

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

- and -

CITY OF HAMILTON

Respondent

APPELLANTS' APPEAL BOOK AND COMPENDIUM – VOLUME 5

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TAB 60

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN

Applicants

-and-

CITY OF HAMILTON

Respondent

AFFIDAVIT OF MARIO MUSCATO
(affirmed September 29, 2021)

I, Mario Muscato, of the City of Hamilton, in the Province of Ontario, AFFIRM AND SAY:

1. I have personal knowledge with respect to the facts set out below, except where stated otherwise. Where the information is not based on my personal knowledge, it is based upon information provided by others which I believe to be credible and true.
2. I am an indigenous man who is homeless and has been homeless living on the street in between encampments and men's shelters since 2017.
3. I am a person living with disabilities and receive income from the Ontario Disability Support Program. When I have shelter costs I am entitled to \$497.00 in shelter allowance from ODSP but since becoming homeless I am only entitled to \$672.00 of the "basic needs" portion of ODSP entitlements.
4. In October of 2018 I was severely electrocuted and I lost my right hand and the majority of my left fingers as a result. Consequently, I require a lot of assistance from others as I do not have hands and digits to grab things and hold items. I do not have any dexterity.
5. I was evicted from my rental housing because Ontario Works was not remitting my shelter portion to the landlord. I was unaware of this and I was suddenly faced with a large sum of arrears owing to the landlord. I was evicted.

6. When I was evicted I was forced to find refuge in a men's shelter. I lost all of my personal possessions when I was evicted because I had no way of storing them.
7. The men's shelter was a difficult experience for me as I am an independent capable person and suddenly I was treated like a child with many rules that micromanaged my every move. As well, the shelter is very dirty, if staff don't like you they can give you a lot of attitude and be condescending. In one instance I was kicked out for allegedly bringing in alcohol in a backpack to the shelter. I had picked up another shelter user's back pack and brought it to him when he asked staff to grab it for him. I did not see in the backpack, nor did staff, but they assumed that this guy's backpack had alcohol in it and that I was facilitating bringing it in. They promptly escorted me out without even investigating or hearing my version of events. I do not drink and yet I was kicked out for allegedly having alcohol on the premises. No one looked to verify and when I asked them to review the video surveillance they refused. I was restricted for 20 days and left to camp outside where I was advised by By-Law and the Police to move.
8. The shelter system is very unpredictable. My possessions have been stolen, when they have been placed in a safe place by staff, it can be difficult to get staff to retrieve them because they are often busy and ask me to return at a later time, until eventually there is no convenient time. I am walking around daily looking for food and maintaining appointments, after sleeping rough or not sleeping at all. This makes it difficult to repeatedly be returning to a shelter hoping the timing is right to get my possessions. As well, I have been kicked out for not being in my bed when "bed checks" occur throughout the night – usually four times. Understandably the shelter wants beds to be used and accounted for but there have been times that I have been in the bathroom or having a cigarette or stretching when they have come around. The following morning I am advised that I am restricted from getting breakfast and services because of not being in the bed the night before – even though I was checked in and there. This uncertainty is exhausting and makes life more difficult. It makes it easier to want to stay outside where you have a semblance of agency and predictability.
9. In the first outbreak of Covid I had just been restricted from shelters. I was left outside with only my clothing on. There was nowhere for me to go to find peace and warmth from the elements. Libraries, Tim Hortons and other spaces have been inaccessible due to Covid and this makes staying outside in the day extra difficult. I was also losing connection to supports bouncing between locations and without "in person" access to agencies.
10. While living outside I sometimes have a tent, other times not. It is near impossible for me to erect and tent and take it down because of my disabilities. It also takes me longer to bag possessions, organize them and move in a timely way demanded by By-law and the police.
11. As a Native American I find it difficult to accept that I cannot stay in public space. Back in 2020 the City said I could stay at Sir John A. McDonald school. I moved there and then within a week, the City attended with police and told us to move. That prompted the

injunction as there was an agreement made that the City broke. Then the City revoked the protocol, which was an agreement with encampment residents settling the injunction. These broken agreements reminds me of how Canada broke treaties with my people. This furthers my distrust of the City, government and agencies such as shelters. This is public land that I should not be kicked off.

12. Even when I tell By-law that there isn't capacity at the shelter or that I am restricted, they still make me dismantle my tent and move, or they dispose of my tent and I move in search of another green space.
13. I need to be close to other people to help me and constantly moving makes it difficult to remain connected to those that assist me. I see Dr. Jill Wiwcharuk for medical care at the Salvation Army and I go to Wesley and sometimes the Salvation Army for food. I have had various housing workers with the Homeward Bound program and they have yet to provide me with affordable housing or private market housing. I have had 5 housing workers and it is difficult for me to get to their agency which is buses away from me. They do not come to me. The last time I saw a housing worker was five months ago roughly. I was on the access to housing waitlist for subsidized housing, but I do not know the status of this. I do not have a phone or a mailing address.
14. The City of Hamilton has not offered me shelter or housing prior to evicting me from encampments.

AFFIRMED BEFOR ME in the
City of Hamilton, this 29 day of
September, 2021

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AFFIRMED at the City of
Hamilton, in the Province of
Ontario, this 29 day of
September, 2021.


A Commissioner etc.

LSUC 65404F



TAB 61

Court File No: CV-21-00077187-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

ASHLEY POFF, DARRIN MARCHAND, GORD SMYTH, MARIO
MUSCATO and SHAWN ARNOLD

Applicants

and

CITY OF HAMILTON

Respondent

Teleconference (Zoom) Cross-Examination on affidavit
of

MARIO MUSCATO
affirmed on September 29, 2021,
taken by Nimigan Mihailovich Reporting Inc.,
One James St. S., Suite 701, Hamilton, Ontario,
Canada L8P 4R5,
on OCTOBER 13, 2021

APPEARANCES:

for Plaintiff: MS. STEPHANIE COX
Hamilton Community Legal Clinic

For Defendant: MR. MICHAEL BORDIN
GOWLING

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2 Examination of MARIO MUSCATO affirmed 3

3 Examination by MR. MICHAEL BORDIN 3

4 EXHIBITS

5 No exhibits entered.
6

7 GUIDE TO UNDERTAKINGS

8
9 This should be regarded as merely a guide
10 and does not necessarily constitute a full
11 and complete list.
1213
14 UNDERTAKINGS ARE FOUND ON THE FOLLOWING PAGES:15 n/a
16
17

18 Under advisements are found on the following pages:

19 n/a
20
21

22 Refusals are found on the following pages:

23 n/a
24
25

MARIO MUSCATO 3

1 -- Upon commencing at 2:03 p.m.

2 MARIO MUSCATO, affirmed.

3 EXAMINATION BY MR. BORDIN:

4 BY MR. BORDIN:

5 1 Q. Good afternoon, Mr. Muscato.

6 A. Good afternoon.

7 2 Q. I am the lawyer for the City of
8 Hamilton, and it is my information that you swore an
9 affidavit on September 29, 2021; correct?

10 A. Yes.

11 3 Q. And you swore that affidavit in
12 support of your application to obtain an injunction
13 against the City of Hamilton for the removal of
14 encampments; correct?

15 A. Yes.

16 4 Q. Okay. You have a copy of the
17 affidavit in front of you, sir?

18 A. Yeah, I do.

19 5 Q. Okay. So I understand, sir, from
20 your affidavit, that you have been homeless living
21 since 2017; is that correct?

22 A. Yes.

23 6 Q. Okay. And at paragraph two of your
24 affidavit you say you've been doing that between
25 encampments and men's shelters since 2017; is that

1 correct?

2 A. Yeah.

3 7 Q. Okay. Now, when you used the word
4 'encampments' in that paragraph, what do you mean?

5 A. Tents, you know, with other
6 homeless people living in tents.

7 8 Q. Okay. So can that be a tent by
8 yourself as well as a tent with other people in their
9 tents?

10 A. I have done that as well with a
11 girlfriend, but we've mainly been, you know, around
12 other people with tents.

13 9 Q. When did you start living in --
14 sorry, when did you start living in tents with other
15 people in tents?

16 A. July of 2017.

17 10 Q. Sorry, did you say July 2017?

18 A. Yes.

19 MS. COX: Could you clarify the
20 question? Are you referring to other people in the
21 tent or other tents beside his tent?

22 MR. BORDIN: Well, let me do this,
23 yeah.

24 11 Q. So, sir, if I say, just for the
25 purpose of this examination, if I say 'encampments',

MARIO MUSCATO 5

1 I mean you're in a tent and there's other people who
2 are in their own tents nearby; okay? Do you
3 understand that?

4 A. Yeah.

5 12 Q. Okay. And if I'm going to refer to
6 you living by yourself or just with your girlfriend
7 in a tent, I'll say that; okay?

8 A. Okay.

9 13 Q. Okay. So when did you first start
10 living in a tent with other people nearby you in
11 their own tents, in other words in an encampment as
12 we've defined it?

13 A. July 2017.

14 14 Q. Now, if you look at paragraph six
15 of your affidavit, you say there: "When I was
16 evicted, I was forced to find refuge in a men's
17 shelter," okay?

18 A. Yes.

19 15 Q. So, did you first go and use men's
20 shelters when you were evicted?

21 A. My cousin was in one at the
22 Salvation Army and I went there; I was there for
23 about two nights before I was kicked out.

24 16 Q. Okay. And why were you, do you
25 recall why you were kicked out at that time?

MARIO MUSCATO 6

1 A. I wasn't back by 10:00 o'clock.
2 There's a curfew of 10:00 p.m., and I was about 15
3 minutes late.

4 17 Q. When is the last time you stayed in
5 a shelter?

6 A. Probably a couple weeks ago.
7 Again that was just pretty much overnight.

8 18 Q. Is it possible you stayed in a
9 shelter on October 7th, 2020?

10 A. That might have been what I'm
11 talking about, yeah.

12 19 Q. And so --

13 A. I went there and --

14 MS. COX: He's still speaking, I don't
15 think you can hear him.

16 A. I went there and I showered; it
17 was late -- or early in the morning, too late to
18 really go to sleep; I stayed up and, you know, I
19 mean I didn't sleep at all really, I just went there
20 and showered. And actually, I still have some of my
21 clothes in their lockup right now.

22 BY MR. BORDIN:

23 20 Q. So between 2017 and about a week or
24 so ago when you last stayed in a shelter, have you
25 used shelters in the City of Hamilton? In other

MARIO MUSCATO 7

1 words, have you been in and out of shelters during
2 that time?

3 A. In and out adverse for any length
4 of time, though, you know, never more than, I'd say
5 probably not even five or six days.

6 21 Q. Okay. And which shelters during
7 that time have you stayed in?

8 A. Mainly the Salvation Army. And
9 that issue, put staff at Good Shepherd, that was
10 2019, I had a couple of exchanges that didn't go so
11 well, and they made some comments I didn't like.
12 And I went to the store, they gave me a 15-minute
13 time limit, I took 17 minutes and found out that I
14 was not allowed back in.

15 22 Q. Yeah. All right. I just want to
16 make sure I understood. This is the Good Shepherd?

17 A. Yeah.

18 23 Q. And you think this was in 2019?

19 A. Yes.

20 24 Q. And have you ever been back to the
21 Good Shepherd since then?

22 A. When I had the Salvation Army call
23 the Good Shepherd, but the Salvation Army was full,
24 I was informed that I was 'restrictive service' at
25 the Good Shepherd at that time.

MARIO MUSCATO 8

1 25 Q. Okay. So did you ever try again to
2 go to the Good Shepherd after that time?

3 A. No.

4 26 Q. Have you ever gone to Mission
5 Services?

6 A. Whenever I tried to go there,
7 they're full, they would tell me to come back at
8 10:00 o'clock at night and basically wait in line
9 and hope that someone would not show up so I could
10 take their bed. I tried a few times that, but I
11 never actually got in there, no.

12 27 Q. I understand that you see Dr. Jill
13 for medical care at the Salvation Army; is that
14 correct?

15 A. Yes.

16 28 Q. So you know that she's there from
17 time to time and you go there for the medical
18 assistance you need; is that correct?

19 A. Yeah.

20 29 Q. And where did you stay, where did
21 you sleep last night, sir?

22 A. Outside.

23 30 Q. Does that mean at an encampment or
24 --

25 A. Yeah, in a tent across the street

1 from Urban Core, on John and Rebecca.

2 31 Q. So during the day, sir, where do
3 you go during a typical day when you are not sleeping
4 in a shelter?

5 A. Sit around the Wesley Day Centre.

6 32 Q. Is that the main place that you go?

7 A. Mainly, yeah. There's times, you
8 know, I'll go to my cousin's; they live beside the
9 Indigenous Housing Hub; I'll stop in there to see my
10 worker who -- I don't really do too much -- asks me
11 how I'm doing and then find me a bus ticket.

12 33 Q. Okay. And is it common for people
13 in your situation to spend time around the Wesley Day
14 Centre?

15 A. You see a lot of the same people
16 there, yeah.

17 34 Q. And I didn't catch where you said
18 you would go see your cousin; where does he stay?

19 A. 16 Kenilworth Avenue.

20 35 Q. It's on Kenilworth?

21 A. Yeah, it's by the Indigenous
22 Housing Hub.

23 36 Q. Beside the Indigenous Housing, and
24 I didn't catch the last word?

25 A. Hub.

MARIO MUSCATO 10

1 37 Q. Hub. Thank you.

2 A. It's like their office, secondary
3 office, I guess.

4 MR. BORDIN: Sorry, counsel, maybe you
5 can assist, I don't know what the last part of what
6 Mr. Muscato said.

7 MS. COX: He thinks it's their
8 secondary office; he said the Indigenous Housing
9 Hub, their office.

10 MR. BORDIN: Okay.

11 A. Last I heard, the buildings are
12 being knocked down this month.

13 BY MR. BORDIN:

14 38 Q. And, sir, was there a period of
15 time this year where, sometime between August 2020
16 and earlier this year, say April, did you move into
17 a, some form of residential care facility?

18 A. No. I was shown a residential
19 care by Gord, who's a worker; he took me to go look
20 at a housing place, and they informed me there that
21 they would take basically all my money except \$150,
22 and I would have to isolate for two weeks upon
23 moving in, which would be impossible to do, and --

24 39 Q. Sir, I'm sorry, I'm going to have
25 to interrupt, I really apologize. It is very, very

MARIO MUSCATO 11

1 difficult for me to hear you.

2 What I heard you say was you were
3 shown a place, some kind of residence by your worker
4 who took you there to go look at it, and then he
5 told you that they would take the money you
6 received, which I understand to be ODSP, and leave
7 you \$150; is that correct so far?

8 A. Yes.

9 40 Q. Okay. And then if you can just
10 tell me what you were going to say after that?

11 A. I just don't believe I fit in in
12 that place. There was, it's more suited for, I mean
13 the people I seen there were more mental issues,
14 needed help, you know, because, I guess.

15 41 Q. And then do I understand, sir, that
16 because of that you didn't accept this placement?

17 A. It was that, as well as the two
18 weeks of self-isolation, and leaving me with \$150
19 for the whole month.

20 42 Q. Okay. So --

21 A. I had --

22 43 Q. Sorry, so you turned it down;
23 correct?

24 A. Yes.

25 MS. COX: Did you hear his entire

1 explanation?

2 MR. BORDIN: Sorry?

3 MS. COX: Were you able to hear his
4 entire explanation?

5 MR. BORDIN: I think I was.

6 Mr. Reporter, were you able to hear
7 it?

8 COURT REPORTER: Yes.

9 MR. BORDIN: Thank you.

10 44 Q. And, sir, do you, I take it you
11 don't have a phone, do you?

12 A. No.

13 45 Q. Have you ever taken a bus before?

14 A. Yes.

15 46 Q. Am I correct that you were not
16 barred from all of the men's shelters; is that
17 correct?

18 A. That's correct.

19 47 Q. So, sir, are you vaccinated?

20 A. Yes.

21 48 Q. And I think in your affidavit, sir,
22 at paragraph 13, if you do want to look at it, you
23 say, it's about a little bit better than halfway
24 down, you say you have had five housing workers;
25 correct? Where, like where are the housing workers

MARIO MUSCATO 13

1 from, what agency or organization? Do you know?

2 A. Maybe they're from Homeward Bound,
3 that's the Indigenous Housing Service. The first
4 one, her name was Kristen; the second one was
5 Darienne I think her name was; the third one was
6 Michele; the fourth one I think is Micka. And I'm
7 not sure if she actually even works there still or
8 not; every time I've gone there to see her, she
9 hasn't been there.

10 49 Q. Okay. And I want to make sure I
11 understand; you said they were with Indigenous
12 Housing Services; correct?

13 A. Yes.

14 50 Q. Okay.

15 MS. COX: -- (inaudible) it's part of
16 the Homeward Bound program that's part of Indigenous
17 Housing Services.

18 MS SEIDEL: I didn't hear that,
19 counsel.

20 MS. COX: He said that it's part, it's
21 called the Homeward Bound Program, and that's part
22 of Indigenous Housing Services.

23 MR. BORDIN: Okay.

24 Thank you. Those are all my
25 questions, sir.

1 MS. COX: Okay. Thank you.

2 (inaudible)

3 MR. BORDIN: We lost you there for a
4 minute, Ms. Cox, I don't know what you said.

5 MS. COX: Sorry. We will go get Gord
6 now for the next cross-examination.

7 MR. BORDIN: Okay. Thank you.

8 Thank you, sir.

9 -- Adjourned at 2:21 p.m.

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1
2 I HEREBY CERTIFY THE FOREGOING
3 to be a true and accurate
4 transcription of my shorthand notes
5 to the best of my skill and ability.
6

7 -----

8 MARC BEEBE, O.C.R.

9 Computer-Aided Transcription
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TAB 62

Court File No. CV-21-00077817-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**ASHLEY POFF, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO
SHAWN ARNOLD et al.**

Applicants

-and-

CITY OF HAMILTON

Respondent

**AFFIDAVIT OF MARIO MUSCATO
(Sworn May 11, 2022)**

1. I, MARIO MUSCATO, of the City of Hamilton in the Province of Ontario, MAKE OATH AND STATE:
2. I am a 48 year old Indigenous man. My current source of income is ODSP. As a single person without housing, I receive \$906 per month. This includes additional funds for a special diet. If I found housing, I'd receive a maximum of \$1169 per month, plus my existing special diet allowance.
3. In 2018, I was electrocuted and lost my right hand the majority of my fingers on my left hand. As a result, I need a lot of assistance from others to pick up and hold items. I do not have dexterity. I also have a substance use disorder.
4. I have been homeless since 2017 and have been living in tents, in shelters and on the streets since then.
5. Before becoming homeless, I was living in rental housing. I was evicted after Ontario Works failed to remit my shelter allowance to the landlord. I was not aware of this and suddenly owed a large amount of arrears to the landlord. I was evicted.
6. When I was evicted, I had to seek refuge in a men's shelter. I had nowhere to store my belongings and lost almost everything.
7. Staying in a shelter was difficult for me. I had previously been an independent and capable person. Suddenly I was treated like a child with so many rules and

micromanaged by every move. Shelters are dirty and staff are often rude and condescending. The environment can really make you feel like a second class citizen.

8. The shelter system is very unpredictable. I spend a lot of time walking around all day, looking for food and figuring out where I will sleep that night.
9. I have tried staying in shelters several times. I am repeatedly kicked out, or service restricted. The amount of time that I am banned from shelters ranges – sometimes it is overnight and sometimes for months.
10. The reasons for the shelter bans vary. I often miss curfew because it takes me longer to walk, especially on ice. I have been kicked out of a shelter for missing curfew by two minutes. I have been accused of bringing in a bottle of alcohol even though I don't I don't drink.
11. I have waited in line for 45 minutes to sleep on a mat on the floor at a shelter when they have run out of beds. Sometimes I can't even get a mat on the floor.
12. I can't carry a lot of my belongings around due to my disabilities. When I previously stayed in an encampment with a friend, he carried my tent and helped me put it up and take it down. I am not physically able to put up and take down my tent.
13. I am currently banned from the Salvation Army shelter until June 22, 2022 after I was falsely accused of using drugs in the bathroom and got into an argument with the manager. I was taking extra time in the bathroom because I was getting changed and it takes me longer than normal because I don't have hands.
14. At the same time that I was banned from Salvation Army, the men's shelters at Mission Services and Good Shepherd were full.
15. Almost every time I go to Mission Services, they are full. Good Shepherd is also often full.
16. There are people in shelters who stay up all night just so they can steal from you as you sleep. Some people will befriend you so you let your guard down, only to find out that they are not your friend after all and they planned to steal from you.
17. As a person experiencing homelessness, the loss of any of the few possessions you own is completely devastating. I have lost almost everything I own. When I report it to staff, they act like it's an everyday thing and there is nothing they can do about it. They do not help with figuring out how I can replace the items. They have security cameras but checking them to see what happened doesn't seem to be part of the process.

18. If I don't have a tent and cannot get into shelter (because they are full or I am service restricted), I try to find a stairwell or hallway to sleep. I can sometimes stay with friends, but I have no way of planning around this.
19. I stayed at the Sandman Hotel, operated by Mission Services, sometime in 2020. The first time, I stayed about 5 weeks and was then evicted. My ex-girlfriend was staying there as well and I was discharged the next day after a false allegation that I threatened her and her new boyfriend.
20. I stayed at the Sandman Hotel a second time – probably in the summer of 2021 – for about 2.5-3 months. I was kicked out after being falsely accused of dealing drugs.
21. There are no independent investigations at shelters or the hotel program. Once an allegation is made, you are kicked out.
22. The hotel program has since been shut down.
23. During the first wave of Covid, I was service restricted from one and possibly two shelters. Everything was shut down – Tim Horton's, the mall, the library, public washrooms. I had nowhere to go.
24. I have stayed in tents in different locations over the past few years. The following is a breakdown of the locations and approximate timeframes.

Location	Timeframe	Duration of stay	Outcome
Different locations, including Wellington/Victoria	Sometime in 2017	It ranged from overnight to a month.	Sometimes left for shelter in the extreme cold
Sir John A MacDonald (school)	Early 2020	One week	Police and By-law evicted me
Ferguson Avenue	Roughly early 2020	About 7 months	Police and By-law evicted me
Various locations	Throughout 2021	It ranged from 3-4 days until 2 weeks	Police came and evicted me
Various locations	Throughout 2022	Couples days	Move to avoid run-ins with police.

25. During the time of the Encampment Protocol, we tried to stay in the parks where we thought it was permitted, but we would still be kicked out. It still felt like

nothing was ok. It seemed like what we were supposed to do was go hide in the mountainside, away from everyone's view.

