

COURT OF APPEAL FOR ONTARIO

BETWEEN:

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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 -

THE CITY OF HAMILTON

Respondent
(Respondents)

- and -

WOMEN'S LEGAL EDUCATION AND ACTION FUND

Proposed Intervener

**FACTUM OF THE PROPOSED INTERVENER,
WOMEN'S LEGAL EDUCATION AND ACTION FUND
(Motion for Leave to Intervene Pursuant to Rule 13.02
of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194)**

November 12, 2025

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PART I – OVERVIEW

1. The Women’s Legal Education and Action Fund (“**LEAF**”) seeks leave to intervene in the present appeal as a friend of the Court pursuant to Rule 13.02 of the *Rules of Civil Procedure*.

2. In this matter, the Superior Court held that the City of Hamilton’s (the “**City**”) encampment restrictions and enforcement actions did not breach ss. 7 or 15 of the *Canadian Charter of Rights and Freedoms* (the “**Charter**”). Before this Court, the Appellants seek, *inter alia*, a declaration that between August 2021 and August 2023, the City’s sheltering restrictions and evictions undertaken pursuant to By-Law No. 01-219 (the “**Bylaw**”) were unconstitutional. With respect to the Court’s conclusions on the s. 15 claim, the Appellants allege that the Court erred in law by failing to (i) apply the appropriate test for s. 15 *Charter* claims, (ii) apply the appropriate test for assessing “disproportionate impact”, (iii) address the Appellants’ argument that the sheltering restrictions and evictions discriminated against the Appellants based on the intersecting grounds of race and sex, and (iv) apply the appropriate test for causation.¹

3. LEAF seeks to intervene in the present appeal to assist the Court by providing submissions on the interpretation of s. 15 of the *Charter*, namely the principles of substantive equality and the intersection of sex and gender-based discrimination and other prohibited grounds of discrimination. Specifically, LEAF seeks leave to intervene to assist the Court in understanding (i) the importance of undertaking in-depth s. 15 analyses in multi-right *Charter* claims, and (ii) the proper framework for considering a s. 15 claim in the context of homelessness, municipal enforcement actions, and encampment evictions.

¹ Notice of Appeal dated December 23, 2024 at para 10, Appeal Book and Compendium [ABC] Vol 1, Tab 1, pp 26 – 27; Appellants’ Factum at paras 10, 97 – 100, pp 3, 33 – 34.

PART II – SUMMARY OF FACTS

4. LEAF is a national charitable organization that advances the equality rights of women, girls, trans and non-binary people in Canada as guaranteed by the *Charter*. Since its founding in 1985, LEAF has amassed 40 years of experience protecting and promoting the equality rights of women, trans and non-binary people, including through litigation, law reform, and public education.² With volunteer branches across the country, LEAF's membership is broad and includes women, trans, and non-binary people of all ages and backgrounds located across Canada.³

5. LEAF is the only national organization whose mandate is to use litigation to advance the equality rights of all women, girls, trans and non-binary people.⁴ LEAF has acted as an intervener in over 140 cases, including some of the most significant cases through which equality rights doctrine in Canada has been developed.⁵

6. LEAF's litigation work has significantly contributed to the advancement of substantive equality for women, girls, trans and non-binary people in areas such as employment, housing, immigration, family law, pay equity, and sexual assault law.⁶ LEAF has also played a key role in assisting courts with interpreting and applying s. 15 of the *Charter*, and has contributed to the evolution of the meaning of substantive equality under s. 15. Notably, LEAF intervened in the landmark case of *Andrews v. Law Society of British Columbia*,⁷ where it successfully argued for an interpretation of s. 15 that reflected principles of substantive, rather than formal, equality. LEAF's contributions in *Andrews*

² Affidavit of Kaitlin (Kat) Owens affirmed November 11, 2025 ["**Owens Affidavit**"], at paras 4-5, Women's Legal Education and Action Fund Motion Record [**LEAF MR**], Tab 2, pp 9-10.

