

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

KRISTEN HEEGSMA, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO,
SHAWN ARNOLD, CASSANDRA JORDAN, JULIA LAUZON, AMMY LEWIS, ASHLEY
MACDONALD, COREY MONAHAN, MISTY MARSHALL,
SHERRI OGDEN, JAHMAL PIERRE, and LINSLEY GREAVES

Appellants (Applicants)

-and-

CITY OF HAMILTON

Respondent (Respondent)

COMPENDIUM OF THE PROPOSED INTERVENERS

**Charter Committee on Poverty Issues and the
National Right to Housing Network**

Date: December 11, 2025

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TAB 1 *Tanudjaja v. Canada (Attorney General)*, 2014 ONCA 852 (at para 17 and paras 36-37 (Per Pardu J.A.) and para 62 (per Feldman J.A.)

Per Pardu JA.

[17] With respect to [s. 7](#) of the *Charter*, the motion judge concluded that there was no positive *Charter* obligation which required Canada and Ontario to provide for "affordable, adequate, accessible housing" and that, in any event, the appellants had not identified any breach of the principles of fundamental justice. With respect to [s. 15](#) of the *Charter*, he found [at para. 128] that "the actions and decisions complained of do not deny the homeless a benefit Canada and Ontario provide to others or impose a burden not levied on others, meaning there can be no breach of s. 15 of the *Charter*". In any event, he concluded that homelessness and inadequate housing were not analogous grounds under s. 15 of the *Charter*. The free-standing claim that homelessness might disproportionately affect persons such as [at para. 135] "women, single mothers, persons with mental and physical disabilities, aboriginal persons, seniors, youth, racialized persons, newcomers and persons in receipt of social assistance" did not engage s. 15 of the *Charter*, in the absence of discriminatory laws, or discriminatory application of those laws. Finally, he concluded [at para. 147] that, in any event, the issues raised by the application were not justiciable, that the implementation of the relief sought would "cross institutional boundaries and enter into the area reserved for the Legislature".

[36] The application here is demonstrably unsuitable for adjudication, and the motion judge was correct to dismiss it on the basis that it was not justiciable.

[37] Given that this application was properly dismissed on the ground that it did not raise justiciable issues, it is not necessary to explore the limits, in a justiciable context, of the extent to which positive obligations may be imposed on government to remedy violations of the *Charter*, a door left slightly ajar in *Gosselin v. Quebec (Attorney General)*, [2002] 4 S.C.R. 429, [2002] S.C.J. No. 85, [2002 SCC 84](#). Nor is it necessary to determine whether homelessness can be an analogous ground of discrimination under [s. 15](#) of the *Charter* in some contexts.

Per Feldman, J.A.

[62] In my view, the motion judge erred by concluding that it is settled law that the government can have no positive obligation under s. 7 to address homelessness. To the contrary, *Gosselin* specifically leaves the issue of positive obligations under s. 7 open for another day.

TAB 2 Issues: Appellants' Factum at para 34

34) This appeal raises the following issues:

- a. Issue 1: Did Ramsay J. err in assessing the impact of sheltering restrictions on the Appellants?
- b. Issue 2: Was Ramsay J.'s finding of no overnight evictions tainted by discriminatory stereotypes?
- c. Issue 3: Did Ramsay J. err by finding no s. 7 violation?
- d. Issue 4: Did Ramsay J. err by finding no s. 15 violation?
- e. Issue 5: Were the ss. 7 and 15 violations saved by s. 1?
- f. Issue 6: What is the appropriate remedy?

TAB 3 <i>Heegsma v. Hamilton (City)</i> , 2024 ONSC 7154 at paras 76 – 86.
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[76] Second, the life, liberty and security of the applicants are not put at risk by enforcement of the by-law. They are put at risk by homelessness. Encampments contribute to this risk. They are lawless, dangerous and unsanitary.

[77] In all this we must not lose sight of the countervailing interest of preserving public parks. It was an important enough public interest that in the Toronto encampment injunction case Schabas J. found that it decided the balance of convenience in favour of the city notwithstanding the risk of irreparable harm: *Black v. Toronto (City)*, [2020 ONSC 6398](#).

[78] Finally, extending the freedom from enforcement to daytime or indefinite encampment would amount to expropriating property, or at least severely limiting property rights. City officials have noticed that since the implementation of the new protocol some occupants have become more territorial, or possessive of “their” camps. Extension of freedom from enforcement would have the effect of depriving the City of the use and enjoyment of its property.

[79] For these reasons, I do not extend the prohibition on enforcement to daytime or indefinite camping.

Section 15 of the Charter

[80] I do not think that the by-law violates the equality rights of Indigenous persons, women and persons with a disability. The law does not treat them differentially by intent or impact. They are disadvantaged by homelessness, not by enforcement of the by-law.

[81] The fact that a group is over-represented does not by itself prove illegitimate discrimination.

[82] The only characteristic that the applicants all share is homelessness. It is agreed that homelessness is not an enumerated or analogous ground.

Conclusion

[83] The problem of homelessness is of diverse origin. Its resolution will come from diverse input. In *City of Grant’s Pass v. Johnson*, 603 US __, 144 S. Ct. 2202 (2024), the Supreme Court of the United States was dealing with the Eighth Amendment (cruel and unusual punishment) in connection

with encampments in public parks. Nevertheless the words of Gorsuch J. are apt and can be adapted to the Canadian context:

Homelessness is complex. Its causes are many. So may be the public policy responses required to address it. At bottom, the question this case presents is whether the Eighth Amendment grants federal judges primary responsibility for assessing those causes and deriving those responses. It does not. Almost 200 years ago, a visitor to this country remarked upon the “extreme skill with which the inhabitants of the United States succeed in proposing a common object to the exertions of a great many men, and in getting them voluntarily to pursue it.” A. de Tocqueville, *Democracy in America* 129 (H. Reeve transl. 1961). If the multitude of amicus briefs before us proves one thing, it is that the American people are still at it. Through their voluntary associations and charities, their elected representatives and appointed officials, their police officers and mental health professionals, they display that same energy and skill today in their efforts to address the complexities of the homelessness challenge facing the most vulnerable among us.

[84] The public is generally sympathetic to the homeless, but it tires of seeing its public spaces appropriated by lawless, unsanitary encampments. There has to be a balance, and the democratic process is best equipped to achieve that balance.

[85] Encampments are a symptom, not a solution. The City is trying to find a solution to homelessness in consultation with numerous others. It has attempted to address the problem with the old protocol, the encampment process and the new protocol. It has limited resources and a duty to its housed constituency. I think I am well advised to leave them to it without interference. Micro-management by judges will not be productive.

[86] The application is dismissed. If anyone seeks costs, submissions not exceeding 3 pages, to which a bill of costs and any offer to settle may be appended, may be uploaded to Case Centre within 10 days for the respondent and 15 days for the applicant.

TAB 4 Harms of Homelessness: [Respondent's Factum](#), Appendix, Chart 8 at 68.

Chart 8: Harms of Homelessness

Category	Evidence	Citation
Life expectancy, Overall Health	Population of people experiencing homelessness in Canada is characterized by markedly worse health outcomes than the general population, with lower life expectancy and significantly higher rates of chronic disease as well as mental health and substance abuse conditions. There is considerable evidence that homelessness is associated with poor health	<i>Gaetz Affidavit</i> , paras. 31-32; RCOM Tab 51, p.302;
	Homeless people have a greatly increased risk of death.	<i>Hwang Affidavit</i> , Exhibit B; RCOM Tab 53, p.315;
Chronic Disease	People experiencing homelessness have a higher incidence of many chronic diseases than the general population.	<i>Koivu Affidavit</i> , para. 46; RCOM Tab 77, p.454;
	Homelessness has major health implications; people often have physical and mental health problems which worsen Homeless people suffer from a wide range of medical problems; disease severity can be remarkably high Medical problems that are particularly prevalent among homeless adults include seizures, chronic obstructive pulmonary disease, arthritis and other musculoskeletal disorders. Conditions such as hypertension, diabetes and anemia are often inadequately controlled and may go undetected for long periods. Respiratory tract infections are common. Oral and dental health is often poor. Skin and foot problems are frequently seen among the homeless	<i>Hwang Affidavit</i> , para. 5, Exhibit B; RCOM Tab 53, p.315;

	Population of people experiencing homelessness in Canada is characterized by markedly worse health outcomes than the general population, with lower life expectancy and significantly higher rates	<i>Gaetz Affidavit</i> , paras. 31-32; RCOM Tab 51, p.302;
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	of chronic disease as well as mental health and substance abuse conditions.	
Mental Health	People experiencing homelessness have a higher incidence of mental health issues than the general population	<i>Koivu Affidavit</i> , para. 51; RCOM Tab 77, p.456;
	People who become homeless often have physical and mental health problems which worsen over the period that they are homeless.	<i>Hwang Affidavit</i> , para. 5, Exhibit B; RCOM Tab 53, p.311-312;
	Population of people experiencing homelessness in Canada is characterized by markedly worse health outcomes than the general population, including mental health and substance abuse conditions. PTSD is very common among people experiencing homelessness Homelessness itself can be a traumatizing event. Mood disorders (depression and bipolar disease), schizophrenia and substance-induced psychosis are all much more prevalent in the homeless population when compared to the general population. Cognitive impairment due to acquired brain injuries is an extremely common condition among the homeless population	<i>Gaetz Affidavit</i> , paras. 31, 38; RCOM Tab 51, p.302-305;
	Observed deterioration in physical and mental health in people who moved into encampments; for many this led to bad health outcomes and even death	<i>Koivu Affidavit</i> , para. 57; RCOM Tab 77, p.457;
Substance abuse	People who are houseless (sheltered and unsheltered) are more likely to use substances than people who are housed and are more likely to experience substance-related harms, including fatal overdose; “approximately 1 in 4 people who are houseless will die by overdose”	Dr. Kate Hayman, Affidavit, February 28, 2023 [<i>Hayman Affidavit</i>], para. 11; RCOM Tab 52, p.308;
	people experiencing homelessness in Canada have significantly higher rates of substance abuse conditions.	<i>Gaetz Affidavit</i> , paras. 31-32, 38-39; RCOM Tab 51, p.302-305;

	Conditions including substance-induced psychosis are all much more prevalent in the homeless population when compared to the general population	
Inadequate sleep	Homeless people often suffer from sleep deprivation due to an inadequate number of hours of sleep, as well as disturbed or fragmented sleep. For homeless people sleeping outside, sleep fragmentation is often related to external stimuli, such as bright lights, loud noises, and intentional efforts by other people to awaken or disturb them. A large body of research evidence has shown that inadequate sleep has numerous adverse health effects, including an increased risk of diabetes, cardiovascular disease, obesity, depression, and injuries, as well as the more commonly recognized problems of impaired alertness, attention, and concentration.	<i>Hwang Affidavit</i> , Exhibit B, para. 6; RCOM Tab 53, p.312;
Exposure to the elements/hypothermia, frostbite	Homeless people are at risk for severe sunburn and heatstroke during the summer months. During cold weather, frostbite and hypothermia are major problems	<i>Hwang Affidavit</i> , para. 5, Exhibit B; RCOM Tab 53, p.311-312;
Physical violence/threats/assault	People experiencing homelessness are more likely to be victims of crime, including assault and sexual assault , than are people who are housed.	<i>Gaetz Affidavit</i> , para. 31(2); RCOM Tab 51, p.299;

		People who experience homelessness are often victims of physical violence, intimidation and threats of physical violence.	<i>Koivu Affirmation</i> RCOM Tab 22, pg. 1
		<p>The state of being homeless has direct adverse health effects including increased risk of violence and victimization while living in shelters and on the street.</p> <p>Violence is a constant threat to the health of homeless people; homeless men are about 9 times more likely to be murdered than their counterparts in the general population.</p>	<i>Hwang Affirmation</i> Exhibit B p.315-316
Sexual assault		Women are at increased risk of "violence and assault, sexual exploitation and abuse" when homeless	<i>Gaetz Affirmation</i> RCOM Tab 22, pg. 1
		<p>80 Q. Okay. Well, to tie it back to the statement in paragraph 10 of your affidavit, you certainly weren't relying on this study to make a proposition that sexual or physical assault risk for women changes based on whether they're in an encampment or not?</p> <p>A. I was not relying on that paper to make a statement about whether they are in an encampment or not. That is correct.</p>	<i>Hayman Affirmation</i> Tab 22, pg. 1
		"Since June 2022 I have been sexually assaulted three times while couch surfing".	<i>Marshall Affirmation</i> para. 4; RCOM Tab 22, pg. 1 p.270;
Loss of belongings/Theft		"Before becoming homeless, I was renting a hotel room and different Air B&Bs. I became homeless shortly after my wallet was stolen."	<i>Marshall Affirmation</i> para. 6; RCOM Tab 22, pg. 1 p.263;
Infectious disease		The state of being homeless also has direct adverse effects on health through an increased exposure to infectious and communicable diseases (e.g., tuberculosis and insect infestations such as bed bugs and scabies) and an increased risk of violence and victimization while living in shelters and on the street.	<i>Hwang Affirmation</i> Exhibit B p.311-312

TAB 5 Notice of Constitutional Question, [Appellants Motion Record, Vol 1](#), Tab 16 at 230

Infringement of *Charter* section 7

2. The By-Laws infringe the Applicants' and other homeless individuals' rights to life, liberty and security of the person by preventing them from engaging in essential life sustaining activities in public space and from creating shelter for themselves, when they have no other viable alternative.
3. The By-Laws further infringe the Applicants' and other homeless individuals' rights under s. 7 by preventing them from meeting essential needs, such as providing themselves with shelter which would allow them to stay safe and dry and protected from the elements, to safely store necessities such as food, water, clothing, bedding, sentimental belongings, personal hygiene supplies, medication and medical supplies, and to sleep and obtain rest.
4. In the context of an affordable housing crisis and the COVID-19 pandemic, the By-Laws and the proposed action of the Respondent further infringes the Applicants' and other homeless individuals' rights under s. 7 by giving them no provision of adequate housing with necessary supports and no alternative but to move into either unsafe congregate living situations or other places (like hotels) where they stand little chance of success. It further deprives the Applicants and other individuals experiencing homelessness of the liberty to make their own decisions about matters fundamentally impacting their lives, such as where and how to safely shelter in place. Some of these facilities also have curfews and other onerous rules that numerous individuals experiencing homelessness have been unable to follow which has led to their eviction from these facilities.
5. Depriving individuals experiencing homelessness of the ability to provide themselves with safe, warm, dry shelter in public spaces in Hamilton exposes the Applicants and other individuals experiencing homelessness to additional health and safety risks. It also causes serious, state-imposed stress and interferes with their ability to make the basic and fundamental decision to take practical steps to protect themselves from the elements.
6. The By-Laws prevent the Applicants and other individuals experiencing homelessness from living together in a manner which allows them to provide each other safety and security. This constitutes a deprivation of their liberty and security of the person.
7. These deprivations are not in accordance with the principles of fundamental justice because they are contrary to the principle that no one should be subject to sanction for engaging in

activities when there is no realistic opportunity to avoid those activities, or for engaging in those activities which are necessary to sustain an individual's safety and well-being. These deprivations are also contrary to the principle of fundamental justice that laws must not be arbitrary. *As a result, the By-Laws contravenes. 7 of the Charter.*

8. *Theses. 7 violations are not justifiable under s. 1 of the Charter.*

TAB 6: Appellants' Position on Homeless as a Cause.
[Appellants' Factum](#), at [para 90](#).

90. Increased risks are deprivations of security of the person and life, since “a risk of such a deprivation suffices” under s. 7. Ramsay J.’s conclusion that sheltering restrictions and evictions did not deprive individuals of life, and security of person because “homelessness” caused those harms, is incorrect. He was bound by *Waterloo* and *Kingston* under horizontal *stare decisis* on causation. The harms at issue are caused by **both homelessness and sheltering restrictions and evictions, especially since homelessness is a product of housing precarity for reasons beyond an individual’s control: rising rental costs and inadequate Ontario Disability Support Program and Ontario Works benefits; the inability of some individuals with complex mental health, addiction and/or trauma struggle to function in rental housing without supports; women fleeing domestic violence; and a vicious cycle of homelessness that chronically unhoused individuals may be unable to escape.** This is an error on a mixed question of fact and law reviewable for correctness.

**TAB 7: Appellants' Section 15
Claim: Further Amended Fresh
As Amended Notice Of
Application, [Application
Record Vol 1](#), Tab 3 at 16-17.**

Infringement of section 15

- (a) The Parks By-Law and/or the Streets By-Law also discriminates against the Applicants and other homeless individuals in violation of s. 15 of the Charter. The Applicants are all members of groups protected by s. 15, and in some cases they are members of multiple protected groups. These groups include Indigenous people, and people with mental and physical disabilities (including but not limited to mobility impairments and substance use disorders). The homeless population more generally also consists disproportionately of people who are members of groups protected by s. 15. For the Applicants, their status as a person experiencing homelessness is immutable and undeniably connected to their status as a member of these historically disadvantaged groups.
- (b) The Parks By-Laws and/or the Streets By-Law, in their application to the Applicants and other homeless individuals, are based on the premise that the needs of the homeless, including their need to sleep, rest, be peaceful, protect their belongings, and remain warm and dry, are not worthy of respect, concern and consideration. The Parks By-Law and/or the Streets By-Law has the effect of perpetuating or promoting the view that the homeless are less worthy of recognition or value as a human being or a member of Canadian society.

TAB 8: Characterization of the Issue: Respondent's Factum at para 6 and paras 89-90
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6. The Appellants seek to hold the City liable for the harms of homelessness, which the City does not cause, and which it struggles mightily to mitigate at great annual cost. Indeed, the expert evidence before Ramsay J. was that being homeless itself causes harm to homeless individuals, and that encampments do not prevent that harm. The Appellants disregard those basic facts, and instead argue that it is the regulation of public parks that is to blame for the harms they have suffered while experiencing homelessness, and that they ought to receive monetary compensation from the public purse as a result.

.....

89. Ramsay J. found as facts that:

- (a) the life, liberty and security of the applicants are not put at risk by enforcement of the By-Law. They are put at risk by homelessness; and
- (b) They are disadvantaged by homelessness, not by encampment enforcement.

90. These findings were supported by the evidence. The risks the Appellants face are those associated with the experience of homelessness, which the City does not cause.

TAB 9:

R. v. Powley, 2001 CanLII 24181 (ON CA) at paras 61-62.

[61] There can be little doubt that in constitutional cases, appellate courts have in some cases allowed considerable latitude for the admission of new materials relating to legislative facts: see for example R. v. Parker, (2000) 2000 CanLII 5762 (ON CA), 49 O.R. (3d) 481 (C.A.); Ford v. Quebec (A.G.), 1988 CanLII 19 (SCC), [1988] 2 S.C.R. 712; R. v. Edwards Books and Art, 1986 CanLII 12 (SCC), [1986] 2 S.C.R. 713, R. v. Seo (1986), 1986 CanLII 109 (ON CA), 54 O.R. (2d) 293 (C.A.). It has become common practice for parties to include in factums and books of authorities a wide range of published scholarly writing providing background and analysis of social, economic and other policies relevant to the legislative and regulatory scheme at issue. This material is often of great assistance, but does not, of course, relieve the parties of the obligation to prove controversial facts in the usual way. As Binnie J. remarked in Public School Board's Assn. of Alberta, at 47:

The usual vehicle for reception of legislative fact is judicial notice, which requires that the "facts" be so notorious or uncontroversial that evidence of their existence is unnecessary. Legislative fact may also be adduced through witnesses. The concept of "legislative fact" does not, however, provide an excuse to put before the court controversial evidence to the prejudice of the opposing party without providing a proper opportunity for its truth to be tested.

(i) Academic articles

[62] The appellant should be allowed to refer to academic articles dealing with the purpose and interpretation of the Constitution Act, 1982, s. 35. No doubt many such articles may make controversial factual assertions. That appears to be the case here. Plainly, such assertions do not become evidence, especially where they concern facts that are disputed and that were the subject of consideration on the evidence at trial. A

party cannot escape the obligation to prove controversial facts at trial by filing academic writings as "authorities" on appeal. With that caveat as to the use that may be made of the articles, I would allow the appellant to include in its book of authorities two articles to which objection was taken by the respondents, namely Thomas Flanagan "Métis Aboriginal Rights: Some Historical and Contemporary Problems", in Boldt, Menno and Long, Anthony J., *The Quest for Justice: Aboriginal People and Aboriginal Rights* (Toronto: University of Toronto Press, 1985) and Brian Schwartz, *First Principles, Second Thoughts: Constitutional Reform with respect to the Aboriginal Peoples of Canada, 1982-84* (Kingston: Institute of Intergovernmental Relations, 1985).

TAB 10: *Housen v. Nikolaisen*, 2002 SCC 33
[2002] 2 SCR 235 at [para 105](#)

105 By contrast, an appellate court reviews a trial judge's findings on questions of law not merely to determine if they are reasonable, but rather to determine if they are correct; *Moge v. Moge*, [1992 CanLII 25 \(SCC\)](#), [1992] 3 S.C.R. 813, at p. 833; *R. v. Nova Scotia Pharmaceutical Society*, [1992 CanLII 72 \(SCC\)](#), [1992] 2 S.C.R. 606, at p. 647; R. P. Kerans, *Standards of Review Employed by Appellate Courts* (1994), at p. 90. The role of correcting errors of law is a primary function of the appellate court; therefore, that court can and should review the legal determinations of the lower courts for correctness.

TAB 11 *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, 2003 SCC 62 (CanLII), [2003] 3 SCR 3, at para 55.

55 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)).

TAB 12: *Christian Heritage Party of Canada v. Hamilton (City)*, 2025 ONCA 700 at paras [8](#), [10](#), [15](#), [17-18](#) and [23](#).

[8] The test for granting leave to intervene is more relaxed in constitutional cases: *Animal Justice v. Ontario (Attorney General)*, [2024 ONCA 941](#), at para [12](#). Constitutional cases may have a wide impact on the rights of others who are not parties to the litigation. Interventions provide affected individuals and groups with an opportunity to be heard and give the court perspectives on the historical and sociological context of the issues raised.

[10] The overarching consideration, however, is whether a proposed intervenor can be of assistance to the court in providing a different perspective that is not already addressed by the parties: *Fair Voting BC v. Canada (Attorney General)*, [2024 ONCA 619](#), at para. [11](#); *Solmar Inc. v. Hall*, [2025 ONCA 570](#), at para. [11](#). Leave to intervene may be denied where the submissions of the proposed intervenor are merely duplicative of the submissions of others: *Fair Voting BC*, at para. [13](#)

[15] I reject these submissions. A proposed intervenor's lack of indifference to the outcome of a proceeding is not a reason to deny it the right to intervene, so long as it can make a useful contribution to the analysis of the issues before the court: *Oakwell Engineering Limited v. Enernorth Industries Inc.*, [2006 CanLII 60327](#) (Ont. C.A.), at para. [9](#), and the caselaw cited therein. In considering whether the City's decision was reasonable, the Divisional Court referred to Egale's supporting submissions on the legal and social status of and challenges faced by transgender and gender non-conforming individuals.

[16] CHP contends that Egale's arguments largely duplicate the City's submissions. I do not agree. Egale represents a distinct community with a real, substantial and identifiable interest in the subject matter of this proceeding. Its perspective is distinct from that of the City.