26. Now, when I stay in a tent, I tried to move before the police come. I know when the police come, you have to go. I worry that I will be arrested or that there will be confrontation. I also know that if I stay in an area that is more visible to the public, I will not be able to stay very long before the police arrive.
27. I feel safer in an encampment because of the people around me, who I usually know and trust. Sometimes I feel less safe because of other people throwing things at tent, or worrying that police will come. In the past, people outside encampments have set off fireworks inside tents in order to scare us away. But I still feel safer in a tent over the shelter or the streets.
28. Not having a stable and secure place to stay overnight means that I almost never get a decent night's sleep. On average, I sleep about 1-2 hours a night that is broken up. Most nights I don't sleep at all. I fall asleep repeatedly during the day, especially if I'm sitting down. My body just shuts down.
29. I am usually groggy and have difficulty concentrating. It is difficult for me to attend appointments. For example, I have a housing worker with the Hamilton Regional Indian Centre. I am in methadone treatment. But it is very difficult for me to keep track of my appointments and physically make it.

SWORN BEFORE ME in the City
of Hamilton, this 11 day of May, 2022



Mario Muscato



A Commissioner, etc.

Sharon Crowe

TAB 63

1 Court File No. CV-21-77187
2 ONTARIO
3 SUPERIOR COURT OF JUSTICE
4
5 B E T W E E N:
6 KRISTEN HEEGSMAN, DARRIN MARCHAND, GORD SMYTH,
7 MARIO MUSCATO, SHAWN ARNOLD, BRADLEY CALDWELL,
8 CHRISTINE DELOREY, GLEN GNATUK, TAYLOR GOGO-HORNER,
9 CASSANDRA JORDAN, JULIA LAUZON, AMMY LEWIS,
10 ASHLEY MACDONALD, COREY MONAHAN, MISTY MARSHALL,
11 SHERRI OGDEN, JAHMAL PIERRE, LINSLEY GREAVES and
12 PATRICK WARD
13 Applicants
14
15 and
16
17 CITY OF HAMILTON
18 Respondent
19
20 --- This is the Cross-Examination of MARIO MUSCATO, an
21 Applicant, herein, on his Affidavit Sworn the 11th day
22 of May, 2022, taken via videoconference on the 14th day
23 of August, 2024.
24
25

Nimigan Mihailovich Reporting Inc.
(905) 522-1653

1 APPEARANCES:
2 Sharon Crowe For the Applicants
3 Curtis Sell
4 Nnonyechi Okenwa
5 Michelle Sutherland
6
7 Bevin Shores For the Respondent
8 Jordan Diacur
9 Vivian Caldas
10
11 ALSO PRESENT:
12 Katherine Finlayson Summer law student
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INDEX OF UNDERTAKINGS

Undertakings are noted by "U/T" and are found on the following pages: NONE

INDEX OF REFUSALS

Refusals are noted by "R/F" and are found on the following pages: 50, 56.

INDEX OF ADVISEMENTS

Under AdviseMENTS are noted by "U/A" and are found on the following pages: NONE

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1 --- Upon commencing at 11:36 a.m.
2 MARIO MUSCATO: Affirmed.
3 CROSS-EXAMINATION BY MS. SHORES:
4 1 Q. Good morning, sir. As I
5 introduced off record, my name is Bevin Shores. My
6 pronouns are "she" and "her." Can we start by getting
7 you to state your full name?
8 A. My name is Mario Joseph Muscato.
9 2 Q. And how would you like to be
10 addressed today?
11 A. "Mario" is fine.
12 3 Q. And do you have any pronouns that
13 you use or wish to share?
14 A. "Him," I guess. Just "him."
15 4 Q. Okay. You've been affirmed to
16 tell the truth?
17 A. Yes.
18 5 Q. Mr. Muscato, before we went on
19 record, you expressed being sleepy, and your lawyer
20 Ms. Crowe observed that you were nodding off. I want
21 to confirm. I asked you if you felt that you were okay
22 to proceed today and you said yes. Is that correct?
23 A. Yes.
24 6 Q. And that's still true? You're
25 still feeling comfortable answering questions today?
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1 **A. Yes.**
 2 7 **Q.** And you think that you're in a
 3 position to do that truthfully?
 4 **A. Yeah.**
 5 8 **Q.** Okay. Have you taken any
 6 medications before coming today?
 7 **A. The only medications I'm on right**
 8 **now is methadone. That's it.**
 9 9 **Q.** Have you consumed any other
 10 substances before attending today?
 11 **A. No, not even a coffee.**
 12 10 **Q.** Does the methadone affect your
 13 ability to understand or remember things?
 14 **A. No. I'm not on that high of a**
 15 **dose.**
 16 11 **Q.** If during this cross-examination
 17 you don't understand one of my questions, please let me
 18 know. Okay?
 19 **A. Yeah.**
 20 12 **Q.** Otherwise, I'll assume that you do
 21 understand. Okay?
 22 **A. Okay.**
 23 13 **Q.** All right. We're here for a
 24 cross-examination on your affidavit dated May 11, 2022.
 25 Have you reviewed that affidavit?

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1 **A. Yes.**
 2 14 **Q.** Thank you. And do you confirm
 3 that it's accurate?
 4 **A. Yes.**
 5 15 **Q.** How long have you lived in
 6 Hamilton?
 7 **A. The very first week of**
 8 **January 2016.**
 9 16 **Q.** Where did you live before coming
 10 to Hamilton?
 11 **A. Buffalo, New York.**
 12 17 **Q.** Buffalo, New York, okay. Where is
 13 your current residence?
 14 **A. I live in Hamilton. You know, no**
 15 **permanent address.**
 16 18 **Q.** So you're not housed?
 17 **A. No.**
 18 19 **Q.** In your May 2022 affidavit, you
 19 say you've been homeless since 2017. Since 2017, have
 20 you ever had any periods of being housed?
 21 **A. May periods...**
 22 20 **Q.** Have you been housed at any time
 23 since becoming homeless?

MS. CROWE: Mario?
 THE DEPONENT: I'm just trying to
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1 think. No, I haven't been.
 2 BY MS. SHORES:
 3 21 **Q.** Where are you currently staying?
 4 I know you said you have no fixed address, but are you
 5 staying in a shelter, are you staying in a park, are
 6 you staying somewhere else?
 7 **A. Well, some nights do get a little**
 8 **chilly out there and I do get a little too tired, and**
 9 **it's those nights I feel safer even if it is going to a**
 10 **shelter.**
 11 22 **Q.** So when it's cold out, you'll go
 12 into a shelter?
 13 **A. Hmm.**
 14 23 **Q.** Was that a yes? I'm sorry, I
 15 didn't hear --
 16 **A. Yes, yes.**
 17 24 **Q.** Thank you.
 18 **A. Sorry.**
 19 25 **Q.** That's okay. If you forget to
 20 keep your voice up, one of us will remind you. On the
 21 nights where it's not too cold out, you stay outside?
 22 **A. Yes.**
 23 26 **Q.** And you stay in a tent?
 24 **A. They're a little hard to put up by**
 25 **myself, so most of the time I'd have to say no.**

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1 27 **Q.** Okay. And so you'll stay in a
 2 park, but you won't have a tent because it's hard for
 3 you to put up?
 4 **A. Yeah. The one -- yeah, yeah.**
 5 28 **Q.** Do you have a tent?
 6 **A. I used to.**
 7 29 **Q.** When was the last time you had a
 8 tent?
 9 **A. Just before November of last year.**
 10 30 **Q.** And what happened to that tent?
 11 **A. It was just stolen.**
 12 31 **Q.** Do you know who stole it?
 13 MS. CROWE: Mario, did you hear the
 14 question?
 15 THE DEPONENT: No.
 16 BY MS. SHORES:
 17 32 **Q.** Do you know who stole your tent?
 18 **A. Yeah, someone stole it, yeah.**
 19 33 **Q.** But you don't know who that was,
 20 who took your tent?
 21 **A. No. There was a period of people**
 22 **going around stealing tents, and at this point there**
 23 **was people going around just burning tents, you know?**
 24 34 **Q.** Was your tent ever burned?
 25 **A. No.**

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<div>9</div> <p>1 35 Q. And so you said since November of</p> <p>2 last year, if I understand correctly, if it's cold out,</p> <p>3 you would go into a shelter, and if it's not too cold</p> <p>4 out, you'll stay outside?</p> <p>5 A. Yeah. I do have a cousin. I will</p> <p>6 try his apartment first. He's not always home, so then</p> <p>7 I'm left with a shelter or go find somewhere warm.</p> <p>8 36 Q. Have you tried to get a new tent</p> <p>9 to replace the one that was stolen?</p> <p>10 A. Not from any organization. And</p> <p>11 for me to go out and buy a tent, you know, it cuts into</p> <p>12 my monthly income a nice amount. And I'm just taking</p> <p>13 that chance as someone just stealing it or burning it</p> <p>14 on fire again, and I'm out that money.</p> <p>15 37 Q. You said "not from any</p> <p>16 organization." Are there organizations that you could</p> <p>17 get a tent from for free? Have you looked into that?</p> <p>18 A. There was a few of them. They do</p> <p>19 run out fairly quick.</p> <p>20 38 Q. Okay. Have you tried to get a</p> <p>21 tent from them?</p> <p>22 A. They told me on two different</p> <p>23 occasions that they're working on one for me, but I</p> <p>24 have yet to see it.</p> <p>25 39 Q. Turning to your May 11, 2022,</p> <p style="text-align: center;">Nimigan Mihailovich Reporting Inc.</p> <p style="text-align: center;">(905) 522-1653</p>	<div>32 11</div> <p>1 45 Q. Have you submitted an application</p> <p>2 to get housing?</p> <p>3 A. Yeah.</p> <p>4 46 Q. And what steps have been taken to</p> <p>5 try to get you housing?</p> <p>6 MS. CROWE: Did you hear the question?</p> <p>7 THE DEPONENT: No, no.</p> <p>8 MS. CROWE: Could you repeat, please?</p> <p>9 BY MS. SHORES:</p> <p>10 47 Q. What steps have been taken to try</p> <p>11 to get you housing?</p> <p>12 A. I don't really feel like any have.</p> <p>13 I have looked myself. I mean, my worker at the</p> <p>14 Salvation Army, Chelsea, tried to hook up with a new</p> <p>15 program called Housing UP! and I was turned down.</p> <p>16 48 Q. When was that?</p> <p>17 A. About a month and a half ago.</p> <p>18 49 Q. Did they tell you why you were</p> <p>19 turned down?</p> <p>20 A. I'm a little hard to take care of.</p> <p>21 50 Q. Is that the reason that they gave</p> <p>22 you, that you were hard to take care of?</p> <p>23 A. Yes.</p> <p>24 51 Q. Did they tell you what the next</p> <p>25 steps are? Are there other options for you to get</p> <p style="text-align: center;">Nimigan Mihailovich Reporting Inc.</p> <p style="text-align: center;">(905) 522-1653</p>
<div>10</div> <p>1 affidavit at paragraph 2, you said at that point in</p> <p>2 time your current source of income was ODSP. You were</p> <p>3 receiving \$906 per month. Is that still correct? Has</p> <p>4 there been any updates to your income?</p> <p>5 A. Yes.</p> <p>6 40 Q. Yes, that's correct?</p> <p>7 A. Yeah. No, there is -- I do have a</p> <p>8 higher income than \$906.</p> <p>9 41 Q. What do you get now?</p> <p>10 A. I get my bus allowance and my --</p> <p>11 my allowance.</p> <p>12 42 Q. How much in total does that add up</p> <p>13 to? Do you know?</p> <p>14 MS. CROWE: Did you hear the question?</p> <p>15 THE DEPONENT: No, I...</p> <p>16 MS. CROWE: Can you repeat, please?</p> <p>17 BY MS. SHORES:</p> <p>18 43 Q. How much do your benefits add up</p> <p>19 to? Do you know how much you get every month in total?</p> <p>20 A. It varies, you know, by \$2 here or</p> <p>21 there. It's mainly been around \$990.</p> <p>22 44 Q. Is it still the case that you</p> <p>23 would receive more money if you found housing because</p> <p>24 you'd get money for that housing?</p> <p>25 A. I do believe so, yeah.</p> <p style="text-align: center;">Nimigan Mihailovich Reporting Inc.</p> <p style="text-align: center;">(905) 522-1653</p>	<div>12</div> <p>1 housing?</p> <p>2 A. No.</p> <p>3 52 Q. Do you know what they mean when</p> <p>4 they say you're hard to take care of?</p> <p>5 A. Kind of. They want me into a --</p> <p>6 they want to put me into a lodging home, and I'm not</p> <p>7 so...</p> <p>8 53 Q. Sorry, I didn't quite catch that.</p> <p>9 I think you trailed off a bit. You said they wanted to</p> <p>10 put you in a lodging home. So they offered you a place</p> <p>11 in a lodging home?</p> <p>12 A. Not yet. They just told me there</p> <p>13 are many lodging homes that they are sure they can get</p> <p>14 me into.</p> <p>15 54 Q. Okay. Well, that sounds</p> <p>16 promising. Did you take them up on that?</p> <p>17 A. No.</p> <p>18 55 Q. And why not?</p> <p>19 A. Because I've heard from many</p> <p>20 other (indiscernible) -- yeah, it's not good enough.</p> <p>21 56 Q. I think I only heard part of what</p> <p>22 you said, Mr. Muscato. You said you've heard, and then</p> <p>23 I didn't hear what you said, and then you said "not</p> <p>24 good enough." Can you repeat that?</p> <p>25 A. The housing's not -- they require</p> <p style="text-align: center;">Nimigan Mihailovich Reporting Inc.</p> <p style="text-align: center;">(905) 522-1653</p>

1 a little too much.

2 57 Q. And what do you mean by that?

3 A. Well, by the time I'm left paying
4 them, from what I hear -- I've been told by many other
5 people that have been through these lodging programs --
6 I'm left with \$150 for the whole month, and they dish
7 that out more as an allowance. Some places will do
8 your laundry and your cooking. Some places, it seems
9 like they won't do nothing at all.

10 58 Q. Okay. Have you talked to anyone
11 about whether that's true or whether you can get into
12 one of the places that do your laundry and your
13 cooking? It seems like if you can get in there, you
14 can stretch that \$150 pretty far.

15 A. I wouldn't know where one of those
16 are.

17 59 Q. Have you talked to anyone about
18 that?

19 A. No.

20 60 Q. Mr. Muscato, do you remember
21 seeing a Dr. Wiwcharuk? Or sometimes she goes, I
22 think, by "Dr. Jill." Have you seen her before?

23 A. No, not lately. She used to be my
24 doctor.

25 61 Q. Do you remember when she stopped
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1 being your doctor?

2 A. About a year and a half ago.

3 62 Q. Do you know her by Dr. Jill or Dr.
4 Wiwcharuk?

5 A. Dr. Jill.

6 63 Q. Dr. Jill, okay. I'm going to call
7 her Dr. Jill so it's not confusing. Dr. Jill wrote a
8 letter about you dated June 9, 2022. Have you seen
9 this letter?

10 A. No, I haven't, I don't believe.

11 64 Q. Okay. I'm going to ask you some
12 things about that letter, but before I do, when
13 Dr. Jill was your doctor, how often would you see her?

14 A. At least once a week.

15 65 Q. And where would you see her?

16 A. Sometimes I'd see her at the
17 Wesley and I'd see her at the Hamilton Clinic or I
18 would see her at the Hub.

19 66 Q. You would go to her at those
20 places --

21 A. In the Hub there, yes.

22 67 Q. When you see her, does she tell
23 you where she can find you next -- I'm sorry, where you
24 can find her next or where she will meet you next?

25 A. No. We had pretty much each
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1 other's schedule down.

2 68 Q. So you knew where you could go to
3 find her?

4 A. Yeah.

5 69 Q. Dr. Jill, in her June 9, 2022,
6 letter in the second paragraph -- I'm just going to
7 zoom in here. I placed it on the screen. I suppose I
8 should say for the record this is appended to the
9 affidavit of Dr. Jillian Wiwcharuk. I'm just looking
10 for the exhibit letter. Exhibit F. Do you have it
11 there, Counsel?

12 MS. CROWE: Yes.

13 MS. SHORES: Okay.

14 BY MS. SHORES:

15 70 Q. In the second paragraph, second
16 sentence, Dr. Wiwcharuk states that you suffer from
17 opioid use disorder and stimulant use disorder. She
18 goes on to list a few other things, but I'm going to
19 ask you about the opioid use disorder and stimulant use
20 disorder first. Is that correct? Do you have those
21 disorders?

22 A. Yes. Unfortunately, yes.

23 71 Q. Which substances do you use?

24 A. Mostly fentanyl at this time.

25 72 Q. Okay. Are you in treatment for
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1 either of those disorders?

2 A. Yes.

3 73 Q. What treatment are you getting?

4 A. Methadone.

5 74 Q. That's the methadone. And the
6 methadone treatment, what does that involve? What do
7 you have to do for your methadone treatment?

8 A. Just a bunch of -- just staying
9 positive and trying to keep busy.

10 75 Q. Okay. How often do you take --

11 A. Lots of --

12 76 Q. Sorry, I didn't mean to interrupt
13 you. Go ahead.

14 A. Just lots of phone calls from
15 different peers and support.

16 77 Q. Phone calls with treatment
17 providers?

18 A. What do you mean "treatment
19 providers"?

20 78 Q. People who are trying to help you
21 get treatment?

22 A. Yeah, she's called me a number of
23 times. They wanted me to start this -- a change that
24 we're trying to make. She thought mine was a little
25 unique because it stemmed a lot more from an accident
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1 **that I had suffered, and losing my daughter -- or her**
 2 **mother back in Buffalo and -- yeah, she nailed it on**
 3 **the nose.**

4 79 **Q.** So your accident, is that the
 5 electrocution incident that she describes?

6 **A. Hmm.**

7 80 **Q.** Sorry, I didn't hear your answer.
 8 MS. CROWE: Did you hear the question?

9 THE DEPONENT: No.

10 MS. CROWE: Can you please repeat?

11 BY MS. SHORES:

12 81 **Q.** You referred to an accident, and I
 13 want to know is that the electrocution incident in
 14 2018?

15 **A. Yeah.**

16 82 **Q.** Okay. Going back to -- sorry, you
 17 said there were phone calls. Do you have a phone?

18 MS. CROWE: Mario, did you hear the
 19 question?

20 THE DEPONENT: Yeah. Sorry, I shook my
 21 head. I'm sorry, no.

22 BY MS. SHORES:

23 83 **Q.** You don't have a phone. How do
 24 you use a phone?

25 **A. Pay phone or a friend's phone.**

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1 **Like, I'll buy a phone, but I'm downtown. It gets**
 2 **stolen. Everybody's phone gets stolen.**

3 84 **Q.** I want to ask about the methadone
 4 treatment in particular. Is that something that you
 5 have to take every day?

6 MS. CROWE: Did you hear the question?

7 THE DEPONENT: No, sorry.

8 BY MS. SHORES:

9 85 **Q.** Do you have to take your methadone
 10 every day?

11 **A. Yes.**

12 86 **Q.** And do you have to take it in a
 13 specific place?

14 **A. Yes.**

15 87 **Q.** Where do you have to take it?

16 **A. 211 James Street South.**

17 88 **Q.** Is that a pharmacy?

18 **A. Yes.**

19 89 **Q.** Do you, in fact, take it every
 20 day, go to that pharmacy?

21 **A. I miss the odd day here and there.**

22 90 **Q.** Overall, you're able to take it?

23 **A. Yes.**

24 91 **Q.** Has anyone discussed with you a
 25 treatment that you might not have to go to the pharmacy

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1 every day for, something like an injection you can get?

2 **A. That's the -- that's the -- where**
 3 **they put the needle in you. Right? Sublocade shot, I**
 4 **think it's called.**

5 92 **Q.** Yeah, yeah. Has anyone suggested
 6 that to you?

7 **A. No.**

8 93 **Q.** Okay --

9 **A. Because that's more Suboxone.**

10 94 **Q.** Would that be easier for you?

11 **A. At this time, no.**

12 95 **Q.** Okay. Dr. Wiwcharuk goes on to
 13 describe the electrocution that you had in 2018, and I
 14 just want to get your information as to whether she's
 15 describing it correctly. She says you had a partial
 16 amputation of your left forearm, severe burn injuries
 17 to your right forearm with grafting that needed to be
 18 done, and you have extremely limited use of your right
 19 forearm so that you can't fully extend it, and your
 20 fingers are in a claw shape. Is that correct so far?

21 **A. Yeah.**

22 96 **Q.** And you have no sensation in any
 23 of the fingers on your right?

24 **A. It would be my left.**

25 97 **Q.** On your left, okay. I was

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1 wondering if maybe she got that mixed up. She says in
 2 the winter you have suffered frostbite injuries to your
 3 hand due to an inability to feel the cold. Do you
 4 remember getting frostbite?

5 MS. CROWE: Mario, did you hear?

6 THE DEPONENT: Huh?

7 BY MS. SHORES:

8 98 **Q.** Have you had frostbite on your
 9 hand?

10 **A. Yeah. Yeah, yeah.**

11 99 **Q.** Did you get treatment for that
 12 frostbite?

13 **A. Yes.**

14 100 **Q.** Do you remember when it was that
 15 you got frostbite?

16 **A. In January of 2019.**

17 101 **Q.** Okay. Do you remember where you
 18 were when you got frostbite?

19 **A. Behind City Hall.**

20 102 **Q.** Behind City Hall. Were you in a
 21 tent?

22 **A. No.**

23 103 **Q.** You were just outside?

24 **A. Yeah. I was walking to my**
 25 **friend's house.**

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1 104 Q. You said you were walking to your
2 friend's house?
3 A. Yes.
4 105 Q. Did you make it to your friend's
5 house eventually?
6 A. Yeah.
7 106 Q. Okay. And then you got that
8 treatment for your frostbite, as you told me before;
9 right?
10 A. Yeah.
11 107 Q. Okay. Now, Dr. Wiwcharuk also
12 says -- I'm going to go back to the second paragraph --
13 that you have HIV?
14 A. Yes.
15 108 Q. Okay. Further down on the second
16 page, she describes it as untreated HIV. Is that still
17 correct, you're not getting any treatment for your HIV?
18 A. I'm starting treatment with the
19 Wellkare Clinic that I'm at now.
20 109 Q. Okay. Is that treatment something
21 you have to go to the clinic for?
22 A. The pharmacist that I go to now,
23 yeah.
24 110 Q. Is that the same pharmacist for
25 your methadone?

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1 A. Yes.
2 111 Q. You can go there, you can get your
3 methadone and your HIV treatment all in one?
4 A. Yes.
5 112 Q. You told me before that other than
6 missing maybe a day here or there, you can make it for
7 your methadone. Is that also true with your HIV
8 treatment?
9 A. Yes.
10 113 Q. I'm glad to hear that. Do you
11 currently have a doctor who's treating you now that Dr.
12 Wiwcharuk is no longer your doctor -- or Dr. Jill?
13 A. Dr. Gupta, I think her name is.
14 It's just mainly the one that's toward my methadone.
15 114 Q. Where do you see Dr. Gupta?
16 A. At 211 James Street South.
17 115 Q. Okay.
18 A. I'm seriously considering on
19 changing that, though.
20 116 Q. And why is that?
21 A. I'm supposed to have a couple more
22 surgeries on my arm and nobody seems to be pushing for
23 that.
24 117 Q. You want someone who can help you
25 try to get those surgeries for your arm?

