidence about the results produced by the challenged law in practice: *Kanyinda,* para. 52.

Disproportionate impact upon women

[216] The By-Laws contribute to a sex-based disproportionate impact because they result in particular "built-in headwinds" for homeless persons who are women or gender-diverse. This is because: (a) homeless women and persons who are gender-diverse are less likely than homeless men to be able to access indoor shelter that meets their needs; and (b) restrictions on outdoor sheltering pose unique safety risks for homeless persons who are women and gender-diverse when they cannot access indoor shelter.

[217] Pursuant to the November 2024 PiT Count, 35% of the Region's then 2,371 persons experiencing homelessness were women or gender-diverse. However, within the adult emergency shelter system, only 20 of the shelter spaces operating 24/7 (at YWCA Cambridge shelter) were set aside for women/gender-diverse, whereas 180 were for men. Of the Region's single sex overnight shelters, 30 spaces are designated for men, whereas 22 are for women/gender-diverse.

It is therefore common that all spaces designated for women/gender-diverse are full on a given night.

[218] This means that if the Encampment is closed, women and gender diverse persons will disproportionately need to find other ways to shelter outside of the municipal shelter system. These strategies, including sleeping rough in remote locations to avoid detection, resuming "unsafe and exploitative relationships", and "exchanging sex for shelter" pose particular safety concerns for women and gender-diverse Encampment Residents. Violence from intimate partners or within families is a key pathway into homelessness for women and girls. A 2020 report by the YWCA of Kitchener-Waterloo found that 83% of women and gender-diverse persons experiencing homelessness in the Region had previously stayed in abusive or violent situations to avoid homelessness. This reflects the experience of homeless women nation-wide. The 2020 "Pan-Canadian Women's Housing and Homelessness Survey", co-authored by Dr. Schwan, is a mixed method survey of 500 women and gender diverse persons experiencing homelessness across the country. It found that women who were turned away from shelters used "alternative strategies such as survival sex, going back to their abuser, or navigating systems like healthcare or criminal justice to seek immediate shelter", and that women were likely to rely on "relational, precarious, and dangerous supports to survive housing instability".

[219] There is no doubt that homeless women and persons who are gender diverse may also face safety risks in encampments. However, Dr. Schwan's research found that encampment living provided relative safety in comparison to the other available options. Her research demonstrates that "encampments can buffer women from exposure to violence, harassment, or abuse that they might otherwise experience when residing outdoors alone, or within situations of hidden homelessness. This was because female encampment residents could "'look out for each other,' warn each other of dangerous or exploitative men, watch over each other's tents and possessions, and remain with partners or pets (e.g., dogs) who provided physical safety".

[220] It is true that, between December to March, women may access the 30-co-ed congregate winter warming spaces in addition to the shelter spaces reserved for women/gender diverse occupants. However, the evidence demonstrates that these are not safe for women. In the YWCA

of Kitchener-Waterloo report, 73% of those surveyed had avoided using co-ed spaces because of safety concerns.

[221] The evidence also demonstrates particular safety risks for women in motels. For instance, the Region no longer places women or gender-diverse people at one of the four motels used for overflow shelter due to reports of sexual coercion and exploitation by motel staff under threat of eviction.

[222] The key question under step two is whether the law worsens or reinforces the disadvantage experienced by the protected group. The majority in *Kanyinda* emphasized that assessment of whether a distinction perpetuates disadvantage for the purpose of step two must "recognize that discrimination cannot be neatly packaged into a single ground and a person will often live with other circumstances, realities, or identities that may enhance or exacerbate their disadvantage": *Kanyinda*, at para. 63. An impugned law need not be based on stereotypical assumptions to satisfy step two. The Court was emphatic about this in *Kanyinda*: "at the second step of the s. 15(1) test, there is no need to show that the challenged measure stereotypes or causes prejudice towards the protected group" because "such an approach incorrectly focuses the inquiry on whether a discriminatory attitude exists as opposed to a discriminatory impact […]": *Kanyinda,* at para. 67.

[223] The By-Laws impose burdens and denies benefits in a way that reinforces, perpetuates, and exacerbates disadvantage. Here, the By-Laws' disproportionate impact on those homeless who are women and gender diverse is that it requires them to seek out particularly unsafe forms of shelter due to the disproportionate lack of municipal shelter spaces for these groups. This deepens the pre-existing disadvantage these groups already face. As the Supreme Court of Canada has recognized in *R. v. Barton,* 2019 SCC 33, at para. 1: "[w]e live in a time where myths, stereotypes, and sexual violence against women [...]are tragically common". Women also experience disproportionate rates of deep poverty in comparison to men, due to what the Supreme Court has recognized as a multiplicity of economic barriers": *Moge v. Moge,* [1992] 3 SCR 813.