³ Owens Affidavit at para 6, LEAF MR, Tab 2, p 10.

⁴ Owens Affidavit at para 5, LEAF MR, Tab 2, p 10.

⁵ Owens Affidavit at para 11, LEAF MR, Tab 2, pp 11-13.

⁶ Owens Affidavit at para 6, LEAF MR, Tab 2, p 10.

⁷ *Andrews v. Law Society of British Columbia*, [1989] 1 SCR 143 [**Andrews**].

helped to lay the groundwork for Canadian courts' current interpretation and analysis under s. 15 of the *Charter*.⁸

7. Since *Andrews*, LEAF has remained at the forefront of equality law, providing critical assistance to courts charged with developing the law under s. 15 of the *Charter*. For example, LEAF recently provided input in the following s. 15 cases: (i) *Canadian Alliance for Sex Work Law Reform et al. v. Attorney General of Canada*, 2023 ONSC 5197, where it argued, *inter alia*, that a robust application of substantive equality requires an intersectional analysis that focuses on how existing systems and institutions reinforce, exacerbate or perpetuate disadvantages that uniquely affect groups who face multiple intersecting barriers;⁹ and (ii) *Procureur général du Québec v. Kanyinda* (SCC Docket 41210), an adverse effects discrimination case, where it argued that consideration of the circumstances and characteristics of the claimant group is necessary at both stages of the s. 15(1) analysis.¹⁰

8. Due to LEAF's significant experience with litigation, law reform, and public education, as well as the breadth of its membership – which includes women, trans and non-binary people of all ages and backgrounds across Canada – LEAF has developed considerable expertise in analyzing and articulating the impact of laws, policies, and government action on women, girls, trans and non-binary people.¹¹ LEAF is widely recognized as a leader in the advancement of substantive gender equality.¹²

PART III – STATEMENT OF ISSUES, LAW & AUTHORITIES

A. The Issue on this Motion

9. The sole issue to be decided on this motion is whether LEAF should be granted

⁸ Owens Affidavit at para 14, LEAF MR, Tab 2, p 14.

⁹ Owens Affidavit at para 13, LEAF MR, Tab 2, p 13.

¹⁰ Owens Affidavit at para 15(g), LEAF MR, Tab 2, p 16.

¹¹ Owens Affidavit at para 16, LEAF MR, Tab 2, p 16.

¹² Owens Affidavit at para 9, LEAF MR, Tab 2, p 11.

leave to intervene in the present appeal and, if so, on what terms.

B. LEAF Meets the Test for Leave to Intervene

10. Rule 13.02 of the *Rules of Civil Procedure* permits a non-party, with leave, to intervene as a friend of the court “for the purpose of rendering assistance to the court by way of argument.”¹³ A proposed intervener in a case involving *Charter* rights usually needs to establish at least one of the three following criteria for intervention. LEAF respectfully submits that it meets all three:

- (a) It has a real, substantial, and identifiable interest in the subject matter of this case;
- (b) It has an important perspective distinct from the immediate parties; and
- (c) It is a well-recognized group with a special expertise and a broadly identifiable membership base.¹⁴

11. In deciding whether to grant leave to intervene, a court should have regard to the following matters: (i) the nature of the case; (ii) the issues which arise; and (iii) the likelihood of the proposed intervener being able to make a useful contribution to the resolution of the matter without causing injustice to the immediate parties.¹⁵ However, in constitutional cases such as this, the rules governing motions for leave to intervene are relaxed.¹⁶

i. LEAF has a real, substantial, and identifiable interest in the appeal

12. LEAF’s interest in this appeal comes directly from its mandate to promote gender equality in Canada, including its long-standing commitment to and involvement in the development of s. 15 *Charter* jurisprudence in a manner consistent with the principles of

¹³ *Rules of Civil Procedure*, RRO 1990, Reg 194, s [13.02](#).