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1 A. Yeah.
2 118 Q. What are those surgeries supposed
3 to do for you? Do you know?
4 MS. CROWE: Did you hear the question?
5 THE DEPONENT: Yeah. They're going to
6 cut my left arm open again, shave down -- they put an
7 extra, like, padding over the tendon to protect them.
8 So they're going to shave that down to look more like a
9 regular forearm. I think that'll hold 'er.
10 BY MS. SHORES:
11 119 Q. Is that supposed to make your
12 forearm more useful for you? What is the reason they
13 say that --
14 A. Yeah, yeah, because it's kind of a
15 dead hand right now. I'm very, very limited in what I
16 can do with it.
17 120 Q. Okay. Is anybody other than
18 Dr. Gupta providing you with medical care right now?
19 A. No.
20 121 Q. One more thing about
21 Dr. Wiwcharuk, because she identified some other things
22 that -- some other conditions that you've sustained.
23 She also describes -- bear with me. I'm just trying to
24 find my place in her report. On the second page of her
25 report, the fifth paragraph down, she states that you

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1 have posttraumatic stress disorder from events in your
2 childhood as well as the electrocution injury in 2018.
3 Is that also correct?
4 A. Well, I'd like to think I'm
5 stronger than that, but, yeah, she's probably correct.
6 122 Q. Okay. Are you in treatment for
7 that, the posttraumatic stress disorder?
8 A. No.
9 123 Q. Have you tried to get treatment
10 for that or has anyone offered you treatment for that?
11 A. No.
12 124 Q. Have you asked about getting some
13 treatment or some help with your PTSD?
14 A. Yeah.
15 125 Q. And what do they tell you?
16 A. About what? Me in treatment?
17 126 Q. Yeah, yeah. If I understand you
18 correctly, you said you tried to get treatment. What
19 were you told?
20 A. That I shouldn't go until I am
21 completely ready, that I should have everything settled
22 on -- in my everyday life before I do something like
23 that, and...
24 127 Q. Do you remember who told you that?
25 A. Maybe Dr. Bob (ph). There's

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1 various other workers.

2 128 Q. Okay. You're not sure?

3 A. No. Well, I know I've been told
4 that, you know, going through some of these centres can
5 be hard work and...

6 129 Q. I'm going to take you back to your
7 affidavit of May 2022. At page 2, paragraph 9, you
8 state "I have tried staying in shelters several times.
9 I am repeatedly kicked out or service restricted. The
10 amount of time that I am banned from shelters ranges.
11 Sometimes it is overnight and sometimes for months."

12 A. Yes.

13 130 Q. Okay. How many times would you
14 say that you've been service restricted from a shelter?

15 MS. CROWE: Did you hear the question?

16 THE DEPONENT: Yeah. How many times?

17 Quite a bit. The longest service restricted was -- I
18 have a hard time going to the bathroom, and if I'm
19 wearing jeans, it's very hard for me to either unbutton
20 or button up my jeans and do up my belt. If I'm
21 wearing jogging pants, it's very hard to, you know, tie
22 the knot in my jogging pants. It takes me, you know, a
23 fair amount of time. It's not like I want to be in
24 there that amount of time. And during that time, knock
25 after knock after knock on the doors. It's been

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1 workers, it's been the superintendent. They're all
2 yelling at me to hurry up. I'm telling them, "You know
3 who I am. You know the problem I have and I'm trying
4 to hurry up."

5 BY MS. SHORES:

6 131 Q. So they're telling you you're
7 taking too long in the bathroom or the washroom. Is
8 that why you were service restricted? Did you hear the
9 question, Mr. Muscato?

10 A. Yes. Yeah, that's why I'm being
11 service restricted.

12 132 Q. Were you doing anything else in
13 the bathroom?

14 A. No.

15 133 Q. Mr. Muscato, I put it to you that
16 service restrictions in these shelters are only used
17 where someone is being violent or threatening or
18 repeatedly breaking the rules. Is that not the case?

19 A. No, it's not the case.

20 134 Q. Okay. And so that time --

21 A. They like to think -- they like
22 other people to think that's the case, but that is not
23 the case at all.

24 135 Q. Okay --

25 A. All it takes -- all it takes is

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1 the staff to have some type of personal issue with you.

2 If they don't like the way you look or dress, or maybe
3 you spoke to them in an off manner a couple days ago,
4 and you will find yourself service restricted within a
5 day or two.

6 136 Q. Have you ever threatened someone
7 in a shelter?

8 A. Yeah.

9 137 Q. You have? Did that result in a
10 service restriction?

11 A. Yes.

12 138 Q. Have you ever gotten into a fight
13 with someone in a shelter?

14 A. Yeah.

15 139 Q. And did that result in a service
16 restriction?

17 A. Yeah.

18 140 Q. Have you ever used substances in a
19 shelter?

20 A. No.

21 141 Q. No? So --

22 A. I have -- I have used -- when I
23 was, like, 18 years old and I went to rehab in Simcoe,
24 surprise, surprise (indiscernible).

25 142 Q. I didn't catch that.

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1 A. I'm sorry. I trailed off. I
2 forget what I was talking about.

3 143 Q. Okay.

4 A. Repeat that again, because I
5 really want to get on that. I just trailed off.

6 144 Q. The original question was whether
7 you've used substances in a shelter, and you said no,
8 and then you went on to explain --

9 A. Yeah, no. No, I haven't used
10 substances in a shelter.

11 145 Q. Okay. So you did just tell me,
12 though, that you've threatened people in shelter and
13 you got service restricted from that, and you've gotten
14 into fights with people at shelter and you've gotten
15 service restricted for that. So you would agree with
16 me that it's not only --

17 A. The fights -- the fights -- like,
18 I'm not out there to try to get into a fight. You
19 know? They have a very big disadvantage or advantage
20 on me. So it's not like I'm the one that's picking the
21 fight. They're stepping up to me and getting into my
22 face and yelling at me because they see that they have
23 the advantage on me, and then it still don't matter. I
24 was in a fight; I'm restricted.

25 146 Q. When you say "they," who are you

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1 talking about?

2 **A. Other residents. You know, you**
 3 **put that many people in a building and you're not all**
 4 **going to like each other. People are going to want to**
 5 **play the tough guy, and there you go. The fight's on.**
 6 **They figure, you know, if they can slap someone like me**
 7 **around, then people will be afraid of them.**

8 147 **Q.** The other people fighting with
 9 you, they get service restricted too?

10 **A. Oh, yeah. Everybody does.**

11 148 **Q.** At paragraph 10 of your affidavit,
 12 you say "I often miss curfew because it takes me longer
 13 to walk, especially on ice." But that's not a service
 14 restriction that you get for missing curfew; right?
 15 They just --

16 **A. Yes, it is.**

17 149 **Q.** Oh, it is?

18 **A. Yes.**

19 150 **Q.** Okay. Tell me about that,
 20 because -- I'll tell you my understanding is that if
 21 you're not there for curfew and they think you've given
 22 up your bed, they might give away your bed, but you can
 23 come back. So tell me what I'm getting wrong.

24 **A. Yeah, no, you can come back. You**
 25 **are not going to get a bed that night, though.**

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1 151 **Q.** Okay. So --

2 **A. Maybe not service restricted, but**
 3 **you may as well not even go because you're not going to**
 4 **stay.**

5 152 **Q.** So what prevents you from being at
 6 the shelter for the curfew?

7 **A. When it's icy outside -- when I**
 8 **fall now, it hurts. I don't know if it's just because**
 9 **I'm missing this right hand and it, you know, helped**
 10 **break the fall that much. But when I slip and fall,**
 11 **it's like I slam myself down on the ground. It knocks**
 12 **the wind out of me and I am not quick to walk fast**
 13 **after that, you know?**

14 153 **Q.** Okay. So you could just stay in,
 15 though, when it's icy out, and then you don't have to
 16 worry about missing curfew; right?

17 **A. Yeah, I could do that. And then**
 18 **there's going to be more problems with the other people**
 19 **that live there. Like, I just want to hurry up and**
 20 **find a place and get away from the people that feel**
 21 **I -- if they can, you know, bother me and badger me and**
 22 **hit me, it's going to make them look tough and get them**
 23 **a better name. It doesn't, you know, at all. I still**
 24 **have to go through that.**

25 154 **Q.** You don't like that.

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1 **A. No. Being attacked because some**
 2 **kid has the wrong idea of what it's going to get him?**
 3 **I have to listen. I understand staff might have a bad**
 4 **day. Okay, I might take five minutes to walk up the**
 5 **stairs. They don't have to be standing up the stairs**
 6 **telling me to "hurry up, Muscato, you're wasting my**
 7 **time." You know, I...**

8 155 **Q.** Now --

9 **A. I get treated very much**
 10 **second-rate at these places right now.**

11 156 **Q.** Okay. Now, at paragraph 19 and
 12 20, you describe staying two times where you've stayed
 13 at the Sandman Hotel. Do you remember that?

14 **A. Yes.**

15 157 **Q.** And you say that, at paragraph 19,
 16 your ex-girlfriend was staying there and you were
 17 discharged after a false allegation that you threatened
 18 her and her new boyfriend.

19 **A. Yeah.**

20 158 **Q.** Okay. So your evidence is that
 21 that's wrong; you didn't threaten them?

22 **A. No.**

23 159 **Q.** So tell me, then, what your
 24 evidence is, why you were asked to leave.

25 **A. Because that is what they were**
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1 **able to convince the staff. For some reason, what the**
 2 **staff failed to look at is I have one hand. I have**
 3 **next to no balance. I ain't going to be quick to start**
 4 **a fight with anybody. I have never hit a female in my**
 5 **life. And as far as I was concerned, that relationship**
 6 **was over. It was three or four years prior. She was**
 7 **just upset because I was in the motel.**

8 160 **Q.** Are you saying she made it up or
 9 the people at the hotel made it --

10 **A. I'm telling you she made it up.**
 11 **And I did talk to her after that and she did say that**
 12 **she never said nothing like that, not to that extent.**

13 161 **Q.** So you think she made it up, but
 14 then she told you later that she did?

15 **A. She said that she was fearful I**
 16 **might attack them, not that I had threatened them. I**
 17 **did not say one word to her.**

18 162 **Q.** And at paragraph 20, you describe
 19 staying at the Sandman Hotel a second time for about
 20 two to three months, but you say you were kicked out
 21 after being falsely accused of dealing drugs.

22 **A. Yeah.**

23 163 **Q.** Were you dealing drugs at any time
 24 when you stayed at the Sandman in 2021?

25 **A. No.**

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1 164 Q. No. And so who alleged that you
 2 were dealing drugs? Do you know?
 3 A. I don't know.
 4 165 Q. After either of these times at the
 5 Sandman, did you go into a shelter? Do you remember?
 6 Did you understand the question?
 7 A. Not -- not really. I got confused
 8 with a different question. Can you repeat that one
 9 again?
 10 166 Q. I'll break it down to make it
 11 easier for you. After the first time you stayed at the
 12 Sandman Hotel, the time where your ex-girlfriend said
 13 you were threatening her or she was afraid that you
 14 threatened her, where did you go?
 15 A. Back down here downtown, the
 16 shelters.
 17 167 Q. Okay. And then the second time
 18 you stayed at the Sandman Hotel, the time they said
 19 that you were dealing drugs, where did you go after the
 20 hotel?
 21 A. Well, the second time -- the
 22 reason I was able to go back to the Sandman the second
 23 time was because she owned up to it.
 24 168 Q. She owned up to it meaning she
 25 told someone that she wasn't telling the truth?
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1 A. Exactly. Telling the truth, yes.
 2 169 Q. So they let you back in?
 3 A. Yeah.
 4 170 Q. Okay.
 5 A. Because even my doctor kind of
 6 chuckled at them and said, "You've got to be kidding me
 7 if you think Mr. Muscato was going to assault anybody."
 8 171 Q. And then the second time when you
 9 left the Sandman, where did you go?
 10 A. Right back downtown.
 11 172 Q. To one of the shelters?
 12 A. Yeah.
 13 173 Q. Mr. Muscato, the City of Hamilton
 14 has records of your attempts to access shelter and
 15 other homelessness services including things like the
 16 service restrictions. Would you sign an authorization
 17 allowing that record to be disclosed in this
 18 litigation?
 19 A. No, because I don't really
 20 understand it.
 21 174 Q. The City has records of when you
 22 stay at shelters and things like your service
 23 restrictions, but we need your permission for those to
 24 be disclosed or, rather, the City needs your permission
 25 and I'm asking if you'll give that permission. You'll
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1 have to sign a piece of paper.
 2 A. To give that permission to what?
 3 175 Q. For the record of --
 4 A. To show how many times I've been
 5 in a shelter?
 6 176 Q. And any service restrictions and
 7 other homelessness services that you've accessed.
 8 A. Yeah, sure, as long as you also
 9 put in there that all it takes to be restricted is for
 10 one single staff to have an issue with a person. And
 11 they can say what they want; the restriction still
 12 stands.
 13 177 Q. Mr. Muscato, I do have to let you
 14 know that what -- I can't tell you what's in those
 15 records, but my understanding is it's what they write
 16 down, so it is going to be their version of events.
 17 A. Yeah, and only their version of
 18 events and that's very unfair, I believe. It's very
 19 unfair.
 20 178 Q. Well, we're here asking you
 21 questions, getting your version of events, which the
 22 Court will also be able to hear. And so my question
 23 again is, will you sign the authorization allowing that
 24 record to be disclosed in this litigation?
 25 A. If we can go through every time
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1 I've been restricted and I can have my say on it in
 2 what happened, yeah.
 3 179 Q. I'm not sure if the procedural
 4 mechanism exists for that. So I will move on. I'll
 5 leave that request --
 6 A. Listen, I'm not saying -- I'm not
 7 saying they were wrong every time. You know, sure,
 8 I've lost my temper. I may have called them some
 9 names. Have I ever threatened any harm to anybody?
 10 No. Have I ever broken anything of theirs? No. Have
 11 I ever gotten into any fights there? No.
 12 180 Q. You told me earlier that you did
 13 get in some fights.
 14 A. When they were brought to me,
 15 yeah. I'm not going to have someone pummel the hell
 16 out of me. But take a good look at me. What kind of a
 17 fight do you think I could put up?
 18 181 Q. Mr. Muscato, I have to tell you,
 19 you seem like you're someone who could hold your own.
 20 MS. CROWE: I don't know if we're going
 21 down a proper road right now.
 22 THE DEPONENT: No.
 23 BY MS. SHORES:
 24 182 Q. Well, I've made my request --
 25 A. Missing one hand, and my other
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1 hand works about 30 percent at best. I have no balance
2 at all. I'm as easy to knock over as a 10-year-old
3 kid.

4 183 Q. Mr. Muscato, I'm going to change
5 subjects and ask you about some places where you've
6 stayed in tents, which is indicated in your affidavit
7 at paragraph 24. You say, starting sometime in 2017,
8 you stayed in different lotions near Wellington and
9 Victoria. I'm going to focus more on the timeframe
10 from 2020 going forward. In early 2020, you stayed
11 near Sir John A. Macdonald for one week and that was in
12 a tent?

13 A. Yeah.

14 184 Q. Okay. When you say "police and
15 by-law evicted me," do you mean that they came and told
16 you you can't be there?

17 A. Yeah.

18 185 Q. Okay. And did they tell you how
19 much time you had to move?

20 A. Yeah.

21 186 Q. So you packed up and moved?

22 A. Yes.

23 187 Q. And you went somewhere else? I'm
24 sorry, I didn't hear your answer.

25 A. Yes.

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1 188 Q. Okay. So they're not coming up to
2 you in the middle of the night; they're coming to you
3 in the day and saying, hey, you can't be here anymore?

4 A. Yeah. They would make -- mainly
5 make it during the morning hours.

6 189 Q. Is that all of the time when the
7 police and by-law come and tell you you have to move
8 it's mainly in the morning hours?

9 A. Mainly.

10 190 Q. Okay. If it's not in the morning
11 hours, when do they come and talk to you about having
12 to move?

13 A. Late afternoon, early evening.

14 191 Q. Okay. After John A. Macdonald,
15 you list here you've stayed at Ferguson Avenue in early
16 2020 for about seven months? That's correct?

17 A. Yeah.

18 192 Q. And then again, police and by-law
19 said you have to move, so you moved? I'm sorry, I
20 didn't hear your answer.

21 A. Yes, yes.

22 193 Q. And then through 2021 you stayed
23 in various locations. Again, you're still in a tent?

24 A. Yes.

25 194 Q. And three to four days up until

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1 two weeks would be about the length of time you would
2 stay in any one place?

3 A. Yeah.

4 195 Q. And again you moved because --
5 here it just says police. So the police told you to
6 move?

7 A. Yeah.

8 196 Q. Okay. And throughout 2022, you
9 say you stayed in various locations for a couple of
10 days at a time. Is that correct?

11 A. Yes.

12 197 Q. And then here it says "moved to
13 avoid run-ins with police." Would I be correct in
14 understanding that you moved on your own; they didn't
15 tell you you had to move?

16 A. Yeah, because I know it was
17 coming.

18 198 Q. And so since then -- we asked a
19 little bit earlier, but since then, you've been staying
20 either in tents or going into shelters?

21 A. I've been staying at a cousin's a
22 bit.

23 199 Q. Okay. So tents or shelters or
24 staying at your cousin's?

25 A. Yeah.

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1 200 Q. When the police or by-law have
2 told you to move, they haven't taken your tent from
3 you?

4 A. No. We were always pretty civil
5 about it.

6 201 Q. At paragraph 27, you say you feel
7 safer in an encampment because of the people around
8 you, who you usually know and trust. You'd agree that
9 anyone can come into an encampment; right?

10 A. Yeah.

11 202 Q. Including someone who might have a
12 problem with you or want to start something?

13 A. Yeah, that's true.

14 203 Q. Have you ever gotten into a fight
15 with anyone at an encampment?

16 A. No.

17 204 Q. Have you ever had things stolen
18 from you in an encampment?

19 A. Maybe some clothes.

20 205 Q. You told me earlier that you've
21 had a phone stolen. Was your phone stolen from a tent,
22 or where was it stolen from you, if you remember?

23 A. Cab? I wasn't sure if I left it
24 in a cab, when I came home (indiscernible).

25 COURT REPORTER: Sorry, Mr. Muscato,
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1 could you please repeat that?

2 **THE DEPONENT: I had no idea where I**
3 **really lost it. I mean, it could have been one of a**
4 **few places.**

5 **BY MS. SHORES:**

6 206 **Q.** Okay, that's fair. Mr. Muscato,
7 have you understood all of the questions that I've
8 asked you today?

9 **A. Yeah, yeah.**

10 207 **Q.** Okay. Are there any of your
11 answers that you wish to change? I'm sorry, I didn't
12 hear your answer.

13 **A. I didn't give one yet.**

14 208 **Q.** Okay. Take your time.

15 **A. I don't think I would like to**
16 **change any of my answers. I wish we could change the**
17 **outlook. I understand why the public has an issue with**
18 **the people that live in tents. I don't appreciate the**
19 **mess that many of them leave behind either. I don't**
20 **like living in a mess. You'll see me pick up more**
21 **stuff than I think anyone else. But at the same time,**
22 **I think the public needs to be aware of the fact that**
23 **we are out here because the rent is very, very high.**
24 **People say it takes two people to move in. I'm**
25 **thinking more like around the number of four.**

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1 209 **Q.** Mr. Muscato, is that something
2 that you would actually consider, living with some
3 roommates to get a place of your own?

4 **A. Yes.**

5 210 **Q.** Is that something that you're
6 working towards?

7 **MS. CROWE:** Did you hear that last
8 question?

9 **THE DEPONENT:** Yes. I said yes.

10 **BY MS. SHORES:**

11 211 **Q.** Okay. I'm sorry, I didn't hear
12 you. Thank you. You said yes, okay.

13 **A. Yeah.**

14 212 **Q.** I don't have any more questions
15 for you, Mr. Muscato. Thank you for coming in today
16 and talking to me.

17 **A. Okay, thank you.**

18 **RE-EXAMINATION BY MS. CROWE:**

19 213 **Q.** Thank you, okay. Mario, I'm going
20 to be asking you a few question just to go back and
21 clarify some of what we've already discussed today.
22 Okay? The first is you said that you sometimes go to
23 the shelter system when it's too cold outside. When
24 you try to access the shelter system, do you ever have
25 any difficulties actually being able to get in? Sorry,

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1 you need to answer.

2 **A. Yeah. During this time of the**
3 **year, it's not so bad. But start getting into end of**
4 **September, October, it's getting colder. You tend to**
5 **have a little hard time here and there.**

6 214 **Q.** What do you mean by "hard time"?

7 **A. Not enough beds.**

8 215 **Q.** Okay. And are there any other
9 problems that you have in accessing the shelter when
10 you try to? Did you hear the question?

11 **A. Pardon? No.**

12 216 **Q.** That's okay. Do you have any
13 other difficulty accessing shelter when you try to?

14 **A. No.**

15 217 **Q.** You were talking about service
16 restrictions. Can you explain what that means in terms
17 of your ability to go into shelter?

18 **A. They stop you even before you get**
19 **started.**

20 218 **Q.** Okay.

21 **A. They don't want to hear it, and**
22 **you're service restricted. They say they don't know**
23 **why and it's not up to them as to why, just you need to**
24 **go now.**

25 219 **Q.** Have you been service restricted

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1 from more than one shelter in Hamilton? Did you hear
2 my question?

3 **A. No.**

4 220 **Q.** Have you been service restricted
5 from more than one shelter in Hamilton?

6 **A. At one time, no.**

7 221 **Q.** Not at one time?

8 **A. Yeah.**

9 222 **Q.** Okay. And what's the longest time
10 that you've been service restricted for?

11 **A. I'd have to say maybe six months.**

12 223 **Q.** When you go to the shelters when
13 it's too cold outside, how long are you allowed to stay
14 inside a shelter?

15 **A. If I get into overflow, which is**
16 **usually the case -- even if it's not the case, you have**
17 **to be outside eight o'clock in the morning.**

18 224 **Q.** So eight o'clock in the morning
19 you have to leave. When are you allowed to return to
20 the shelter? Mario, did you hear me?