Physical, Mental Health and Addiction Disabilities

[224] People struggling with mental health and addiction issues are vastly overrepresented in the

Region's homeless population. According to the 2024 Point in Time (PIT) count, 72% of homeless people reported substance abuse, 70% reported mental health issues, and 27% reported acquired brain injuries. This is consistent with the reports of the nearly 80% of the Named Respondents who identified as having mental health or cognitive challenges. In addition, it is recognized that some persons who reside at the Encampment may lack capacity to instruct counsel. (This was one of the reasons why *Amicus* was appointed).

[225] The By-Laws have a disproportionately adverse impact on homeless individuals who also struggle with physical, mental health, cognitive and addiction-related disabilities.

[226] The duty to accommodate drives the obligation state actors have when interacting with and providing services to, people with disabilities. The Supreme Court of Canada noted in *Granovsky v. Canada (Minister of Employment and Immigration),* 2000 SCC 28, at para. 33, that "[t]he Charter is not a magic wand that can eliminate physical or mental impairments" but what s.15(1) does is "address the way in which the state responds to people with disabilities" ensuring that governments "may not, intentionally or through a failure of appropriate accommodation" stigmatize or attribute functional limitations to the disability "or fail to recognize the added burdens which persons with disabilities may encounter in achieving self-fulfilment in a world relentlessly oriented to the able-bodied."

[227] I accept the submission of *Amicus* that the Region has failed to recognize the heightened burdens that clearing the Encampment will impose on homeless persons with disabilities and has not implemented adequate accommodations to address the disproportionate impact of the By-Laws on this subgroup of Encampment residents.

[228] The protection of disadvantaged individuals and groups is at the heart of s. 15. This requires the court to recognize that people living in encampments are some of the most marginalized in society and who frequently face prejudice linked to colonialism, racism, sexism, ableism, and other forms of discrimination, particularly when analysing the effects of a law.

[229] This equality-based analysis was utilized in *Persons Unknown 2023* as illustrated by the following findings: a. to be of any real value, shelter spaces must be truly accessible to

accommodate the varied needs of homeless people in the Region (para. 93); b. that the law at issue impacted marginalized people in the Region who were not named parties and that their rights deserved *Charter* protection (para. 94; para 104); c. arguments about personal "choice" cannot negate a breach of s. 7 where choices are constrained by poverty, drug addiction, disability, and insufficient shelter alternatives (para. 106); and d. people with mental illness, substance abuse, or capacity issues may feel the negative effects of a law more strongly (para. 117).

[230] What matters is not discriminatory attitude or intention, but impact. In order for the Court to appreciate how the By-Laws impose burdens and perpetuates disadvantage, the lived intersectional realities of claimants in the subgroup must be recognized: people experience discrimination as whole persons, not as an aggregate of separate characteristics. Lack of stability, difficulty accessing services, increased health problems, and risk of death are all burdens experienced disproportionately by people with serious mental health, cognitive, addiction, physical and other disabilities that are made worse by forced eviction. Enforcement of the By-Laws also undermines the community some Encampment residents have built, increasing isolation. These are all impacts that deepen pre-existing disadvantages.

[231] I agree with the submission of *Amicus* that the Transition Protocol only applies to a minority of arbitrarily selected homeless people in the Encampment who happened to reside there on April 16, 2025. Rather than provide a systemic response to homelessness, the effect of the By-Law is to push an already marginalized population away from vital sources of health and community support and access to basic forms of outdoor shelter crucial to survival given that there are no lawful outdoor tenting alternatives. By doing so, it increases segregation, exclusion, and stigmatization and puts the claimants at risk of serious harm or death. Rather than promoting intersectionality, accommodation and respect for people's choice to know what's best for them, there is no requirement that the Alternative Accommodation offered be accessible and adequate. Many of the shelter options included as Alternate Accommodation options are fundamentally unsuitable for people with mental health/addiction disabilities who comprise the vast majority of homeless in the Region. In fact, in some cases the Alternative Accommodation may be less safe than the Encampment.

[232] I also agree with *Amicus* that dignity is at the heart of human rights. An accommodation plan that fulfils the Region's s.15(1) obligations would have to be developed in consultation with individuals who are chronically homeless and have disabilities.

