

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**

Applicants
(Appellants)

-and-

CITY OF HAMILTON

Respondent
(Respondent on Appeal)

-and-

ATTORNEY GENERAL OF ONTARIO

Intervenor

AMENDED FACTUM OF THE PROPOSED INTERVENER

(Filed by the Canadian Centre for Housing Rights
in support of its motion for leave to intervene)

November 14, 2025

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TO THIS HONOURABLE COURT

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PART I – OVERVIEW

1. The proposed intervenor, the Canadian Centre for Housing Rights (“CCHR”), is seeking leave to intervene as a friend of the court in this Appeal. CCHR seeks leave to file a factum and present oral argument.
2. CCHR should be permitted to intervene because:
 - (a) The Appeal raises issues of public interest;
 - (b) CCHR can make a useful contribution to the proceedings because of its expertise, interest and perspective relating to the issues; and
 - (c) CCHR’s intervention will not cause injustice to the parties.

PART II – STATEMENT OF FACTS

Brief History of Litigation

3. CCHR relies on the facts submitted by the Appellants in their factum.
4. In 2021, The City of Hamilton passed *By-Law 01-219* (“By-Law”) which prohibits individuals from erecting tents, residing, or taking possession of public parks, both overnight and during the daytime. The By-Law also restricts entry into parks to designated hours between 6:00 AM and 11:00 PM.
5. In August 2023, the Hamilton City Council implemented an Encampment Protocol to operationalize the By-Law. The protocol authorized the removal of tents and the forced eviction of individuals living in encampments across the city.
6. The Appellants challenged the By-Law under the *Canadian Charter of Rights and Freedoms* [“*Charter*”] – specifically that the by-law and protocol between August 2021 and August 2023 violated section 7 by depriving unhoused individuals their right to life, liberty, and security of the person in a manner inconsistent with the principles of

fundamental justice; and section 15, by discriminating on the basis of sex, race, and disability.

7. With respect to section 15, the Appellants allege that the restrictions on sheltering and the forced evictions had a disproportionate impact on women, who represent roughly half of Hamilton's unhoused population yet have access to a far smaller share of shelter beds, and who face increased risks of sexual and gender-based violence. The measures also had a discriminatory impact on Indigenous persons, who experience homelessness at approximately ten times the rate of the general Hamilton population, with consequences for Indigenous women. Finally, the Appellants argued that the restrictions discriminated against persons with mental health and substance use-disabilities, including individuals who may face service restrictions or mobility barriers, and those who rely on harm reduction practices not permitted in shelters.
8. The Application was heard by Justice Ramsay at the Superior Court on December 16-18, 2024. The Application was dismissed on December 23, 2024. Justice Ramsay held that neither the By-Law nor the Protocol infringed sections 7 or 15 of the *Charter*. On section 15, the Court found no causal link between the By-Law and the disadvantages experienced by women, Indigenous persons or persons with disabilities, concluding that "they are disadvantaged by homelessness, not by enforcement of the by-law".
9. Although the Appellants provided evidence on the interpretive role of international human rights law – including the relevance the right to adequate housing has on defining the scope and content of *Charter* rights – the Court did not engage with these arguments or this evidence in the reasons for the decision.

Overview of CCHR's Work

10. Since 1987, the Canadian Centre for Housing Rights has been Canada's leading registered non-profit organization dedicated to promoting human rights in housing, eliminating housing discrimination and ensuring the right to adequate housing as guaranteed under domestic and international human rights law.¹
11. CCHR works with affected groups and individuals to address systemic or structural causes of homelessness or inadequate housing, including (but not limited to) unhoused persons, people with disabilities, women and gender diverse people, Indigenous, and racialized persons.²
12. To advance its mandate, CCHR engages in rights-based housing policy through research, policy development, advocacy, and litigation, including:³
 - (a) assisting individuals, households or groups facing discrimination in relation to access to or occupancy of housing;
 - (b) assisting those facing eviction from housing to avoid eviction or to avoid homelessness if eviction cannot be avoided;
 - (c) conducting research into issues of housing policy or practices which may lead to homelessness;
 - (d) identifying and attempting to address systemic barriers to accessing adequate housing faced by vulnerable or disadvantaged groups;
 - (e) conducting research, public education and legal/judicial education on issues of human rights in housing, housing policy and practices affecting access to adequate housing or ability to remain in existing housing;

¹ Affidavit of Mathieu Pierre Dagonas ["Dagonas Affidavit"].

² Dagonas Affidavit at para 15.

³ Dagonas Affidavit at paras 13 and 16-32.