21 **A. Yeah. 5:00.**

22 225 **Q.** Okay. And so you made a
23 distinction. You talked about overflow shelters and
24 then, I guess, regular shelters. Do they both have the
25 same rules in terms of when you have to leave in the

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<p style="text-align: right;">45</p> <p>1 morning and when you're allowed to come back? Sorry?</p> <p>2 A. Yeah.</p> <p>3 226 Q. What are the different rules?</p> <p>4 A. At the Mission, from what I</p> <p>5 hear -- I've never gone there. The Mission, you can</p> <p>6 sleep on your bed all day long if you feel like it.</p> <p>7 Many people feel like it. Those are the people that I</p> <p>8 feel are just here sucking the system dry.</p> <p>9 227 Q. You said you've never gone to</p> <p>10 Mission Services? Sorry, can you answer for the</p> <p>11 record?</p> <p>12 A. No.</p> <p>13 228 Q. And why is that?</p> <p>14 A. I've gone to the Good Shepherd.</p> <p>15 As far as I know, they're about the same. The Good</p> <p>16 Shepherd -- we got off on a bad foot. I asked them if</p> <p>17 I could go to the store one night. They told me I had</p> <p>18 15 minutes to get back. I ran to the store, hurried</p> <p>19 back. I'm not sure if they were mad at me or what.</p> <p>20 Come to find out, I got back in 17 seconds and I was</p> <p>21 not allowed.</p> <p>22 229 Q. 17 seconds or 17 minutes?</p> <p>23 A. 17 minutes, sorry.</p> <p>24 230 Q. Okay. So we talked about that you</p> <p>25 were applying for housing through a program called</p> <p style="text-align: center;">Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>	<p style="text-align: right;">41 47</p> <p>1 BY MS. CROWE:</p> <p>2 234 Q. Are there other expenses that you</p> <p>3 would have while staying at a lodging home? Let me ask</p> <p>4 it a different --</p> <p>5 A. Yes, yes.</p> <p>6 235 Q. Sorry, go ahead.</p> <p>7 A. I have my youngest daughter in</p> <p>8 Buffalo and I enjoy sending her money every month.</p> <p>9 236 Q. Okay. Are you concerned that if</p> <p>10 you were -- the rough number that you mentioned before</p> <p>11 was \$150 left over. Are you concerned that you might</p> <p>12 not be able to cover other expenses if that's all you</p> <p>13 were left with?</p> <p>14 MS. SHORES: I'm just going to speak up</p> <p>15 and state on the record, Counsel, I've been giving you</p> <p>16 a fair bit of leeway, but as I'm sure you know, leading</p> <p>17 questions in cross-examination are not proper for</p> <p>18 re-examination, and re-examination's purpose is really</p> <p>19 to clarify answers that may have been unclear during</p> <p>20 direct examination.</p> <p>21 BY MS. CROWE:</p> <p>22 237 Q. What is the reason that being left</p> <p>23 with approximately \$150 is a concern to you, Mario?</p> <p>24 A. \$150 for what?</p> <p>25 238 Q. We were talking about that you</p> <p style="text-align: center;">Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>
<p style="text-align: right;">46</p> <p>1 Housing UP! and that your housing worker told you that</p> <p>2 you might be -- the term that you used was "hard to</p> <p>3 take care of." Have you heard that kind of thing</p> <p>4 before about being able to access housing or shelter?</p> <p>5 A. No.</p> <p>6 231 Q. Do you know what they meant?</p> <p>7 Mario, do you know what they meant?</p> <p>8 A. No.</p> <p>9 232 Q. Okay. You mentioned concerns</p> <p>10 about lodging homes because you might not be left with</p> <p>11 very much of your cheque at the end. Do you know</p> <p>12 exactly how much would be left?</p> <p>13 A. No.</p> <p>14 233 Q. Are there other expenses that you</p> <p>15 would have to pay for while in a lodging home? Mario,</p> <p>16 are there other expenses that you would have to pay for</p> <p>17 while in a lodging home?</p> <p>18 A. (Indiscernible).</p> <p>19 MS. CROWE: Are you hearing his</p> <p>20 response?</p> <p>21 THE DEPONENT: (Indiscernible) --</p> <p>22 MS. SHORES: I honestly didn't hear</p> <p>23 that he was responding. Mr. Muscato, can you please</p> <p>24 keep your voice up?</p> <p>25 THE DEPONENT: Okay, go on.</p> <p style="text-align: center;">Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>	<p style="text-align: right;">48</p> <p>1 might only be left with around \$150. Why is that a</p> <p>2 concern?</p> <p>3 A. I send more than that to my</p> <p>4 daughter. Even if I was to cut that \$150 in half and</p> <p>5 send \$75 to my daughter, the other \$75 (indiscernible).</p> <p>6 COURT REPORTER: I'm sorry, I didn't</p> <p>7 hear the last half of that answer. "Even if I was to</p> <p>8 cut that \$150 in half and send \$75 to my daughter, the</p> <p>9 other \$75..."</p> <p>10 THE DEPONENT: What would \$75 in</p> <p>11 Hamilton be able to get me other than some toothpaste</p> <p>12 and some shampoo, you know?</p> <p>13 BY MS. CROWE:</p> <p>14 239 Q. Is that a difficult choice for</p> <p>15 you, to decide between housing in a lodging home and</p> <p>16 having some additional money available, Mario?</p> <p>17 A. Yeah, it is difficult.</p> <p>18 MS. SHORES: Again, Counsel, I really</p> <p>19 need to remind you about leading questions on</p> <p>20 re-examination.</p> <p>21 BY MS. CROWE:</p> <p>22 240 Q. Okay. I want to talk about the</p> <p>23 time that you were seeing Dr. Jill back in 2022, Mario.</p> <p>24 Are you hearing me okay?</p> <p>25 A. Yeah.</p> <p style="text-align: center;">Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>

<p style="text-align: right;">49</p> <p>1 241 Q. You mentioned that you were able 2 to see her regularly. I want to bring you to the 3 letter that she provided, where she's talking about on 4 top of the care that she is providing you, that you had 5 some other medical needs that you needed attention for. 6 We're looking at page 2, Mario, if you're able to 7 follow along, paragraphs 3, 4 and 5. In paragraph 3, 8 she talks about that you would be eligible for a 9 right-arm prosthesis, but the process to require one 10 requires multiple appointments and fittings. And you 11 were having difficulty at the time, and she mentions 12 your precarious housing situation and not having access 13 to a phone and a chaotic lifestyle and your brain 14 injury. Can you tell us about your ability to follow 15 through with medical appointments beyond Dr. Jill? Let 16 me say it a different way. So Dr. Jill mentions that 17 you were having difficulty attending appointments for a 18 prosthesis to get fitted, and then in paragraph 5 -- 19 are you with me? 20 A. Yeah. 21 242 Q. Yeah? She mentions untreated HIV 22 and that you weren't able to access your medications 23 consistently. And then lastly, she talks about not 24 being able to access methadone therapy regularly. So 25 can you tell us what that was like for you? So you're</p> <p style="text-align: center;">Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>	<p style="text-align: right;">42 51</p> <p>1 tell us about why you were having difficulty following 2 up with your arm prosthesis, getting treatment for your 3 HIV and methadone treatment while you were seeing 4 Dr. Jill? Are you okay? Are you okay, Mario? 5 A. Yeah, I'm... 6 245 Q. I think we'll move on from that 7 question. 8 A. I'm sad. It just brings me back 9 some other memories. 10 246 Q. Right, I'm sorry. You talked 11 about one of the issues in shelter is that you were 12 taking too long -- they thought you were taking too 13 long in the washroom. 14 A. Yeah. 15 247 Q. Can you explain why that might be 16 a concern for shelter staff? 17 A. Yeah, I understand why they're 18 concerned about it. But again, look at me. What am I 19 going to do? I'm not going to cook up a shot. I'm not 20 going to stick it in my vein and flag it and push it 21 in. I don't have that movement. 22 248 Q. Okay. So what -- 23 A. I don't have the ability to do 24 what these people are thinking I can do. 25 249 Q. Just so we're clear, are you</p> <p style="text-align: center;">Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>
<p style="text-align: right;">50</p> <p>1 better now at accessing this medication, but can you 2 tell us why you struggled to access this medical 3 treatment and the medications at the time? 4 R/F MS. SHORES: Counsel, I'm going to 5 object. That wasn't addressed in the questioning or in 6 Mr. Muscato's affidavit. 7 MS. CROWE: Well, you did ask him about 8 being able to get regular medical treatment from 9 Dr. Jill. You were talking about once a week. 10 MS. SHORES: You're speaking about the 11 time period prior to that. 12 MS. CROWE: I think that these -- these 13 are concurrent with the treatment that Dr. Jill was 14 providing. 15 MS. SHORES: I've noted my objection. 16 I think this going beyond the scope of redirect 17 examination. 18 BY MS. CROWE: 19 243 Q. Mario, is there anything that you 20 can tell us about why you were having difficulty 21 following up with the prosthesis -- sorry, the 22 treatment and methadone at the same time that you were 23 seeing Dr. Jill? 24 A. Pardon? 25 244 Q. Is there anything that you can</p> <p style="text-align: center;">Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>	<p style="text-align: right;">52</p> <p>1 saying that the concern from shelter staff is that 2 you're doing drugs in the washroom? 3 A. Yeah. 4 250 Q. Okay. 5 MS. SHORES: Again, Counsel, that's a 6 leading question. 7 BY MS. CROWE: 8 251 Q. You talk about in your -- back to 9 your affidavit, you were talking about the incidents 10 where you've been service restricted. Ms. Shores had 11 referred you to paragraph 19 and 20, where you were 12 service restricted from the Sandman. In paragraph 21, 13 you talk about that there were no independent 14 investigations at shelters or the hotel program. What 15 has your experience been of the process or what steps 16 are taken before a service restriction is imposed? 17 Mario? I'm going to ask you again. What has your 18 experience been in the shelter system of the service 19 restriction process? What happens before they impose a 20 service restriction? 21 A. That they believe they heard you 22 say something or they believe they saw you do 23 something, and that's it. 24 252 Q. Okay. Are you given an 25 opportunity to respond? I don't think they're going to</p> <p style="text-align: center;">Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>

<p>53</p> <p>1 be catching this answer on the recording.</p> <p>2 MS. SHORES: No, I didn't hear</p> <p>3 anything.</p> <p>4 THE DEPONENT: It's not? It just takes</p> <p>5 one single staff member to have a bad day, and they can</p> <p>6 restrict half the damn place and nobody's going to bat</p> <p>7 an eye about it. Nobody's going to think twice about</p> <p>8 it.</p> <p>9 BY MS. CROWE:</p> <p>10 253 Q. Okay, thank you. When was the</p> <p>11 last time you stayed in a shelter?</p> <p>12 A. I still am.</p> <p>13 254 Q. Sorry?</p> <p>14 A. I'm still there.</p> <p>15 255 Q. You still are. Where are you</p> <p>16 staying in?</p> <p>17 A. (Indiscernible) but it's very on</p> <p>18 and off.</p> <p>19 256 Q. Okay, thank you.</p> <p>20 COURT REPORTER: I'm sorry, I didn't</p> <p>21 hear the answer.</p> <p>22 MS. SHORES: I'm sorry --</p> <p>23 BY MS. CROWE:</p> <p>24 257 Q. Can you repeat that, Mario?</p> <p>25 A. It's the Sally Ann, but it's very</p> <p>Nimigan Mihailovich Reporting Inc.</p> <p>(905) 522-1653</p>	<p>43 55</p> <p>1 262 Q. Mario, Ms. Shores had asked you</p> <p>2 about whether the police or by-law have taken your</p> <p>3 tent. I wanted to ask you, can you pack up and move</p> <p>4 your tent?</p> <p>5 A. No.</p> <p>6 263 Q. Can you explain?</p> <p>7 A. I have one hand that barely works.</p> <p>8 264 Q. What happens when you are told to</p> <p>9 leave an encampment site?</p> <p>10 A. I don't have a lot of stuff. You</p> <p>11 seen me walk in here with one bag today. That's the</p> <p>12 stuff I own.</p> <p>13 265 Q. Okay. So what about your other</p> <p>14 belongings when you --</p> <p>15 A. I don't --</p> <p>16 266 Q. Do you ever lose belongings or</p> <p>17 have to leave belongings behind?</p> <p>18 A. All the time.</p> <p>19 267 Q. I want to go back to Dr. Jill's</p> <p>20 affidavit -- or letter. She talks about some of your</p> <p>21 disabilities. In paragraph 2, she mentions that from</p> <p>22 your acquired brain injury, that you can struggle with</p> <p>23 your memory, your mood, i.e., you're often quick to</p> <p>24 anger and have difficulty with emotions and have a</p> <p>25 harder time managing psychiatrist diagnoses such as</p> <p>Nimigan Mihailovich Reporting Inc.</p> <p>(905) 522-1653</p>
<p>54</p> <p>1 on and off.</p> <p>2 258 Q. Okay, thank you.</p> <p>3 MS. SHORES: Did you say "Sally Am,"</p> <p>4 like meaning the Salvation Army?</p> <p>5 BY MS. CROWE:</p> <p>6 259 Q. Did you hear the question? Mario,</p> <p>7 she asked you if when you said "Sally Ann," do you mean</p> <p>8 the Salvation Army?</p> <p>9 A. Yeah.</p> <p>10 260 Q. Thank you.</p> <p>11 A. Sorry, I thought everyone got</p> <p>12 that.</p> <p>13 261 Q. That's okay.</p> <p>14 MS. SHORES: Mr. Muscato, your voice is</p> <p>15 really trailing off and it's very difficult for those</p> <p>16 of us who aren't in the room with you to hear, so can</p> <p>17 you speak up?</p> <p>18 THE DEPONENT: Yeah. I just -- I</p> <p>19 thought everybody understood Sally Ann was the</p> <p>20 Salvation Army.</p> <p>21 MS. SHORES: We could guess, but the</p> <p>22 judge who eventually reads this might not know, so we</p> <p>23 just wanted to clarify.</p> <p>24 THE DEPONENT: All right, I understand.</p> <p>25 BY MS. CROWE:</p> <p>Nimigan Mihailovich Reporting Inc.</p> <p>(905) 522-1653</p>	<p>56</p> <p>1 anxiety and depression. When we talk about how you are</p> <p>2 in shelters, can you tell us, are you able to manage</p> <p>3 your mood, your anger when you're in shelter?</p> <p>4 R/F MS. SHORES: Counsel, I'm going to</p> <p>5 object. That's suggesting the answer to the witness.</p> <p>6 BY MS. CROWE:</p> <p>7 268 Q. Mario, you mentioned that you had</p> <p>8 sometimes lost your temper.</p> <p>9 A. Mm-hmm.</p> <p>10 269 Q. While in shelter?</p> <p>11 A. Yes.</p> <p>12 270 Q. Can you tell us about what makes</p> <p>13 it difficult to not lose your temper when you're in</p> <p>14 shelter? Sorry, can you answer a little bit louder so</p> <p>15 they can hear? Okay, Mario, we're going to move on and</p> <p>16 we're almost done. Ms. Shores asked you whether anyone</p> <p>17 is able to come into a park or where an encampment</p> <p>18 might be located. Do you have any control over who you</p> <p>19 stay with at an encampment? Did you hear my question?</p> <p>20 A. No.</p> <p>21 271 Q. Sorry, we're almost done.</p> <p>22 Ms. Shores had asked you about the fact that anyone</p> <p>23 could come into a park. Do you have any control over</p> <p>24 who you stay with when you're staying in an encampment?</p> <p>25 Pardon? Mario? Mario, we're almost done. Do you ever</p> <p>Nimigan Mihailovich Reporting Inc.</p> <p>(905) 522-1653</p>

1 decide who you stay with when you're in an encampment?

2 Did you answer? I didn't catch it.

3 **A. Yes.**

4 272 **Q.** Your answer was yes?

5 **A. Yes.**

6 273 **Q.** Okay, thank you. Just one more

7 question. Do you have any control over who is around

8 you when you're in a shelter? Mario?

9 **MS. SHORES:** For the record,

10 Mr. Muscato appears to be kind of slumping over in his

11 seat. I have to ask, Mr. Muscato, are you okay to

12 continue giving answers? Do you feel like you can

13 focus enough to give answers?

14 **THE DEPONENT:** I'm getting tired. You

15 can do a couple more, though.

16 **BY MS. CROWE:**

17 274 **Q.** We're almost done. I just wanted

18 to know, when you're in shelter, Mario, do you have any

19 control over who else is in the shelter with you?

20 **A. No.**

21 **MS. CROWE:** Thank you. Those are my

22 questions.

23 **MS. SHORES:** Thank you, Mr. Muscato.

24 --- Whereupon proceedings adjourned at 1:02 p.m.

25

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1 I HEREBY CERTIFY THE FOREGOING
2 to be a true and accurate transcription
3 of my shorthand notes
4 to the best of my skill and ability.

5

6

7 [Electronically signed on August 22, 2024]

8 Lydia Pak, Court Reporter

9 Computer-Aided Transcription

10

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Nimigan Mihailovich Reporting Inc.
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TAB 64

Court File No. CV-21-00077817-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**KRISTEN HEEGSMA, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO,
SHAWN ARNOLD ET AL**

Applicants

-and-

CITY OF HAMILTON

Respondent

AFFIDAVIT OF SHERRI OGDEN
(Sworn June 2, 2022)

1. I, SHERRI OGDEN of the City of Hamilton in the Province of Ontario, MAKE OATH AND STATE:
2. I am a 28 year old Indigenous woman.
3. I am in a person with a disability and in receipt of benefits from the Ontario Disability Support Program (ODSP). As a single person who is homeless, I receive approximately \$672 per month from ODSP for basic needs. I don't receive any shelter allowance while I am homeless.
4. My medical conditions include mental health and substance use disorders.
5. I have been homeless for the past five years.
6. Before becoming homeless, I lived with my mom. However, the relationship was strained and I had to move out.
7. I have stayed on and off in a tent at several different locations in Hamilton. The following chart is a breakdown of the locations and general timeframes:

Location	Timeframe	Duration of stay	Outcome
Durand Park	About a year and a half ago	Approximately seven months	By-Law Officers evicted me
Beasley Park	About a year ago	Few nights	By-Law Officers

			evicted me, took my tent & lost some belongings
Beasley Park	Month and a half later	One night	24 hours notice from By-law to leave. Lost another tent and some clothes
Durand Park	Winter 2021	Three nights	Had to move because of some problems at the encampment, and because By-law had already been there and warned them about garbage at the site
Beasley Park	Early 2022	Approximately two months	Police evicted me

8. In between staying in tents in parks, I am sometimes able to stay in a tent in my mom's yard. However, my mom's landlord doesn't like me staying in the yard so I can never stay for long.
9. I have received trespassing tickets and repeatedly told to move while staying in a tent.
10. It would be nice to be able to stay in one spot instead of moving all over the place because it is hard to move all of my belongings day after day. I feel safer. I sometimes stay in parks with friends, which makes me feel safer. When I stayed in Durand for seven months, I could sleep much better. It was easier to concentrate and just feel healthier.
11. I have repeatedly tried to get into shelters. Even though I don't have a phone, I am sometimes able to contact a shelter every day to ask about a bed. Staff at the Wesley Day Centre sometimes call for me, and are also told that they are full. When you call to ask for a bed, they do not take your name if they are full. The shelter tells you to just keep calling back to see if a bed as opened up.

12. I was able to stay at the Four Points hotel with an ex-boyfriend. We stayed for about two weeks, but were kicked out because of a false allegation of domestic violence. Staff alleged that my ex-boyfriend had kicked me, but it was an accident. Even though we tried to explain and there were no other incidents, we were kicked out and banned for about a month. The City since ended the hotel program for couples.
13. Carol Anne's Place is an overnight drop in centre for women that acts as an overflow shelter when the other women's shelters are full. You sleep on a cot a gymnasium floor (double check). They open at 10 p.m.
14. I have stayed at Carol Anne's Place once. I hate it because it was dirty and crowded.
15. If I can't stay in a tent, a shelter, or my mom's backyard, I sleep in stairwells and parking garages. Last night, I stayed at John Rebecca park underneath blankets.
16. Being unable to stay in one location is very difficult. I can't sleep properly and hardly ever sleep.
17. I have had a housing worker with the Hamilton Regional Indian Centre on Ottawa Street for the past few months. Although they have tried to get me into housing, I have been denied supportive housing through both Indwell and the YWCA Transitional Living Program because I am too unwell. They said they would not be able to support me.
18. Being evicted from encampments, and having to live and sleep without a tent has been very difficult.

SWORN BEFORE ME in the City
of Hamilton, this 2nd day of June, 2022

Sherri Ogden
Sherri Ogden

Sharon Crowe
A Commissioner, etc.
Sharon Crowe
Barrister & Solicitor

TAB 65

Court File No. CV-21-00077817-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

KRISTEN HEEGSMA, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO,
AND SHAWN ARNOLD, ET AL.

Applicants

-and-

CITY OF HAMILTON

Respondent

AFFIDAVIT OF Sherri Ogden

(Sworn March 27, 2023)

I, Sherri Ogden, of the City Hamilton in the Province of Ontario, Affirm and say:

1. Since June 2022 have stayed in the following locations:

Bayfront
Vine St

2. I have been impacted by on-going encampment evictions since June 2022 in the following ways:

- Loss of belongings
-
-
-

3. *been denied of shelter*

AFFIRMED AND DECLARED
before me at the City of Hamilton,
in the Province of Ontario,
this day of March, 2023.

)
)
)
)

Mohamed Asat

A Commissioner etc.

Sherri Ogden

TAB 66

1 Court File No. CV-21-77187
2 ONTARIO
3 SUPERIOR COURT OF JUSTICE
4
5 B E T W E E N:
6 KRISTEN HEEGSMAN, DARRIN MARCHAND, GORD SMYTH,
7 MARIO MUSCATO, SHAWN ARNOLD, BRADLEY CALDWELL,
8 CHRISTINE DELOREY, GLEN GNATUK, TAYLOR GOGO-HORNER,
9 CASSANDRA JORDAN, JULIA LAUZON, AMY LEWIS,
10 ASHLEY MACDONALD, COREY MONAHAN, MISTY MARSHALL,
11 SHERRI OGDEN, JAHMAL PIERRE, LINSLEY GREAVES and
12 PATRICK WARD
13 Applicants
14
15 and
16
17 CITY OF HAMILTON
18 Respondent
19
20 --- This is the Cross-Examination of SHERRI OGDEN, an
21 Applicant, herein, on her Affidavits Sworn the 2nd day
22 of June, 2022, and the 27th day of March, 2023, taken
23 via videoconference on the 14th day of August, 2024.
24
25

Nimigan Mihailovich Reporting Inc.
(905) 522-1653

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Nimigan Mihailovich Reporting Inc.
(905) 522-1653

1 APPEARANCES:
2 Sharon Crowe For the Applicants
3 Curtis Sell
4 Nnonyechi Okenwa
5 Michelle Sutherland
6
7 Bevin Shores For the Respondent
8 Jordan Diacur
9 Vivian Caldas
10
11 ALSO PRESENT:
12 Katherine Finlayson Summer law student
13
14
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Nimigan Mihailovich Reporting Inc.
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1 --- Upon commencing at 4:02 p.m.
2 SHERRI OGDEN: Affirmed.
3 CROSS-EXAMINATION BY MS. SHORES:
4 1 Q. Good afternoon, Ms. Ogden. Can
5 you please state your full name for the record?
6 A. Sherri Ogden.
7 2 Q. And how would you like to be
8 addressed today? What name do you go by?
9 A. Sherri.
10 3 Q. Sherri?
11 A. Yeah.
12 4 Q. Okay. And do you have any
13 pronouns that you wish to share?
14 A. No.
15 5 Q. Okay. So you've been affirmed to
16 tell the truth today. You understand that that means
17 that you have to give truthful answers to the questions
18 that I'm asking?
19 A. Yeah.
20 6 Q. And at any time during this
21 cross-examination if you don't understand a question,
22 please let me know. Is that understood?
23 A. Yeah.
24 7 Q. Okay. If you don't tell me you
25 don't understand, I'm going to assume you do

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1 understand. Okay?