Indigenous Identity

[233] The Amended By-Law will have a disproportionate impact on the Encampment's Indigenous residents and exacerbate ongoing harms and existing disadvantages.

[234] Homelessness among Indigenous people is not simply a matter of individual misfortune. For Indigenous people, it is well established that homelessness is a consequence of colonization which dispossessed Indigenous people of their land and resources, propelling and inflicting generations of systemic racism and ongoing trauma. Homelessness is a consequence of systemic and societal barriers, a lack of affordable and appropriate housing, and the individual person's specific history and challenges.

[235] Indigenous people in Canada are disproportionately under-housed, unhoused, and experience barriers to access affordable, permanent, stable, and supportive housing. In Waterloo Region, only 1.7% of the total population identify as Indigenous. However, 17% of the surveyed unhoused people in the 2024 PiT Count were Indigenous.

[236] Following the Supreme Court of Canada's analysis in *Kanyinda*, even if homelessness is not recognized as an analogous ground under s. 15(1), the Encampment's Indigenous residents will satisfy the first part of the s.15(1) test as a subgroup of the affected homeless population. The adverse effects of the By-Law arise in the nexus between homeless and race. The second part of the test is satisfied because the impacts of the By-Law are particularly severe for Indigenous people who are already unhoused and overrepresented in the homeless population. Upon eviction, Indigenous residents will be denied the benefit of culturally safe housing options and will face additional barriers due to shelter eligibility rules that disproportionately exclude them because of their Indigenous identities.

[237] Indigenous racial identity is a protected ground under s.15(1), and the By-Law creates a

distinction based on its disproportionate impact on the Indigenous people living in the Encampment. The purpose of the By-Law is to evict the residents of the Encampment to facilitate the construction of the KCTH. Although the stated purpose of the By-Law is facially neutral, its effects disproportionately burden Indigenous residents of the Encampment and therefore amount to adverse effects discrimination.

Are the infringements to s.7 and s.15 Charter rights saved under s.1?

[238] Section 1 of the *Charter* provides:

> 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.

[239] In order to justify the infringements under s. 1, the Region must show that the By-Laws have a pressing and substantial object and that the means chosen are proportionate to that object. A law is proportionate if: (1) the means are rationally connected to the objective; (2) it is minimally impairing of the rights; and (3) there is proportionality between the deleterious and salutary effects of the law: *Carter*, para. 94; *R. v. Oakes*, [1986] 1 S.C.R. 103.

[240] It is difficult to justify a s. 7 violation. As Justice Valente recognized at para. 129 in *Persons Unknown 2023*, "[a] section 7 breach will rarely be justifiable under section 1 except 'in cases arising out of exceptional conditions, such as disasters, the outbreak of war, epidemics and the like.'"

[241] This high standard is appropriate due to the fundamental nature of the interests s. 7 protects. As the Supreme Court of Canada put it in at para. 95 in *Carter*, it is "hard to justify a law that runs afoul of the principles of fundamental justice and is thus inherently flawed".

[242] The Region asserts that this Court should take a deferential approach at s. 1 because the By-Laws are a "complex regulatory response" to the social problem of homelessness. However, the By-Laws are far from a "complex regulatory response". They do not seek to balance competing objectives or regulate Encampment conditions in the public interest. Rather, effective April 1,

2026, they are simply a bare sheltering prohibition. In any event, the By-Laws do not satisfy the *Oakes* test, failing the second and third step of the proportionality analysis. The second step asks if the provision "impair[s] 'as little as possible' the right or freedom in question". A bare prohibition on sheltering at the only lawful sheltering site in the Region is not minimally impairing because the Region has not taken adequate steps to mitigate the impact of closing the Encampment on its chronically homeless. It is open to the Region to consider a safe tenting protocol or to designate other sites for sheltering. Either could permit the Region to obtain vacant possession while mitigating the harm caused by closure of the site. Contrary to the Region's assertion, offering no sheltering location of last resort to the 43% of the Region's homeless population living outdoors is not within a range of reasonable alternatives. Similarly, the Court is not "micro-manag[ing]" resources in finding that there are alternative, less harmful means of achieving the government's objective. Rather, that is the precise purpose of this portion of the analysis.