[17] Finally, CHP argues that Egale seeks to impermissibly enlarge the scope of this litigation by advancing s. 7 *Charter* arguments and filing additional evidence.

[18] I agree that none of the parties granted leave to intervene should be permitted to supplement the factual record by filing additional evidence. My order will reflect that. I am not, however, prepared, at this stage, to limit Egale's ability to argue whether the reasonableness of the City's decision should be assessed in light of s. 7 of the *Charter*. This submission does not raise a completely new issue but rather elaborates on why it was reasonable for the City to decide that posting the proposed advertisement could harm transgender and non-binary individuals. This does not foreclose the possibility that the panel that hears the appeal will determine that the s. 7 argument does not need to be considered.

[23] The City contends that ARPA's proposed submissions encourage the court to consider the impact of the City's decision on freedom of conscience and religion under s. 2(a) of the *Charter*, even though CHP focused uniquely on its right to freedom of expression under s. 2(b) of the *Charter* when it sought to persuade the City to allow the advertisement on the transit system. At the motion hearing, ARPA's counsel affirmed that its proposed argument focuses on freedom of expression. In any event, I am not prepared to limit ARPA's submissions on the considerations that the City should have taken into account, just as I was not prepared to limit Egale's submissions on this point. It will again be up to the panel that hears the appeal to determine whether any s. 2(a) arguments advanced by ARPA are relevant or helpful.

TAB 13: *Falkiner v. Ontario (Minister of Community and Social Services)*, 2002 44902 (ON CA) at paras 92-93

[92] The Divisional Court also recognized that social assistance recipients deserved s. 15 protection. The Divisional Court, however, defined the analogous ground more narrowly as sole support parents on social assistance or single mothers on social assistance. The intervenor LEAF supported the Divisional Court's characterization. It seems to me, however, that recognizing the broader or more general category, receipt of social assistance, is preferable. It is more truly analogous to the enumerated grounds, which themselves are general; it conforms to the similar protection accorded to social assistance recipients in human rights legislation; it recognizes a group that is vulnerable to discrimination and that historically has been subjected to negative stereotyping; and it simplifies the equality analysis under s. 15. By contrast, recognizing as analogous a highly specific ground like sole support mothers on social assistance makes the s. 15 analysis, which is difficult enough, unnecessarily complex. Moreover single mothers on social assistance already receive two-fold s. 15(1) protection on the grounds of sex and marital status. What is novel about the respondents' position is that they seek recognition that their status as social assistance recipients is also relevant to the equality analysis. In my view, the most coherent way to achieve this is to recognize receipt of social assistance as an analogous ground.

[93] In summary, the definition of spouse has subjected the respondents to differential treatment on the basis of three prohibited grounds of discrimination: sex, marital status and receipt of social assistance.

TAB 14:

St. Theresa Point First Nation v . Canada, 2025 FC 1926 at paras [10-11](#), [307](#)

[10] Canada acknowledges the significant housing gaps that remain on reserve, recognizing there is more to be done so that all First Nations have access to safe and adequate housing. Canada states its ongoing commitment to funding First Nations housing as a matter of public policy, as it continues to work in collaboration with national and regional First Nations organizations on long-term strategies to address housing challenges and ensure that First Nations have the tools for community-led housing solutions. Canada states that it is committed to working with First Nations to address their immediate and longer-term housing needs.

[11] The Plaintiffs are seeking \$5 billion dollars in damages for the Class, and funding to support housing on reserves throughout the country.

[307] Moreover, I find that sections 15, 7 and 2(a) and 2(c) of the Charter are engaged. I have done so without delving into a consideration of the tests applicable to each section and I have done so only on the basis of section 32(1) of the Charter. To engage more deeply with the legal tests would require me to delve into the determination of the scope and extent of such rights, and any breaches of such rights, which is a matter for the Stage II Common Issue determination. Moreover, with respect to section 7, I have found that there are special circumstances giving rise to both a positive right and negative right.