- (f) assisting governments and policy-makers in identifying causes of and solutions to homelessness or inadequate housing;
- (g) providing evidence or expertise to courts, tribunals, human rights bodies, parliamentary and legislative committees, task forces, human rights commissions and other bodies on issues of housing, homelessness and human rights;
- (h) participating in international human rights processes to enhance compliance with international human rights in Ontario and in Canada and to promote the right to adequate housing; and
- (i) taking forward or assisting in interventions in test cases under laws which CCHR judges to be helpful to the interests of the groups CCHR serves in terms of protecting their rights and promoting access to or ability to remain in adequate housing.

13. CCHR has authored several reports and submissions on housing and human rights. Some notable and recent examples include:⁴

- (a) *The right to housing for women, two spirit, trans and gender-diverse people:*
Submission to the National Housing Council Review Panel (March 14, 2025)
- (b) *40 Years of Housing and Disability in Manitoba – A Grey Literature Review* (January 2025)
- (c) *Nowhere To Go: Gender-based violence and housing insecurity in Ontario* (July 2024)
- (d) *Developing National Rights-Based and Gender-Sensitive Shelter Standards* (July 2024)

⁴ Dagonas Affidavit at paras 15 and 28.

14. CCHR regularly appears before human rights bodies, parliamentary and legislative committees, commissions, task forces, and all levels of government to advocate for effective housing strategies. Recent examples include collective advocacy with partners against the use of the notwithstanding clause to clear encampments, and human rights reviews of the City of Toronto's response to evictions and homelessness during the COVID-19 pandemic. Furthermore, in 2025, CCHR supported the City of Hamilton in developing tenant education materials on housing and human rights law, and the City of Hamilton's new Renoviction Licence and Relocation By-Law.
15. Throughout its history, CCHR has represented clients and acted in an advisory capacity in many legal challenges to policies and practices on housing rights for disadvantaged groups. Notable cases include the use of rent-to-income ratios to screen out low-income tenants: *Kearney et al v Bramalea Ltd., et al.*, 1998 CanLII 29852 (ON HRT) and *Vander Schaaf v M & R Property Management Ltd. and Gerald Pearlstein*, 2000 CanLII 20867 (ON HRT); credit and reference requirements that disadvantage recent immigrants and refugees: *Ahmed v 177061 Canada Ltd (Shelter Canadian Properties Ltd.)*, 2002 CanLII 46504 (ON HRT); and occupancy rules that deny families access to housing: *Maria Cunanan v Boolean Developments Ltd.*, 2003 HRT0 17 (CanLII).
16. CCHR has also coordinated interventions on leading cases to promote interpretations and applications of the *Charter* to address the rights of disadvantaged groups in need of housing. This includes ⁵
- (a) *Gosselin v Québec (Attorney General)*, [2002] 4 SCR 429,
 - (b) *Lovelace v Ontario*, 2000 SCC 37 (CanLII), [2000] 1 SCR 950;

⁵ Dagonas Affidavit at para 23.

(c) *New Brunswick (Minister of Health and Community Services) v G. (J.)*, [1999] 3 SCR

(d) *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817

(e) *Eldridge v British Columbia (Attorney General)*, [1997] 3 SCR 624

(f) *Thibaudeau v Canada*, [1995] 2 SCR 627

(g) *Walker v Prince Edward Island*, [1995] 2 SCR 407 and *R v Prosper*, [1994] 3 SCR

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(h) *Symes v Canada*, [1993] 4 SCR 695

17. Finally, CCHR has a long history of providing its expertise on the application of international law to housing. In 1993, CCHR co-ordinated and represented the first domestic NGOs to appear before any United Nations human rights treaty monitoring body to make oral submissions with respect to the periodic review of a state party. CCHR has made several submissions to international bodies that highlight the violations of the right to housing in Canada. The most recent submissions include:⁶

(a) “Housing Indigenous Peoples in Cities: A Policy Guide” for the United Nations Human Settlements Programme (UN-HABITAT)

(b) co-authoring a submission to the UN Special Rapporteur on Adequate Housing in 2021 with the NRHN and SRAC for the Report to the UN General Assembly and Human Rights Council, entitled “Housing Discrimination & Spatial Segregation in Canada”

(c) co-authoring a submission with the NRHN in 2021 to the UN Committee on Civil and Political Rights for the International Covenant on Civil and Political Rights

⁶ Dagonas Affidavit at paras 30-32.