[243] Finally, the third step of the test asks if there is a "proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of 'sufficient importance'". Only the third branch takes full account of the 'severity of the deleterious effects of a measure on individuals or groups'". If the lack of access to a benefit has a severe effect on the affected group, this will weigh especially heavily in the balancing exercise. I agree with the submission of the Named Respondents that in this case the cost of achieving the objective is simply too great; the deleterious effects outweigh the salutary effects described by the Region. The deleterious impacts are severe – the risk of deprivation to lives, liberty, and security of the person of the Region's chronically homeless are significant. On the other hand, the Region has not actually demonstrated the salutary effects that will result from the transit hub. The anticipated benefits of the transit hub (greater connectivity, reduced transfer times, more efficient transit connections) are speculative. In cross-examination, the Region's Acting Commissioner, Transportation admitted that his statements that the transit hub would dramatically improve transit access were not based on any specific modeling or empirical data that was projected for this project. In these circumstances, the *Charter* infringement is too high a price to pay for the benefit that actually results from the law. As Justice Carter stated at para. 87 in *Kingston:* "To borrow the language from *Bedford,* a law that prevents the homeless from avoiding a serious risk of injury or death by erecting shelter overnight when there is nowhere else to go is a

law that has lost sight of its purpose [...]

[244] I find that the infringements of the Respondents' s.7 and s.15 *Charter* rights are not saved under s.1. Accordingly, they constitute violations of these *Charter* rights.

Illegality under s.273 Municipal Act

[245] Pursuant to s. 273 of the *Municipal Act, 2001*, a court may quash a municipal bylaw, in whole or in part, for illegality. A by-law is "illegal" for the purpose of s. 273 if it is passed in "bad faith", which will be indicated where the by-law is enacted without the degree of fairness, openness, and impartiality required of a municipal government. Indicia of bad faith include a failure to consult on the by-law, and a failure to provide meaningful notice to affected stakeholders. They may also include: "questionable timing; […] lack of notice; the usual practices and procedures are set aside; the parties most affected are kept in the dark; or the law singles out one individual or property": *Bertrand v. Ramara (Township),* 2024 ONSC 7291, at para. 170.

[246] I do not assess that these indicia are engaged here. While the consultation engaged in and the notice provided by the Region with regard to the first By-Law were imperfect, these shortcomings were remedied by the Region's efforts surrounding the Amended By-Law. This portion of the Respondent's application will be dismissed.

Conclusion

[247] The issues before the Court on these applications are complex, difficult and of vital significance to the lives of many of the people involved. The situation is fluid. The pressures which drive the issue of homelessness in Waterloo Region, and at the Encampment in particular, are not static. There are inevitably some sharply differing views about the best way ahead. What is apparent to me at this stage however is that all parties should resist any temptation to caricature the positions or the motives of those with opposing views.

[248] The Region has engaged in a significant effort to move forward with the KCTH while respecting the *Charter* rights of the Respondents. I have, however, found that the Amended By-Law is not constitutionally compliant with the *Charter*, as it infringes both s.7 and s.15(1), and is

not saved under s.1. Accordingly, there will be a Declaration pursuant to s.52 of the *Constitution Act, 1982*, that the By-Law is unconstitutional and is of no force and effect.

[249] The potential benefit to the Region's general population of the proposed KCTH constitutes a genuine public interest. There are ways that this can still be accomplished while respecting the rights of Encampment residents.

[250] The Encampment is currently the only place in the Region where it is not illegal for homeless people to set up a tent or structure. The Region has clearly stated that if the Encampment is cleared, it is not prepared to allow homeless people to shelter outdoors anywhere on Region property. The extremity of this position is what ultimately drives the findings that the infringements are not saved by s.1. No one should romanticize or be starry-eyed about the Encampment. It is a miserable and desperate place. But it represents the only remaining safety valve for the Region's homeless as a refuge of last resort.

[251] To address disproportionate impact and individualized accessibility needs, an accommodation plan that fulfills the Region's s. 7 and s.15(1) obligations would need to include an alternative lawful encampment site of last resort, or a tenting protocol that facilitates access to essential services and healthcare on par with the current encampment. The Region could look by way of inspiration to the City of London or the City of Thunder Bay, both of which have created lawful designated encampment zones. For example, the City of London has promulgated a Community Encampment Plan which seeks to better balance the relevant contending considerations.

Remedy

[252] Courts must be careful not to engage in 'judicially legislating' beyond their sphere of competence and appropriate exercise of jurisdiction. However, in the present matter, the Applicant Region has specifically asked for direction from the Court in the event of a Declaration that the Amended By-Law is not *Charter* compliant.

[253] The observations of Iacobucci and Arbour JJ for the majority at paras. 55 - 59 in *Doucet-*

Boudreau v Nova Scotia (Minister of Education), 2003 SCC 62, at paras. 55 - 59, are apt:

> First, an appropriate and just remedy in the circumstances of a Charter claim is one that meaningfully vindicates the rights and freedoms of the claimants. Naturally, this will take account of the nature of the right that has been violated and the situation of the claimant. A meaningful remedy must be relevant to the experience of the claimant and must address the circumstances in which the right was infringed or denied. An ineffective remedy, or one which was "smothered in procedural delays and difficulties", is not a meaningful vindication of the right and therefore not appropriate and just (see *Dunedin,* supra, at para. 20, McLachlin C.J. citing *Mills*, supra, at p. 882, per Lamer J. (as he then was)).
>
> Second, an appropriate and just remedy must employ means that are legitimate within the framework of our constitutional democracy. As discussed above, a court ordering a Charter remedy must strive to respect the relationships with and separation of functions among the legislature, the executive and the judiciary. This is not to say that there is a bright line separating these functions in all cases. A remedy may be appropriate and just notwithstanding that it might touch on functions that are principally assigned to the executive. The essential point is that the courts must not, in making orders under s. 24(1), depart unduly or unnecessarily from their role of adjudicating disputes and granting remedies that address the matter of those disputes.
>
> Third, an appropriate and just remedy is a judicial one which vindicates the right while invoking the function and powers of a court. It will not be appropriate for a court to leap into the kinds of decisions and functions for which its design and expertise are manifestly unsuited. The capacities and competence of courts can be inferred, in part, from the tasks with which they are normally charged and for which they have developed procedures and precedent.
>
> Fourth, an appropriate and just remedy is one that, after ensuring that the right of the claimant is fully vindicated, is also fair to the party against whom the order is made. The remedy should not impose substantial hardships that are unrelated to securing the right.
>
> Finally, it must be remembered that s. 24 is part of a constitutional scheme for the vindication of fundamental rights and freedoms enshrined in the Charter. As such, s. 24, because of its broad language and the myriad of roles it may play in cases, should be allowed to evolve to meet the challenges and circumstances of those cases. That evolution may require novel and creative features when compared to traditional and historical remedial practice because tradition and history cannot be barriers to what reasoned and compelling notions of appropriate and just remedies demand. In short, the judicial approach to remedies must remain flexible and responsive to the needs of a given case.

At para. 87, they concluded:

> Section 24(1) of the Charter requires that courts issue effective, responsive remedies that guarantee full and meaningful protection of Charter rights and freedoms. The meaningful protection of Charter rights, and in particular the enforcement of s. 23 rights, may in some cases require the introduction of novel remedies. A superior court may craft any remedy that it considers appropriate and just in the circumstances. In doing so, courts should be mindful of their roles as constitutional arbiters and the limits of their institutional capacities. Reviewing courts, for their part, must show considerable deference to trial judges' choice of remedy, and should refrain from using hindsight to perfect a remedy. A reviewing court should only interfere where the trial judge has committed an error of law or principle.

[254] In his recent (as-yet) unpublished paper, "A New Constitutional Remedy: The Declaration Plus", Professor Kent Roach of the University of Toronto, an eminent authority on constitutional remedies in Canada, has advanced a useful proposal for what he describes as a "Declaration Plus". This draft paper was shared with the Court on consent of all counsel, with the kind agreement of Professor Roach. At page 29 of his paper, Professor Roach states:

> There is a need for an intermediate remedy that is stronger than a simple declaration but that is not so detailed that it can be immediately enforced by coercive sanctions of contempt of court. Courts should learn from failure of simple declarations in *Little Sisters* and *Khadr* to produce effective remedies for long-standing violations of constitutional rights in complex and dynamic situations.
>
> In 2024, Canadian courts recognized the need for an intermediate remedy stronger than a bare declaration but not as strong as an enforceable mandatory order…

At page 30, he continues:

> The Court in both *Restoule* and *Pekuakamiulnuatsh Takuhikan* stressed the breadth of the court's remedial powers and the need for creativity in remedial decision-making. It would be a mistake to limit this invitation to the Indigenous rights context or to view retention of jurisdiction as either an unfair penalty imposed on government or an extravagant expenditure of limited judicial resources. As suggested by my re-analysis of the important remedial precedents of *Little Sisters*, *Khadr* and *Doucet-Boudreau*, courts can and have used the declaration plus, including the retention of jurisdiction, in a way that would have produced effective remedies while treating the government fairly and respecting the respective role of the courts and government.