2 **A. Mm-hmm. Okay.**

3 **Q.** There you go, thank you. I was
4 also going to remind you to give verbal answers, and if
5 you forget, that's okay. One of us will just remind
6 you. Now, we're here today to cross-examine you on two
7 affidavits. One of them is an affidavit dated June 2,
8 2022, and the other is an affidavit dated March 27,
9 2023. Have you reviewed your affidavit dated June 2,
10 2022?

11 **A. Yes, I have.**

12 **Q.** Okay. Can you confirm everything
13 in that affidavit is accurate?

14 **A. Yeah.**

15 **Q.** And your affidavit dated March 27,
16 2023, have you reviewed that affidavit?

17 **A. Yes, I have as well.**

18 **Q.** Okay. And you confirm that
19 everything in that affidavit is accurate?

20 **A. Yeah.**

21 **Q.** Where are you currently living?

22 **A. Well, I'm across the street from**
23 **the Hub, outside.**

24 **Q.** Okay. So you're not currently
25 housed?

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(905) 522-1653

1 **A. No.**

2 **Q.** Okay. Where you are currently,
3 across the street from the Hub, what street is that
4 near?

5 **A. That's at Vine and Park.**

6 **Q.** Vine and Park. Are you in a tent
7 there?

8 **A. No.**

9 **Q.** No? Are you staying at any
10 shelter currently?

11 **A. No.**

12 **Q.** You're just staying outside?

13 **A. Yeah, with my older brother.**

14 **Q.** With your older brother. Is your
15 brother in a tent?

16 **A. No. He's outside currently with**
17 **me.**

18 **Q.** How long have you been living
19 outside not in a tent near the Hub?

20 **A. Well, it's only been a couple of**
21 **nights. Last time, we were in the corner part of the**
22 **parking lot of the Philpott Church. That's --**

23 **Q.** And when you were -- sorry, go on.

24 **A. That's also on Vine Street but**
25 **more closer to Bay Street.**

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1 **Q.** And when you were in the parking
2 lot of the Philpott Church, were you in a tent there?

3 **A. No.**

4 **Q.** Let's just back up a little bit.

5 In your June 2, 2022, affidavit, you say that you've
6 been homeless for the past five years. If I'm doing
7 the math correctly, that means you've been homeless
8 since about 2017?

9 **A. Yeah.**

10 **Q.** Since 2017 to date, have there
11 been any time periods that you've been housed?

12 **A. They tried offering me housing,**
13 **but I didn't take it.**

14 **Q.** Okay. When did they offer you
15 housing?

16 **A. Around 2019 they tried to offer me**
17 **housing.**

18 **Q.** Why didn't you take the housing?

19 **A. Because I figured people needed it**
20 **more than I did.**

21 **Q.** Were there any other reasons that
22 you didn't take the housing?

23 **A. No.**

24 **Q.** Ms. Ogden, there's been some
25 evidence from the City of Hamilton, a witness named Rob

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1 Mastroianni, who I don't think you've ever met, but he
2 reviews or has reviewed housing records. He's
3 indicated that you made an Access to Housing
4 application and obtained housing on September 28, 2022.
5 Do you remember obtaining housing on September 28,
6 2022, or sometime around then?

7 **A. No.**

8 **Q.** No? So that's not correct?

9 **A. Mm-mm, no.**

10 **Q.** No, okay. So only in 2019 was
11 when you were offered housing?

12 **A. Yeah.**

13 **Q.** Have you ever lived in a tent in
14 the City of Hamilton?

15 **A. Yes, I have.**

16 **Q.** When was the last time you were in
17 a tent?

18 **A. The last time I was in a tent was**
19 **at Beasley Park.**

20 **Q.** When would that have been?

21 **A. Early 2022.**

22 **Q.** Early 2022?

23 **A. Yeah.**

24 **Q.** Since early 2022, where have you
25 been living?

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1 **A. Everywhere, like everywhere**
2 **outside with my brother and my sister in a compound.**
3 35 **Q.** Have you ever gone inside into a
4 shelter since --
5 **A. No.**
6 36 **Q.** -- 2022?
7 **A. No, I haven't.**
8 37 **Q.** And what's the reason for that?
9 **A. It's usually because they're full**
10 **or, like, they don't have any beds or I've been denied**
11 **shelter.**
12 38 **Q.** You've been denied shelter, okay.
13 We're going to come back to that and break that down a
14 little bit. Have you stayed anywhere indoors at all --
15 **A. No.**
16 39 **Q.** -- since early 2022?
17 **A. No.**
18 40 **Q.** I'm going to share my screen so
19 you can see your affidavit. We'll start with your
20 June 2, 2022, affidavit. At paragraph 4, you state "my
21 medical conditions include mental health and substance
22 use disorders." Is that correct?
23 **A. Yeah.**
24 41 **Q.** Now, there's a doctor who's also
25 written a letter on your behalf. It's Dr. Wiwcharuk,
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1 Dr. Jill Wiwcharuk. We understand that she also goes
2 by "Dr. Jill." Do you remember her?
3 **A. Yeah.**
4 42 **Q.** So she's written a letter dated
5 June 2, 2022. Have you ever seen this letter before?
6 **A. Yes, I have.**
7 43 **Q.** How many times have you seen
8 Dr. Wiwcharuk?
9 **A. Probably a few times before she**
10 **went back to B.C. Was it B.C.? Yeah, she went back to**
11 **B.C.**
12 44 **Q.** Do you remember when she went to
13 B.C.?
14 **A. No.**
15 45 **Q.** I assume it was sometime after she
16 wrote this letter in June of 2022?
17 **A. Yeah.**
18 46 **Q.** Do you know for how long a period
19 of time you saw Dr. Wiwcharuk before she went back to
20 B.C.?
21 **A. It was a while. I can't really**
22 **remember. It was a while.**
23 47 **Q.** Was it more than a month?
24 **A. Yeah, it was probably over a**
25 **month.**
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1 48 **Q.** Was it more than six months?
2 **A. I think it was, like, over two**
3 **years before she first went back.**
4 49 **Q.** Where would you see Dr. Wiwcharuk
5 when you saw her?
6 **A. At the Wesley Centre.**
7 50 **Q.** At the Wesley Centre? You would
8 go to her there?
9 **A. Yeah.**
10 51 **Q.** What kind of things or what reason
11 would you see Dr. Wiwcharuk for?
12 **A. Prescriptions, antibiotics.**
13 52 **Q.** Okay. At the bottom of the first
14 page of Dr. Wiwcharuk's letter, she says "Ms. Ogden
15 would see me with complaints of poor sleep and being
16 tired." Do you agree? Is that something that you
17 would talk to Dr. Wiwcharuk about?
18 **A. Yeah.**
19 53 **Q.** Okay. In the next paragraph on
20 the following page at the beginning, Dr. Wiwcharuk says
21 "hospital records indicate that Ms. Ogden has accessed
22 the emergency department on ten occasions since the
23 fall of 2020." Is that accurate? You've gone to
24 emergency about ten times between 2020 and when this
25 letter was written in 2022?
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1 **A. Yes.**
2 54 **Q.** Okay. Do you remember what those
3 visits were for?
4 **A. I had abdominal pain before**
5 **because something -- I didn't know what it was.**
6 55 **Q.** Now, Dr. Wiwcharuk describes these
7 visits as something called functional pain, and she
8 says that's something like headaches or abdominal pain
9 that's related to stress and anxiety but has no
10 underlying pathology and is not associated with any
11 abnormal lab work or imaging, and then she goes on to
12 say "this would be in keeping with the extraordinarily
13 stressful situation that Ms. Ogden has been in as she
14 continues to remain homeless, often unsheltered and at
15 times unable to access a shelter bed when she needs
16 one."
17 **A. Mm-hmm, yeah.**
18 56 **Q.** So you agree with that? That's
19 accurate?
20 **A. Yeah.**
21 57 **Q.** Now, Dr. Rachel Lamont also wrote
22 a letter on your behalf dated February 22, 2024. Have
23 you seen this letter before?
24 **A. Yeah.**
25 58 **Q.** How many times have you seen
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<p>13</p> <p>1 Dr. Lamont?</p> <p>2 A. Who is that again?</p> <p>3 59 Q. I'm sorry, what was that?</p> <p>4 A. I was asking which one was</p> <p>5 Dr. Lamont again.</p> <p>6 60 Q. I'm not able to tell you that. Do</p> <p>7 you remember Dr. Lamont at all?</p> <p>8 A. I don't remember, really.</p> <p>9 61 Q. Okay. Her first name is Rachel.</p> <p>10 Do you remember someone going by the name of Rachel?</p> <p>11 A. Oh, okay. Yeah, okay. I know who</p> <p>12 she is now. Yeah, I remember her. I remember her.</p> <p>13 62 Q. Okay. How many times have you</p> <p>14 seen Rachel?</p> <p>15 A. Probably, like, five times.</p> <p>16 63 Q. About five times? Okay.</p> <p>17 A. Mm-hmm.</p> <p>18 64 Q. And where do you see Rachel?</p> <p>19 A. She's with the Social Medicine</p> <p>20 Response Team.</p> <p>21 65 Q. Okay. So do you go to see her at</p> <p>22 a particular location or does she come to you?</p> <p>23 A. She comes to me outside when I'm</p> <p>24 outside.</p> <p>25 66 Q. So she comes to find you? She</p> <p>Nimigan Mihailovich Reporting Inc.</p> <p>(905) 522-1653</p>	<p>56 15</p> <p>1 complex posttraumatic stress disorder, major depressive</p> <p>2 disorder, attention deficit hyperactivity disorder,</p> <p>3 opioid use disorder and stimulant use disorder. Is</p> <p>4 that correct?</p> <p>5 A. Yeah. But the depression one is</p> <p>6 confirmed by my family doctor.</p> <p>7 74 Q. Who's your family doctor?</p> <p>8 A. Dr. Bigby (ph).</p> <p>9 75 Q. Do you know how to spell the last</p> <p>10 name?</p> <p>11 A. No, I do not.</p> <p>12 76 Q. How often do you see your family</p> <p>13 doctor?</p> <p>14 A. Well, I haven't seen him in a</p> <p>15 couple years, because due to -- I mean, I haven't seen</p> <p>16 him in a couple years.</p> <p>17 77 Q. Okay. Where is your family doctor</p> <p>18 located?</p> <p>19 A. I have no idea.</p> <p>20 78 Q. You don't know where your family</p> <p>21 doctor is?</p> <p>22 A. Not anymore because he's moved.</p> <p>23 79 Q. He's moved, okay. So is that why</p> <p>24 you haven't seen him?</p> <p>25 A. Yeah.</p> <p>Nimigan Mihailovich Reporting Inc.</p> <p>(905) 522-1653</p>
<p>14</p> <p>1 knows where you are?</p> <p>2 A. Yeah.</p> <p>3 67 Q. Do you ever go to see her where</p> <p>4 she is, in an office or one of the Outreach centres or</p> <p>5 the day centres?</p> <p>6 A. No.</p> <p>7 68 Q. No? Okay. What does Dr. Lamont</p> <p>8 do for you?</p> <p>9 A. She's with the Social Navigation,</p> <p>10 Social Response, yeah.</p> <p>11 69 Q. Can you explain what that means?</p> <p>12 A. She's with -- she does, like,</p> <p>13 street outreach or something.</p> <p>14 70 Q. And what exactly does that mean</p> <p>15 that she's doing for you?</p> <p>16 A. She provides care to people who</p> <p>17 are unhoused, because she's like -- she comes outside</p> <p>18 and she takes care of people who are living outside.</p> <p>19 71 Q. Okay. Is she treating you for any</p> <p>20 medical conditions? Does she give you medication?</p> <p>21 A. No.</p> <p>22 72 Q. Or refer you to other specialists?</p> <p>23 A. No.</p> <p>24 73 Q. Okay. In her letter, in the</p> <p>25 second paragraph, she states that you have diagnoses of</p> <p>Nimigan Mihailovich Reporting Inc.</p> <p>(905) 522-1653</p>	<p>16</p> <p>1 80 Q. Have you gotten a new family</p> <p>2 doctor?</p> <p>3 A. No.</p> <p>4 81 Q. Are you still getting medication</p> <p>5 for your depression?</p> <p>6 A. Yes, I am, at the Hub.</p> <p>7 82 Q. At the Hub, okay. Do you know who</p> <p>8 prescribes you medication at the Hub?</p> <p>9 A. Well, my -- I don't go see anybody</p> <p>10 to get the prescription filled because it's sent there.</p> <p>11 So I probably have, like, a few months -- like, a good</p> <p>12 six, seven months of prescription there.</p> <p>13 83 Q. Let me make sure I understand. At</p> <p>14 the Hub, they can give you six to seven months' worth</p> <p>15 of your medication?</p> <p>16 A. No, that's how much medication has</p> <p>17 been delivered there. Every time -- every week they</p> <p>18 deliver new meds there. So I'm kind of, like, behind</p> <p>19 on my meds.</p> <p>20 84 Q. I'm sorry. I don't understand, so</p> <p>21 let me back up and make sure that I get this clear.</p> <p>22 You do take medication for your depression and you get</p> <p>23 that through the Hub; correct?</p> <p>24 A. Yeah.</p> <p>25 85 Q. Okay. What medication is that?</p> <p>Nimigan Mihailovich Reporting Inc.</p> <p>(905) 522-1653</p>

		17
1	A. It's sertraline, Zoloft, and a --	
2	I can't pronounce the last one. It's like a sodium	
3	pill.	
4	86 Q. So those are given. They're	
5	dispensed to you at the Hub?	
6	A. Yeah.	
7	87 Q. How often do you get those	
8	medications from the Hub?	
9	A. I get them every day on Friday. I	
10	get them for the weekend too.	
11	88 Q. So you go there every day, and on	
12	Friday they'll give you enough to get you through the	
13	weekend?	
14	A. Yeah.	
15	89 Q. And you're able to make it there	
16	every day to get your medication?	
17	A. Yeah.	
18	90 Q. Is there any reason why you have	
19	to go there every day?	
20	A. Well, because they also have a	
21	drop-in program where I can go eat at nighttime.	
22	91 Q. You're there for the drop-in	
23	program and you can just pick up your medication when	
24	you're there?	
25	A. Yeah.	
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		18
1	92 Q. If you weren't going there for the	
2	drop-in program, would they give you medication to last	
3	until you're going to come there next?	
4	A. If I ask them to.	
5	93 Q. Do you ever stay there overnight?	
6	A. No. They're not an overnight	
7	program.	
8	94 Q. They're not an overnight program,	
9	okay. Have you ever talked to anyone there about	
10	finding you a place to stay overnight?	
11	A. No.	
12	95 Q. With respect specifically to your	
13	opioid use disorder and your stimulant use disorder, do	
14	you still have those disorders?	
15	A. Yeah.	
16	96 Q. Which substances do you use?	
17	A. I use fentanyl and I smoke	
18	marijuana too.	
19	97 Q. How often do you use fentanyl?	
20	A. I use it every day.	
21	98 Q. Every day. Are you in treatment	
22	for your substance use disorder?	
23	A. No.	
24	99 Q. Do you have any plans to get into	
25	treatment for your substance use disorder?	
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		57 19
1	A. Well, I tried, but then I	
2	chickened out at the last minute and didn't show up	
3	when I was supposed to go.	
4	100 Q. And then you didn't take any	
5	further steps after that, do I take it?	
6	A. Mm-hmm, yeah.	
7	101 Q. Yes, okay. Has any of the	
8	doctors, either Rachel or any other people at the Hub,	
9	talked to you about getting help for your substance use	
10	disorder?	
11	A. No.	
12	102 Q. Have you asked them about getting	
13	help?	
14	A. No, I haven't.	
15	103 Q. Dr. Lamont has referenced use of	
16	stimulants. Do you use any stimulants?	
17	A. What's a stimulant? What's a	
18	stimulant?	
19	104 Q. Things to help keep you awake?	
20	A. No.	
21	105 Q. No?	
22	A. Mm-mm, no.	
23	106 Q. And you haven't used those since	
24	you've become -- since you've started experiencing	
25	homelessness?	
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		20
1	A. Well, I had used them for a little	
2	bit, but I -- at the same time as crystal meth. I	
3	don't like the taste of it. So the only way for me to	
4	do it was to shoot it, but I don't want to do that	
5	anymore, so I stopped doing that myself.	
6	107 Q. Approximately when were you using	
7	crystal meth?	
8	A. Couple years.	
9	108 Q. Do you remember from when to when?	
10	A. No.	
11	109 Q. Okay. You stopped because you	
12	didn't like the taste of it?	
13	A. Yeah. And the only way was to	
14	shoot it, and I don't like the needle marks that were	
15	going in my arm.	
16	110 Q. When you were using crystal meth,	
17	would you use it the same amount whether you were	
18	inside or outside? Did it make a difference?	
19	A. Yeah, it wouldn't make a	
20	difference, really.	
21	111 Q. Okay. I'm going to ask you some	
22	more questions about where you've been, where you've	
23	been staying since you began experiencing homelessness.	
24	At paragraph 6 of your affidavit, you state, "Before	
25	becoming homeless, I lived with my mom. However, the	
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1 relationship was strained and I had to move out."
 2 Where did you go once you moved out from your mom's
 3 place?
 4 **A. I went to -- I'd go stay at Durand**
 5 **Park.**
 6 112 **Q.** You stayed at Durand Park? Okay.
 7 I want to be fair to you because according to paragraph
 8 7 of your affidavit, it says that was about a year and
 9 a half ago. So if I'm doing the math right, that's
 10 about 2021. I think you told us earlier that you
 11 became homeless sometime around 2017, so that leaves
 12 about four years unaccounted for. Do you remember
 13 where you went?
 14 **A. No.**
 15 113 **Q.** No? Is your mom's apartment --
 16 sorry, your mom's home in Hamilton?
 17 **A. Yes.**
 18 114 **Q.** Are you from Hamilton?
 19 **A. No, I'm not. I'm from Toronto.**
 20 115 **Q.** You're from Toronto. When did you
 21 come to Hamilton?
 22 **A. When I turned ten.**
 23 116 **Q.** Okay. And since experiencing
 24 homelessness, have you always been in Hamilton or have
 25 you gone to other places?

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1 **A. I've been in Hamilton.**
 2 117 **Q.** You've been in Hamilton the whole
 3 time?
 4 **A. Yeah.**
 5 118 **Q.** Okay. Before 2021, do you
 6 remember where you were staying at all?
 7 **A. No.**
 8 119 **Q.** Okay. It could have been in a
 9 shelter, it could have been in a tent, you don't
 10 remember?
 11 **A. No.**
 12 120 **Q.** Okay. Let's look at paragraph 7
 13 of your affidavit. At paragraph 7, you said "I have
 14 stayed on and off in a tent at several different
 15 locations in Hamilton. The following chart is a
 16 breakdown of the locations and general timeframes." So
 17 you say Durand Park, about a year and a half ago, and
 18 you stayed there for approximately seven months. Is
 19 that correct?
 20 **A. Mm-hmm.**
 21 121 **Q.** Yes?
 22 **A. Yeah.**
 23 122 **Q.** Okay. And so you're in a tent in
 24 Durand Park and you stayed there for seven months;
 25 right?

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1 **A. Mm-hmm.**
 2 123 **Q.** Sorry, you have to say yes or no.
 3 **A. Yes. Sorry, yeah.**
 4 124 **Q.** I'm not trying to be mean. It's
 5 just that --
 6 **A. I know.**
 7 125 **Q.** -- it's not clear what you mean.
 8 You say "by-law officers evicted me." I want to talk
 9 about that a little bit. The by-law officers, did they
 10 come by and say you can't be here?
 11 **A. Yes, that's what they told me.**
 12 126 **Q.** Did they say when you had to move
 13 by?
 14 **A. The next day.**
 15 127 **Q.** The next day? Okay. What did you
 16 do in response to them telling you that you --
 17 **A. I'm taking my tent down and I**
 18 **bring it back during the night.**
 19 128 **Q.** Sorry, I didn't catch that. You
 20 took your tent down...
 21 **A. I take my tent down during the day**
 22 **and I bring it back at nighttime.**
 23 129 **Q.** Okay.
 24 **A. And put it back up.**
 25 130 **Q.** Okay. Then would you take it down

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1 again before the morning?
 2 **A. Yes.**
 3 131 **Q.** Okay. So the by-law officers came
 4 by in the day, and you took the tent down, and then you
 5 put it back up at night when they wouldn't see you?
 6 **A. Yeah.**
 7 132 **Q.** Okay. How long did you do that,
 8 taking your tent down in the day and putting it back up
 9 in the night?
 10 **A. I did it for quite a bit, and then**
 11 **they caught on to what I was doing.**
 12 133 **Q.** And tell me about that.
 13 **A. They'd come by early in the**
 14 **morning. I wouldn't see them. So they'd come by early**
 15 **in the morning. I don't know how. They're not**
 16 **supposed to be at work until, like, 8:30, I think.**
 17 134 **Q.** So what time in the morning?
 18 **A. Like 5:30.**
 19 135 **Q.** 5:30 in the morning. Are you
 20 certain of that? Did you have a clock or anything
 21 nearby?
 22 **A. I have -- I do have cell phones.**
 23 136 **Q.** Okay. So let's break this down.
 24 So when is it that someone came by at 5:30 in the
 25 morning?

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1 **A. I don't remember.**
 2 137 **Q.** You don't remember. Do you
 3 remember what time of year it was?
 4 **A. No.**
 5 138 **Q.** Do you remember what year it was?
 6 **A. No.**
 7 139 **Q.** But you're certain of the time?
 8 **A. Mm-hmm, yeah.**
 9 140 **Q.** So tell me what the person did
 10 when they came by at 5:30 in the morning.
 11 **A. They were shaking my tent, telling**
 12 **me I wasn't allowed to be there. Because I recognized**
 13 **the by-law officer. It was the (indiscernible) guy.**
 14 141 **Q.** The who?
 15 **A. The by-law officer. I don't know**
 16 **how to -- I don't want to sound racist.**
 17 142 **Q.** I'm sorry, I didn't catch that.
 18 **A. I don't want to sound like I'm**
 19 **racist, but it was the Black by-law officer, the Black,**
 20 **fat one.**
 21 143 **Q.** Okay. There was a Black by-law
 22 officer and he came by at 5:30 in the morning and told
 23 you you needed to move?
 24 **A. Yeah.**
 25 144 **Q.** And so what did you do?
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1 **A. Kind of, like -- I swore and**
 2 **told him to leave me alone.**
 3 145 **Q.** And what did he do?
 4 **A. He called the police.**
 5 146 **Q.** Right away?
 6 **A. Oh, yeah.**
 7 147 **Q.** What happened next?
 8 **A. The police came and I took my tent**
 9 **down and moved.**
 10 148 **Q.** You took your tent down and moved?
 11 **A. Yeah.**
 12 149 **Q.** Okay. How long did it take the
 13 police to arrive?
 14 **A. Ten minutes.**
 15 150 **Q.** Ten minutes. Can you describe the
 16 police officer?
 17 **A. Not really, because I had just**
 18 **woken up.**
 19 151 **Q.** Was the by-law officer wearing a
 20 uniform?
 21 **A. No.**
 22 152 **Q.** The by-law officer was not wearing
 23 a uniform. Did the by-law officer issue you a ticket?
 24 **A. No. He wasn't in uniform, so I**
 25 **don't think he can do that, but the cop issued a**
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1 **ticket.**
 2 153 **Q.** What did the cop say they were
 3 issuing you a ticket for?
 4 **A. Trespassing.**
 5 154 **Q.** Where were you at the time?
 6 **A. Durand Park.**
 7 155 **Q.** What part of the park were you in?
 8 **A. The part that's on Hunter Street**
 9 **(ph).**
 10 156 **Q.** How close to the street were you?
 11 **A. I was by the bathrooms, so it**
 12 **wasn't close to the street.**
 13 157 **Q.** Were you doing -- sorry. Were you
 14 making any sort of noise at the time that the by-law
 15 officer came up to you?
 16 **A. No. Well, I don't know. I talk**
 17 **in my sleep a lot.**
 18 158 **Q.** Was anybody else around? Did
 19 anyone else witness this by-law officer come up to you
 20 at 5:30 in the morning?
 21 **A. My ex-boyfriend was previously in**
 22 **jail.**
 23 159 **Q.** I'm sorry?
 24 **A. My ex-boyfriend was previously in**
 25 **jail.**
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1 160 **Q.** How do you spell his name?
 2 **A. It's Kevin, K-E-V-I-N, Gowers,**
 3 **G-O-W-E-R-S.**
 4 161 **Q.** Where was Kevin when all of this
 5 happened?
 6 **A. He was right beside me.**
 7 162 **Q.** So he was staying in the tent with
 8 you?
 9 **A. Yeah.**
 10 163 **Q.** So you said Kevin's in -- Kevin's
 11 in jail?
 12 **A. Yeah.**
 13 164 **Q.** When was the last time you saw
 14 Kevin?
 15 **A. Almost a year ago.**
 16 165 **Q.** Ms. Ogden, the City of Hamilton's
 17 by-law officers have given evidence that they don't, in
 18 fact, work overnight, and that they --
 19 **A. It wasn't overnight. It was 5:30.**
 20 166 **Q.** 5:30 in the morning.
 21 **A. Not in uniform.**
 22 167 **Q.** Not in uniform. This person, you
 23 believe, was just acting on their own volition?
 24 **A. Yeah.**
 25 168 **Q.** Now, on the chart you say you went
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1 to Beasley Park about a year ago. This is your
 2 affidavit of June 2022, so that would have been
 3 June 2021. Does that sound about right?
 4 **A. Yeah.**
 5 169 **Q.** You say you were there for a few
 6 nights?
 7 **A. Mm-hmm.**
 8 170 **Q.** Yes?
 9 **A. Yeah, sorry.**
 10 171 **Q.** You were there in a tent?
 11 **A. Yeah, I believe so.**
 12 172 **Q.** You say the by-law officers
 13 evicted you again. Does that again mean they came up
 14 to you and said you have to move?
 15 **A. Yeah.**
 16 173 **Q.** And how much time did they tell
 17 you you had to move?
 18 **A. Five minutes.**
 19 174 **Q.** Five minutes. Had they come up to
 20 you before then?
 21 **A. Couple days before that, I think.**
 22 175 **Q.** All right. So they told you you
 23 had to move a couple days before that, and then they
 24 came back and said now you have five minutes?
 25 **A. Yeah.**

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1 176 **Q.** When they came up to you the first
 2 time, did you take any steps to move?
 3 **A. No.**
 4 177 **Q.** Okay. Why not?
 5 **A. I didn't feel like moving.**
 6 178 **Q.** And then when they came back and
 7 said, no, you have five minutes to move, did you move
 8 at that time?
 9 **A. Yeah.**
 10 179 **Q.** Okay. Did you pack up your things
 11 and move?
 12 **A. Yeah.**
 13 180 **Q.** You said you lost some belongings.
 14 What belongings did you lose?
 15 **A. I lost clothes plus -- I lost all**
 16 **my clothes. I lost my blankets.**
 17 181 **Q.** How did you lose those?
 18 **A. The -- from when they came into**
 19 **the -- bulldoze the things and took the tents.**
 20 182 **Q.** I didn't hear that, sorry.
 21 They --
 22 **A. When they came and picked up my --**
 23 **those bulldozer things that they have. They bulldozed**
 24 **my tent.**
 25 183 **Q.** Were you there?

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1 **A. No, but I watched them and viewed**
 2 **it from afar.**
 3 184 **Q.** So you had left, and then they
 4 came and they bulldozed your tent?
 5 **A. Yeah.**
 6 185 **Q.** How long had you been gone when
 7 that happened?
 8 **A. A day.**
 9 186 **Q.** You left, and then a day later
 10 they came and cleared out your tent?
 11 **A. Mm-hmm.**
 12 187 **Q.** Yes?
 13 **A. Yes, sorry.**
 14 188 **Q.** Okay. Where did you stay next
 15 after that?
 16 **A. I don't remember.**
 17 189 **Q.** You don't remember. Why didn't
 18 you take your tent with you when you left?
 19 **A. Because I guess I gained too much**
 20 **stuff, and so I don't feel like taking it all with me.**
 21 **Because I know I can get another tent somewhere.**
 22 190 **Q.** You knew you could get another
 23 tent somewhere else, so you prioritized the other
 24 things that you could take with you?
 25 **A. Yeah.**

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1 191 **Q.** And you don't remember where you
 2 went after that? Did I hear you correctly?
 3 **A. Yes, you did.**
 4 192 **Q.** Okay. Did you talk to anyone
 5 about getting into a shelter or finding somewhere else
 6 to go?
 7 **A. No.**
 8 193 **Q.** Did you ask for help getting into
 9 a shelter or finding somewhere else to go?
 10 **A. No.**
 11 194 **Q.** The next place that you say you
 12 stayed was also Beasley Park, and you say that was a
 13 month and a half later. I just want to be clear.
 14 You're not sure where you went for that month and a
 15 half?
 16 **A. Yeah.**
 17 195 **Q.** Sorry, that was confusing. So it
 18 is correct that you're not sure where you went?
 19 **A. Yes.**
 20 196 **Q.** But at some point, about a month
 21 and a half later, you end up at Beasley Park again? Is
 22 that correct?
 23 **A. Yeah.**
 24 197 **Q.** Okay. And you say that you were
 25 there for one night?

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1 **A. Mm-hmm, yes.**
2 198 **Q.** Okay. So you got another tent;
3 you were there for one night. And then according to
4 this chart in your affidavit, you got 24 hours' notice
5 from by-law to leave; is that correct?
6 **A. Yes.**
7 199 **Q.** They came back and said you have
8 24 hours' notice to leave?
9 **A. Yeah.**
10 200 **Q.** Okay. And so did you leave within
11 the 24 hours?
12 **A. I left.**
13 201 **Q.** You said you left. Did -- well,
14 I'll just leave that there, then. It says you lost
15 another tent and some clothes. Did you do the same
16 thing you did last time?
17 **A. Yes, I did.**
18 202 **Q.** So you left your tent behind
19 because you had other things you wanted to take with
20 you and knew you could get another tent; right?
21 **A. Yeah.**
22 203 **Q.** Okay. And so where did you go
23 after leaving Beasley Park?
24 **A. I stayed with my friends outside.**
25 204 **Q.** Stayed with your friends outside,
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1 okay --
2 **A. I stayed in their tent.**
3 205 **Q.** In their tent, okay. Where were
4 they staying in their tent?
5 **A. I honestly don't remember.**
6 206 **Q.** You don't remember which park it
7 was or which neighbourhood?
8 **A. No.**
9 207 **Q.** Do you remember for how long you
10 were staying with your friends in their tent?
11 **A. No, I don't remember.**
12 208 **Q.** Okay. Again, at that point in
13 time, did you talk to anyone about finding a place to
14 stay or getting into a shelter?
15 **A. No.**
16 209 **Q.** The next place -- sorry. When did
17 you stop staying with your friends in their tent?
18 **A. I don't remember.**
19 210 **Q.** You don't remember. But at some
20 point in winter of 2021 you went to Durand Park,
21 according to your affidavit; is that correct?
22 **A. Yeah.**
23 211 **Q.** Just again to be really clear,
24 between when you stopped staying with friends in your
25 tent and when you went to Durand Park in winter of
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1 2021, you don't remember where you were?
2 **A. No.**
3 212 **Q.** Okay. You don't remember if you
4 were in a tent or in shelter or somewhere else?
5 **A. No, I wasn't in a shelter.**
6 213 **Q.** You weren't in a shelter?
7 **A. Yeah.**
8 214 **Q.** Do you remember anything else
9 about where you were?
10 **A. No, not really.**
11 215 **Q.** Now we're at winter of 2021, and
12 you say that you're staying in Durand Park and you were
13 there for three nights. Is that correct?
14 **A. Yeah.**
15 216 **Q.** So you were in a tent for three
16 nights in Durand Park in winter of 2021?
17 **A. Yeah. That was also when I was**
18 **using heroin and fentanyl.**
19 217 **Q.** That's when you were -- okay. So
20 you mentioned that that's when you were using heroin
21 and fentanyl. Why is that significant to you?
22 **A. That stuff usually makes you fall**
23 **asleep.**
24 218 **Q.** Okay. And so were you falling
25 asleep in your tent?
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1 **A. Yeah.**
2 219 **Q.** And in the chart here, you say you
3 had to move because of some problems at the encampment.
4 What problems were there at the encampment?
5 **A. This lady, she started on me and**
6 **my ex-boyfriend when we were staying there at the time.**
7 220 **Q.** So there was a conflict with
8 another person at the encampment?
9 **A. Yeah.**
10 221 **Q.** Okay. And --
11 **A. She was --**
12 222 **Q.** Go on, sorry.
13 **A. It was someone who lived next**
14 **door.**
15 223 **Q.** Someone who lived next door. You
16 mean someone who lived next door in the encampment?
17 **A. No, to the park.**
18 224 **Q.** To the park. So who was the
19 person who lived next door to the park?
20 **A. I have no idea who she was.**
21 225 **Q.** Okay. And so is this the person
22 that had a problem with you?
23 **A. Yeah.**
24 226 **Q.** So it wasn't another person in the
25 encampment; it was somebody --
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1 **A. No, yeah.**
 2 227 **Q.** -- near the park where you were
 3 staying?
 4 **A. Yeah.**
 5 228 **Q.** And what specifically was --
 6 describe what happened. What was that conflict?
 7 **A. She was arguing about why we were**
 8 **staying in the park. Because she didn't like us -- she**
 9 **didn't like seeing us in the park because she thought**
 10 **we were bad people.**
 11 229 **Q.** Were you using drugs at the time?
 12 **A. Yeah.**
 13 230 **Q.** Were you using intravenous drugs?
 14 **A. I was smoking fentanyl and**
 15 **shooting crystal.**
 16 231 **Q.** So you were using needles and you
 17 were smoking, using a glass pipe?
 18 **A. Yeah.**
 19 232 **Q.** And where were you discarding your
 20 needles and your --
 21 **A. I have a sharps container.**
 22 233 **Q.** You had a sharps container? Where
 23 was that?
 24 **A. It was outside of my tent.**
 25 234 **Q.** Is it possible that any of the

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1 sharps or pipes may have ended up on the ground?
 2 **A. It's most likely my pipe's there.**
 3 235 **Q.** I didn't catch that.
 4 **A. It's most likely my pipe's there,**
 5 **but I'd always make sure my needles were in my sharps**
 6 **container.**
 7 236 **Q.** Is there anything that the woman
 8 said to you about why she thought you were bad people?
 9 **A. No.**
 10 237 **Q.** No. And do you have any knowledge
 11 or belief as to what she may have objected to about you
 12 being there?
 13 **A. No. She said there's kids that go**
 14 **around in the park, and we smoke drugs and we use drugs**
 15 **there.**
 16 238 **Q.** Did that cause you concern, that
 17 there are kids at the park where you're in the space
 18 where you're admittedly doing drugs?
 19 **A. I was concerned, yes, for the**
 20 **kids, but that's why I stopped going to the parks.**
 21 239 **Q.** So she said that there's kids
 22 there, and you agreed that that was a concern, so you
 23 left?
 24 **A. Yeah.**
 25 240 **Q.** Now, in your affidavit you also

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1 say that by-law had already been there and warned them
 2 about garbage at the site. But by-law, based on what
 3 you just told me, by-law wasn't the people who made you
 4 leave; you decided to leave when the woman told you
 5 that there are kids there?
 6 **A. Yes.**
 7 241 **Q.** Okay. Did you observe garbage at
 8 the site?
 9 **A. No.**
 10 242 **Q.** Do you know anything about by-law
 11 having come and warning people at the encampment about
 12 garbage at the site?
 13 **A. No.**
 14 243 **Q.** I do have to ask: Why is that in
 15 your affidavit?
 16 **A. I don't -- because that's what it**
 17 **says.**
 18 244 **Q.** Because -- I'm sorry --
 19 **A. That's what I told him.**
 20 245 **Q.** You said that there was garbage at
 21 the site, but you don't remember?
 22 **A. I didn't want people to know I was**
 23 **using drugs.**
 24 246 **Q.** Sorry, I caught part of that --
 25 **A. I didn't want people to know I was**

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1 **using drugs.**
 2 247 **Q.** You didn't want people to know you
 3 were using drugs?
 4 **A. Yeah.**
 5 248 **Q.** Where did you go after you left
 6 Durand Park after the woman told you that there were
 7 kids there?
 8 **A. Well, it's in the affidavit. In**
 9 **2022 I went to Beasley Park. And I don't -- I stayed**
 10 **everywhere after that.**
 11 249 **Q.** So you went right from Durand Park
 12 back to Beasley Park?
 13 **A. For two months.**
 14 250 **Q.** For two months, okay. Now we're
 15 into early 2022. You went to Beasley Park. You were
 16 in a tent again in Beasley Park; correct?
 17 **A. Mm-hmm --**
 18 251 **Q.** Yes?
 19 **A. -- for two months, and then I've**
 20 **just been staying outside since then.**
 21 252 **Q.** So when you say -- let's just talk
 22 about Beasley Park again. In early 2022 you're in
 23 Beasley Park for two months. You say "police evicted
 24 me." Is it the police now who came and told you you
 25 couldn't be there?

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- 1 **A. Yes.**
- 2 253 **Q.** How much time did the police say
- 3 that you had before you had to leave?
- 4 **A. They didn't really give me a time.**
- 5 254 **Q.** They just said you can't be here
- 6 anymore?
- 7 **A. Yeah.**
- 8 255 **Q.** And so what did you do in response
- 9 to the police saying you can't be there anymore?
- 10 **A. I told him I been there -- same**
- 11 **thing. I'd go back and -- but I didn't have a tent**
- 12 **with me that time. I just stayed outside for about two**
- 13 **months.**
- 14 256 **Q.** You were just staying outside for
- 15 two months?
- 16 **A. After the police evicted me.**
- 17 257 **Q.** After the police evicted you,
- 18 okay. Let's just talk before the police evicted you.
- 19 You were in a tent, and the police said you can't be
- 20 here; correct?
- 21 **A. Yeah.**
- 22 258 **Q.** And so what did you do in response
- 23 to the police saying you can't be here?
- 24 **A. I took my tent down and gave it**
- 25 **away to somebody.**

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- 1 **A. Yeah.**
- 2 267 **Q.** And so where did you go after you
- 3 left Beasley Park after the police said you can't be
- 4 here and you gave your tent away to your friend?
- 5 **A. Just staying everywhere.**
- 6 268 **Q.** Can you be more specific than
- 7 that?
- 8 **A. Just everywhere in the**
- 9 **neighbourhood, in parking lots, on the side of the**
- 10 **roads, on church steps.**
- 11 269 **Q.** During that time, did you make any
- 12 attempts to get into a shelter?
- 13 **A. No.**
- 14 270 **Q.** No, okay. Now, at paragraph 8,
- 15 you do say "in between staying in tents and parks, I'm
- 16 sometimes able to stay in a tent in my mom's yard.
- 17 However, my mom's landlord doesn't like me staying in
- 18 the yard, so I can never stay for long." Is that
- 19 correct?
- 20 **A. I haven't been to my mom's in a**
- 21 **while.**
- 22 271 **Q.** When was the last time you stayed
- 23 at your mom's?
- 24 **A. I can't remember.**
- 25 272 **Q.** Would it have been within the past

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- 1 259 **Q.** Why did you give your tent away to
- 2 someone?
- 3 **A. So then I wouldn't be bothered by**
- 4 **the cops or by-law officers anymore.**
- 5 260 **Q.** Why not just take it down but keep
- 6 it with you?
- 7 **A. No. It's too much hassle.**
- 8 261 **Q.** Too much hassle, okay. Who did
- 9 you give the tent to? Is it someone you knew?
- 10 **A. Yeah, I gave it to one of my**
- 11 **friends who passed away now.**
- 12 262 **Q.** When did your friend pass away?
- 13 **A. Gosh, sometime last year.**
- 14 263 **Q.** My condolences. Before your
- 15 friend passed away, did you ever ask for your tent back
- 16 or stay with your friend?
- 17 **A. No.**
- 18 264 **Q.** Any particular reason why not?
- 19 **A. No.**
- 20 265 **Q.** Do you think your friend would
- 21 have let you stay in the tent if you asked?
- 22 **A. She would have.**
- 23 266 **Q.** Okay. After that police -- and
- 24 again, the police are coming up to you during the day
- 25 and saying you can't be here; right?

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- 1 year?
- 2 **A. No.**
- 3 273 **Q.** Would it have been sometime in
- 4 2023?
- 5 **A. No.**
- 6 274 **Q.** Sometime in 2022?
- 7 **A. Possibly.**
- 8 275 **Q.** Any particular reason why you
- 9 haven't stayed in your mom's yard in so long?
- 10 **A. Because my younger sister, she got**
- 11 **kicked out of her place, so her stuff's in my mom's**
- 12 **backyard.**
- 13 276 **Q.** Sorry, I didn't catch all of that.
- 14 Did I hear --
- 15 **A. My younger sister, she had a place**
- 16 **that she got kicked out of. She got locked out of her**
- 17 **own place, and so my mom has a ton of her grandchildren**
- 18 **there, and my sister's stuck in her backyard.**
- 19 277 **Q.** Your sister's using the space in
- 20 the backyard and there's no room for you, I take it?
- 21 **A. Exactly.**
- 22 278 **Q.** Okay. And there's no room for you
- 23 to stay inside at your mom's house?
- 24 **A. No, there's not.**
- 25 279 **Q.** Have you asked if you can share a

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1 tent with your sister in the backyard?

2 **A. No.**

3 280 **Q.** Any particular reason why not?

4 **A. She's got her boyfriend there.**

5 281 **Q.** She's got her boyfriend there. Is

6 there room for two tents?

7 **A. No.**

8 282 **Q.** At paragraph 15 -- I'm going to

9 skip ahead a little bit -- you say if you can't stay in

10 a tent, shelter or your mom's backyard, you sleep in

11 stairwells and parking garages. How many times have

12 you stayed in a stairwell or a parking garage?

13 **A. Sixteen, seventeen times.**

14 283 **Q.** Do you remember when that would

15 have been?

16 **A. No.**

17 284 **Q.** Do you remember what year?

18 **A. No.**

19 285 **Q.** Do you remember what time of year?

20 **A. No, not really.**

21 286 **Q.** You do say in paragraph 15, "Last

22 night, I stayed at John Rebecca Park underneath

23 blankets." This is your affidavit in June of 2022,

24 so --

25 **A. No, that was the park where the**
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1 **Urban Core used to be.**

2 287 **Q.** I'm sorry, what was that?

3 **A. That was the park where the Urban**

4 **Core used to be.**

5 288 **Q.** Where the what used to be?

6 **A. The Urban Core.**

7 289 **Q.** Urban Core.

8 **A. It's not there anymore. They tore**

9 **it down.**

10 290 **Q.** Okay. So when the Urban Core was

11 still there, you would sleep in the park under some

12 blankets?

13 **A. Yeah.**

14 291 **Q.** Okay. So this was in June that

15 you were staying outside at John Rebecca Park under

16 some blankets?

17 **A. Mm-hmm, I think so.**

18 292 **Q.** I believe you said before that

19 since 2022 and up until now you haven't stayed in a

20 shelter. Is that correct?

21 **A. Yeah.**

22 293 **Q.** Mr. Mastroianni, the gentleman

23 with the City of Hamilton who took a look at the

24 housing records, he's given evidence that you were

25 offered shelter at least three times. He's named three

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1 times: on March 22, April 1, and April 7 of 2022. And

2 he says that, according to those records, you declined

3 shelter each of those times. Do you remember that?

4 **A. No, I don't remember.**

5 294 **Q.** Okay. Is it possible that's

6 correct, that you were offered shelter but decided not

7 to take it?

8 **A. Not that I'm aware of.**

9 295 **Q.** Not that you're aware of, okay.

10 But you don't remember?

11 **A. Mm-hmm, yes.**

12 296 **Q.** When was the last time you tried

13 to get into a shelter?

14 **A. Before 2022, early -- before 2022**

15 **ended.**

16 297 **Q.** Before 2022 ended, okay. And is

17 there any reason that you haven't tried to get into

18 shelter since then?

19 **A. No.**

20 298 **Q.** Now, Ms. Ogden, the City does keep

21 records of stays in shelter, attempts to access

22 homeless services, and any service restrictions from

23 shelter. Would you be willing to sign an authorization

24 to allow those records to be disclosed in this

25 litigation?

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1 **A. No.**

2 299 **Q.** Okay. Why not?

3 **A. I kind of feel -- I don't feel --**

4 **I just don't feel like doing that.**

5 300 **Q.** Are you concerned it might say

6 something different than what you remember?

7 **A. Yeah.**

8 301 **Q.** Okay. So I'm going to repeat my

9 request on the record because there are some things

10 that you can't remember and it would help us figure out

11 where potentially you've been staying or what offers of

12 shelter have been made. Again, my request is that you

13 sign an authorization so that we can obtain your

14 record.

15 **A. Yeah.**

16 302 **Q.** Will you sign the authorization?

17 **A. Yes.**

18 303 **Q.** Okay, thank you. We've sent a

19 copy to your lawyer and she can help you sign it. Now,

20 you have talked about -- so a couple of things. At

21 paragraph 11 of your affidavit -- we've talked about

22 trying to get into shelters. You say, "Staff at Wesley

23 Day Centre sometimes call for me, and are also told

24 that they are full." You told me the last time you

25 tried to get into shelter was in 2022. So that would

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1 have been around then?

2 **A. Mm-hmm, yeah.**

3 304 **Q.** Yes? Okay. Do you still go to
4 the Wesley Day Centre?

5 **A. No, because they're no longer**
6 **open.**

7 305 **Q.** Right, of course, sorry. And you
8 go to the Hub now?

9 **A. Yes.**

10 306 **Q.** Okay.

11 **A. But I'm supposed to be there in**
12 **ten minutes.**

13 307 **Q.** Okay. Well, I'm very sorry. I'll
14 try to wrap up quickly. Do you have to be there to get
15 some medication?

16 **A. Yeah.**

17 308 **Q.** Okay.

18 MS. SHORES: Counsel, do you want to
19 adjourn this examination so Ms. Ogden can get her
20 medication? Or are there other arrangements that can
21 be made? Why don't we go off for just a moment.

22 --- (Off-record discussion)

23 MS. SHORES: Following a discussion off
24 the record, Ms. Ogden has very kindly agreed to come
25 back. We're going to adjourn this examination so that

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1 she can go back to the Hub and get her medication, so
2 this cross-examination is adjourned.

3 --- Whereupon proceedings adjourned at 4:53 p.m.

4 I HEREBY CERTIFY THE FOREGOING
5 to be a true and accurate transcription
6 of my shorthand notes
7 to the best of my skill and ability.

8
9
10 _____
11 [Electronically signed on August 22, 2024]
12 Lydia Pak, Court Reporter
13 Computer-Aided Transcription
14
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TAB 67

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**KRISTEN HEEGSMA, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO,
SHAWN ARNOLD, ET AL.**

Applicants

-and-

CITY OF HAMILTON

Respondent

AFFIDAVIT OF JAHMEL LOPIERRE

1. I, JAHMEL LOPIERRE (aka JAMMY LO), of the City of Hamilton in the Province of Ontario, MAKE OATH AND STATE:
2. I am a 32 year old Black Transgender woman.
3. I am on Ontario Works. I receive \$343 per month. I am not eligible for a shelter portion while I am homeless.
4. I am a volunteer peer support worker with Keeping Six, a local harm reduction agency.
5. My medical conditions include PTSD, anxiety and depression, and a substance use disorder.
6. I have been homeless on and off for about three years.
7. Most recently, I was housed through the YWCA Transitional Living Program for about two years. I was evicted from the program into homelessness in November 2021 and have been homeless ever since. I had been homeless for a few months before going to the YWCA.
8. Since becoming homeless, I have stayed in many locations, including shelters, a temporary hotel program, drop in centres, on the streets, overflow shelters, and in tents.

9. After being evicted from the YWCA, I was sent to the Four Points Hotel, which was a temporary hotel program run by Mission Services. I stayed there for about a month. I was kicked out after missing curfew.
10. I then went to the Admiral Hotel, another temporary hotel program, for about a month. The program moved locations to a new shelter at Cathedral.
11. I then went to the Cathedral women's shelter at the end of February 2022. I stayed about a week or so. I did not do well in the shared living set up. Theft is rampant in shelters, I feel anxious around large groups of strangers, and I have trouble sleeping. I got into an argument with staff and they wanted to Form me under the *Mental Health Act*. I left to avoid being involuntarily hospitalized.
12. After Cathedral, I went to Willow's Place, which is a drop in centre for women that occasionally stays open overnight.
13. I then went to Carol Anne's Place. Carol Anne's Place is an overnight drop in centre for women that acts as an overflow shelter when the other women's shelters are full. They open at 10 p.m. Women line up for hours before they open. I have tried to get into Carol Anne's Place. Sometimes they are full and sometimes I can get in.
14. Carol Anne's Place has also had to limit the number of women permitted inside at various times during Covid.
15. My ability to access a shelter bed is always hanging in the balance. If you miss curfew, or step out for a smoke, the shelter can suddenly be at capacity. You can unknowingly break and rule or have a disagreement with staff and get kicked out.
16. I believe many shelter staff lack de-escalation skills. Shelter policies don't seem to have an end game of how to help people. You are treated like everything is a sacred privilege and have no control of your surroundings.
17. As a Transgender woman, I have stayed in both men's and women's shelters. I will sometimes stay in men's shelters if the women's shelters are full. When I stay in the men's shelters, I change my appearance to "pass" as a man. This is difficult for me – I can't express myself and everything feels muted and grey.
18. I have been service restricted – or banned - from shelters several times. The period of the ban ranges from a day to a week.

19. I have stayed in a tent in several different locations. The following is a breakdown of the locations, timeframes and outcomes.

20. Location	Timeframe	Duration of stay	Outcome
Urban Core	Sometime in 2019	unknown	Police evicted me
Beasley Park	Few times (about 4) during period of homelessness	Unknown – sometimes not even a day	Police evicted me
Outside new Hamilton Urban Core	Few times (about 4) during period of homelessness	Unknown – sometimes	Police evicted me

21. It feels like any time I plant my feet, the police are there to evict me. I have asked where I am supposed to go, but I don't really get a response.
22. I feel safer in a tent because I have more control over who is around me. I can smoke marijauna without being kicked out. Shelters are chaotic and chaos tends to breed more chaos.
23. I have been ticketed repeatedly while homeless.
24. I have not put up a tent or stayed in a tent much in 2022 because the City has ramped up enforcement. People aren't bothering with it anymore because we know that you will just be told to move.
25. Not having a stable and secure place to stay overnight means that I almost never get a decent night's sleep. On average, I sleep one or maybe two hours at a time. Sometimes I don't sleep at all.

26. When I wander the streets in search of somewhere to stay, I am at risk of *being* *ticked, robbed and assaulted.*

SWORN BEFORE ME in the City
of Hamilton, this 7 day of June, 2022

Sharon Crowe
Commissioner
Sharon Crowe
Barrister & Solicitor

Jamhel LoPierre
JAMHEL LOPIERRE

TAB 68

Court File No. CV-21-00077817-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

KRISTEN HEEGSMA, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO, AND
SHAWN ARNOLD, ET AL.

Applicants

-and-

CITY OF HAMILTON

Respondent

AFFIDAVIT OF *Jahmal Pierre*(sworn April *27*, 2023)I *Jahmal Pierre*, of the City of Hamilton in the Province of Ontario,

AFFIRM AND STATE:

1. Since June 2022, I have stayed in various locations, including Carol Anne's Place, Airb nbbs, with friends, and in a tent outside of Carol Anne's Place. Carol Anne's Place continues to be full on a regular basis, which you don't learn until 10:30 or 11:00 p.m. That means that I have to make my plans for the night at that point.

S.P.

2. I have had my belongings repeatedly stolen while staying at Carol Anne's Place, including laptops, tablets, phones, and identification.

SWORN THIS day of April, 2023
in the City of Hamilton, Province of
of Ontario

Sharon Crowe
A Commissioner, etc.

Sharon Crowe
Barrister & Solicitor

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)
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Sharon Crowe

Sharon Crowe

TAB 69

<div>1</div> <div>Court File No. CV-21-77187</div> <div>ONTARIO SUPERIOR COURT OF JUSTICE</div> <div>BETWEEN:</div> <div>KRISTEN HEEGSMa, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO, SHAWN ARNOLD, BRADLEY CALDWELL, CHRISTINE DELOREY, GLEN GNATUK, TAYLOR GOGO-HORNER, CASSANDRA JORDAN, JULIA LAUZON, AMMY LEWIS, ASHLEY MACDONALD, COREY MONAHAN, MISTY MARSHALL, SHERRI OGDEN, JAHMAL PIERRE, LINSLEY GREAVES and PATRICK WARD</div> <div>- and -</div> <div>CITY OF HAMILTON</div> <div>Applicants Respondent</div> <div>CROSS-EXAMINATION OF JAHMAL (JAMMY) PIERRE, Applicant, on her affidavits dated June 7, 2022, and April 27, 2023, held via Zoom Videoconference hosted by the offices of Nimigan Mihailovich Reporting Inc., Hamilton, Ontario, on Friday, August 16, 2024, at 2:48 p.m. EDT</div> <div>APPEARANCES:</div> <div>Sujit Choudhry for the Applicants Sharon Crowe Curtis Sell</div> <div>Bevin Shores for the Respondent Jordan Diacur</div> <div>ALSO PRESENT:</div> <div>Jojo Johnson Articling Student</div> <div>NIMIGAN MIHAILOVICH REPORTING INC.</div>	<div>374</div> <div>Zoom Videoconference</div> <div>--- Upon commencing on Friday, August 16, 2024, at 2:48 p.m. EDT</div> <div>AFFIRMED: JAHMAL (JAMMY) PIERRE</div> <div>CROSS-EXAMINATION BY MS. SHORES:</div> <div>1 Q. Good afternoon, Ms. Pierre.</div> <div>2 Can you please state your full name for the 3 record.</div> <div>4 A. Jahmal Alexander Pierre.</div> <div>5 Q. Okay. I'm sorry, can you just 6 speak up? I didn't quite catch that.</div> <div>7 A. Jahmal Alexander Pierre is my 8 birth name.</div> <div>9 Q. All right. And as we -- as 10 indicated just now when we spoke off record, you 11 go by Jammy?</div> <div>12 A. Yes.</div> <div>13 Q. Okay. And do you have any 14 pronouns that you wish to share?</div> <div>15 A. She / they.</div> <div>16 Q. And, sorry, that was he / they?</div> <div>17 A. She / they.</div> <div>18 Q. She / they. My apologies.</div> <div>19 As I introduced off record, my name 20 is Bevin Shores. My pronouns are she / her, and 21 22 23 24 25</div> <div>NIMIGAN MIHAILOVICH REPORTING INC.</div>
<div>2</div> <div>INDEX</div> <div>PAGE</div> <div>1 AFFIRMED: JAHMAL (JAMMY) PIERRE 3</div> <div>2 CROSS-EXAMINATION BY MS. SHORES 3</div> <div>3 REEXAMINATION BY MS. CROWE 65</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9 LIST OF UNDERTAKINGS, REFUSALS, & UNDER ADVISEMENTS</div> <div>10</div> <div>11 Undertakings (U / T) found at pages:</div> <div>12 NONE</div> <div>13 Refusals (REF) found at pages:</div> <div>14 NONE</div> <div>15 Under Advisements (U / A) found at pages:</div> <div>16 31</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> <div>NIMIGAN MIHAILOVICH REPORTING INC.</div>	<div>4</div> <div>1 I'll be asking you questions today about two 2 affidavits that you've affirmed in this 3 litigation. One of them is an affidavit dated 4 June 7, 2022, and one is an affidavit dated April 5 27, 2023.</div> <div>6 Before we get to those affidavits, 7 if during this cross-examination, Ms. Pierre, you 8 don't understand a question, please just let me 9 know. I can repeat or rephrase it. Is that 10 understood?</div> <div>11 A. Yes.</div> <div>12 7 Q. Okay. And please just make 13 sure that you're giving verbal responses as 14 opposed to nodding or shaking your head or using 15 gestures so that we can ensure your answers are 16 accurately recorded on the transcript. Is that 17 also understood?</div> <div>18 A. Yes, it is.</div> <div>19 8 Q. Excellent.</div> <div>20 Okay. I'll start with your June 7, 21 2022, affidavit. I'll put it on the screen. You 22 may also have a copy in front of you.</div> <div>23 Are you able to see your June 7, 24 2022, affidavit?</div> <div>25 A. Yes, I am.</div> <div>NIMIGAN MIHAILOVICH REPORTING INC.</div>

1 **9** Q. Okay. Can you confirm that
 2 you swore this affidavit?
 3 **A. Yes.**
 4 **10** Q. Have you reviewed it?
 5 **A. Yes.**
 6 **11** Q. And you confirm that
 7 everything in it is accurate?
 8 **A. Yes.**
 9 **12** Q. Okay. And your June -- I'm
 10 sorry, your April 27, 2023, affidavit, you swore
 11 that affidavit as well?
 12 **A. Yes, I did.**
 13 **13** Q. You've reviewed it?
 14 **A. Yes.**
 15 **14** Q. And you can confirm that
 16 everything in that affidavit is accurate?
 17 **A. Yes.**
 18 **15** Q. Okay. And in fairness to you,
 19 I think there's just maybe a typo with respect to
 20 your name in the June 7, 2022, affidavit. They
 21 have your name spelled as J-A-M-H-E-L and then
 22 your last name as L-O-P-I-E-R-R-E. That's just an
 23 error?
 24 **A. Yep.**
 25 **16** Q. Okay. All right. Just making
NIMIGAN MIHAILOVICH REPORTING INC.

1 sure we're calling you by the right name.
 2 **A. Not a problem.**
 3 **17** Q. You currently live in
 4 Hamilton?
 5 **A. Yes.**
 6 **18** Q. How long have you lived in
 7 Hamilton?
 8 **A. Since I was in grade 3.**
 9 **19** Q. Okay. Are you currently
 10 housed?
 11 **A. Yes.**
 12 **20** Q. Okay. And how long have you
 13 been housed?
 14 **A. Since June 1, 2023.**
 15 **21** Q. June 1, 2023. Excellent.
 16 And in your June 7, 2022, affidavit
 17 at paragraph 6, it's stated:
 18 "I have been homeless on and off
 19 for about three years."
 20 So if I am doing the math
 21 correctly, you started to experience homelessness
 22 sometime around 2019?
 23 **A. Yeah.**
 24 **22** Q. Do you remember any more
 25 precisely than 2019 when you became unhoused?
NIMIGAN MIHAILOVICH REPORTING INC.

1 **A. I believe sometime in the**
 2 **summer. I was experiencing issues with the**
 3 **roommates I had, and when I would leave town to go**
 4 **be with my partner, they would have other people**
 5 **staying in my room. So that was not something**
 6 **that I was comfortable with. So I moved out to**
 7 **Brantford for a little bit, but eventually the**
 8 **relationship dissolved and I came back to nothing.**
 9 **23** Q. Okay. Before we get into some
 10 of the timeline of your experience of
 11 homelessness, I want to find out a little bit more
 12 about times in which you've been housed.
 13 So at paragraph 7 of your June 7,
 14 2022, affidavit, you state that you had been
 15 housed through the YWCA Transitional Living
 16 Program for about two years. You state you were
 17 evicted from the program into homelessness in
 18 November 2021.
 19 So if I'm again understanding
 20 correctly, sometime in 2019 you were housed
 21 through the YWCA program, and that spanned until
 22 November 2021?
 23 **A. That's correct.**
 24 **24** Q. Okay. And up until May 1st of
 25 2023, have you had any other time periods of being
NIMIGAN MIHAILOVICH REPORTING INC.

1 housed?
 2 **A. Prior to that, it would have**
 3 **been when I was living at 881 King Street East.**
 4 **It was only, like, January to March of I think**
 5 **twenty -- maybe 2019 or 2018. I can't recall.**
 6 **25** Q. Sorry, you trailed off there a
 7 little bit and I didn't catch --
 8 **A. My apologies.**
 9 **I was living at 881 King Street**
 10 **prior to the Y, and I think that was around 2019**
 11 **or 2018. I don't exactly recall. It was, like,**
 12 **January to March.**
 13 **26** Q. Okay. One of the witnesses
 14 for the City, who I don't think you've ever met --
 15 his name is Rob Mastroianni. He works for the
 16 City and has access to, among other things,
 17 housing records.
 18 He's indicated that there's at
 19 least some indication in the records that you were
 20 moved to housing or obtained housing in 2022. Is
 21 that accurate, or do you have any recollection of
 22 a period in 2022 in which you were housed?
 23 **A. I had been staying at, like,**
 24 **hotels, like, the Four Points and the Admiral Inn.**
 25 **27** Q. Okay. We'll talk about that
NIMIGAN MIHAILOVICH REPORTING INC.

1 because you've set that out in your affidavit as
 2 well. But no housing, nothing like the YWCA
 3 program or an apartment, anything like that?
 4 **A. No.**
 5 **28 Q.** Okay. Staying with paragraph
 6 7 of your June 2022 affidavit, you stated you were
 7 evicted from the program into homelessness. What
 8 do you mean when you say "evicted"? What
 9 happened?

10 **A. It is a transitional living**
 11 **program. So it is supposed to last approximately**
 12 **11 months, is the time frame that's set out for**
 13 **each individual. After that, they kind of send**
 14 **you on your way. I was sent to the Four Points**
 15 **after my, like, dismissal from the Y.**

16 **29 Q.** Okay. So you transitioned out
 17 of that program at the Y and then went to the Four
 18 Points through the hotel program there?

19 **A. Yeah.**

20 **30 Q.** Okay, which you state at
 21 paragraph 9 of your affidavit.

22 **A. Yeah.**

23 **31 Q.** So as you explain in your
 24 affidavit, that was a temporary hotel program run
 25 by Mission Services?

NIMIGAN MIHAIOVICH REPORTING INC.

1 **A. Yeah. Yes.**

2 **32 Q.** Okay. Thank you.

3 And as you indicate, you say you
 4 stayed there for about a month and you were kicked
 5 out after missing curfew?

6 **A. Yes.**

7 **33 Q.** Okay. So tell me what
 8 happened when you were kicked out after missing
 9 curfew.

10 **A. Basically, it was frustrating**
 11 **because it was much farther east than most of --**
 12 **like, the majority of my network. So it was a**
 13 **little bit difficult to get to, and being a social**
 14 **person, obviously, it was a difficult time for me.**
 15 **I wanted to see my friends, and there were a**
 16 **couple times I came back late and then they said**
 17 **-- after three times, I think, then they say**
 18 **goodbye and send you on your way.**

19 **I don't really remember exactly,**
 20 **like, where I went. I probably went back**
 21 **downtown, probably, staying closer to, like, the Y**
 22 **area 'cause there's a lot -- like, there's a large**
 23 **community of people that stay around there,**
 24 **outside on the streets. I'm not -- I don't fully,**
 25 **like, recall how it -- how it exactly transpired**

NIMIGAN MIHAIOVICH REPORTING INC.

1 **that night, but I just remember coming back and**
 2 **being told that it was time for me to go.**

3 **34 Q.** Okay. And recognizing that
 4 you said you don't remember exactly what
 5 transpired, did they give you any notice?

6 **A. Not too much.**

7 **35 Q.** Do you remember --

8 **A. Like -- like, I think -- I'm**
 9 **pretty sure it was a "three strikes and you're**
 10 **out" kind of thing. I wasn't necessarily keeping**
 11 **-- I wasn't necessarily keeping track, but I don't**
 12 **think -- it wasn't -- it wasn't completely abrupt,**
 13 **but it wasn't necessarily planned out either.**

14 **36 Q.** Understood.

15 And at paragraph 10 of your
 16 affidavit, you state you then went to the Admiral
 17 Hotel, another temporary hotel program. So would
 18 I understand correctly that you went from the Four
 19 Points to the Admiral Hotel?

20 **A. Not direct -- like, not**
 21 **directly. There was obviously some time spent in**
 22 **lieu -- in between those -- those spots. You kind**
 23 **of had to, like, call and keep checking in to see**
 24 **if they have a spot available. But eventually a**
 25 **spot opened up and I was welcomed to the Admiral,**

NIMIGAN MIHAIOVICH REPORTING INC.

1 **and I enjoyed it there.**

2 **37 Q.** Do you remember how much time
 3 between when you left the Four Points and when you
 4 began to stay at the Admiral?

5 **A. I don't recall. I want to say**
 6 **maybe a month in between, or maybe -- maybe a**
 7 **couple weeks.**

8 **38 Q.** Okay. And just to orient us
 9 in terms of time, so you left -- or, sorry, you
 10 ceased to be in the YWCA Transitional Housing
 11 Program around November 2021. You were at the
 12 Four Points, and in your affidavit you say you
 13 stayed there for about a month. So would that
 14 take us into about December 2021? Does that sound
 15 about right?

16 **A. Yeah.**

17 **39 Q.** Okay. And then at some point
 18 you were at the Admiral Hotel. So would that have
 19 been around sometime in about January of 2022?

20 **A. I believe so.**

21 **40 Q.** Okay. And in between the Four
 22 Points and the Admiral, where were you staying?

23 **A. It probably would have been**
 24 **Carole Anne's Place, which is the shelter division**
 25 **of the YWCA. It's the drop-in shelter. It's not**

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1 **guaranteed and depends on how many people they**
 2 **have lined up that night and what capacity they**
 3 **can handle. So that's probably where I would have**
 4 **stayed for the most part.**

5 **41** Q. Okay. And recognizing what
 6 you said about how Carole Anne's Place operates,
 7 you were able to get a place to stay at Carole
 8 Anne's Place between the Four Points and the
 9 Admiral?

10 **A. At times, yes.**

11 **42** Q. Okay.

12 **A. Not all the time.**

13 **43** Q. Okay. If you didn't get a
 14 place to stay at Carole Anne's Place, where did
 15 you stay?

16 **A. I might have been lucky to**
 17 **stay at a friend's or I might have stayed close by**
 18 **in a tent or with some other people.**

19 **44** Q. When you say "with some other
 20 people," do you mean other people in a tent or
 21 other people -- sorry, where were those other
 22 people?

23 **A. Either in a tent or outside.**

24 **45** Q. Are you certain that you spent
 25 any nights outside between leaving the Four Points

NIMIGAN MIHAIOVICH REPORTING INC.

1 and going to the Admiral?

2 **A. I'm pretty sure -- I'm sure I**
 3 **may have. It would have been minimal.**

4 **46** Q. Okay. And on those nights you
 5 were spending outside, did you speak to anyone
 6 about getting into a different shelter, such as
 7 Mary's Place or one of the other shelters?

8 **A. In trying to access some of**
 9 **the other shelters, I experienced some difficulty**
 10 **with the communication. Like, I would try to call**
 11 **and a lot of times they were full. I tried to go**
 12 **to the Salvation Army and was turned away at one**
 13 **point due to my gender expression.**

14 **So I did try to access some other**
 15 **shelters, which -- I had access to Good Shepherd.**
 16 **I believe they were usually full. And yeah, I**
 17 **don't think -- I don't believe Mary's Place had**
 18 **room at the time.**

19 **47** Q. Okay. And on the nights --
 20 let me just go a step back.

21 **A. Yep.**

22 **48** Q. So if I understand correctly,
 23 you think there would have been at least some
 24 nights that you spent unsheltered between the Four
 25 Points and the Admiral. You weren't quite sure.

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1 If you spent those nights unsheltered, why not go
 2 in a tent for those nights?

3 **A. If that option was available,**
 4 **then I definitely would have utilized it.**

5 **49** Q. And can you help me with why
 6 that option might not have been available to you?

7 **A. 'Cause they might have been**
 8 **taking tents down at the time.**

9 **50** Q. Do you know for certain
 10 whether that was the case?

11 **A. I can't say for sure given the**
 12 **time frame and the time that's passed.**

13 **51** Q. You mentioned something just
 14 now about being turned away due to your gender
 15 expression. Where were you turned away from due
 16 to your gender expression?

17 **A. The Salvation Army.**

18 **52** Q. The Salvation Army.
 19 And when did that happen?

20 **A. I don't recall the exact date,**
 21 **but I believe it was during that time frame**
 22 **between the Four Points and the Admiral.**

23 **53** Q. Okay. And what specifically
 24 happened?

25 **A. I went to stay and the worker**
NIMIGAN MIHAIOVICH REPORTING INC.

1 **had suggested that I go to a place more suited to**
 2 **my lifestyle and look and basically turned me**
 3 **away.**

4 **54** Q. And can you describe this
 5 worker?

6 **A. I believe he was a middle-aged**
 7 **Caucasian male. I'm not sure of the name. But**
 8 **average, Caucasian, middle-aged male is all I can**
 9 **really describe him as.**

10 **55** Q. When you say "Salvation Army,"
 11 do you mean the Booth Centre?

12 **A. Yes.**

13 **56** Q. Okay. And was someone that
 14 you've ever seen at the Booth Centre before or
 15 since?

16 **A. They weren't particularly**
 17 **familiar to me, no.**

18 **57** Q. Okay. So a middle-aged
 19 Caucasian male. Do you remember their height,
 20 hair colour, if they had hair?

21 **A. Grey, I believe. I would**
 22 **think that he was around five-six.**

23 **58** Q. And this person at the Booth
 24 Centre who told you to go somewhere else, did they
 25 actually say you couldn't stay at the Booth

NIMIGAN MIHAIOVICH REPORTING INC.

1 Centre?

2 **A. Those words weren't used**
 3 **exactly, but the suggestion was heavily implied,**
 4 **and I could tell that he wasn't going to be of**
 5 **assistance. He made it seem like -- I don't want**
 6 **to say that he made it seem like my staying there**
 7 **would be an issue, but that's what I feel he was**
 8 **afraid of.**

9 **59 Q.** Afraid of -- do you get the --
 10 did this person give any indication that there
 11 were concerns about your safety in light of your
 12 gender expression?

13 **A. No.**

14 **60 Q.** Did this person suggest
 15 another shelter for you to go to?

16 **A. No, not by name.**

17 **61 Q.** Did they give you any sort of
 18 suggestion? You said "not by name," but did they
 19 give you any sort of other direction?

20 **A. Not really, no.**

21 **62 Q.** And where did you end up
 22 staying on that occasion?

23 **A. That occasion, I probably**
 24 **would have been -- probably would have been back**
 25 **to Carole Anne's Place.**

NIMIGAN MIHAIOVICH REPORTING INC.

1 **63 Q.** I do want to take you to
 2 paragraph 17 of your June 2022 affidavit, which
 3 reads:

4 "As a transgender woman, I have
 5 stayed in both men's and women's
 6 shelters. I will sometimes stay in
 7 men's shelters if the women's
 8 shelters are full. When I stay in
 9 the men's shelters, I change my
 10 appearance to 'pass' as a man.
 11 This is difficult for me. I can't
 12 express myself and everything feels
 13 muted and grey." (As read.)

14 You wrote that in your affidavit?

15 **A. Yeah.**

16 **64 Q.** So you have accessed men's
 17 shelters?

18 **A. Yes.**

19 **65 Q.** And you didn't say in this
 20 affidavit that you'd been turned away for your
 21 gender expression?

22 **A. I've experienced a lot of**
 23 **things that have happened to me at the time and I**
 24 **guess that experience didn't ring too heavy in my**
 25 **head at that point in time, but it is something**

NIMIGAN MIHAIOVICH REPORTING INC.

1 **that happened.**

2 **66 Q.** So going back up -- we took a
 3 little bit of a segue to speak about that
 4 experience, but I want to go back to establishing
 5 the timeline of where you've been staying. So we
 6 talked about the timeline between the Four Points
 7 and the Admiral Hotel.

8 Let's talk about the Admiral Hotel.
 9 That's closer to downtown; correct?

10 **A. Yeah, it's much closer to**
 11 **downtown.**

12 **67 Q.** You state you stayed there for
 13 about a month?

14 **A. Yeah.**

15 **68 Q.** And you state the program
 16 moved locations to a new shelter at Cathedral?

17 **A. Yes.**

18 **69 Q.** At paragraph 11, you describe
 19 you went to the Cathedral shelter at the end of
 20 February '22 -- February 2022. So, again, just
 21 confirming with the timeline, so you went from the
 22 Admiral Hotel to Cathedral, and that takes us to
 23 February 2022; correct?

24 **A. Yes.**

25 **70 Q.** Okay. And you stayed at

NIMIGAN MIHAIOVICH REPORTING INC.

1 Cathedral for a week or so?

2 **A. Yeah, that's correct.**

3 **71 Q.** All right. And you state that
 4 you -- at the very end of that paragraph, you left
 5 to be -- to avoid being involuntarily
 6 hospitalized, and in the sentence immediately
 7 before that, you say:

8 "I got into an argument with staff
 9 and they wanted to Form me under
 10 the Mental Health Act." (As read.)

11 That's correct?

12 **A. Yes.**

13 **72 Q.** Okay. In the incident that
 14 led the staff to say that they wanted to Form you
 15 under the Mental Health Act, let's just talk about
 16 what "Form" means. Does that mean they wanted to
 17 admit you for treatment under the Mental Health
 18 Act?

19 **A. Yeah. Basically, they said**
 20 **without -- without going -- without going to the**
 21 **hospital, I would not be able to stay there any**
 22 **longer. I had overdosed, and at the time I just**
 23 **wanted to -- like, in recovery mode, just wanted**
 24 **to sleep and get my strength back. But they were**
 25 **adamant, so much so that they had called -- they**

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1 had called the police.

2 They had general -- most of the
3 times, to get me out of -- like, they had a couple
4 different tactics, but the police had came and
5 they had tried to get them to, like, advise or
6 take me. But the police basically said that it
7 was my choice and that they couldn't necessarily,
8 like, force me to do that. So they threatened my
9 stay there.

10 73 Q. If you had overdosed, why not
11 just go to the hospital and get checked out?

12 A. Sometimes it's temporary and,
13 like, you can be brought back and recover at home.
14 I've experienced a couple of them over the times.
15 So I'm a little bit used to it.

16 So I know how to kind of bounce
17 back from that, in a sense, without getting to the
18 hospital because what that does is just creates --
19 what usually happens is that your stuff gets
20 stolen, and that just keeps you, like, locked away
21 from your stuff for longer. So you have less of a
22 chance of getting your things back.

23 74 Q. So you were concerned about
24 leaving your things behind while you were in
25 hospital because you were concerned that they

NIMIGAN MIHAIOVICH REPORTING INC.

1 would get stolen and not be there when you came
2 back for them?

3 A. 'Cause that's what has
4 happened to me many times before.

5 75 Q. Did you inquire at Cathedral
6 about whether there was a place to lock away your
7 things?

8 A. In terms of that, the -- their
9 version of storing things was not the most
10 comprehensive or streamlined. When I'd gone back
11 after leaving the Cathedral to get some of my
12 things back, it took them quite some time to get
13 my things, and most of the times it was wrong, and
14 I lost a lot of faith in them.

15 76 Q. So after Cathedral, at
16 paragraph 12 of your affidavit, you describe that
17 you went to Willow's Place, which is a drop-in
18 centre for women that occasionally stays open
19 overnight.

20 Were you able to stay at Willow's
21 Place?

22 A. Yes.

23 77 Q. How long did you stay at
24 Willow's Place?

25 A. I don't fully recall. It

NIMIGAN MIHAIOVICH REPORTING INC.

1 could have been a couple of nights to, like, a
2 week or so.

3 78 Q. And then you --

4 A. Willow's --

5 79 Q. Sorry, I didn't mean to
6 interrupt you. Go ahead.

7 A. No, go ahead.

8 80 Q. Well, tell me if you want to
9 say anything more about Willow's Place because I
10 was next going to ask you about paragraph 13,
11 where you describe that you went to Carole Anne's
12 Place.

13 A. Go ahead for paragraph 13.

14 81 Q. So after Willow's Place, you
15 say, "I then went to Carole Anne's Place,"
16 described that as "an overnight drop-in shelter
17 for women that acts as an overflow shelter when
18 other women's shelters are full," and you go on to
19 describe the procedure for getting into Carole
20 Anne's Place, which you took us through earlier
21 this afternoon.

22 Were you able to stay overnight at
23 Carole Anne's Place?

24 A. Yes.

25 82 Q. Okay. Do you remember how

NIMIGAN MIHAIOVICH REPORTING INC.

1 long you were at Carole Anne's Place?

2 A. Carole Anne's Place has been
3 kind of a saving grace in this story because
4 that's where I now work, in the Safer Use Space.
5 So I had been building a relationship with the
6 staff and the community of people there, and now
7 my colleagues and coworkers. So there were
8 oftentimes where they could make a little bit of
9 -- a bit of an exception for me. So Carole Anne's
10 has kind of been, like, the safest spot for me.

11 83 Q. Okay. How long have you been
12 working at Carole Anne's Place?

13 A. Almost two, three years maybe.

14 84 Q. And can you just describe for
15 me briefly what you -- you said you work in the
16 Safer Use Space. Can you describe for me briefly
17 what you do?

18 A. I'm a peer support worker. So
19 I watch over people while they're using, making
20 sure that they don't overdose, and if they do, we
21 can respond to it, either with Narcan or oxygen,
22 whatever type of assistance they might need. We
23 talk to the girls, give them hygiene products,
24 anything they might need --

25 85 Q. Do you have a --

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1 A. -- baby --
 2 86 Q. Oh, sorry. Go on.
 3 A. **Baby wipes and such.**
 4 87 Q. Do you have a regular schedule
 5 at Carole Anne's Place?
 6 A. **Yeah.**
 7 88 Q. What hours do you work?
 8 A. **Typically, I work Monday**
 9 **mornings and then, depending on how staffing is**
 10 **throughout the week, I may cover some evening**
 11 **shifts as well. They're open from 10:00 to 5:00**
 12 **in the -- 10:00 to 5:00 at nighttime and 10:00 to**
 13 **1:00 in the morning.**
 14 89 Q. So 10:00 p.m. to 5:00 a.m. or
 15 10:00 p.m. to 1:00 a.m.?
 16 A. **Yeah.**
 17 90 Q. Got it.
 18 A. **1:00 p.m.**
 19 91 Q. Oh, 10:00 a.m. to 1:00 p.m.?
 20 A. **Yeah.**
 21 92 Q. Okay. Is that a volunteer
 22 position or a paid position?
 23 A. **It's a paid position.**
 24 93 Q. Okay. I'm asking because in
 25 your June 2022 affidavit you describe also working
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1 as a volunteer peer support worker for Keeping
 2 Six. So let me just ask about that for a moment.
 3 Are you still a volunteer support worker with
 4 Keeping Six as well?
 5 A. **I'm a peer events coordinator**
 6 **with Keeping Six now.**
 7 94 Q. Okay. And that's still a
 8 volunteer position?
 9 A. **No.**
 10 95 Q. No. Okay.
 11 So that's a paid position as well?
 12 A. **Yeah.**
 13 96 Q. Okay. How long have you been
 14 in a paid role with Keeping Six?
 15 A. **I started to get paid probably**
 16 **-- probably 2020, 2021.**
 17 97 Q. Okay. And so those two jobs,
 18 so Keeping Six and Carole Anne's Place -- do you
 19 have any other jobs that you're working?
 20 A. **I'm doing some stuff with**
 21 **McMaster as a research assistant. That's only**
 22 **four hours a month.**
 23 98 Q. Okay. And are you in any sort
 24 of program at McMaster, a degree program or
 25 anything like that?
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1 A. **Not as of yet, no.**
 2 99 Q. Okay. You said "Not as of
 3 yet." Do you have any intentions of pursuing any
 4 such program?
 5 A. **It's a possibility. I mean,**
 6 **in -- the -- there's been a lot of opportunity,**
 7 **and if something opens up that I think I can**
 8 **navigate and handle, then I might pursue it, yeah.**
 9 100 Q. Okay. And so just between
 10 your -- so you indicated McMaster was about four
 11 hours a month. So just focusing on Keeping Six
 12 and Carole Anne's Place, between those two jobs,
 13 roughly how many hours a week are you working?
 14 A. **15 to 25.**
 15 101 Q. Okay. So that's been -- if
 16 I'm remembering correctly your evidence, that
 17 would have been the case for about the past two or
 18 three years that you've had both those jobs?
 19 A. **The peer position is through**
 20 **Keeping Six. It's a partnership through Keeping**
 21 **Six and the Y.**
 22 102 Q. I see.
 23 A. **Yeah.**
 24 103 Q. Okay. So it's one job, but
 25 it's through those two organizations in
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1 partnership?
 2 A. **Mm-hmm.**
 3 104 Q. I see. Okay. Thanks for
 4 clarifying.
 5 So for the past two or three years,
 6 you've been working about 15 to 20 hours a week in
 7 that role as a peer support worker?
 8 A. **Mm-hmm.**
 9 105 Q. That's a "Yes"?
 10 A. **Yes.**
 11 106 Q. Okay. I'm taking you next to
 12 paragraph 18 of your affidavit where you discuss
 13 service restrictions, and you state that you've
 14 been service-restricted or banned from shelters
 15 several times. How many times have you been
 16 service-restricted from shelter?
 17 A. **I think I can recall at least**
 18 **about five particular times.**
 19 107 Q. Okay. And from which shelters
 20 were you service-restricted?
 21 A. **Through, like, the Mission**
 22 **Services, probably the Sally -- I think Mission**
 23 **Services and the Sally.**
 24 108 Q. Okay. And by "Sally," you
 25 mean Salvation Army Booth Centre?
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1 **A. Yeah. Yes. My apologies.**

2 **109 Q.** No, that's not -- just
3 clarifying for those who might read your
4 transcript and not be familiar with the
5 terminology.

6 Okay. So do you remember what the
7 reasons given were for each of these service
8 restrictions?

9 **A. Probably -- probably drug use.**

10 **110 Q.** Okay. You said "probably."
11 Do you remember, or is that a guess?

12 **A. It's a guess.**

13 **111 Q.** Okay. Do you remember when
14 these service restrictions would have happened?

15 **A. No.**

16 **112 Q.** Okay. And do you remember
17 even what year they might have been in?

18 **A. No, I don't, to be honest.**

19 **113 Q.** Okay. Do you remember how
20 long the service restrictions would have been for?

21 **A. They can go from -- it can be**
22 **from a day to a week to a month, depending on the**
23 **severity of the -- the indiscretion.**

24 **114 Q.** Okay. But the service
25 restrictions that you actually had, do you

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1 remember how long they were for?

2 **A. I don't recall at this time,**
3 **but I believe they would be in and around a couple**
4 **of weeks.**

5 **115 Q.** I'm very sorry, I didn't hear
6 the last part of your answer.

7 **A. I believe they would have been**
8 **in and around a couple of weeks.**

9 **116 Q.** A couple of weeks. Okay.

10 Now, I have to ask: Have you ever
11 gotten into an altercation with anyone at a
12 shelter?

13 **A. A physical altercation, no.**
14 **Verbal, a little bit, but not too -- not too --**
15 **not too explosive.**

16 **117 Q.** Okay. And were you ever
17 service-restricted for a verbal altercation, to
18 your recollection?

19 **A. No.**

20 **118 Q.** So your best recollection is
21 that you would have been service-restricted for
22 multiple weeks for drug use?

23 **A. I'm saying most likely, yes.**

24 **119 Q.** The City of Hamilton keeps
25 records of attempts to get shelter, including

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1 service restrictions, shelter stays and other

2 access to homeless assistance. Would you provide
3 an authorization to the City in order to have
4 those records disclosed in this litigation?

5 **A. Yes, I would.**

6 **120 Q.** Okay. Thank you.

7 U/A MS. CROWE: We'll take that under
8 advisement.

9 MS. SHORES: What's the reason for
10 taking that under advisement, Counsel?

11 MR. CHOUDHRY: We need to discuss
12 with our client.

13 MS. CROWE: We need to discuss the
14 content with our client.

15 MS. SHORES: I'm sorry, someone
16 said something off camera.

17 MS. CROWE: We need to discuss with
18 our client. We'll take it under advisement.

19 MS. SHORES:

20 **121 Q.** At paragraph 15 of your
21 affidavit, Ms. Pierre, you say:

22 "My ability to access a shelter bed
23 is always hanging in the balance.

24 If you miss curfew, or step out for
25 a smoke, the shelter can suddenly

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1 be at capacity." (As read.)

2 Has that happened to you where you stepped out for
3 a smoke and the shelter was at capacity?

4 **A. I would say where that would**
5 **have happened would probably be at Willow's Place.**
6 **I would have experienced that type of treatment.**

7 **122 Q.** Okay. And when you say "step
8 out for a smoke," how long were you gone?

9 **A. Five, ten minutes.**

10 **123 Q.** When did that happen?

11 **A. I'm not sure of the exact**
12 **dates, but it would have been in and around the**
13 **times that I was staying at Willow's Place.**

14 **124 Q.** And had you previously missed
15 a bed check or not been present for curfew during
16 that stay at Willow's Place?

17 **A. No. No.**

18 **125 Q.** My understanding is that, at
19 the shelters, they want to make sure that the beds
20 are being used. And so if people aren't there,
21 then they will give away the beds so someone else
22 can use that. Is that also your understanding?

23 **A. Yes.**

24 **126 Q.** Okay. But your evidence is
25 that you stepped out for five to ten minutes and

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1 they gave away your bed?

2 **A. Yes.**

3 **127 Q.** Now, when we were talking
4 about your timeline, we went up to the point where
5 you were staying at Carole Anne's Place after
6 Cathedral, which, if I'm doing the math, takes us
7 to somewhere around or after March of 2022. Would
8 that be roughly accurate?

9 **A. I believe so, yes.**

10 **128 Q.** Okay. So after Carole Anne's
11 Place in March of 2022, where have you been
12 staying?

13 **A. I probably continued to stay**
14 **at, like, Carole Anne's. It would have been -- it**
15 **would have been a variety between -- a mix between**
16 **friends' houses, Carole Anne's Place and tents or**
17 **wherever I could find.**

18 **129 Q.** Okay. I'm just going to
19 briefly skip ahead to your April 27, 2023,
20 affidavit because you pick up with the timeline in
21 June 2022 and state:

22 "Since June 2022, I have stayed in
23 various locations, including Carole
24 Anne's Place, Airbnbs, with friends
25 and in a tent outside of Carole

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1 Anne's Place." (As read.)

2 So would I be correct in understanding that that
3 was roughly the state of things through about
4 March --

5 **A. Yeah.**

6 **130 Q.** Okay, until at least the time
7 that this affidavit was sworn in April of 2023?

8 **A. Yeah.**

9 **131 Q.** Okay. All right. I am going
10 to go back to your June 2022 affidavit at
11 paragraph 19 where you describe times in which
12 you've stayed in a tent.

13 So at paragraph 19, just starting
14 at the top of the chart, you list a location,
15 Urban Core. Sometime in 2019 was the time frame.
16 Duration of stay, "Unknown," and outcome, "Police
17 evicted me"; is that correct?

18 **A. That is correct.**

19 **132 Q.** Okay. When you say "Urban
20 Core" for the location, that would have been the
21 old --

22 **A. 74 Rebecca.**

23 **133 Q.** Yeah. Okay. The old Urban
24 Core location.

25 And when you say "Police evicted

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1 me," you mean the police came by and told you to
2 leave?

3 **A. Yeah, or threw out my tent.**

4 **134 Q.** I'm sorry?

5 **A. They would often come and**
6 **throw everyone's stuff out. They would bulldoze**
7 **it.**

8 **135 Q.** Okay. So let's -- when you
9 say they would often come and bulldoze it, did
10 that ever happen to you?

11 **A. Yes.**

12 **136 Q.** Okay. When did that happen to
13 you?

14 **A. The date? Not so long after I**
15 **was moved from 881. So I'm thinking maybe April,**
16 **May-ish 2019, probably around the time they threw**
17 **all my -- yeah. Not just me, many other people**
18 **too.**

19 **137 Q.** And did the police give you
20 any notice before coming and, as you say,
21 bulldozing your tent?

22 **A. Yes and no. It was always**
23 **kind of like a bit of a guessing game. They'd say**
24 **that they'd come one day -- they'd say that they**
25 **were coming one day and then they'd either not**

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1 **come that day or come the day before. So it was**
2 **very tricky.**

3 **138 Q.** Okay. So with that particular
4 occasion, wherein sometime around -- I think you
5 said after you left 881, when the police bulldozed
6 your tent, how much time passed between when they
7 first approached you and when the actual
8 bulldozing happened?

9 **A. I'm honestly not sure because**
10 **they would come to the Core for a variety of**
11 **different reasons. They are down the street.**
12 **There weren't many people staying there. So it**
13 **was just kind of a -- I couldn't tell you.**

14 **139 Q.** And so --

15 **A. It's not like I was -- I**
16 **wasn't given, like, a time frame to be like,**
17 **"Okay, you have this long before we're coming to**
18 **throw everybody's tents out, so you guys better**
19 **leave" kind of thing.**

20 **140 Q.** Well, then what was it?

21 **A. Shock and surprise.**

22 **141 Q.** What specifically did the
23 police say about coming back to, as you said,
24 bulldoze your tent?

25 **A. They didn't. They just did.**

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1 **I went and took my dog for a walk and then came**
2 **back and our tent was thrown out.**

3 **142 Q.** Okay. So your evidence is
4 that you took your dog for a walk and that,
5 without any sort of warning, the police came,
6 bulldozed your tent and gave you no warning of
7 doing so?

8 **A. (No verbal response.)**

9 MR. CHOUDHRY: Excuse me, Counsel
10 -- Jammy, I'm sorry, sir, but -- ma'am -- ma'am,
11 excuse me. When you nod, it doesn't turn up on
12 the record. So you have to say "Yes" or "No."

13 THE WITNESS: Yeah, no, I don't
14 believe I was given a fair enough -- fair -- I
15 don't believe I was given a fair warning. I don't
16 believe I was given a time frame, and I didn't
17 think that that was going to happen.

18 MS. SHORES:

19 **143 Q.** