Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

REBECCA STRUNG and RYAN HAYASHI

Applicants

- and –

HIS MAJESTY THE KING IN RIGHT OF ONTARIO

Respondent

AFFIDAVIT OF KAITLIN SCHWAN

I, **KAITLIN SCHWAN**, of the City of _____, in the Province of Ontario, SOLEMNLY AFFIRM:

1. I am the former National Director of the Women's National Housing and Homelessness Network and a Senior Researcher at the Canadian Observatory on Homelessness. I am an Associate Professor of Family Medicine at the University of Southern California's School of Family Medicine. I am appointed Assistant Professor, Status Only, at the University of Toronto's Faculty of Social Work. I am the former Senior Researcher for the UN Special Rapporteur on the Right to Adequate Housing and former Director of Research for The Shift.

2. A copy of my Curriculum Vitae is attached to this Affidavit as **Exhibit "A".**

3. I have been asked by Addario Law Group, Cavalluzzo LLP and Niagara Community Legal Clinic to provide an expert opinion in this matter regarding themes related to unhoused women. These themes include their unique experience accessing the shelter system, gender-based violence experienced by this population, the context of the encampment experience faced by women compared to men, the adverse effects of encampment evictions, and the impact of the law against the consumption of unlawful substances in public on unhoused women living on the street. I have also been asked to provide an opinion on homelessness and receipt of social assistance as personal characteristics linked to negative stereotype and discrimination.

4. The facts and opinions contained in this affidavit are based on my own research and experiences as well as other reliable research in this area, where noted. I confirm that I will comply with the duties of an expert, as required by the Rules of Civil Procedure. A copy of my Acknowledgment of Expert's Duty is attached as **Exhibit "B**."

5. Attached as **Exhibit "C"** is the publication "The Pan-Canadian Women's Housing and Homelessness Survey," Schwan, K., Vaccaro, M., Reid, L., Ali, N., & Baig, K. (2021). The Pan-Canadian Women's Housing & Homelessness Survey. Toronto, ON: Canadian Observatory on Homelessness that I authored and adopt it as part of my opinion in this case. The Pan-Canadian Women's Housing & Homelessness Survey is the largest national survey to date examining women and gender-diverse people's distinct housing experiences, challenges, and service needs.

6. I have reproduced the following significant findings from Exhibit "C" that relate to the issues raised in this case and they are as follows:

a. Women and gender diverse people experiencing housing need and homelessness reported high exposure to trauma and violence, with 75% identifying as a survivor of trauma or abuse;

b. Women and gender diverse people reported significant barriers to accessing emergency services, with almost a third being unable to access a bed when they needed one; and

c. 79% of women and gender diverse people experiencing housing need or homelessness report having a disability. This group reports significant inequities and discrimination on the basis of their disabilities, with severe consequences for many.

d. Shelter policies related to substance use, pets, and adult children – combined with a failure to employ trauma-informed, harm reduction approaches – result in women and gender diverse people being turned away from services. This is particularly evident in the lives of women and gender diverse people who have complex needs or are multiply marginalized. Those that used substances reported being barred from shelters at a rate three times that of those who did not (30.9% vs. 10.4%).

e. The odds of being evicted were three times greater for those who reported a substance use problem.

A. HOUSING NEED AND HOMELESSNESS AMONGST WOMEN, GIRLS AND GENDER DIVERSE PEOPLE IN CANADA

7. Homelessness amongst women, girls, and gender-diverse people in Canada remains both understudied and underestimated, despite indications that these groups disproportionately experience both poverty and core housing need.[1] This is linked to the ways in which commonly used definitions, typologies, and ways of measuring homelessness have failed to account for the hidden ways that women, girls and gender diverse people often experience housing instability and homelessness.[2]

8. They are also more likely to negotiate a number of high-risk survival strategies to obtain shelter and avoid the dangers of the streets and co-ed shelter spaces, including by staying in unsafe and exploitative relationships, and exchanging sex for shelter.[3]

9. National data from the Canadian Mortgage and Housing Corporation finds that women are more likely to be in core housing need than men across most ages, and that racialized women face especially high rates.[4]

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[1] Sadie McInnes, "Fast Facts: 4 Things to Know About Women and Homelessness in Canada," Canadian Centre for Policy Alternatives. August 26, 2016.

[2] See, for instance, Statistics Canada. (2023, June 16). A review of Canadian homelessness data. The report notes that Canadian homelessness data often lack gender-specific breakdowns, limiting understanding of the distinct experiences of women, girls, and gender-diverse individuals. It also identifies measurement gaps, particularly around hidden homelessness, and recommends standardized definitions and methodologies to better capture the experiences of all genders. Similarly, the 2024 HPS Point-in-Time Count methodology acknowledges that many individuals experiencing homelessness do not access shelters, and that hidden homelessness is only captured "where possible," highlighting inherent underestimation. See: Infrastructure Canada. (2024). 2024 HPS Point-in-Time Count – Standards & Approach. Government of Canada. For evidence of this pattern in other Global North nations see, for example: Savage, M. (2016). Gendering Women's Homelessness. *Irish Journal of Applied Social Studies, 16*(2), 43-64. See also Pleace, N. (2017). "Exclusion by Definition: The Under-representation of Women in European Homelessness Statistics." In P. Mayock & J. Bretherton (Eds.), *Women's Homelessness in Europe* (pp. 105– 126). London: Palgrave Macmillan.

[3] Bretherton, J. (2017). Reconsidering gender in homelessness. *European Journal of Homelessness, 11*(Suppl. s1), S21.