[255] This proposal seems to me to be apt in the context of the present matter.

[256] As I have indicated, the Court declares that the Amended By-Law is not constitutionally compliant with the *Charter*, and is of no force and effect. As a 'Declaration Plus', I will retain jurisdiction in this matter such that the Region may request to return before the Court once it has promulgated either a Safe Tenting Protocol or provided an alternative site for an encampment somewhere reasonably proximate to 100 Victoria, or both, in order to request a review or further direction from the Court.

[257] I wish to express my appreciation to all counsel for their valuable assistance and the high quality of their written and oral submissions. It has been a privilege to benefit from the submissions of advocates of such caliber on all sides.

Order

[258] The Court Declares that:

1. The Site-Specific and the Amended By-Laws violate s.7 of the *Canadian Charter of Rights and Freedoms*, and are not justified under s.1 of the *Charter*;

2. The Site-Specific and the Amended By-Laws violate s.15(1) of the *Canadian Charter of Rights and Freedoms,* and are not justified under s.1 of the Charter; and,

3. Pursuant to s.52(1) of the *Constitution Act, 1982*, the Site-Specific and the Amended By-Law are of no force and effect.

[259] The Court Orders that:

1. The application of the Region is dismissed;

2. The cross-application of the Respondents is allowed in part;

3. There shall be an injunction restraining the Applicant, its servants, employees,

agents, assigns, officers, directors and anyone else acting on its behalf from enforcing or acting on any part of the Site-Specific By-Law or Amended By-Law, including but not limited to:

i) directly or indirectly evicting the Named Respondents or other persons from the Encampment;

ii) preventing the Named Respondents or other persons' entry to or use of the Encampment site, directly or indirectly, including without limitation the use of fences or other barriers;

iii) preventing the Named Respondents or other persons from relocating their temporary shelters to another part of the Encampment site;

iv) prohibiting entry onto the premises of non-residents, including prohibiting vehicle access to the premises; and

v) disposing of or removing any personal belongings, real or personal property belonging to the Named Respondents or other persons and located at the Encampment.

4. Following its implementation of either a Safe Tenting Protocol, or the provision by the Region of an alternative Encampment site reasonably proximate to 100 Victoria Street, or both, the Region may seek further direction from the Court regarding its plan to clear the 100 Victoria Site for the purposes of the Kitchener Central Transit Hub.

Costs

[260] The parties are encouraged to agree upon appropriate costs. If the parties are not able to agree on costs, they may make brief written submissions to me (maximum three pages double-spaced, plus a bill of costs) by email to my judicial assistant at mona.goodwin@ontario.ca and to Kitchener.SCJJA@ontario.ca. The Named Respondents may have 14 days from the release of this decision to provide their submissions, with a copy to the Region; the Region a further 14 days to respond, with a copy to the Named Respondents; and the Named Respondents a further

7 days for a reply, if any. If no submissions are received within this timeframe, the parties will be deemed to have settled the issue of costs as between themselves. If I have not received any response or reply submissions within the specified timeframes after the Named Respondents' initial submissions, I will consider that the parties do not wish to make any further submissions and will decide on the basis of the material that I have received. There shall be no costs ordered against or in favour of *Amicus* or the Interveners the Attorney General of Ontario, CCLA, ALS or CCPI/NRHN.

M.R. Gibson J.

Date: May 21, 2026

CITATION: The Regional Municipality of Waterloo v. Named Respondents and Persons Unknown, 2026 ONSC 2971
COURT FILE NO.: CV-25-00000750-0000 and CV-25-00001341-0000
DATE: 2026/05/21

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

THE REGIONAL MUNICIPALITY OF WATERLOO

Applicant

– and –

JOSEPHINA DUGAS, TERRA-LYNN WEBER, AVERY AMENT, AARON PRICE, JEREMY LINTON, JEREMY NICHOL, JAMES HAMMOND, JAJOB STUBBS, JAMES DAVIS, JASON PAUL, NOAH HELSBY, JOSEPH BRADLEY, JOSEPH SADLER, JULIE YOUNG, KYLE YORK, MEGAN LOPES, STEPHANIE MCMILLAN, JEFFREY COUTO, JORDAN CAMM, TERRANCE COLE, XANDER HARKER, CHARLES KOCHER, ALINE JEFFERY, MICHAEL JEFFERY, AND PERSONS UNKNOWN

Respondents/Cross-Applicants

REASONS FOR DECISION

M.R. Gibson J.

Released: May 21, 2026