¹⁴ *Bedford v. Canada (Attorney General)*, 2009 ONCA 669 at para [2](#) [**Bedford**].

¹⁵ *Bedford*, at para [2](#) citing *Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada* (1990) 1990 CanLII 6886, p [167](#) [**Peel**].

¹⁶ *Reference re Greenhouse Gas Pollution Pricing Act*, 2019 ONCA 29 at para [8](#).

substantive equality.

13. This appeal will require the Court to consider the constitutionality of the City's encampment restrictions and enforcement actions and how they adversely impact some of the most vulnerable and marginalized segments of society. The record shows that many of the Appellants are women, trans or non-binary people; many are Indigenous or racialized; many live with disabilities and/or substance-use or mental health disorders; and several experience multiple intersecting characteristics.¹⁷ LEAF seeks to ensure that this Court's s. 15 analysis is appropriately informed by the complex, intersectional systems and patterns of discrimination faced by the Appellants and those similarly situated. Consistent with its mandate, LEAF is well-suited to assist the Court to understand these intersectional issues and the crucial role they play in a s. 15 analysis.¹⁸

ii. LEAF offers a unique and distinct perspective

14. As an intervener before this Court in relation to the constitutionality of the City's enforcement actions under the Bylaw, LEAF would provide a unique perspective and particular expertise on the public interest issues raised in this appeal because:

- (a) LEAF has expertise in the application of equality principles in the context of s. 15 *Charter* analyses;
- (b) It has expertise in substantive equality rights jurisprudence and theory; and
- (c) It has expertise in developing substantive equality analysis in the context of systemic discrimination, and in applying that analysis to complex inequalities based on the intersection of sex, gender identity and expression, race, poverty, Indigeneity, disability, and socioeconomic

¹⁷ Owens Affidavit at para 20, LEAF MR, Tab 2, p 18; Appellants' factum at para 2, p 1; Appendix to Appellants' Factum, pp 47 – 71.

¹⁸ Owens Affidavit at paras 5, 10, 16, LEAF MR, Tab 2, pp 10-11, 16.

status.¹⁹

iii. LEAF is a well-recognized group with special expertise and a broadly identifiable membership base

15. LEAF is a well-established group, comprising an identifiable membership base of women, trans and non-binary people of all ages and backgrounds across Canada.²⁰ LEAF has substantially and meaningfully contributed to the development of equality rights jurisprudence under the *Charter*, advocating for a robust interpretation of s. 15 that would enable courts to respond to the inequality experienced by women, girls, trans, and non-binary people in Canada. LEAF's advocacy work is informed by the contributions and assistance of legal academics, representatives of community organizations, and researchers.²¹ LEAF has been recognized both nationally and internationally for its expertise in advancing substantive gender equality.²²

C. LEAF's Proposed Submissions

16. If granted leave to intervene, and subject to further consideration by counsel and coordination with other interveners to avoid duplicating submissions, LEAF anticipates making the submissions set out in the draft factum appended to this application for leave to intervene. These proposed submissions are summarized below.

i. Courts must fully adjudicate s. 15 Charter claims

17. Canadian courts must fully adjudicate the s. 15 *Charter* claims that are duly brought before them. As recently reiterated by the Supreme Court of Canada in *Canadian Council for Refugees*, claims based on s. 15 of the *Charter* are not secondary issues and should not be treated as if the *Charter* establishes a hierarchy of rights in which s. 15

¹⁹ Owens Affidavit at paras 10, 14 –16, LEAF MR, Tab 2, pp 11, 14-16.

²⁰ Owens Affidavit at para 6, LEAF MR, Tab 2, p 10.

²¹ Owens Affidavit at paras 6, 11 – 16, LEAF MR, Tab 2, pp 10, 11-16.

²² Owens Affidavit at para 9, LEAF MR, Tab 2, p 11.

occupies a lower tier.²³ Nevertheless, there is a trend in Canadian jurisprudence of dismissing s. 15 claims at a higher rate when courts decline to rule on all of the *Charter* rights violations alleged in one matter.²⁴ This trend was perpetuated in a recent Ontario encampment decision, where the court deemed it unnecessary to deal with the s. 15 claim “in light of” its finding with respect to the violation of s. 7.²⁵

18. Comparative harms of equality rights violations are independent of breaches of s. 7 rights and need to be specifically addressed by courts, particularly in the context of encampments and homelessness, as these contexts involve some of the most vulnerable, marginalized, and discriminated against groups in Canadian society. To ignore gender-based and intersectional s. 15 claims relating to homelessness, encampment evictions, and displacements would serve to further perpetuate the often invisible harm experienced by unhoused and precariously housed women and gender-diverse persons.²⁶

ii. **Courts adjudicating s. 15 claims in the context of homelessness and encampment evictions must take into account adverse effects caused by systemic discrimination and apply an intersectional lens**

19. The framework for considering a s. 15 claim relating to homelessness and encampment evictions must properly take into account adverse impact discrimination. As stated by the Supreme Court of Canada in *Fraser*, increased awareness of adverse impact

²³ *Canadian Council for Refugees v Canada (Citizenship and Immigration)*, 2023 SCC 17 at para [180](#).

²⁴ See, e.g., Cheryl Milne and Caitlin Salvino, *Analyzing the Treatment of Multiple Charter Claims: Judicial Restraint and the Case for Section 15*, (2023), [114 S.C.L.R. \(2d\) \[“Analyzing the Treatment of Multiple Charter Claims”\]](#), at paras 52, 65.

²⁵ *The Corporation of the City of Kingston v. Doe*, 2023 ONSC 6662, at para [118](#).

²⁶ Many women and gender-diverse persons experience what is called “hidden” homelessness, where they rely on informal networks for housing or engage in dangerous survival strategies to access shelter. This not only places them at risk of exploitation and abuse, but renders their needs invisible to mainstream supports and systems. See *The Pan-Canadian Women’s Housing & Homelessness Survey*, at pp 5, 8, 10 [**Pan-Canadian Survey**], Ex B to Affidavit of Kaitlin Schwan sworn June 13, 2022 [**Schawn Affidavit**] ABC Vol 9, Tab 115, pp 61, 64, 66. See also Schwan Affidavit at paras 6 – 7, ABC Vol 9, Tab 115, pp 9 – 10.

discrimination has marked a shift towards an effects-based model which critically examines systems, structures, and their impact on disadvantaged groups.²⁷

20. A careful examination of the “results” of relevant systems and structures is particularly important where the laws, practices or government actions at issue appear to be facially neutral, such as the Bylaw and municipal actions in this case.²⁸ A consideration of the harms of encampment evictions must therefore take into account the particular context surrounding the link between women and gender-diverse persons and homelessness and precarious housing. As a result of the prevailing system, women and gender-diverse persons (i) have more difficulty accessing and retaining adequate housing;²⁹ and (ii) represent a significant proportion of people experiencing homelessness.³⁰ When these groups experience homelessness and are evicted from encampments or otherwise displaced, they (i) face uniquely gendered harms, including violence, sexual assault, and engaging in gendered survival tactics;³¹ and (ii) consistently have fewer shelter spaces available to them in comparison to men.³² Simply put, women and gender-diverse persons have unique pathways to and face unique hardships because of homelessness.

21. These gendered hardships often intersect with other social characteristics, such as Indigeneity, race, disability, and gender identity, and experiences such as trauma and

²⁷ *Fraser v. Canada (Attorney General)*, 2020 SCC 28, at para [31](#) [**Fraser**].

²⁸ See *Fraser* at para [39](#), citing *Canadian National Railway Co. v. Canada (Canadian Human Rights Commission)*, [1987] 1 SCR 1114, pp [1138 – 1139](#).