(“ICCPR”), 132nd Sess, entitled “The Right to Life, Protection of the Home & Non-Discrimination in Canada,”

(d) report to the UN Commission on the Status of Women in 2021, entitled “Setbacks in Realizing Women’s Right to Housing in Canada” and,

(e) Co-authoring a submission to the UN Committee on the Elimination of All Forms of Discrimination Against Women, 89th session, entitled “Equality, The Human Right to Housing, and Women & Gender-Diverse Persons in Canada in 2024

PART III – ISSUES

18. Should CCHR be granted leave to intervene as a friend of the court?

PART IV – LAW AND ARGUMENT

19. It is respectfully submitted that CCHR meets the requirement for intervener status in this Appeal.

20. Rule 13.03(2) of the *Rules of Civil Procedure*, RRO 1990, Reg 194 governs leave to intervene as a friend of the Court in the Ontario Court of Appeal. It provides that a panel of the Court, the Chief Justice, or a judge designated by them may grant leave to intervene where appropriate. In exercising this discretion, the Court considers “the nature of the case, the issues which arise and the likelihood of the applicant being able to make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties”.⁷

⁷ Christian Heritage Party of Canada v. Hamilton (City), [2025 ONCA 700](#) at para 7, see also *Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada Ltd.* (1990), [1990 CanLII 6886 \(ON CA\)](#), 74 O.R. (2d) 164, at p. 167; *Reference re Greenhouse Gas Pollution Pricing Act*, [2019 ONCA 29](#), at para. 8; and *Caruso v. Law Society of Ontario*, [2025 ONCA 270](#), at para. 6.

21. A proposed intervener in constitutional litigation needs to only meet one of the following criteria:

- (1) the applicant has a real, substantial, and identifiable interest in the subject matter of the proceedings;
- (2) the applicant has an important perspective distinct from the immediate parties; and
- (3) the applicant is a well-recognized group with a special expertise and a broadly identifiable membership base.⁸

While only one of these criteria needs to be met, it is submitted that CCHR satisfies all three.

22. Moreover, there are more relaxed standards for granting leave to intervene in constitutional cases. As recently noted by this Honourable Court, constitutional cases can often have a “wide impact on the rights of others who are not parties to the litigation”. Interventions offer an avenue for groups that represent affected individuals with the opportunity to be heard and provide historical, sociological, and legal perspectives of the issues raised.⁹

23. This appeal raises profound constitutional and human rights concerns regarding the rights of unhoused persons to shelter themselves in the absence of accessible and adequate shelter spaces. The issues engage sections 7 and 15 of the *Charter* and protection against forced evictions and municipalities’ duties regarding adequate housing options in light of international human rights obligations.

CCHR has a Real, Substantial, and Identifiable Interest in the Appeal

⁸ Christian Heritage Party of Canada v. Hamilton (City), 2025 ONCA 700 (CanLII), at [para 9](#), *Reference re Greenhouse Gas Pollution Pricing Act*, at para. 8.

⁹ Christian Heritage Party of Canada v. Hamilton (City), 2025 ONCA 700 (CanLII), at para 8.

24. CCHR's mandate and daily work directly engages the legal and policy questions before this Court. CCHR is a national non-profit organization dedicated to advancing the right to adequate housing and preventing homelessness and discrimination in housing across Canada. Its legal and policy work focuses on the intersection of housing, human rights, and international law, including how the international right to housing informs the interpretation of domestic human rights and constitutional guarantees.
25. This appeal will determine how the Charter safeguards the rights of persons experiencing homelessness from forced evictions in the absence of accessible shelter alternatives. The Court's decision will shape the analysis of discriminatory impact under section 15 and proportionality and minimal impairment assessment under section 1. It will also clarify the duties of municipalities to ensure that by-laws and enforcement practices respect both constitutional guarantees and Canada's international commitments.
26. CCHR provides direct legal assistance to tenants and unhoused persons who routinely face eviction, shelter inaccessibility, and discrimination. The laws surrounding shelter, housing rights, and evictions are a central concern for CCHR. The outcome of the appeal will have an impact on both the communities it serves, and the work CCHR engages in with its public education, outreach, policy development, and law reform activities. Therefore, CCHR therefore has a substantial and identifiable interest in the subject matter of this appeal.

CCHR brings a distinct and valuable perspective

27. CCHR is well-positioned to contribute a perspective that is legally grounded and distinct from submissions of the parties. Drawing on its national and international expertise in housing and human rights, CCHR will focus its submissions on:

- (a) The Honourable Court has a duty to consider and apply international law relating to the right to housing (some of which Canada has ratified, and some which pre-dates the *Charter*), in *Charter* interpretation, in keeping with the presumption of conformity.
- (b) International law and norms relating to adequacy within the right to housing are contextual factors that will help the Court evaluate the impact of eviction on the encampment residents, and whether that impact amounts to substantive discrimination under section 15 of the *Charter*; and
- (c) International law and norms relating to proportionality in evictions (ie, eviction as a last resort), and government's duties to accommodate the needs of people it evicts will help the Court evaluate: (i) whether encampment residents can show government failure to accommodate the needs of encampment residents amounts to a section 15 breach; and (ii) whether the municipality can pass the minimal impairment and proportionality tests of section 1.