[4] "Core housing need" is defined as spending 30% or more of its before-tax income to access housing that meets all three standards of adequacy, suitability, and affordability. See Canada Mortgage and Housing Corporation. (2025,

10. "It may be that the major trigger for homelessness is poverty and exclusion, but it is also clear that women do not experience homelessness in the same way as men. The triggers for women's homelessness are often different and their trajectories while homeless are often different, women's experience of homelessness is different. Gender plays a role."[5]

11. 'Hidden homelessness' is the most common form of homelessness experienced by women and girls. It is well recognized that women are more likely to rely on relational, precarious, and dangerous supports to survive housing instability[6], and are less likely to appear in mainstream shelters, drop in spaces, public spaces, or other homeless-specific services.[7] Hidden homelessness includes conditions such as "Remaining in an abusive relationship in order to maintain housing; living in inadequate or dangerous housing in order to keep the family together or maintain custody over one's children; engaging in survival sex in order to access housing; and couch-surfing with family, friends, or strangers in order to avoid shelters, or because shelter services and affordable housing are unavailable or unsafe."[8] Part of the reason that women's homelessness remains understudied, undercounted, and underfunded is because these survival strategies often render it invisible to official counts, policy makers, and service systems, allowing the scale and urgency of women's homelessness to be obscured and deprioritized in research, funding allocations, and program design.[9]

March 11). Core housing need and gender. Housing Observer. See also Department of Finance Canada. (2024, April 17). Statement and Impacts Report on Gender, Diversity, and Inclusion [Budget 2024].

[5] Bretherton, supra note 3 at 6.

[6] Ibid.

[7] Isabel Baptista, "Women and Homelessness," Homelessness Research in Europe 4, no. 1 (2010): 163-185; Maki, K. (2017). "Housing, Homelessness, and Violence Against Women: A Discussion Paper." Canadian Network of Women's Shelters and Transition Houses.

[8] Kaitlin Schwan, et al., "The State of Women's Housing Need & Homelessness in Canada," Canadian Observatory on Homelessness Press, 2020, 68.

[9] Bretherton, supra note 3.

B. INEQUITABLE ACCESS TO EMERGENCY SHELTERS, SUPPORTS & HOUSING FOR WOMEN, GIRLS AND GENDER DIVERSE PEOPLE

12. Data from Statistics Canada,[10] Employment and Social Development Canada,[11] parliamentary reports,[12] and municipal data and research[13] consistently indicate that emergency shelters across the country are operating at (or over) capacity and there remains a severe lack of gender-specific supportive, transitional, and permanent affordable housing that meets the needs of women, girls, and gender diverse people. Importantly, this is linked to systemic underfunding and inequitable funding in Canada for services, shelters, and housing that is gender-specific and meets the needs of women, girls, and gender diverse people.

13. Violence against women ("VAW") shelters across Canada are chronically underfunded, with 46% of VAW shelters in Canada reporting that the top challenge facing service delivery was a lack of sustainable funding.[14] A 2019 Statistics Canada survey found that on a national snapshot day across Canada, "669 women, 236 accompanying children, and 6 men were turned away from residential facilities for victims of abuse. The most common reason reported for a woman being turned away was that the facility was full (82%)".[15] The same Statistics Canada survey, repeated in 2022/2023, found that one-third of short-term facilities for victims of abuse were full on the national snapshot date, with a similar proportion reporting they had to turn away women and

[10] Statistics Canada. (2019). Canadian residential facilities for victims of abuse, 2017/2018. Statistics Canada Catalogue. Ottawa.
[11] Employment and Social Development Canada. (2019). Highlights of the National Shelter Study 2005 to 2016. Ottawa.
[12] Vecchio, K. (2019). Surviving abuse and building resilience – A study of Canada's systems of shelters and transition houses serving women and children affected by violence. Report of the Standing Committee on the Status of Women.
[13] For example, City of Toronto. (2018). Street Needs Assessment. City of Toronto.
[14] Statistics Canada, supra note 10.
[15] Ibid at 3.

children. Among those turned away, most women (82%) said it was because the shelter was at capacity.[16]

14. Women and gender diverse people reported significant barriers to accessing emergency shelters, with almost a third unable to access a bed when they needed one (Exhibit "C", page 41).

15. Regarding their experiences in emergency shelters, the top 7 problems reported by survey participants of The Pan-Canadian Women's Housing and Homelessness Survey (Exhibit "C") were as follows, from most reported to least:

a. Feel like I don't belong – 29.8%

b. Not enough beds – 29.4%

c. Discrimination from other participants – 27.6%

d. Not knowing about services – 26.4%

e. Not feeling safe – 26.2%

f. No money for transportation – 25%

g. Discrimination/judgement from staff – 23.6%

16. Our survey findings contained in Exhibit "C" suggest that some women and gender diverse people are harmed by how the homelessness and VAW sectors structure and deliver services. In addition to the severe capacity issues that are well-documented, personal accounts indicate that

[16] Statistics Canada. (2024). Canadian residential facilities for victims of abuse, 2022/2023. Statistics Canada Catalogue. Ottawa.

shelters can exacerbate the very needs they are meant to address, including through discriminatory policies, duty to report policies, and rigid eligibility and acuity criteria. Shelter policies related to substance use, pets, and adult children – combined with a failure to employ trauma-informed, harm reduction approaches – result in women and gender-diverse people being turned away from services. This is particularly evident in the lives of women and gender-diverse people who have complex needs or are multiply- marginalized. The effects of such exclusion cannot be overstated. In some cases, seemingly benign or very minor operational policies within shelters, drop-ins, transitional housing, and other emergency services produce traumatic results for those seeking or receiving support.

17. Violence Against Women shelters, which in many jurisdictions serve only women fleeing intimate-partner violence ("IPV"), create gaps in service for women who are experiencing violence due to being homeless or street-involved, or experiencing violence from other family members. This creates silos between women and gender diverse people who experience violence in different circumstances. Given this, it is not surprising that some women report feeling there is a "hierarchy of deservingness" that shapes who gets access to services, and that women experiencing particular forms of violent victimization are prioritized over others.

18. Experiences of gender-based discrimination and race-based discrimination at shelters further disenfranchise women and gender diverse people from spaces that are meant to protect them and their families. Being turned away from shelters can mean women and gender-diverse people are forced to utilize alternative strategies such as survival sex, going back to their abuser, or navigating systems like healthcare or criminal justice to seek immediate shelter.

19. Experiences of trauma and violence were reported both prior to and during experiences of homelessness by participants. Remarkably, over 75% of women and gender diverse persons reported being a survivor of abuse or trauma (Exhibit "C", page 45).

20. Of the participants of the survey referenced in paragraph 4, attached as Exhibit "C", 79% of women and gender diverse people experiencing housing need or homelessness report having a disability. This group reports significant inequities and discrimination on the basis of disability, with severe consequences for many. Analysis indicated having a disability was a significant predictor of negative housing outcomes. These included having difficulties accessing emergency shelter and supports, difficulties finding affordable and accessible housing, experiences of discrimination, and numerous additional inequities.

C. PROJECT WILLOW REPORT

21. I endorse the Project Willow Report attached as **Exhibit "D"**, which made findings that are consistent with my knowledge about the experiences of gender-based violence among women experiencing homelessness in the United States and Canada.[17]

22. The Project Willow study on experiences of gender-based violence among women experiencing homelessness in Waterloo Region surveyed 48 and interviewed 13 women and gender-diverse individuals in Waterloo Region in 2020. This study is significant because it provides insight into the experiences of women and gender-diverse individuals in Waterloo Region using emergency shelter. Pertinent findings include:

[17] Gordon, J., Walser, R., Crozier, K., Gunn, R. (2022). "Don't tell them you're homeless." Experiences of gender-based violence among women experiencing homelessness in Waterloo Region. Waterloo Region: YW Kitchener-Waterloo. https://ywkw.ca/wp-content/uploads/2024/06/Project-Willow-Dont-Tell-Them-Youre-Homeless-Impact-Report.pdf

- 88% of participants reported as having a mental health condition and 31% of participants identified as having a disability;

- 73% of respondents stated they felt unsafe in co-ed shelters and avoided them. One participant shared about the violence they faced while staying in the co-ed shelter "I went there once and the first night I was there I was unfortunate to be raped";[18]

- For some participants, the women's emergency shelter also felt unsafe, which led them to choose camping and other rough sleeping options instead. One participant stated as follows: "Sometimes I camp because even staying in an all-women shelter feels unsafe to me. I feel people recommend the shelter too much because it's the only one and I feel unsafe there sometimes"; and

- 64% of participants said they avoided spaces they perceived to be male dominated (ex: soup kitchens, meal programs, safe consumption sides, co-ed shelters, etc.) because they had safety concerns.

23. These findings are consistent with my research on homelessness among women and gender-diverse people across Canada.

D. PROBLEMS ACCESSING SHELTERS

24. My data collection and analysis in the survey referenced at paragraph 4 concluded that people with disabilities reported being unable to access shelter beds when they needed them at roughly twice the rate of those without disabilities (65.1% for people with physical disabilities vs. 34.9% for those without; 43.1% for those with mental health disabilities vs. 18% for those

[18] Ibid at 17

without). This suggests profound accessibility issues persist in the homelessness and VAW sectors. Evidence of this surfaced in other parts of the data. For instance:

- Persons with physical disabilities reported shelters and drop-ins were not accessible to them by public transportation at almost twice the rate of those without physical disabilities (11.6% vs. 6%).

- Shelters and drop-ins are inaccessible to people with physical disabilities at more than three times the rate of those without physical disabilities (10.7% vs. 3%).

- Individuals with substance use problems also experienced significant barriers when trying to access shelters. There was a significant association between reporting a substance use problem and having been barred from shelters. Those that used substances reported being barred from shelters at a rate three times that of those who did not (30.9% vs. 10.4%).

E. EXPERIENCES OF WOMEN AND GENDER DIVERSE PERSONS IN ENCAMPMENTS, BENEFITS OF AN ENCAMPMENT VERSUS SHELTER

25. Research indicates that women, transwomen, and gender-diverse persons commonly experience harassment or violence within large mainstream homeless shelters, particularly co-ed and congregate shelters.[19]

26. In a recent study, one transwoman testified: “They asked me why don’t I go to men’s [shelter] before and I was getting sexually harassed all the time. I remember one time waking up

[19] Schwan, supra note 8.

[at a men's shelter] and there was like five guys standing around my bed in the dark and they were all naked from the waist down. After I left the building. I never went back."[20]

27. Violence in homeless shelters appears to be increasing in some Ontario cities. A 2021 report indicated a 200% increase in violent incidents and a 125% rise in deaths over a five- year period.[21] More recent data further underscores this concerning trend. According to the Centre for Addiction and Mental Health's (CAMH) 2024 Shelter Safety Study, incidents of interpersonal violence—including physical assaults, verbal abuse, threats, and harassment—have increased by 283% from 2011 to 2021.[22]

28. Safety in homeless shelters was significantly undermined during the COVID-19 pandemic. While municipalities often displace encampment residents or evict encampments on the basis that they have access to "safe" or "high quality" indoor shelters, research demonstrates that that people experiencing homelessness and accessing homeless shelters in Ontario were significantly more likely to contract COVID-19, to be hospitalized for the virus, to require ICU care, and to die.[23]

29. Further, some women and gender-diverse persons will be unable to access a shelter in their communities due to their disabilities, necessitating that they reside outdoors and/or within an encampment. For example, a DAWN Canada study reports that only 75% of homeless shelters

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[20] Lyons, T., Krüsi, A., Pierre, L., Smith, A., Small, W., & Shannon, K. (2016). Experiences of Trans Women and Two-Spirit Persons Accessing Women-Specific Health and Housing Services in a Downtown Neighborhood of Vancouver, Canada. LGBT Health,3(5), 373-378, p.374.
[21] Liam Casey, "Toronto's shelters see triple the number of violent incidents rise, rise in overdoses during COVID-19 pandemic, data shows," Globe and Mail (6 June 2021).
[22] Liam Casey, "Toronto's shelters see triple the number of violent incidents rise, rise in overdoses during COVID-19 pandemic, data shows," Globe and Mail (6 June 2021).
[23] Richard, L., et al. (2021). Testing, infection, and compliance rates of COVID-19 among people with a recent history of homelessness in Ontario, Canada: A retrospective cohort study. *CMAJ Open*, *9*(1), E6.

have a wheelchair accessible entrance, 66% provide wheelchair accessible rooms and bathrooms, 17% provide sign language, and 5% offer braille reading materials.[24]

30. Many necessitate that residents leave during the day, sometimes early in the morning. Limiting access to overnight shelter forces women to spend the daytime without safe, stable spaces, which can exacerbate risks of violence, theft, and harassment on the streets. The necessity to leave the shelter each morning interrupts rest, recovery, and access to basic necessities, and can make it difficult to maintain employment, attend appointments, or care for children. This "daytime displacement" reinforces the instability and precarity that shelters are meant to alleviate, and may create ongoing stress, exposure to harm, and barriers to achieving housing security.[25]

31. More broadly, as demand for shelter beds increases, women and gender diverse peoples face some of the greatest disadvantage. Across Canada, there are fewer women-specific emergency shelter beds – 68% of shelter beds are co-ed or dedicated to men, compared to 13% dedicated to women. Men's shelters also have more than double the number of beds that women's emergency shelters have (4,280 beds compared to 2,092 beds).[26] Further, while 38% of beds are reported to be within "general" emergency shelters across Canada[27]– meaning shelter beds that are co-ed or open to all genders – research consistently demonstrates that many women will avoid co-ed shelters for fear of violence or because they have experienced violence within those spaces.[28]

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[24] Alimi, S., Singh, S., & Brayton, B. (2018). *Parliamentary brief: A brief prepared for the Standing Committee on the Status of Women in Canada (FEWO) for their study of the system of shelters and transition houses in Canada*. Ottawa, ON: House of Commons.
[25] Kerman, N., Kidd, S. A., & Stergiopoulos, V. (2024). The Shelter Safety Study: An examination of violence and service restrictions in Toronto's shelter system. Centre for Addiction and Mental Health.
[26] Employment and Social Development Canada. (2018). Shelter Capacity Report 2018. Ottawa.
[27] Ibid
[28] See Bretherton, supra note 3. See also National Inquiry into Missing and Murdered Indigenous Women and Girls (NIMMIWG). (2019a). Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls. Vol. 1a.

32. The culmination of all of these factors means that some women and gender-diverse persons experiencing homelessness may elect to – or be forced to – reside outdoors or in encampments given: (1) threats to physical, emotional, and psychological safety within homeless shelters (particularly co-ed congregate shelters); (2) previous experiences of trauma and violence in homeless shelters; (3) increased risk of exposure to COVID-19 within shelters; (4) the inaccessibility of many homeless shelters for persons with disabilities; and (5) the overall lack of women-specific homeless shelters, and shelters for people outside the gender binary. For many marginalized women and gender-diverse persons, the confluence of these factors makes residing in an encampment a rational or necessary choice amongst a number of minimal (or non-existent) options.[29]

F. PHYSICAL SAFETY IN ENCAMPMENTS

33. In my research on homelessness among many women and gender-diverse people, I have had the opportunity to visit numerous encampments across Ontario over the last several years and meet with women residing in them. While the women I've met with have reported safety concerns related to residing outdoors and in encampments (e.g., vulnerability to physical violence), overwhelmingly women state that residing in an encampment is a safer option than the other options available to them (e.g., accessing a shelter, returning to an abusive relationship, etc.).

34. Furthermore, my conversations with women residing in encampments indicated that the violence they face is often not from others within the encampment, but from housed persons (mostly men) outside of the encampment. This was reported by women themselves, and from City

[29] For first-person accounts of these constrained choices, see https://www.thestar.com/news/gta/we-re-the-vulnerable-ones-why-women-living-in-toronto-s-public-parks-during-covid/article_afd83d15-db21-546b-9ae0-74d7484c0ec4.html

staff and outreach workers. This suggests that while encampments are often portrayed as dangerous places, particularly for women, this danger is embedded within broader societal patterns of violence against women amongst the housed public.

35. My engagements with women residing in encampments across Ontario suggest 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. For example, I have met numerous women encampment residents in Toronto who described how their relationships with other people living in encampments was a protective factor because they could 'look out for each other,' warn each other of dangerous or exploitive men, watch over each other's tents and possessions, and remain with partners or pets (e.g., dogs) who provided physical safety.

36. Nonetheless, feeling safer is not the same as feeling safe within an encampment, and some women expressed concern for their safety and security. In response, some women had developed innovative means to protect themselves. For example, as a security measure, one encampment resident I met in Toronto had extended a measuring tape around her tent. The measuring tape created a distinctive sound when it was walked over, alerting her that someone was nearby and she needed to be alert for intruders. Encampments enabled the adoption of such security systems for some women, who often used all available means to keep themselves safe.

37. My engagements with women residing in encampments indicated that encampment evictions often eroded the security systems, safety measures, and mutual aid systems women had adopted for themselves within encampments. These were not easily re- established.

G. SUBSTANCE USE BY WOMEN ON THE STREET

38. Research consistently demonstrates that women experiencing unsheltered homelessness often use substances as a survival strategy, including specifically to stay awake at night in order to protect themselves from violence, theft, or assault. Qualitative studies have documented stimulant use among women on the street as a means of remaining alert through the night to guard belongings and reduce vulnerability to attack.[30] Classic epidemiological and ethnographic research has similarly found that high levels of victimization among homeless women are directly linked to coping behaviors such as substance use, with drugs or alcohol employed as protective mechanisms against the dangers of sleeping in public spaces.[31] In my many conversations with women experiencing unsheltered homelessness, women often report that they rely on substances, alongside other transactional strategies, to mitigate risks of sexual violence, physical violence, and robbery while on the street.

39. These findings are echoed in more recent studies of shelter avoidance and encampment survival strategies, which report that safety concerns often drive women to remain outdoors and use substances as part of staying awake at night despite the additional health risks posed.[32] The literature highlights that these strategies are not recreational but rather forms of "survival use," undertaken to navigate unsafe environments and a lack of safe shelter options. While such coping mechanisms may exacerbate health harms, they are consistently described as rational responses to

[30] Haile, K., Strom, K., & Thompson, K. (2020). Substance Use and Survival Strategies Among Homeless Women: A Qualitative Study. *Journal of Social Distress and Homelessness*, 29(3), 215–228.

[31] See: Wenzel, S. L., Tucker, J. S., Golinelli, D., Green, H. D., & Zhou, A. (2004). The Social Context of Homeless Women's Alcohol and Drug Use. *American Journal of Community Psychology*, 34(3-4), 243–258. Padgett, D. K., Gulcur, L., & Tsemberis, S. (2008). Housing First Services for People Who Are Homeless With Co-Occurring Serious Mental Illness and Substance Abuse. *Research on Social Work Practice*, 18(3), 243–253.

[32] Beaugard, E., Smith, J., & Thompson, L. (2024). Shelter Avoidance and Survival Strategies Among Unsheltered Women. *Journal of Homelessness Studies*, 12(1), 55–72.

an environment marked by trauma, exploitation, and heightened risk of assault.[33] The evidence demonstrates that substance use in these contexts cannot be understood in isolation from the pervasive insecurity of life on the street and must be recognized as part of women's broader efforts to protect themselves from harm.

40. Canadian research underscores similar dynamics, highlighting the gendered nature of substance use and safety among women experiencing homelessness. A multi-city study of homeless women in Canada found high rates of concurrent substance dependence and mental health disorders, which were deeply intertwined with exposure to violence.[34] Qualitative work with women who inject drugs in Ottawa documented that violence shaped drug use practices, with substance use often linked to survival in unsafe environments.[35] Research in British Columbia also connects stimulant use with attempts to manage risk and vulnerability in public space.[36] Journalistic accounts from Canada have explicitly reported that people experiencing homelessness use stimulants to stay awake at night to avoid robbery or assault.[37] Together, this body of evidence shows that substance use is not always recreational but often a rational response to gendered risks of violence on the street. Criminalizing drug use in public space therefore risks disproportionately harming women, by removing a survival mechanism that some rely on to protect themselves from assault, theft, and exploitation.

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[33] See Wenzel et al. and Padgett et al., supra note 31.

[34] Stergiopoulos, V., Herrmann, N., Chau, J., & Gozdzik, A. (2012). Mental Health, Concurrent Disorders, and Health Care Utilization in Homeless Women. *Canadian Journal of Psychiatry*, 57(10), 624–632.

[35] Shannon, K., Bright, V., Allinott, S., Alexson, D., Gibson, K., & Tyndall, M. W. (2009). Community-Based HIV Prevention and Harm Reduction Programs for Women Who Inject Drugs: Lessons From Ottawa, Canada. *Journal of Urban Health*, 86(1), 48–61.

[36] Buxton, J. A., Ti, L., & Milloy, M. J. (2015). Stimulant Use and Risk Management Among Marginalized Populations in British Columbia, Canada. *Substance Use & Misuse*, 50(12), 1596–1604.

[37] The Tyee. (2025, January 20). If You Use Stimulants, Talk to Your Doctor About Heart Health. *The Tyee*. https://thetyee.ca/News/2025/01/20/If-You-Use-Stimulants-Talk-Doctor-Heart-Health

41. Bill 6 in Ontario, which imposes legal restrictions on public substance use, has the potential to increase the risks faced by women experiencing unsheltered homelessness. Prohibiting substance use in public spaces further marginalizes women who use because they may not be able to access shelters (as noted above) and consequently are pushed to more marginal spaces where they are at greater risk for violence. By limiting behaviors that women may rely on as protective strategies—such as using stimulants to stay awake at night—this legislation could heighten their vulnerability to assault, theft, and exploitation. Rather than addressing the underlying safety concerns or providing accessible harm reduction supports, these legal measures may push women further from services and safe spaces, intensifying the very harms the law aims to prevent. In this context, the policy may disproportionately affect women who use substances as survival tools, highlighting the need for approaches that prioritize safety, harm reduction, and access to secure shelter rather than punitive measures.

H. HOMELESSNESS AS A PERSONAL CHARACTERISTIC LINKED TO DISCRIMINATION, STEREOTYPE, STIGMATIZATION, CRIMINALIZATION AND SOCIAL EXCLUSION

42. Based on my experience working with people experiencing homelessness and from research done by myself and others in this field, it is my opinion that homeless persons are subject to distinctive historical disadvantage, pervasive stereotyping, stigma, criminalization, and systemic discrimination on the basis of the personal characteristic of homelessness. The experience of homelessness becomes deeply embedded in personal identity such that it is difficult to change. Many people experiencing homelessness have less political influence than other groups and face major obstacles to voting. Politicians rarely describe people experiencing homelessness as constituents whom they represent but rather refer to them as social problems to be addressed in the interests of other constituents.

43. As documented by the UN Special Rapporteur on Adequate Housing in her 2015 Report to the UN Human Rights Council, the experience of homelessness goes beyond the deprivation of physical shelter. The Special Rapporteur explains that "being deprived of a home gives rise to a social identity through which "the homeless" is constituted as a social group subject to discrimination and stigmatization." The Report of the Special Rapporteur, with which I agree, is attached as **Exhibit "E"** to this affidavit.

44. The Special Rapporteur also explains that "with a unique understanding of the systems that deny them their rights, homeless people must be recognized as central agents of the social transformation necessary for the realization of the right to adequate housing."[38] I agree with the Special Rapporteur's understanding of homelessness not solely as a deprivation of housing but also as personal characteristic and identity that is socially constructed through dominant patterns of stigmatization, social exclusion, and marginalization and also as rights claimants whose struggle for dignity and home must be recognized as central to the human rights movement in Canada and internationally.

45. Homeless people are often treated as "outsiders" or unwelcome intruders in their own communities in a manner that is analogous to other forms of discrimination. Opposition from residents to the development of housing for individuals experiencing homelessness is common, and some municipalities deliberately withhold access to essential services—such as water and sanitation—as a means of displacing them.[39] Such tactics are often accompanied by dehumanizing

[38] Report of the UN Special Rapporteur on the Right to Adequate Housing, UN Human Rights Council Thirty-first session, A/HRC/31/54 (30 December 2015), attached as Exhibit D.
[39] See: Office of the Federal Housing Advocate. (2022). Homeless encampments in Canada: A human rights crisis. Canadian Human Rights Commission. Office of the Federal Housing Advocate. (2023). The Advocate's review of homeless encampments. Canadian Human Rights Commission.

comments about homeless people, such a comment from a former mayor of Ottawa comparing homeless persons to pigeons, who stated: "if you don't feed them, they'll go away."[40]

46. Homeless people are particularly vulnerable to violence not only because they live outdoors but because of widespread hostility and discriminatory attitudes toward them. People experiencing homelessness who are victims of violence rarely report these incidents to police, as they often believe police and the justice system will not care, will deny them fair and equal treatment, and/or will fail to treat them with basic dignity[41]

47. In their study of how people experiencing homelessness were treated in eight Canadian cities, Marie-Eve Sylvestre and Celine Bellot found a marked increase in penalties imposed during the late 1990s and early 2000s for simply being present in public spaces or engaging in basic survival activities. For example, they found that in Montreal between 2006 and 2010, although homeless people represented only 1 or 2 per cent of the population, they received, on average, approximately 25 percent of all statements of offences issued by the Montreal police – mostly related to simply trying to survive in public spaces in the absence of a home.[42] A copy of Marie-Eve Sylvestre and Celine Bellot's chapter entitled "Challenging Discriminatory and Punitive Responses to Homelessness in Canada" is attached and marked as **Exhibit "F"** to this affidavit.

48. As Sylvestre and Bellot document, widespread criminalization of those who are homeless – by making survival activities linked to homelessness illegal – is more accurately understood as rendering those who are homeless illegal because of a personal characteristic rather than as rational

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[40] Reported in Maclean's "Why Kindness meters' are a horrible way to deal with panhandlers" (March 14, 2016).
[41] See Kouyoumdjian, F., et al. (2019). Interactions between police and persons who experience homelessness: A systematic review. Canadian Journal of Public Health, 110(5), 625–634. Zakrison, T. L., et al. (2004). Homeless people's trust and interactions with police and paramedics. *Canadian Journal of Urban Research, 13*(2), 1–17.
[42] Sylvestre, M.-E., & Bellot, C. (2014). Challenging discriminatory and punitive responses to homelessness in Canada. In M. Jackman & B. Porter (Eds.), *Advancing Social Rights in Canada* (pp. 155–186). Irwin Law.

measures to address harms they may cause to others. For example, by-laws that prohibit homeless people from sleeping in public, even when no alternative shelter is available, are aimed more at removing them from neighbourhoods and public spaces than at addressing any specific harm. Such measures further deprive homeless people of dignity and security, and entrench their social exclusion and precarious situation within society.

49. A dominant feature of responses to homelessness that is similar to other grounds of discrimination is the phenomenon of scapegoating or blaming them for broader social ills for which they are not responsible but rather are the victims. At times when the number of people experiencing homelessness has increased due to economic factors or inflated housing prices that are beyond the control of those affected, one would expect greater compassion towards those who are the victims of these developments and who have no power over these market forces. However, the opposite is the case. In the mid-1990s, as the number of homeless people in Canada grew significantly, social and income supports were dramatically reduced and governments stopped funding subsidized housing. Provinces adopted laws that had the effect of criminalizing homeless people, such as Ontario's Safe Streets Act (1999) and B.C.'s Safe Streets Act (2004), and municipalities enacted measures to drive homeless people out of public places or business areas by imposing curfews and preventing them from lying down on benches by installing arm rests.

50. Sylvestre and Bellot document a number of key characteristics shared by most homeless people that make them particularly susceptible to discrimination, social exclusion, and ongoing historical disadvantage, making homelessness a personal characteristic that is very difficult to change or overcome. They find that public responses to homelessness are often informed by three stigmatizing ideas: the characterization of people experiencing homelessness as morally depraved, as being homeless by choice, and as criminals or law- breakers.

51. As explained by Sylvestre and Bellot, homelessness is not a choice of lifestyle but rather a complex, structural, and socially constructed identity, rooted in social, economic, and political causes. They note that the disproportionate penalization of people experiencing homelessness creates further social exclusion, making it more difficult to secure employment or housing and thus creating further obstacles to escaping from homelessness. These findings align with my own observations from working with people experiencing homelessness.

52. The Quebec Human Rights Commission has investigated the treatment of homeless people by police in Montreal and the discriminatory effects of by-laws. The Commission produced an opinion on "the judiciarization of the homeless" in 2009. The Commission found that "the stigmatization of the homeless in SPVM [City of Montreal Police Service] standards and policies as well as the ensuing police profiling, undermines the rights of the individuals concerned to the safeguard of their dignity without discrimination based on social condition." The Commission found that homeless persons "are more likely to be punished by police officers to quell fears based on prejudice than because of the actual degree of nuisance or danger created by their behaviour."[43]The Commission also considered the effects of bylaws designed to restrict access by the homeless to public spaces and found such bylaws to have a discriminatory effect of depriving homeless people of basic human needs such as a place to sleep. A copy of the Commission's Report is attached as **Exhibit "G"** to this affidavit.

53. The Commission also found that punitive approaches to homelessness and discriminatory bylaws impede exits from homelessness and are costly compared to providing housing and supports. It recommended that punitive approaches be reversed and that governments "give

[43] Commission des droits de la personne et des droits de la jeunesse, The Judiciarization of the Homeless in Montréal: A Case of Social Profiling: Executive Summary of the Opinion of the Commission (November 6, 2009).

priority to a preventive and proactive approach to homelessness, in particular by providing sufficient and adequate housing for the homeless or individuals at risk of homelessness, if they so desire."[44]

54. In 2000, the Canadian Human Rights Act Review Panel, chaired by the retired Supreme Court Justice Honourable Gérard La Forest, held extensive consultations and commissioned research to make recommendations on changes needed to the Canadian Human Rights Act. The panel reported to the federal government that "research papers and the submissions we received provided us with ample evidence of widespread discrimination based on characteristics related to social conditions, such as poverty, low education, homelessness and illiteracy."[45] The panel recommended that "social condition" be added to the Canadian Human Rights Act as a prohibited ground of discrimination to provide remedies to such discrimination. A copy of chapter 17 of the Report of the Canadian Human Right Act Review Panel, dealing with the ground of "social condition" is attached to my affidavit and marked as **Exhibit "H"**.

55. Other human rights bodies have similarly recommended that social and economic conditions, such as Homelessness, should be considered a ground of decimation. For example, the Ontario Human Rights Commission has similarly recommended the inclusions of social condition as a prohibited ground of discrimination under Ontario's Human Rights Code, noting that this ground "would permit the Commission to deal more effectively with issues related to homelessness; and, it would be a means for the Commission and the province to better comply with some of Canada's international obligations."[46] A copy of the section on "Social and Economic

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[44] Ibid, Recommendation 11.
[45] Canadian Human Rights Act Review Panel under the authority of the Minister of Justice and the Attorney General of Canada. Promoting Equality: A new Vision (2000).
46 Ontario Human Rights Commission, Human Rights and rental housing in Ontario: Background paper Approved by the Commission: March 28, 2007, "Social and Economic Condition".

Condition" from the Ontario Human Rights Commission's report "Human Rights and rental housing in Ontario: Background paper is attached and marked as **Exhibit "I"** to this affidavit.

56. International human rights bodies have also recognized homelessness as a prevalent ground of discrimination and urged Canada and other states to provide necessary protection from this kind of discrimination. As the UN Special Rapporteur on Adequate Housing explained in her Report on Homelessness (Exhibit "E"): Those who are homeless are constructed as a social group. Worldwide, their identity is created and then reinforced by people who have more money, more power or more influence. It is a vicious circle. Laws, policies, business practices and media stories depict and treat homeless people as morally inferior, undeserving of assistance and authors of their own misfortune, and blame them for the social problems they come to represent. Once stigmatized, their needs are further neglected and inequality and discrimination further entrenched.[47]

57. The Special Rapporteur states that: "Homeless people must be recognized as a protected group in all relevant domestic anti-discrimination and hate-crime laws, including where relevant in national Constitutions, national and subnational human rights legislation and in city charters."[48]

58. A scoping review by Canham et. al. of 205 peer-reviewed studies on stigma and discrimination toward people experiencing homelessness and found:

a. People experiencing homelessness often face disrespect, denial of care, rushed treatment, and surveillance that deter access to healthcare and social services and worsen health.

[47] Report of the Special Rapporteur on Adequate Housing, Exhibit D at para 19.
[48] Ibid at para 91(f)

b. Employers and landlords frequently reject applicants because of homeless status, appearance, or use of shelters or vouchers.

c. Widespread harassment, violence, and exclusion from parks, transit, businesses, and community facilities; opposition to shelters and affordable housing (NIMBYism).

d. Disproportionate ticketing, forced relocation, harassment, and assault.

e. Rejection by family, friends, and neighbors; some people experiencing homelessness stigmatize each other to distance themselves from the identity.

f. Discrimination is intensified by race, gender, age, sexual orientation, disability, substance use, criminal record, and appearance.

59. A copy of the review is attached to my affidavit as **Exhibit "J**."

I. RECEIPT OF SOCIAL ASSISTANCE AS A GROUND OF DISCRIMINATION

60. 54. Differential treatment on the ground of receipt of social assistance has been found to be more widespread than any other ground of discrimination that is prohibited under Ontario's Human Rights Code in rental housing. A 2008 study conducted by the Centre for Equality Rights in Accommodation compared the treatment of a married applicant receiving the highest level of social assistance in Ontario (i.e. Ontario Disability assistance rather than Ontario Works) with treatment of a married applicant with the same level of income from employment. Although receipt of social assistance is a prohibited ground of discrimination in housing, the study and found differential treatment in 40% of cases - higher than with any other prohibited ground of discrimination. A copy of the Report on CERA's findings, entitled "Sorry it's Rented: Measuring

Discrimination in Toronto's Rental Market" is attached and marked as **Exhibit "K"** to this Affidavit.

61. A study commissioned by the Ontario Human Rights Commission on attitudes toward groups protected from discrimination under the Human Rights Code similarly found that of all of the identified groups, social assistance recipients were viewed the least positively. Only 39% of respondents viewed social assistance recipients positively or somewhat positively. A copy of the Ontario Human Rights Commission's Survey Overview: Taking the Pulse is attached and marked as **Exhibit "L"** to my affidavit.

62. Discrimination against persons receiving social assistance, however, is often inseparable from and compounded by differential treatment of persons living in poverty or relying on a low level of income. Landlords or property managers frequently apply income or affordability criteria that disqualify anyone on social assistance because of their low income. The result is that applicants on social assistance applying for the most affordable housing they can find will frequently be denied the most affordable apartments based on affordability criteria they are unable to meet, even in the lowest rent apartments.

63. In the case of *Kearney v. Bramalea Ltd.*, data was found to show no significant correlation between income level of applicants and the risk of default.[49] The reason for this somewhat counter-intuitive finding is that tenants relying on social assistance, despite severe affordability challenges, will often go to extremes lengths to avoid rent default.

[49] *Kearney v. Bramalea Ltd. (No. 2)*, 1998 CanLII 29852 (ON HRT) at para 165.

64. Social assistance recipients, however, now rely on benefits that are grossly inadequate to compete within the current housing market. This means they are increasingly unlikely to find any housing they can afford, leaving them extremely vulnerable to homelessness.

65. From 1994 to 2024 the maximum shelter allowance for singles has decreased from $414/month through the predecessor to the Ontario Works program (General Welfare Assistance) to $390/month (OW), a decrease of 6% in nominal dollars (i.e. not adjusted for inflation).[50]

66. 60. During the same period, the average rent for a bachelor apartment in Ontario based on CMHC surveys has gone from $479/month to $1,307/month, an increase of 272%.[51] In 1994 the max shelter was 86% of the CMHC average rent for a bachelor apartment. In 2024 the max shelter was 28% of the CMHC average rent for a bachelor apartment. In real terms, the current max shelter is worth 1/3 of the 1994 max shelter. The average rent for an **available** bachelor apartment in Ontario is of course much higher than the CMHC average rent. The average asking rent in Ontario for a bachelor apartment in October 2024 was $1,806/month.[52]

67. According to provincial data, homelessness among OW recipients has almost doubled in the past two years to 8% of recipients.[53]

68. Even if most landlords and property managers did not discriminate against social assistance recipients, it would be virtually impossible for a recipient of Ontario Works to find an adequate

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[50] *Masse v. Ontario (Minister of Community and Social Services*, 1996 CanLII 12491 (ON SCDC) at para 4; Ontario Works Policy Directive 2024 Section 6.3 Shelter.

[51] CMHC Canada — Average Rent by Bedroom Type by Provinces: Ontario October 1994; October 2024

[52] November 2024 Rentals.ca Rental Report, Provincial Overview.

[53] The Trillium, "Number of homeless OW, ODSP recipients has almost doubled in two years: government data" (September 26, 2024).

apartment for $390/month. As a result, social assistance recipients in Ontario face a significant risk of homelessness.

69. Negative attitudes toward social assistance recipients often reflect patterns of discrimination seen against other marginalized groups, and in some cases may be particularly pronounced. Research indicates that social assistance recipients—especially women with children—frequently encounter stigmatization related to their parenting, with assumptions that they lack parenting skills or have children to access benefits. My experience of single mothers on social assistance has been that although they are stigmatized as inadequate parents, they are among the most committed parents, often navigating significant challenges related to poverty and housing instability while striving to provide supportive and stable environments for their children. For example, I have spoken with many single mothers who have chronically skipped meals so their children could eat, postponed medical treatment for themselves in order to ensure their children had what they needed, or who have sacrificed their wellbeing or safety in order to meet their children's needs.

70. A 2004 study of abused women's experience of Ontario's welfare system found that the stigma associated with relying on welfare combined with the grossly inadequate rates, leaving women in fear of not being able to properly provide for their children, made some women consider returning to situations of domestic violence.[54] Studies of the experience of single people on social assistance have also found a significant effect of discriminatory stigma attached to relying on social assistance that, combined with grossly inadequate rates, leads to social isolation, long term

[54] Mosher, J. E., Evans, P. M., & Little, M. (2004). Walking on eggshells: Abused women's experiences of Ontario's welfare system. Osgoode Hall Law School.

unemployment, and homelessness.[55] Attached as **Exhibit "M"** to my affidavit is a copy of the Institute for Research and Public Policy report entitled Canada's Forgotten Poor? Putting Singles Living in Deep Poverty on the Policy, which documents these patterns.

71. Social assistance recipients generally have been the subject of negative stereotypes and this can influence policy decisions. Such stigmatizing stereotypes bear little resemblance to the lived realities of surviving on Ontario Works and illuminate that recipients of social assistance—similar to people experiencing homelessness—are a distinct group facing systemic disadvantage, prejudice, and social exclusion. The persistence of these stereotypes can hinder recipients' ability to build self-confidence, secure employment, or obtain housing, and may shape political discourse in ways that contrast them with so-called 'taxpayers' rather than focusing on accurately assessing their needs and supporting their full participation in society.

72. I make this Affidavit in support of the response to the Application, and for no improper purpose.

AFFIRMED before me by video conference, from the City of _____, in the Province of Ontario, to the City of Pickering, in the Regional Municipality of Durham, this _____ day of October, 2025, in accordance with O. Reg. 431/20.

Commissioner for Taking Affidavits
(or as may be)

KAITLIN SCHWAN

[55] Herd, Dean, Yuna Kim and Christine Carrasco. 2020. Canada's Forgotten Poor? Putting Singles Living in Deep Poverty on the Policy. IRPP Report (September). Montreal: Institute for Research on Public Policy.

REBECCA STRUNG et al
Applicants

-and-

HIS MAJESTY THE KING IN RIGHT OF ONTARIO
Respondent

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

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