²⁹ See, e.g., *Pan-Canadian Survey* at pp 6 – 7, 26 – 27, 32 – 36, 48 – 49, Ex B to Schawn Affidavit, ABC Vol 9, Tab 155, pp 62 – 63, 82 – 83, 88 – 92, 104 – 105; Affidavit of Ammy Lewis (unsworn) dated June 2022 at paras 6 – 8, ABC Vol 4, Tab 43, p 8; Affidavit of Ashley Macdonald sworn June 13, 2022 at para 21, ABC Vol 4 Tab 46, p 32.

³⁰ City of Hamilton Point in Time Connection Results 2021, at p [12](#), Exhibit D to Affidavit of Medora Uppal dated July 17, 2023, ABC Vol 7, Tab 87, p 54.

³¹ See footnote 26.

³² See, e.g., *Pan-Canadian Survey* at pp 14 – 15, 41 – 43, Ex B to Schawn Affidavit, ABC Vol 9, Tab 155, pp 70 – 71, 97 – 100; *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2023 ONSC 670 at paras [68 – 71](#).

abuse.³³ It follows that a s. 15(1) analysis of the City’s encampment restrictions and enforcement actions also requires an intersectional analysis of their adverse impact. The Supreme Court of Canada has been clear that substantive equality analysis requires an intersectional lens in order to properly and fully engage in the required contextual approach.³⁴ In this case, an intersectional analysis would examine how existing systems and institutions reinforce, exacerbate or perpetuate disadvantages that uniquely affect women and gender-diverse persons who experience homelessness. Those disadvantages are then compounded for those facing intersecting grounds of discrimination, such as many of the Appellants in this case.³⁵ This broader context is key to understanding the equality harms at issue.

22. Finally, in respect of the evidentiary burden to be met by s. 15 claimants, the need to show a disproportionate impact on members of a protected group at step 1 of the s. 15(1) test is not meant to “impose scientific rigour or import elements of justification properly left to s. 1”.³⁶ If courts are to require a causal connection under step 1 of the test, it should be no more onerous than the “sufficient causal connection” test required under s. 7 of the *Charter*,³⁷ and must recognize the relevance of historical, structural, and

³³ *Pan-Canadian Survey* at p 12, Ex B to Schawn Affidavit, ABC Vol 9, Tab 155, p 68.

³⁴ See, e.g., *Fraser*, at para [116](#); Debra Parkes and Sonia Lawrence, *R. v. Sharma: Reckoning with Destabilizing Truths in Constitutional Equality Adjudication*, (2024), [115 S.C.L.R.](#) (2d) 139-169, at para 41.

³⁵ See, e.g., *Pan-Canadian Survey* at pp 41 – 44, 50 – 53 Ex B to Schawn Affidavit, ABC Vol 9, Tab 155, p 97 – 100, 106 – 109; Schwan Affidavit at paras 20, 25 ABC Vol 9, Tab 115, pp 14 – 15, 17.

³⁶ *R v. Sharma*, 2022 SCC 39 at para [190](#), (Justice Karakatsanis, dissenting, citing to the majority judgment in *Quebec (Attorney General) v. Alliance du personnel professionnel et technique de la santé et des services sociaux*, 2018 SCC 17, at para [26](#)).

³⁷ *Bedford*, at paras [75 – 76](#). See Jonnette Watson Hamilton and Jennifer Koshan, *Sharma: The Erasure of Both Group-Based Disadvantage and Individual Impact*, (2024), [115 S.C.L.R.](#) (2d) 113 – 137 [*“Erasure”*], at p 120, where the authors note that Justice Abella’s approach in the *Fraser* decision was similar to the “sufficient causal connection” requirement articulated in *Bedford*. See also Benjamin Perryman, *Proving Discrimination: Evidentiary Barriers and Section 15(1) of the Charter*, (2023), [114 S.C.L.R.](#) (2d) 93 – 109, at para 21.

systemic inequalities.³⁸ Otherwise, courts risk placing a nearly impossible evidentiary burden on s. 15 litigants, many of whom cannot support their claim with quantitative evidence precisely because of their marginalized status.³⁹

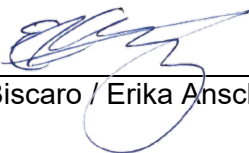
PART IV – ORDER REQUESTED

23. LEAF respectfully requests an order granting:

- (a) Leave to intervene in this appeal on a without costs basis;
- (b) Leave to file a factum of a maximum of 10 pages;
- (c) Leave to make oral arguments of a maximum of 15 minutes at the hearing of the appeal;

24. LEAF seeks no costs and asks that no costs be awarded against it on this motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of November, 2025.



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³⁸ See, e.g., *Erasure*, at p [121 – 122](#); Margot Young, *Zombie Concepts: Contagion in Canadian Equality Law*, (2023), 114 S.C.L.R. (2d) [**“Zombie Concepts”**], at paras 23 – 27, LEAF Book of Authorities [**“LEAF BOA”**], Tab 1.

³⁹ See e.g., *Zombie Concepts*, at para 25, LEAF BOA, Tab 1.

SCHEDULE “A”

Jurisprudence

1. *Andrews v. Law Society of British Columbia*, [\[1989\] 1 SCR 143](#)
2. *Bedford v. Canada (Attorney General)*, [2009 ONCA 669](#)
3. *Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada* (1990), 74 OR (2d) 164, [1990 CanLII 6886](#)
4. *Reference re Greenhouse Gas Pollution Pricing Act*, [2019 ONCA 29](#)
5. *Canadian Council for Refugees, et al v. Minister of Citizenship and Immigration, et al*, [2023 SCC 17](#)
6. *The Corporation of the City of Kingston v. Doe*, [2023 ONSC 6662](#)
7. *Fraser v. Canada (Attorney General)*, [2020 SCC 28](#)
8. *Canadian National Railway Co. v. Canada (Canadian Human Rights Commission)*, [\[1987\] 1 SCR 1114](#)
9. *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, [2023 ONSC 670](#)
10. *R. v. Sharma*, [2022 SCC 39](#)
11. *Quebec (Attorney General) v. Alliance du personnel professionnel et technique de la santé et des services sociaux*, [2018 SCC 17](#)

Secondary Sources

1. Benjamin Perryman, *Proving Discrimination: Evidentiary Barriers and Section 15(1) of the Charter*, [\(2023\), 114 S.C.L.R. \(2d\)](#)
2. Cheryl Milne and Caitlin Salvino, *Analyzing the Treatment of Multiple Charter Claims: Judicial Restraint and the Case for Section 15*, [\(2023\), 114 S.C.L.R. \(2d\)](#)
3. Debra Parkes and Sonia Lawrence, *R. v. Sharma: Reckoning with Destabilizing Truths in Constitutional Equality Adjudication*, [\(2024\), 115 S.C.L.R. \(2d\)](#)
4. Jonnette Watson Hamilton and Jennifer Koshan, *Sharma: The Erasure of Both Group-Based Disadvantage and Individual Impact*, [\(2024\), 115 S.C.L.R. \(2d\)](#)
5. Margot Young, *Zombie Concepts: Contagion in Canadian Equality Law*, (2023), 114 S.C.L.R. (2d)

SCHEDULE “B”

TEXT OF RELEVANT LEGISLATIVE PROVISIONS

Rules of Civil Procedure, RRO 1990, Reg 194

Leave to Intervene as Friend of the Court

13.02 Any person may, with leave of a judge or at the invitation of the presiding judge or associate judge, and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument. R.R.O. 1990, Reg. 194, r. 13.02; O. Reg. 186/10, s. 1; O. Reg. 711/20, s. 7; O. Reg. 383/21, s. 15.

Canadian Charter of Rights and Freedoms, The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11

Life, liberty and security of person

7 Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Equality before and under law and equal protection and benefit of law

15 (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Affirmative action programs

15 (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

KRISTEN HEEGSMA et al.

-and- THE CITY OF HAMILTON

Appellants

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