

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)

MOTION RECORD OF THE PROPOSED INTERVENERS

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

Date: November 13, 2025

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Court File No. COA-25-CV-0166

COURT OF APPEAL FOR ONTARIO

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TAB 1

NOTICE OF MOTION

THE PROPOSED INTERVENERS, the Charter Committee on Poverty Issues (CCPI) and the National Right to Housing Network (NHRN) represented by a single counsel, will make a motion to the Honourable Justice Favreau on December 11, 2025 or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard

- ☐ In writing under subrule 37.12.1(1) because it is on consent;
- ☐ In writing
- ☐ In person;
- ☐ By telephone conference;
- ☒ By video conference.

THE MOTION IS FOR

- (a) Leave to intervene as a friend of the court in this appeal pursuant to Rule 13.02, to:
 - (i) file a joint factum of up to 12 pages or a length to be determined by the Court;
and,
 - (ii) to make oral submissions at the hearing of the appeal as determined by the Court;
- (b) An order that there be no costs of this motion and no costs in the appeal as they relate to CCPI and NRHN;
- (c) such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

- (a) This appeal raises issues of substantial public importance that extend beyond the interests of the parties, regarding the scope of obligations under ss. 7 and 15 of the

Canadian Charter to protect the life, liberty, security of the person, and equality of individuals whose rights are jeopardized by homelessness.

(b) The application judge held that the risk to life, liberty and security of the person faced by the appellants arises from homelessness rather than from government action, that courts should not interfere with the Respondent's attempts to solve the problem of homelessness, and that s. 15 is not engaged because homelessness is not an enumerated or analogous ground.

(c) These findings relied on Superior Court jurisprudence, particularly on Lederer J.'s findings in *Tanudjaja v. Attorney General (Canada) (Application)* 2013 ONSC 5410, that s. 7 does not impose positive obligations on governments to address homelessness and that homelessness is not an analogous ground of discrimination. Those findings were not, however, endorsed by this Court on appeal, and were left to be considered in subsequent cases, such as this one.

(d) The proposed interveners have a longstanding interest and recognized expertise in ensuring that serious violations of *Charter* rights linked to homelessness are not ignored by courts based on misunderstandings of the jurisprudence of this Court or that of the Supreme Court of Canada.

(e) The proposed interveners understand the need identified by this Court in *Tanudjaja* for judicially discoverable and manageable standards to ensure respect and accountability for commitments to address homelessness in compliance with the *Charter*. They have been active in working with the international human rights standards for addressing homelessness that have been incorporated into the *National Housing Strategy*

Act and in rights-based approaches to homelessness adopted by municipalities including the respondent in this case.

(f) The proposed interveners will argue that strategies to effectively address homelessness based on international human rights norms, provide the necessary legal framework for courts to assess and ensure compliance with governments' positive *Charter* obligations to address homelessness without, in the words of the application judge, "micromanaging" housing policy.

(g) The proposed interveners have a real, substantial, identifiable interest and expertise in the issues raised in the appeal, in particular, regarding interpretations of ss. 7 and 15 that safeguard the rights of homeless persons.

(h) The proposed interveners' ongoing work to clarify the obligations of all orders of government to address the needs of homeless persons under the *Charter* and international human rights law will be affected by the decision in this case.

(i) The proposed interveners have an important perspective distinct from the immediate parties, because of their history of advocating for *Charter* rights interpretation that is inclusive of issues of poverty and homelessness; their research into positive measures to address homelessness; their experience in assisting governments to implement rights-based approaches to homelessness to ensure compliance with both national and international human rights obligations; and their ongoing community engagement regarding these issues.

(j) The proposed interveners have been widely recognized for their special expertise in the issues raised in the appeal. CCPI has been granted leave to intervene to address similar issues in 14 appeals at the Supreme Court of Canada as well as before this Court

and the Ontario Superior Court of Justice. NRHN has been recognized by parliamentary committees, government officials, legal practitioners and persons with lived experience of homelessness, for its expertise in the rights of homeless persons under both Canadian and international law.

(k) As outlined in its draft factum, CCPI and NRHN will make a useful contribution by addressing the following issues:

- i) Whether s. 7 of the *Charter* requires measures to address the needs of homeless persons for shelter, housing and related supports;
- ii) Whether homelessness may be recognized as an analogous ground of discrimination under s. 15;
- iii) Whether the adoption of international human rights standards for the implementation of the right to housing and the elimination of homelessness in federal legislation and in municipal policies provides a judicially manageable standard to assess the respondent's compliance with ss. 7 and 15; and
- iv) Whether a remedy could be crafted in the present case to vindicate the rights of the appellants while respecting the proper role of courts.

(l) The proposed interveners will rely on the record as filed by the parties and will not cause delay.

(m) The proposed interveners will not seek an order of costs and request an order that costs not be awarded against them.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

(n) The affidavit of Bruce Porter, affirmed November 10, 2025;

- (o) The affidavit of Michèle Biss, affirmed November 10, 2025;
- (p) Draft Factum;
- (q) Such further and other evidence as this Honourable Court may permit.

November 13, 2025

A handwritten signature in black ink, appearing to read "M. Jackson", with a stylized, cursive script.

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

KRISTEN HEEGSMA, DARRIN MARCHAND,
GORD SMYTH, MARIO MUSCATO, SHAWN
ARNOLD, CASSANDRA JORDAN, JULIA LAUZON,
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Appellants (Applicants)

CITY OF HAMILTON

Respondent (Respondent)

Court File No. COA-25-CV-0166

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED

AT TORONTO

**NOTICE OF MOTION FOR LEAVE TO
INTERVENE OF THE PROPOSED
INTERVENERS**

**THE CHARTER COMMITTEE ON POVERTY
ISSUES AND
THE NATIONAL RIGHT TO HOUSING
NETWORK**

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Telephone: (613) 720-9233

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

TAB 2

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

KRISTEN HEEGSMA, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO,
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PIERRE AND LINSLEY GREAVES

APPLICANTS (APPELLANTS)

and

CITY OF HAMILTON

RESPONDENT (RESPONDENT ON APPEAL)

AFFIDAVIT OF BRUCE PORTER, CHARTER COMMITTEE ON POVERTY ISSUES

I, Bruce Porter, in the District Municipality of Muskoka in the Province of Ontario AFFIRM:

1. I am the Coordinator of the Charter Committee on Poverty Issues (CCPI) and as such I have personal knowledge of the matters contained in this affidavit. I am a human rights consultant, the Executive Director of the Social Rights Advocacy Centre, and a Maytree Fellow.
2. I make this affidavit in support of the motion by CCPI for leave to intervene jointly with the National Right to Housing Network (NRHN) as a friend of the court in this case, to file a factum of no more than 12 pages and to make oral argument at a length to be determined by the Court at the hearing of the appeal. Attached to this affidavit as “Exhibit A” is a draft of CCPI/NRHN’s proposed factum.

The Charter Committee on Poverty Issues (CCPI)

3. The Charter Committee on Poverty Issues (CCPI) is a national committee established in 1988 which brings together low-income representatives and experts in human rights, constitutional law and poverty law for the purpose of assisting disadvantaged groups in Canada to secure and assert their rights under the *Charter*, human rights legislation, other Canadian law, and international human rights law. CCPI was initiated with support from the Court Challenges Program of Canada to address the absence of cases being advanced to protect the rights of people living in poverty and homelessness under the *Charter*, to address the need for interventions in cases of significance to those groups, and to provide their perspective and expertise.

4. CCPI's activities have included research and consultation with other organizations and members of marginalized and vulnerable groups, test case litigation, judicial and public education, engagement with governments in Canada and internationally, appearances before United Nations and other international bodies, and collaboration with non-governmental organizations and researchers in Canada and other countries.

CCPI's Litigation and Interventions in Previous Cases

5. CCPI has initiated and intervened in a significant number of cases at various levels of court to ensure that issues of socio-economic disadvantage, and the perspectives of persons living in poverty, are effectively presented before courts and tribunals through high-quality submissions grounded in reliable evidence. Based on instructions from both its low-income members and human rights experts, and on decades of experience working to secure meaningful protection of the rights of marginalized communities, CCPI has consistently emphasized that the *Charter*

rights of the most disadvantaged require positive measures by governments to ensure access to the basic requirements of life, dignity, and security, including housing, health care, nutrition, and other necessities. While more advantaged groups may predominantly rely on restraints on state action to protect their rights, those living in poverty or homelessness often require governments to take affirmative steps to remedy systemic deprivation and inequality.