28. CCHR's submissions will assist the court with a legal methodology consisting of straightforward frameworks for its section 15 and section 1 analyses, by applying international human rights norms. CCHR will assist the Court in situating the Charter issues within Canada's broader human rights framework, ensuring that constitutional interpretation reflects the foundational values of human dignity, equality, and social justice in a free and democratic society that underlie both the *Charter* and Canada's treaty obligations.

CCHR is a Well-Recognized Organization with Established Expertise in Housing and Human Rights

29. Finally, it is respectfully submitted that CCHR is a long-standing and highly respected authority on housing and human rights. It has collaborated with municipal, provincial, and federal governments, United Nations bodies, and civil-society partners to advance rights-based housing policy.¹⁰ CCHR has appeared before courts, tribunals, and legislative committees, has participated in landmark cases including *Kearny v Bramalea Ltd*, *Baker v Canada*, *Eldridge v British Columbia*, and *Gosselin v Quebec*.¹¹ It has also contributed to numerous national and international processes concerning Canada's implementation of the right to housing, which binds both provincial and municipal governments.

30. Given its established record, specialized expertise, and national reach, CCHR's intervention will assist the Court by offering authoritative context and principled submissions grounded in domestic and international human rights law.

PART V – ORDER SOUGHT

31. CCHR seeks an order:

- (a) Granting CCHR leave to intervene and to file a factum not to exceed 12 pages;
- (b) Granting CCHR permission to present oral submissions at the hearing of the appeals not to exceed 15 minutes; and
- (c) CCHR will neither seek nor be liable to pay costs to any other party or intervener.

¹⁰ See paras 57 – 64 of the Dagonas Affidavit.

¹¹ See list of cases under 'Litigation' of Dagonas Affidavit.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of November, 2025

PrincessDoe

Margaret Flynn

Canadian Centre for Housing Rights

Margaret Flynn & Princess Doe

Lawyers for the Proposed Intervenor,
Canadian Centre for Housing Rights

CERTIFICATE OF AUTHENTICITY

I, Princess Doe, counsel for the proposed intervener, the Canadian Centre for Housing Rights, certify that I am satisfied as to the authority of every authority cited in this factum, pursuant to Rule 4.06.1(2.1) of the *Rules of Civil Procedure*.

November 14, 2025

A handwritten signature in cursive script that reads "PrincessDoe".

Princess Doe
Counsel, Canadian Centre for Housing Rights

SCHEDULE “A” — CASES

Ahmed v 177061 Canada Ltd (Shelter Canadian Properties Ltd.), [2002 CanLII 46504 \(ON HRT\)](#)

Baker v Canada (Minister of Citizenship and Immigration), [1999] 2 SCR 817, [1999 CanLII 699 \(SCC\)](#)

Caruso v Law Society of Ontario, [2025 ONCA 270](#)

Christian Heritage Party of Canada v Hamilton (City), [2025 ONCA 700](#)

Cunanan v Boolean Developments Ltd., [2003 HRT0 17](#)

Eldridge v British Columbia (Attorney General), [1997] 3 SCR 624, [1997 CanLII 327 \(SCC\)](#)

Gosselin v Québec (Attorney General), [2022 SCC 84](#)

Reference re Greenhouse Gas Pollution Pricing Act, [2019 ONCA 29](#)

Heegsma v Hamilton (City), [2024 ONSC 7154](#)

Heegsma v Hamilton (City), [2025 ONCA 588](#)

Kearney v Bramalea Ltd. (No.2), [1998 CanLII 29852 \(ON HRT\)](#)

Lovelace v Ontario, [2000 SCC 37](#)

New Brunswick (Minister of Health and Community Services) v G. (J.), [1999] 3 SCR 46, [1999 CanLII 653 \(SCC\)](#)

R v Prosper, [1994] 3 SCR 236, [1994 CanLII 65 \(SCC\)](#)

Symes v Canada, [1993] 4 SCR 695, [1993 CanLII 55 \(SCC\)](#)

Thibaudeau v Canada, [1995] 2 SCR 627, [1995 CanLII 99 \(SCC\)](#)

Vander Schaaf v M & R Property Management Ltd., [2000 CanLII 20867 \(ON HRT\)](#)

Walker v Prince Edward Island, [1995] 2 SCR 407, [1995 CanLII 92 \(SCC\)](#)

SCHEDULE “B” — LEGISLATION

Rules of Civil Procedure, RRO 1990, Reg 194, r 13.03 (2)

LEAVE TO INTERVENE AS FRIEND OF THE COURT

13.03 (2) Leave to intervene as an added party or as a friend of the court in the Court of Appeal may be granted by a panel of the court, the Chief Justice or Associate Chief Justice of Ontario or a judge designated by either of them. R.R.O. 1990, Reg. 194, r. 13.03 (2); O. Reg. 186/10, s. 2.