6. CCPI has intervened in fourteen appeals before the Supreme Court of Canada. These include *Symes v Canada*, [1993] 4 S.C.R. 69; *R. v. Prosper*, [1994] 3 S.C.R. 236; *R. v. Matheson* [1994] 3 S.C.R. 328; *Walker v. Prince Edward Island*, [1995] 2 S.C.R. 407; *Thibaudeau v. Canada*, [1995] 2 S.C.R. 627; *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817; *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 S.C.R. 46; *Lovelace v. Ontario*, [2000] 1 S.C.R. 950; *Gosselin v. Québec (Attorney General)*, [2002] 4 S.C.R. 429; *R. v. Wu*, [2003] 3 S.C.R. 530; *Chaoulli v. Quebec (Attorney General)*, [2005] 1 S.C.R. 791; *R. v. Caron*, [2011] 1 S.C.R. 78; and *Attorney General of Quebec v Cibuabua Kanyinda* (SCC File No 4121), heard 14 May 2025.

7. CCPI intervened before a special three person Board of Inquiry in *Kearney v. Bramalea Ltd. (No. 2)*, 1998 CanLII 29852 (ON HRT) in which systemic practices in tenant selection which exclude low income applicants based on affordability criteria were found to constitute adverse effect discrimination under ss. 2 and 11 of Ontario's *Human Rights Code* based on race, receipt of public assistance, family status and other grounds.

8. CCPI intervened before the Ontario Superior Court of Justice and the Ontario Court of Appeal in *Tanudjaja v. Attorney General (Canada) (Application)* 2013 ONSC 5410, *Tanudjaja v. Canada (Attorney General)* 2014 ONCA 852 with respect to positive obligations under ss. 7 and 15 of the *Charter* to ensure the rights of those who are homeless. At this Court, CCPI argued that the motions judge had erred in finding that the *Charter* does not impose positive obligations on governments to address homelessness, and that homelessness is not an analogous ground of discrimination under ss. 15. This Court upheld the motions judge's granting of the motion to strike on other grounds but did not uphold its findings on positive obligations under ss. 7 or on homelessness as an analogous ground under ss. 15, leaving these issues to be considered in subsequent cases, such as the present appeal.

9. CCPI was also granted intervener status jointly with NRHN in *The Regional Municipality of Waterloo v Persons Unknown and to be Ascertained*, Court File No. CV-25-00000750-0000, to make submissions concerning positive obligations under ss. 7 and 15 to address homelessness; the recognition of homelessness as an analogous ground under ss. 15; and whether the Region of Waterloo's Plan to End Chronic Homelessness and its associated human-rights commitments provide judicially manageable standards to assess compliance with *Charter* obligations.

Advancing *Charter* Interpretation Inclusive of the Rights of Persons Living in Poverty and Homelessness

10. In all its interventions, CCPI has encouraged courts to interpret and apply the *Charter* in a manner that does not exclude or diminish the rights of people living in poverty or homelessness. CCPI has emphasized that the meaningful enjoyment of *Charter* rights by the most disadvantaged may require proactive government measures, including the provision of essential

benefits and services and may require courts to craft innovative remedies to ensure the protection of *Charter* rights in complex areas of social policy. CCPI's facts have been relied upon in multiple decisions and are widely referenced by researchers, advocates, and community organizations across Canada and internationally.

11. In *Eldridge v. British Columbia (Attorney General)*, CCPI argued that s. 15 may impose positive obligations on governments to address the needs of disadvantaged groups, including where the source of inequality does not arise from direct state action. In that case, the Supreme Court held that the province was required to fund medical interpretation services for Deaf patients to ensure equal access to publicly funded health and hospital care. The Court rejected the assertion that s. 15 does not require governments to alleviate disadvantages that exist independently of state action, characterizing this as a "thin and impoverished" view of equality that is inconsistent with the Court's jurisprudence.

12. In *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, CCPI submitted that s. 7 may require positive measures to ensure access to justice and representation where the rights to security of the person and a fair hearing are at stake. The Supreme Court agreed, finding a positive obligation to provide state-funded counsel to a sole-support parent in child protection proceedings to ensure a fair process. In *Gosselin v Québec (Attorney General)*, CCPI argued that the drafting history of the *Charter*, together with Canada's international human rights obligations, support recognition of positive obligations under s. 7 to secure access to an adequate standard of living for those living in poverty. While the majority held that the impugned regulation did not violate s. 7, it expressly left open the possibility that positive obligations to

ensure access to basic necessities may be required under s. 7 in a future case, on an appropriate evidentiary record.

13. In *Tanudjaja v Canada (Attorney General)*, CCPI argued before both the Superior Court of Justice and this Court that the *Charter* may impose positive obligations on governments to address homelessness, and that homelessness should be recognized as an analogous ground of discrimination under s. 15. While the majority of this Court upheld the motion judge's conclusions that the Charter cannot impose positive obligations or that homelessness cannot be recognized as an analogous ground. These issues therefore remain open for determination in the present case and CCPI can again provide useful assistance to the Court in considering them.

14. In its recent intervention before the Supreme Court of Canada in *Attorney General of Quebec v Cibuabua Kanyinda* CCPI argued that the guarantee of substantive equality under s. 15 may require governments to take measures to address systemic inequality, in that case the inequality faced by women in the labour market if they lack access to affordable childcare.

Advancing Interpretations of *Charter* Rights Consistent with International Human Rights Law

15. In all its interventions, CCPI has emphasized the importance of interpreting the *Charter* in a manner consistent with Canada's international human rights law obligations. CCPI has highlighted the relationship between s. 7 rights to life and security of the person and section 15 equality rights and Canada's obligations under the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* and the *International Covenant on Civil and Political Rights*

(*ICCPR*) to address systemic inequality and to ensure access to housing, health care, and other basic necessities.

16. CCPI has participated in each of Canada's periodic reviews before the UN Committee on Economic, Social and Cultural Rights (in 1993, 1998, 2006, and 2016) and before the UN Human Rights Committee (in 1999, 2005, and 2016). CCPI has also provided testimony before the Inter-American Commission on Human Rights concerning the right to adequate housing.

17. In these submissions to international human rights bodies, CCPI has consistently identified widespread homelessness as one of the most serious and urgent human rights violations in Canada. These bodies have repeatedly called on governments in Canada to treat homelessness as a violation of fundamental rights, to ensure access to effective remedies, and to align domestic legal interpretation with international obligations. CCPI has emphasized the role of courts in implementing international human rights in Canada's dualist system, where compliance with the obligation to ensure access to effective remedies depends largely on a judicial commitment to the presumption that the *Charter* provides at least the same level of protection of fundamental human rights as is afforded by international human rights treaties ratified by Canada.

18. CCPI has also argued before Canadian courts that while access to housing, health care, and legal representation do not appear as freestanding rights in the *Charter*, socio-economic rights to which Canada is committed under international law must also be subject to effective remedies and failures to take reasonable steps to ensure access to these basic necessities, as required under international law, directly engage the rights to life, liberty, or security of the person under s. 7 and the right to equal protection and benefit of the law under s. 15.

19. CCPI addressed these issues in the motion to strike in *Toussaint v. Canada (Attorney General)*, 2022 ONSC 4747, to argue that having secured a decision from the UN Human Rights Committee that her rights to life and non-discrimination under the *ICCPR* had been violated, the plaintiff should not be barred from seeking a *Charter* remedy for Canada's ongoing failure to implement the Committee's findings and the ongoing denial of access to essential health based on immigration status. The Superior Court rejected the Attorney General's argument that access to publicly funded health care is exclusively a socio-economic right that is not protected in the *Charter* and dismissed the motion to strike. CCPI continues to participate as an intervener in the ongoing proceedings (*Toussaint v. Attorney General of Canada*, 2025 ONSC 2007).

CCPI's Recognized Expertise in the Rights of People Experiencing Homelessness and Poverty

20. CCPI's role in advancing interpretations of the *Charter* and other laws that reflect the perspectives and rights of persons experiencing poverty or homelessness has been widely recognized. The National Judicial Institute has drawn on CCPI's expertise to support social context education for judges in multiple provinces. CCPI has also been invited to appear before parliamentary committees, including the Special Joint Committee of the Senate and the House of Commons on a Renewed Canada to address the relationship between the *Charter* and a proposed social charter and the House of Commons Standing Committee on Justice respecting public interest litigation and the Court Challenges Program of Canada.

21. Internationally, CCPI has been invited to make presentations by the International Commission of Jurists, the Constitutional Assembly of South Africa, Forum Asia, the Committee for the Administration of Justice in Northern Ireland, and the Office of the United Nations High

Commissioner for Human Rights. CCPI has provided analysis and advice to governments and intergovernmental bodies regarding the protection of the rights of people living in poverty or homelessness.

22. CCPI has also been a research partner in national multi-year collaborations focused on social rights accountability, involving four universities and multiple community organizations and experts. This research included examination of the relationship between *Charter* rights and socio-economic rights under international human rights law, including the right to adequate housing.

CCPI's Different and Useful Perspective

23. CCPI brings a distinct perspective to the issues before the Court in this appeal. Its long-standing engagement with courts, human rights bodies, governments, and affected communities regarding the positive obligations required to address homelessness and poverty provides important context for the interpretation of the *Charter* rights at issue in this case.

24. CCPI's work on access to justice and effective remedies for violations of *Charter* rights caused by homelessness will assist in clarifying what is at stake for disadvantaged groups in the present application and provide a different perspective from the Appellants and the other interveners as to the role of the court in crafting a remedy that vindicates the rights of the Appellants. CCPI can assist the Court in situating the legal issues within the broader framework of emerging domestic and international jurisprudence regarding the right to life and its interdependence with the right to adequate housing.

Proposed Submissions

25. CCPI proposes to make joint submissions with NRHN to assist the Court in addressing the issues identified in their Notice of Motion and in the draft factum. The submissions will focus on the application judge's finding that homelessness is the source of the *Charter* violations at issue in this case, that homelessness is not an analogous ground of discrimination, and that the court should not interfere with the Respondent's attempts to solve the problem of homelessness.

26. CCPI/NRHN will address positive obligations under ss. 7 and 15 to respond to homelessness; the recognition of homelessness as an analogous ground under s. 15; and the court's important role in providing direction as to what is required by the *Charter* without intruding on the municipality's competence to design and implement necessary plans and programs.

27. CCPI/NRHN's submissions will directly address the justiciability concerns raised by this Court in the *Tanudjaja* case, regarding the need for judicially discoverable and manageable standards to assess whether measures taken to address homelessness. CCPI/NRHN will argue that, in the present case, Justice Ramsay failed to consider the need for a creative and flexible remedy that vindicates the rights of the appellants without exceeding the proper role of courts.

CCPI's Proposed Intervention Will Not Cause Delay

28. CCPI and NRHN will work with the schedule agreed to by the parties. We will not introduce new evidence and will rely on the record as filed by the parties. We will not seek an award of costs and request an order that costs will not be awarded against us.

**AFFIRMED REMOTELY in the City of Ottawa,
in the Province of Ontario, this 10th day of November, 2025**
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely



**Martha Jackman LSO # 31426C
A Commissioner for Taking Affidavits**



Bruce Porter

TAB 3

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

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APPLICANTS (APPELLANTS)

and

CITY OF HAMILTON

RESPONDENT (RESPONDENT ON APPEAL)

**AFFIDAVIT OF MICHÈLE BISS, NATIONAL RIGHT TO HOUSING NETWORK,
PROPOSED INTERVENER**

I, Michèle Biss, of City of Ottawa in the Province of Ontario AFFIRM:

1. I am the Executive Director of the National Right to Housing Network (NRHN) and as such I have personal knowledge of the matters contained in this affidavit. I am a human rights lawyer (LSO # 66567R) and have worked at NRHN since its inception in 2019.

2. I make this affidavit in support of the motion by the NRHN for leave to intervene as a friend of the court jointly with the Charter Committee on Poverty Issues (CCPI) in the above Appeal.

The National Right to Housing Network (NRHN)

3. The NRHN is a pan-Canadian coalition of more than 2,000 organizations, advocates, experts and people with lived experience of homelessness committed to the progressive realization of the right to adequate housing in Canada as guaranteed under international human rights law and affirmed under the *National Housing Strategy Act* (SC 2019, c. 29, s. 313)

4. After a civil society campaign for federal legislation for the implementation of the right to adequate housing in Canada, the *National Housing Strategy Act* (NHSA) was adopted by the Parliament of Canada in 2019, recognizing the right to adequate housing as a fundamental human right and committing the federal government to the progressive realization of the right to adequate housing in accordance with obligations under international human rights law.

5. The NHSA requires the Minister of Housing and Infrastructure to develop and maintain a national housing strategy to further the progressive realization of the right to housing, taking into account key principles of a human rights-based approach to housing, establishing goals, timelines and desired outcomes, and focusing on improving housing outcomes for persons in greatest need. It also establishes mechanisms through which the government is to be held accountable to its commitments with respect to the right to adequate housing, including a Federal Housing Advocate, a National Housing Council and Review Panels appointed by the National Housing Council to hold hearings into systemic issues within federal jurisdiction.

6. The NRHN officially launched on 6 February 2020, soon after the *NHSA* received Royal Assent, to assist civil society organizations and those experiencing homelessness or precarious housing to utilize the new government accountability mechanisms contained in the *NHSA* and to promote the implementation of the right to adequate housing in Canada.
7. Governance of the NRHN rests with a Steering Committee whose members bring a wealth of experience in diverse areas, including human rights law, housing policy, anti-poverty advocacy, and crucial lived experience of housing insecurity and homelessness. Day-to-day activities are carried out by a small paid staff and a set of issue-specific working groups including a legal working group focusing on promoting the right to adequate housing through the interpretation of the *Charter* and other domestic law.
8. The NRHN makes regular submissions to the National Housing Council to guide the implementation of the right to housing and actively supports partners in engaging with reviews conducted by the Federal Housing Advocate or by Review Panels.
9. NRHN staff have published extensively on international human rights law and its application in Canada. This includes a literature review on the Progressive Realization of the Right to Housing commissioned by the National Housing Council.
10. The NRHN created an online right to housing training to help members of the National Housing Council apply international human rights law and norms, which is now mandatory for members.

11. In 2023-2024 NRHN acted as an “engagement partner” for the Federal Housing Advocate’s comprehensive review of government responses to homeless encampments, including assessing the responsibilities and legal obligations of municipal governments. This work included supporting partners in organizing engagement sessions with encampment residents, conducting media interviews, and developing public education and advocacy materials, including a webinar and Toolkit for Advocacy for a National Encampment Response Plan, which included sample letters to local government representatives and communications messaging.

Promoting Implementation of the Right to Adequate Housing by All Orders of Government

12. NRHN has worked extensively through its partner organizations and working group members to promote the progressive realization of the right to adequate housing by all orders of government in Canada. This work includes encouraging municipalities to recognize that under international law the responsibility to implement the right to adequate housing applies to all orders of government and encouraging municipalities to adopt plans or charters that commit to implementing the right to adequate housing in accordance with obligations under international human rights law, the *Charter* and human rights legislation in areas of municipal authority.

13. NRHN has conducted research and public legal education to promote interpretations of the *Charter* and domestic law that are consistent with obligations to realize the right to adequate housing under international human rights law. In doing so, NRHN has emphasized that reasonable interpretations of legislation or constitutional guarantees based on the presumption of

conformity with obligations to address homelessness or to ensure access to housing under ratified international human rights treaties does not rely on a “freestanding” right to housing in domestic law.

14. NRHN has conducted research and public education on all aspects of the right to adequate housing under international law. It has been commissioned to provide research on the right to adequate housing by the Office of the Federal Housing Advocate and has been retained to provide training to multiple federal government departments on the right to adequate housing under international human right law and how it should be implemented within various areas of federal jurisdiction and in inter-governmental agreements.

15. NRHN has conducted research and provided training and public education materials for lawyers, government officials and housing advocates on the prohibition of “forced eviction” under international law and its application to persons without legal security of tenure or living in encampments. It has conducted research and provided public education on established legal standards under international human rights regarding the components of adequate housing under international human rights law, which are included in the rights-based approach adopted by the City of Hamilton to eliminate homelessness. NHRN has also conducted public education on the implications of the decision in *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2023 ONSC 670 for the *Charter* rights of homeless persons and encampment residents.

NHRN's Well- Recognized Expertise

16. NHRN has a recognized expertise in the structural causes of homelessness and in how meaningful engagement with homeless persons and with encampment residents can lead to effective solutions to homelessness. It has been called upon by the Federal Housing Advocate, the National Housing Council and many government officials to share this expertise.

17. NHRN also has recognized expertise in the overlapping responsibilities for housing and human rights by different orders of government in Canada and in how accountability to the shared commitment to the right to adequate housing under international law can be implemented in that context. NHRN was an invited participant at the Federal-Provincial-Territorial (FPT) Meeting of Ministers Responsible for Human Rights in 2023, which focused on the implementation of Canada's international human rights obligations, including with respect to addressing homelessness. NHRN has also engaged regularly with officials of the two inter-governmental committees that oversee the implementation of international human rights in Canada, the Continuing Committee of Officials on Human Rights (CCOHR) and the FPT Senior Officials Committee Responsible for Human Rights (SOCHR). NHRN presented as a witness to the Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development in 2024 when the Subcommittee was conducting a review of the Implementation of recommendations from Canada's Universal Periodic Review before the UN Human Rights Council.

18. Through its work in implementing the right to adequate housing under the *NHSA* and promoting the implementation of the right to adequate housing by other orders of government

based on the “rights-based approach” required by the *NHSA*, NRHN has a recognized expertise in a rights-based approach to housing and homelessness. It is also a recognized expert in how international human rights commitments embedded in domestic law or policy, such as the commitment to the rights-based approach adopted by the City of Hamilton’s plan to end chronic homelessness and its encampment protocols, can be given concrete legal and practical effect.

NHRN’s Different and Useful Perspective

19. NHRN offers a different perspective than the parties in this application by providing a broader lens through which to assess the *Charter* rights of encampment residents and other homeless persons informed by an extensive network of organizations and individuals addressing issues similar to those being faced in the City of Hamilton.

20. The NRHN also provides a different perspective on the responsibilities of municipal governments to adopt measures to ensure the rights of encampment residents and other homeless persons that is informed by national and international standards, practices and experiences. NHRN has been directly involved in developing and promoting the “rights-based-approach” to homelessness that has been affirmed by the Respondent in this case, and it is able to provide the perspective of organizations involved in promoting that approach across Canada. NHRN has submitted reports to UN human rights bodies regarding homelessness and human rights in Canada and has extensive experience in ensuring that the right to adequate housing under international human rights law is given domestic legal effect through Canadian law and policy, including through rights-based municipal initiatives to address homelessness.

Proposed Submissions

21. NHRN seeks leave to intervene jointly with the CCPI to assist the Court with the issues identified in the Notice of Motion and to advance arguments as described in the Draft Factum. NHRN will not seek an award of costs and requests an order that costs will not be awarded against it. NHRN will not adduce any evidence and will rely on the record as filed by the parties. It will adhere to any schedule agreed to by the parties so as not to create any delay.

**AFFIRMED REMOTELY by the Affiant,
located in Mississauga, Ontario,
before me, located in Ottawa, Ontario, this
10th day of November, 2025,
in accordance with O. Reg.
431/20.**



**Martha Jackman LSO # 31426C
A Commissioner for Taking Affidavits**



Michèle Biss

TAB 4

**FACTUM OF THE PROPOSED INTERVENERS
THE CHARTER COMMITTEE ON POVERTY ISSUES (CCPI)
AND THE NATIONAL RIGHT TO HOUSING NETWORK (NRHN)
IN SUPPORT OF THE MOTION FOR LEAVE TO INTERVENE**

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PART I – NATURE OF THE MOTION

1. CCPI and NRHN seek leave to intervene jointly in this appeal pursuant to Rule 13.02, to file a joint factum of up to 12 pages and to make oral submissions as the Court may direct, with no costs for or against them.

2. This appeal raises issues of significant public importance that extend beyond the interests of the parties, regarding the scope of obligations under ss. 7 and 15 of the *Charter* toward people who are homeless. Widespread homelessness in Canada has been recognized as a serious human rights violation and the application judge accepted that homelessness causes risks to life and security of the person. He held, however, that courts should not interfere with municipal responses to homelessness.¹ He further held that s. 15 is not engaged because it has been agreed homelessness is not an analogous ground.²

3. Those conclusions relied on Superior Court findings that were not endorsed by this Court in *Tanudjaja v Canada (Attorney General)* (ONCA), which left these issues open for consideration in subsequent cases, such as this one.³ CCPI/NHRN's submission will focus on the need for clarification from this Court that courts have an important and constitutionally mandated role to play in safeguarding the *Charter* rights of homeless persons, including the ss. 7 and 15 rights of the appellants at risk in this case.

¹ *Heegsma v. Hamilton (City)*, 2024 ONSC 7154 (CanLII) at para 76.

² *Ibid* at para 82.

³ *Tanudjaja v. Canada (Attorney General)*, 2014 ONCA 852 at para 37.

PART II – FACTS

4. CCPI is a national committee founded 1988 to bring together low-income representatives and experts in human rights and constitutional law to advance the rights of people living in poverty and homelessness under the *Charter*, human rights legislation, and international law. CCPI has extensive experience and unique expertise in the issues arising in this appeal.⁴ It has intervened in many cases before the Supreme Court of Canada and other courts to address issues similar to those arising in this case.⁵

5. NRHN is a pan-Canadian coalition of more than 2,000 organizations, advocates, experts and people with lived experience of homelessness committed to the progressive realization of the right to adequate housing as affirmed under the *National Housing Strategy Act* and international human rights law. NRHN has singular expertise in international human rights norms incorporated into national legislation that now serve as a basis for implementing positive obligations of all orders of government to address violations of rights caused by homelessness.⁶

PART III – ISSUES AND ANALYSIS

6. This Court has recognized three considerations guiding the exercise of discretion to grant intervener status: whether the proposed intervener (i) has a real, substantial and identifiable interest in the issues; (ii) offers a perspective that is distinct and useful to the Court; or (iii) is a

⁴ Affidavit of Bruce Porter, affirmed November 10, 2025, [[Porter Affidavit](#)] at para 3.

⁵ Ibid at [para 6](#).

⁶ Affidavit of Michèle Biss, affirmed November 10, 2025, Tab 3 [[Biss Affidavit](#)] at [para 3](#).

well-recognized group with relevant expertise and a broadly identifiable membership. The overarching consideration is whether a proposed intervener can be of assistance to the court in providing a different perspective that is not already addressed by the parties.⁷ The Court has also recognized that, in *Charter* cases involving systemic issues affecting marginalized groups that may impact the rights of others, these criteria are applied flexibly “to ensure that the Court has the benefit of the broader legal and social context necessary to fully address the issues raised.”⁸

7. CCPI and NRHN jointly meet all these considerations, and their participation will assist the Court in addressing the constitutional issues at stake in this appeal.

(i) CCPI and NRHN Have a Real and Substantial Interest in the Appeal

8. CCPI and NRHN are national organizations committed to securing the rights of people experiencing homelessness under the *Charter* and international human rights law. Both regularly work with governments and affected communities to clarify state obligations to address homelessness, including through research, policy development, rights education, test case litigation, and submissions to international treaty bodies.⁹

9. The Court’s decision in this appeal will have a direct impact on the ongoing work of both organizations to ensure accountability of governments in Canada for the protection of the rights of homeless persons and effective remedies for rights violations caused by failures to ensure access to adequate and accessible shelter, long term housing and necessary supports. Both groups

⁷ *Christian Heritage Party of Canada v. Hamilton (City)*, 2025 ONCA 700 at para 9.

⁸ *Ibid* at para 8.

⁹ *Porter Affidavit* at paras 21-22; *Biss Affidavit* at paras 8 - 15.

also have a direct interest in the recognition of widespread stereotypes and differential treatment of homeless persons and in access to effective *Charter* remedies for such discrimination.¹⁰

(ii) CCPI and NRHN Offer a Distinct and Useful Perspective

10. CCPI and NRHN bring a perspective grounded in lived experience, national comparative policy analysis, and international human rights law, which will be useful to this Court in addressing issues of *Charter* interpretation that are of national importance and engage directly with international human rights law.¹¹

11. CCPI and NRHN have worked extensively on the development and implementation of rights-based approaches to homelessness with meaningful standards for ensuring accountability, including in municipal planning and policy, international monitoring processes, and community-based engagement with encampment residents. Their perspective is informed by cross-jurisdictional, community-informed, and rights-based analysis of direct relevance to concerns raised by this court in *Tanudjaja* regarding judicially manageable standards of accountability and the judicial role in crafting remedies that respect municipal responsibilities and competencies while ensuring *Charter* compliance.¹²

¹⁰ [Porter Affidavit](#) at para 8.

¹¹ [Biss Affidavit](#) paras 17-19; [Porter Affidavit](#) at paras 16 – 20.

¹² *Tanudjaja v. Canada (Attorney General)*, 2014 ONCA 852, 2014 ONCA 852 at paras 33-34.

(iii) CCPI and NRHN are Well-Recognized Organizations with Established Expertise

12. CCPI has been granted leave to intervene in fourteen appeals before the Supreme Court of Canada addressing the need to interpret the *Charter* in a manner that protects the rights of people living in poverty and homelessness.¹³ CCPI was granted intervener status by both the Superior Court and by this Court in *Tanudjaja* to address the issue of positive obligations under the *Charter* to address homelessness.¹⁴ CCPI's expertise is widely recognized both nationally and internationally, having been relied upon by government officials, the National Judicial Institute, the Constitutional Assembly of South Africa and United Nations bodies, among others.¹⁵

13. NRHN's membership includes more than 2,000 organizations, advocates, experts, and people with lived experience. It supports thousands of organizations and individuals through policy work and human rights education and is recognized nationally for its leadership in advancing the right to adequate housing under the *National Housing Strategy Act* and international law by all orders of government in Canada.¹⁶

14. NHRN has made multiple submissions to the Federal Housing Advocate, to parliamentary committees, to United Nations human rights bodies and inter-governmental bodies charged with implementing Canada's international human rights obligations.¹⁷

¹³ Porter Affidavit at para 6.

¹⁴ Porter Affidavit at para 8.

¹⁵ Porter Affidavit at para 21.

¹⁶ Biss Affidavit paras 3 – 11.

¹⁷ Biss Affidavit at para 17.

(iv) No Prejudice or Delay Will Result

15. Both organizations will rely solely on the existing record, will file one joint factum, and seek no costs.

v) Will Make a Useful and Unique Contribution

16. As elaborated in the draft factum, CCPI/NRHN will make a useful and unique contribution in this case by advancing the following arguments.

a) S. 7 Requires Positive Measures Where Life and Security Are at Stake

17. In *Tanudjaja*, this Court left open the scope of positive obligations under s. 7 to address homeless in the context of justiciable claims.¹⁸ Supreme Court jurisprudence recognizes that s. 7 imposes both obligations of restraint and obligations to act to ensure rights to life and security of the person. In *Gosselin v Quebec (Attorney General)*, the majority of the Supreme Court found that the evidence of hardship in that case was “wanting” and did not warrant a novel finding of a positive obligation to provide an adequate standard of living. But Court explicitly left the issue of positive obligations under s.7 open for consideration in other contexts.¹⁹ In the present case the evidence of harm from homelessness, including risk of death, is overwhelming and warrants consideration of positive measures required to address ongoing violations of s. 7 rights.²⁰

¹⁸ *Tanudjaja v. Canada (Attorney General)*, 2014 ONCA 852 [*Tanudjaja ONCA*] at para 37.

¹⁹ *Gosselin v. Québec (Attorney General)*, 2002 SCC 84 [2002] 4 SCR 429, 2002 SCC 84, [2002] 4 SCR 429) at paras 82-83.

²⁰ *Respondent’s Factum*, Appendix, Chart 8 at 68.

b) Homelessness as an Analogous Ground

18. The application judge in this case was constrained by Superior Court jurisprudence in the 2023 *Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained* decision, which adopted the findings of Lederer J. in *Tanudjaja* that homelessness is not an analogous ground under s. 15.²¹ This Court did not, however, endorse those findings and left this issue to be considered in subsequent cases. CCPI/NRHN will argue that recognizing homelessness as an analogous ground clarifies the equality analysis advanced by the appellants and accords with both this Court’s approach in *Falkiner v Ontario (Minister of Community and Social Services)* and with the relevant factors identified by the Supreme Court (identity, immutability/difficulty of change, historical disadvantage and stigma, human rights recognition).²²

c) Judicially Manageable Standards

19. The need for “judicially discoverable and manageable standards” for assessing positive measures to address homelessness identified by this Court in *Tanudjaja* can be resolved in the present case.²³ The *National Housing Strategy Act* now embeds commitments under international human rights law to the progressive realization of the right to adequate housing with goals, timelines and accountability mechanisms. Municipal rights-based plans and protocols (including those adopted by the City of Hamilton) operationalize those standards.

²¹ *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2023 ONSC 670 at paras 126-127.

²² *Falkiner v. Ontario (Minister of Community and Social Services)*, 2002 44902 (ON CA) at para 92; *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, 1999 687 (SCC), [1999] 2 SCR 203, at para 60.

²³ *Tanudjaja ONCA* at paras 33-34.

20. As this Court has found in the context of measures to mitigate climate change in *Mathur v Ontario*,²⁴ where governments commit to positive obligations aligned with international commitments, in that case with the Paris Agreement, these commitments provide judicially workable benchmarks on which courts may rely. Commitments to international human rights norms for the realization of housing as a fundamental human rights, based on reasonable goals, timelines and available resources, similarly provide judicially ascertainable standards on which *Charter* compliance can be meaningfully assessed by courts in the context of homelessness, while leaving the details of policy design and implementation to governments.

d) Just and Appropriate Remedies

21. Consistent with the obligation of courts affirmed in *Doucet-Boudreau v Nova Scotia (Minister of Education)*²⁵ to vindicate rights while respecting institutional roles, CCPI/NRHN will argue that the appropriate remedy in the present case is declaratory relief, establishing the obligation to address homelessness as an ongoing *Charter* violation, coupled with supervisory jurisdiction. This would provide the legal framework for the Respondent to develop and implement, within a reasonable timeframe, a realistic plan to reduce and eliminate chronic homelessness in concert with other orders of government, in a manner that is consistent with its obligations under the *Charter*.

²⁴ *Mathur v. Ontario*, 2024 ONCA 762 at para 71.

²⁵ *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, 2003 SCC 62), [2003] 3 SCR 3, 2003 SCC 62, [2003] 3 SCR 3 at paras 55-59, 68-69.

PART IV – ORDER SOUGHT

22. CCPI and NRHN respectfully request an order granting them leave to intervene jointly; to file a joint factum of up to 12 pages; to make oral submissions in a time to be determined by the Court; with no costs for or against them; and such further relief as this Honourable Court deems just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.



Martha Jackman
Lawyer for CCPI/NRHN

SCHEDULE A– LIST OF AUTHORITIES

(Factum for Leave to Intervene)

	Case Law	Factum Paragraph(s)
1.	<i>Heegsma v. Hamilton (City)</i> , 2024 ONSC	3
2.	<i>Tanudjaja v. Canada (Attorney General)</i> , 2014 ONCA 852	3, 11, 12, 17, 19
3.	<i>Christian Heritage Party of Canada v. Hamilton (City)</i> , 2025 ONCA 700	6
4.	<i>Gosselin v. Québec (Attorney General)</i> , 2002 SCC 84 [2002] 4 SCR 429	17
5.	<i>Falkiner v. Ontario (Minister of Community and Social Services)</i> , 2002 44902 (ON CA	18
6.	<i>Mathur v. Ontario</i> , 2024 ONCA 762	19
	Legislation	
7.	<i>National Housing Strategy Act</i> S.C. 2019, c. 29, s. 313	19

TAB 5

COURT OF APPEAL FOR ONTARIO

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)

DRAFT FACTUM OF THE PROPOSED INTERVENERS

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

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Part I Overview

1. The Charter Committee on Poverty Issues and the National Right to Housing Network (CCPI/NRHN) intervene to address what is, in their view, the central question in the present case – the scope of the respondent’s obligations under ss. 7 and 15 of the *Charter* to protect the life, liberty, security, and equality of the appellants and others whose rights are jeopardized by homelessness.
2. The constitutional question regarding s. 7 in the application before Justice Ramsay, was whether the respondent’s by-laws and proposed enforcement measures “infringe 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.”²⁶
3. Justice Ramsay held that 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.”²⁷ He concluded the respondent is trying to find a solution to homelessness and that the court should “leave them to it without interference. Micro-management by judges will not be productive.”²⁸
4. Justice Ramsay further held that there was no violation of s. 15 because “[t]he only characteristic that the applicants all share is homelessness. It is agreed that homelessness is not an enumerated or analogous ground.”²⁹

²⁶ [Notice of Constitutional Question](#), Appellants Motion Record, Vol 1, Tab 16 at 230

²⁷ *Heegsma v. Hamilton (City)*, 2024 ONSC at [para 76](#).

²⁸ *Ibid* at [para 85](#).

²⁹ *Ibid* at [para 82](#).

5. CCPI/NRHN submits that Justice Ramsay erred in his conclusions regarding the court's role. *Charter* review of municipal responses to homelessness need not entail "micromanaging" housing policy. Homelessness is widely recognized not only as a critical matter of social policy, but as a human rights violation. Canadian courts should not abdicate their constitutionally mandated role of safeguarding the rights of the most vulnerable individuals and groups in society simply because complex policy issues are involved.³⁰
6. Ss. 7 and 15 of the *Charter* require governments to do more than refrain from evicting residents of encampments when adequate housing and supports are unavailable. They must address the underlying cause of the violations at issue – the failure of governments to ensure access to adequate and accessible shelter, longer term housing and social supports.³¹
7. In *Doucet-Boudreau v Nova Scotia (Minister of Education)*, the Supreme Court confirmed that, while respecting the institutional roles of governments and courts, *Charter* remedies must vindicate the rights at stake, and that courts must be flexible and responsive in determining effective remedies in complex social contexts.³² CCPI/NRHN submits that Justice Ramsay erred in failing to consider what would be a "just and appropriate" remedy in this case, consistent with judicial competence and the evidence of ongoing violations of *Charter* rights.
8. The scope of positive obligations under ss. 7 and 15, and the extent to which these rights should be interpreted consistently with Canada's international human rights commitments,

³⁰ *Chaoulli v. Quebec (Attorney General)*, 2005 SCC 35, [2005] 1 SCR 791 at para 107.

³¹ Martha Jackman, "Charter Remedies for Socio-Economic Rights Violations: Sleeping Under a Box?", in Robert J. Sharpe and Kent Roach (eds.), *Taking Remedies Seriously* (Ottawa: Canadian Institute for the Administration of Justice, 2010) at 284-285.

³² *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, 2003 SCC 62, [2003] 3 SCR 3, 2003 SCC 62, [2003] 3 SCR 3 at paras 55 -59, 68-69.

remains one of the most critical unresolved issue of *Charter* interpretation.³³ The present appeal offers this Court a crucial opportunity to provide the direction that municipalities have requested and urgently require regarding their constitutional obligations toward homeless persons.³⁴

Part II Issues

9. The following issues raised in this Appeal will be addressed:

- i) Whether s. 7 imposes positive obligations to address risks to life and security of the person arising from homelessness;
- ii) Whether homelessness should be recognized as an analogous ground under s. 15;
- iii) Whether there is “judicially discoverable and manageable standard” to assess whether measures adopted to address homelessness are compliant with ss. 7 and 15; and
- iv) Whether a remedy can be crafted that vindicates the appellants’ *Charter* rights while respecting the roles and constitutional functions of courts and municipalities.

Part III Facts

10. CCPI/NRHN adopts the respondent’s summary in “Chart 8: Harms of Homelessness,” of the evidence on the record establishing the severe and foreseeable harms associated with homelessness, including significantly increased mortality and reduced life expectancy, chronic

³³ Martha Jackman and Bruce Porter, “[Social and Economic Rights](#)”, in Peter Oliver, Patrick Maklem & Nathalie DesRosiers, eds, *The Oxford Handbook of the Canadian Constitution* (New York: Oxford University Press, 2017) 843-861; Bruce Porter, “[Inclusive Interpretations: Social and Economic Rights and the Canadian Charter](#)” in Helena Alviar García, Karl Klare and Lucy Williams (eds), *Social and Economic Rights in Theory and Practice: Critical Inquiries* (London and New York: Routledge, 2015).

³⁴ *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2025 ONSC 4774. Following on the decision in *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2023 ONSC the Regional Municipality returned to court with a new by-law, accompanied by a *Plan to End Chronic Homelessness*, seeking guidance from the court as to whether its proposed actions comply with the *Charter*. [Application Record](#) p. 10.

disease; a significant risk of death from overdose; sleep deprivation; hypothermia and frostbite; and elevated exposure to physical assault, sexual violence and exploitation.³⁵

11. CCPI/NRHN further relies on the evidence on the record, establishing that homelessness is experienced as a personal identity and that negative stereotypes, stigma, and differential treatment, combined with long term health and psychological effects, make it difficult to change.

Part IV Argument

i) S. 7 Imposes Positive Obligations to Address Homelessness

12. This Court has considered the application of the *Charter* to government responses to homelessness only once, in *Tanudjaja v. Canada (Attorney General)*, on appeal from a decision of Lederer J. granting the respondents’ motion to strike.³⁶ Leave to appeal to the Supreme Court of Canada was denied and the Supreme Court has not considered how ss. 7 and 15 may apply to homelessness in any other decision. The *Tanudjaja* case has therefore been widely relied upon as authority on the question of *Charter* obligations toward those who are homeless.

13. Justice Lederer’s findings in *Tanudjaja* were surprisingly definitive. He found that “[n]o positive obligation has, in general, been recognized as having been imposed by the *Charter* requiring the state to act to protect the rights it provides for”³⁷ and that “there can be

³⁵ Respondent’s Factum, Appendix, Chart 8 at 68.

³⁶ *Tanudjaja v. Canada (Attorney General)*, 2014 ONCA 852 [*Tanudjaja ONCA*] *Tanudjaja v. Attorney General (Canada) (Application)*, 2013 ONSC 5410 [*Tanudjaja ONSC*].

³⁷ *Tanudjaja ONSC* at para 103.

no positive obligation on Canada and Ontario to undertake measures that would reduce or eliminate homelessness, meaning that there can be no breach of s. 7 of the *Charter*.”³⁸

14. Aside from his rejection of positive obligations, Justice Lederer held that the broad policy review of diffuse laws and policies proposed in the application in *Tanudjaja* was “misconceived” and was not justiciable.³⁹

15. Justice Lederer’s decision with respect to the justiciability of the *Tanujaja* claim was upheld by this Court in dismissing the appeal, but the majority found that “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)*.”⁴⁰ In her dissenting opinion, Justice Feldman found that Justice Lederer “erred by concluding that it is settled law that the government can have no positive obligation under s. 7 to address homelessness.”⁴¹

16. While lower courts have tended to follow Justice Lederer’s lead in closing the door to positive obligations under s. 7, the Supreme court of Canada has not done so. In its early decision in *Irwin Toy Ltd v Quebec (Attorney General)*, the Supreme Court recognized that the exclusion of property rights from s. 7 does not preclude the inclusion within s. 7 of socio-economic rights recognized in international human rights law, such as the right to shelter.⁴²

17. In the 1999 *New Brunswick (Minister of Health and Community Services) v G.(J.)* case, where a mother’s security of the person was at stake, s. 7 imposed “a positive constitutional

³⁸ *Tanudjaja ONSC*, 2013 ONSC 5410 at para 128.

³⁹ *Ibid* at para 148.

⁴⁰ *Tanudjaja ONCA* at para 37.

⁴¹ *Ibid* at para 62.

⁴² *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927 1989 87 (SCC) at .

obligation to provide state-funded counsel” to ensure a fair hearing.⁴³ The Court held that concerns about judicial interference with the allocation of government resources should be considered under s. 1.⁴⁴

18. In the 2011 *PHS Community Services (Insite)* case, the Supreme Court found that the government’s failure to provide the Insite clinic an exemption from federal narcotics control legislation violated s. 7 and ordered the Minister of Health to act immediately to provide the exemption that Insite needed to continue offering its services.⁴⁵

19. The Supreme Court’s decision in *Gosselin v. Québec (Attorney General)* is frequently misunderstood as having rejected positive obligations under s. 7, but the majority decision turned on its findings of fact, leaving the issue open for consideration in subsequent cases:

The question therefore is not whether s. 7 has ever been — or will ever be — recognized as creating positive rights. Rather, the question is whether the present circumstances warrant a novel application of s. 7 as the basis for a positive state obligation to guarantee adequate living standards [T]he impugned program contained compensatory “workfare” provisions and the evidence of actual hardship is wanting. The frail platform provided by the facts of this case cannot support the weight of a positive state obligation of citizen support.”⁴⁶

20. In the present case, the record is clear and the evidence of hardship overwhelming. There is no disagreement that homelessness causes multiple harms to life and security, including death. The legal question reserved in *Gosselin* therefore properly arises in this appeal.

21. Claims to positive measures to protect rights to life and security in the context of housing do not rely on a “freestanding” right to adequate housing or other socio-economic rights not

⁴³ *New Brunswick (Minister of Health and Community Service) v G(J)* [1999] 3 SCR 46 at paras 81, 91, and 107.

⁴⁴ *Ibid* at para 108.

⁴⁵ *Canada (Attorney General) v. PHS Community Services Society* 2011 SCC 44, [2011] 3 SCR 134 at paras 150-151 and 156.

⁴⁶ *Gosselin v. Québec (Attorney General)*, 2002 SCC 84 [2002] 4 SCR 429, at paras 82-83.

included in the *Charter*. As Justice Perell has found in relation to s. 7 and access to health care, the mischaracterization of a claim that access to publicly funded health care is required for the protection of life “as a claim for a purely socio-economic right which is outside the guarantees of the *Canadian Charter of Rights and Freedoms*” is prejudicial and unfair.⁴⁷

22. The interdependence of the rights to life and to housing has been clearly affirmed in international human rights law and is a lived reality for the appellants and others experiencing homelessness.⁴⁸ As Gibson J. recently agreed in the context of homeless encampments in the Region of Waterloo, s. 7 protects “foundational and fundamental human 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.”⁴⁹

ii) Homelessness as an Analogous Ground of Discrimination Requiring Positive Measures of Protection

23. The appellants state in their Notice of Appeal that:

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.”⁵⁰

⁴⁷ *Toussaint v. Canada (Attorney General)*, 2022 ONSC 4747 at para 34.

⁴⁸ UN Human Rights Committee, *General Comment 36* CCPR/C/GC/36 (3 September 2019); UNGA, Report of the UN Special Rapporteur on Adequate Housing, *A/71/310* (8 August, 2016); Bruce Porter, “*The Interdependence of Human Rights*” in Jackie Dugard, Bruce Porter, Daniela Ikawa and Lilian Chenwi (eds) *Research Handbook on Economic, Social and Cultural Rights as Human Rights* (Cheltenham, UK: Edward Elgar Publishing, 2020) at 321-327.

⁴⁹ *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2025 ONSC 4774 at para 86.

⁵⁰ *Ibid*, Notice of Application p 20.

24. CCPI/NRHN agrees with the appellants and other interveners that the discriminatory treatment of homeless people intersects with and adversely affects disadvantaged groups who are over-represented and differentially affected by homelessness, including Indigenous persons, women and persons with disabilities. However, CCPI/NRHN submits that this Court should not uphold Justice Ramsay’s finding that homelessness is not an analogous ground.

25. In *Falkiner v. Ontario (Minister of Community and Social Services)*, this Court revised the approach taken by the Divisional Court, which had defined the relevant group affected by the “spouse in the house” rule as “sole support parents on social assistance.”⁵¹ Instead, this Court recognized receipt of social assistance as an discrete analogous ground that intersected with sex and marital status, explaining that this approach aligns with human rights legislation, reflects the historical disadvantage and negative stereotyping experienced by the group, and clarifies and simplifies the s. 15 analysis.⁵² The same reasoning applies in this case: homelessness similarly constitutes a socially identifiable characteristic associated with persistent stigma, disadvantage, and exclusion which operates in intersection with other grounds identified by the appellants. Recognizing homelessness as an analogous ground would ensure that the distinction and substantive inequality at issue is fully and properly analyzed.

26. At trial, Justice Ramsay followed earlier Superior Court decisions holding that homelessness is not an analogous ground, including *Regional Municipality of Waterloo v Persons Unknown*, where Valente J. relied on Lederer J.’s decision in *Tanudjaja*.⁵³ What was not understood or acknowledged in the hearing before Justice Ramsay, however, is that when

⁵¹ *Falkiner v. Ontario (Minister of Community and Social Services)*, 2002 44902 (ON CA) at para 92.

⁵² *Ibid* at para 92.

⁵³ *The Regional Municipality of Waterloo v Persons Unknown and to be Ascertained* 2013 ONSC 5410 at paras 125-127.

Tanudjaja came before it, this Court did not endorse Lederer J's conclusion and instead left open the question of whether homelessness constitutes an analogous ground.⁵⁴

27. The Supreme Court has confirmed that a court may “refine” the characterization of the group or comparison necessary to properly assess the equality claim.⁵⁵ This principle is particularly applicable here, where the application was constrained by existing Superior Court jurisprudence and it remains open to this Court to consider whether recognizing homelessness as an analogous ground would clarify and properly frame the s. 15 analysis.

28. The Supreme Court has identified several contextual factors relevant to determining whether a characteristic constitutes an analogous ground, including whether it is closely tied to identity and dignity, whether it is immutable or difficult to change, whether it has caused historical disadvantage and social prejudice, and whether it has been recognized in human rights legislation.⁵⁶ Each of these factors supports recognition of homelessness as an analogous ground, based on the evidence in this case.

29. As confirmed in the Affidavit of Leilani Farha, based on her work as UN Special Rapporteur on Adequate Housing, people experiencing homelessness are routinely subjected to discriminatory treatment, harassment, and violence “because of their housing status” and those residing in encampments are often exposed to heightened forms of such treatment when pressured to relocate or disperse.⁵⁷ In her report to the UN Human Rights Council on homelessness as a human rights crisis Ms. Farha explains that:

⁵⁴ *Tanudjaja ONCA* at para 62. See *Appellants’ Motion Record Vol 1*, at 586 where it is stated that “[t]he leading case on that point is the Ontario Superior Court decision in *Tanudjaja*, which is - again, is cited in the City's Factum, and that decision was upheld on appeal to the Court of Appeal.”

⁵⁵ *Lovelace v. Ontario*, 2000 SCC 37, [2000] 1 SCR 950 at para 62

⁵⁶ *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, 1999 687 (SCC), [1999] 2 SCR 203, at para 60.

⁵⁷ Affidavit of Leilani Farha, *Appellants’ Motion Record Vol 7* at para 26.

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.⁵⁸

30. The UN Committee on Economic, Social and Cultural Rights has likewise established that those who are homeless face “pervasive discrimination, stigmatization and negative stereotyping” and that States must prohibit such discrimination.⁵⁹

31. Canadian human rights law reflects this understanding. Manitoba’s *Human Rights Code*, prohibits discrimination because of “social disadvantage” expressly including homelessness.⁶⁰ New Brunswick, Quebec and the Northwest Territories, prohibit discrimination based on social condition, interpreted as including homelessness as a prohibited ground.⁶¹ The Quebec Human Rights Commission has found that practices targeting homeless persons, including restrictive by-laws constitute systemic discrimination based on social condition.⁶² The Canadian Human Rights Commission as well as provincial commissions in Ontario, Saskatchewan and British Columbia, where homelessness or social condition is not included in human rights legislation, have all recommended that such protection be added.⁶³

⁵⁸ UN Special Rapporteur on Adequate Housing, Report to the Human Rights Council, [UN Doc A/HRC/31/54](#) (2015) at [para 19](#).

⁵⁹ UN Committee on Economic, Social and Cultural Rights, [General Comment 20](#): Non-discrimination E/C.12/GC/20 (2 July 2009) at [para 35](#).

⁶⁰ *The Human Rights Code*, C.C.S.M. c. H175, s. 9(1)(l)

⁶¹ *Charter of human rights and freedoms*, CQLR c. C-12, s. 10; *Human Rights Act*, RSNB 2011, c. 171, ss. 2(1) and 3(1); *Human Rights Act*, S.N.W.T. 2002, c. 18, s. 5(1); *Commission des droits de la personne et des droits de la jeunesse (Levasseur) c. Ville de Montréal (SPVM)*, 2025 QCTDP.

⁶² Commission des droits de la personne et des droits de la jeunesse, *La judiciarisation des personnes itinérantes à Montréal : un profilage social* (Montréal: CDPDJ, 2009) at 75–83.

⁶³ Canada, House of Commons, Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, *Evidence*, 40th Parl, 3rd Sess, Meeting No 39 (2 June 2010) at 2 (Jennifer Lynch, Chief Commissioner, Canadian Human Rights Commission); British Columbia Office of the Human Rights Commissioner, *Adding “social condition” as a protected ground to B.C.’s Human Rights Code* (May, 2020); Ontario Human Rights Commission, *OHRC engagement on poverty and systemic discrimination in the areas of*

32. Canadian scholarship also supports the recognition of homelessness as an analogous ground. Professors Sylvestre and Bellot have found that homeless persons are “subject to systemic rights violations, widespread discrimination and prejudice based on stereotypes and misconceptions,” including the persistent association of homelessness with moral failure, personal choice, and criminality.⁶⁴ They further observe it “defines one’s personhood in a way that is socially constructed and difficult to change.”⁶⁵

33. Recognizing homelessness as an analogous ground also clarifies that a rights-compliant response to homelessness and encampments requires ameliorative measures to address the systemic disadvantage associated with homelessness, regardless of the extent to which the respondents are directly responsible for the disadvantage. In *Eldridge v. British Columbia (Attorney General)*, the Court rejected the argument that s. 15 “does not oblige governments to implement programs to alleviate disadvantages that exist independently of state action” as a “thin and impoverished vision of s. 15(1).”⁶⁶

iii) Judicially Discoverable and Manageable Standard for Assessing Whether the Measures Adopted to Address Homelessness are Compliant with ss. 7 and 15 of the *Charter*

34. The central question raised by this Court in *Tanudjaja* was whether governments can be held accountable for ensuring the *Charter* rights of those who are homeless based on “judicially

accessible, adequate and affordable housing, mental health and addiction disabilities: Background paper at 9-10; *Saskatchewan Human Rights Commission, Annual Report 2001-2002* at 11.

⁶⁴ Marie-Eve Sylvestre and Céline Bellot, “Challenging Discriminatory and Punitive Responses to Homelessness in Canada” in Martha Jackman and Bruce Porter (eds) *Advancing Social Rights in Canada* (Toronto: Irwin Law, 2014) at 155-159 and 184.

⁶⁵ *Ibid* at 27.

⁶⁶ *Eldridge v. British Columbia (Attorney General)*, 1997 327 (SCC) at paras 72–73.

discoverable and manageable standards.”⁶⁷ Citing then Professor Lorne Sossin’s book on justiciability, the majority in *Tanudjaja* concluded that the applicants’ claim was too policy-laden to be judicially manageable⁶⁸ and that a declaratory order requiring a rights-based housing strategy, as sought by the appellants, “would be so devoid of content as to be essentially meaningless”⁶⁹ As Justice Sossin and Gerard Kennedy have explained in the more recent edition of the book, this Court’s decision in *Tanudjaja* clarifies that justiciability turns on the existence of legal standards that courts can apply, rather than on whether a claim involves a positive duty to act or engages with complex social policy issues.⁷⁰

35. The legal landscape of these issues has dramatically changed since *Tanudjaja* was decided. The rights-based National Housing Strategy requested by the appellants in that case is now entrenched in the 2019 *National Housing Strategy Act (NHSA)*. The *NHSA* imposes clear, statutory obligations to establish goals, timelines and participatory mechanisms consistent with the recognition that housing is “a fundamental human right recognized in international human rights law.”⁷¹

36. Municipalities, including the respondent in this case, have followed the federal government’s lead in implementing rights-based strategies and protocols to address homelessness, grounded in international human rights legal norms.⁷² The same year the *NHSA* was enacted, the Hamilton adopted “Coming Together to End Homelessness” declaring that

⁶⁷ *Tanudjaja v. Canada (Attorney General)*, 2014 ONCA 852 at at para 33.

⁶⁸ *Tanudjaja v Canada (AG)*, 2014 ONCA 852 at para 21 citing Lorne Sossin, *Boundaries of Judicial Review: The Law of Justiciability in Canada* 2nd ed (Toronto: Carswell, 2012) at 242–44.

⁶⁹ *Tanudjaja v. Canada (Attorney General)*, 2014 ONCA 852 at at para 34.

⁷⁰ Lorne Sossin and Gerard Kennedy, *Boundaries of Judicial Review: The Law of Justiciability in Canada*, 3rd ed (Toronto: Thomson Reuters, 2023) Section 6.15 at 413-419.

⁷¹ *Ibid.*

⁷² X Examination of Leilani Farha, Appellants’ Motion Record Vol 7 at 348.

“Working from a rights-based approach to housing, Hamilton will end chronic homelessness by 2025.”⁷³ The 2023 Hamilton Encampment Protocol adopted “a human-centered, housing first, health-focused, rights-based approach ... guided by a commitment to upholding the human rights and human dignity of all individuals living in encampments, temporary shelters, or tents.”⁷⁴

37. The issue of judicially ascertainable standards raised in the present case are analogous to those raised in *Mathur v. Ontario* regarding climate change.⁷⁵ In that case, Ontario relied on this Court’s decision in *Tanudjaja* to argue that an order requiring the adoption of targets compliant with s. 7 of the *Charter* would be “so devoid of content as to be meaningless.”⁷⁶ In response, this Court found the government’s argument was “belied by its choice stated in the Plan to align its Target to Canada’s 2030 target under the international standard of the Paris Agreement.”⁷⁷

38. Like the commitment to the *Paris Agreement*⁷⁸ in Ontario’s climate plan considered in *Mathur*, international human rights norms referenced in the *National Housing Strategy Act* and incorporated into municipal rights-based plans to address homelessness, provide legal standards enabling this Court to reasonably assess whether the measures adopted by the respondent are compliant with ss. 7 and 15 of the *Charter*.

⁷³ [Coming Together to End Homelessness: Hamilton’s Systems Planning Framework](#), July 2019, at 3.

⁷⁴ Appellants Motion Record Vol 2 at 165.

⁷⁵ *Mathur v. Ontario*, 2024 ONCA 762.

⁷⁶ *Mathur* at para 71.

⁷⁷ *Ibid.*

⁷⁸ *Paris Agreement*, U.N. Doc. FCCC/CP/2015/10/Add.1,(29 January 2016).

iv) A Just and Appropriate Remedy

39. In its decision in *Mathur*, this Court found that “[i]f a breach of the appellants’ *Charter* rights is declared, there are clear international standards based on accepted scientific consensus that can inform what a constitutionally compliant Target and Plan should look like.”⁷⁹ This Court also recognized in *Mathur*, as Felman JA did in *Tanudjaja*, that the Supreme Court’s jurisprudence on the obligation to fashion just and effective remedies to systemic human rights violations may be satisfied by issuing declaratory relief while maintaining ongoing supervisory jurisdiction.⁸⁰ In *Mathur* the Court noted that “As the Supreme Court stated in *Canada (Prime Minister) v. Khadr*, a court can exercise its discretion to grant declaratory relief as a proper remedy and, “respectful of the responsibilities of the executive and the courts ... provide the legal framework for the executive to exercise its functions and to consider what actions to take ... in conformity with the *Charter*.”⁸¹

40. In CCCPI/NRHN’s view, the evidence in this case and the findings of Justice Ramsay regarding homelessness establish that a just and appropriate remedy in the present appeal requires positive measures to remedy the ongoing *Charter* violations of the appellants’ rights caused by homelessness. While it is the respondent, in consort with other orders of government, that must design and implement a renewed plan to end homelessness, it is the responsibility of the courts to provide direction as to what the *Charter* requires.

41. CCPI/NRHN submit that, in order to safeguard the appellants’ fundamental rights to life, security of the person, and equality in this appeal, s. 24 calls for a declaratory order requiring

⁷⁹ Ibid at [para 70](#).

⁸⁰ *Tanudjaja* at [para 85](#).

⁸¹ Ibid at [para 69](#).

the respondent, within a reasonable period of time, to develop and implement a plan to reduce and eliminate homelessness, based on the rights-based approach the City has affirmed and in accordance with accepted international human rights norms.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

A handwritten signature in dark ink, appearing to read "M. Jackman", with a stylized, cursive script.

Martha Jackman
Lawyer for CCPI and NRHN

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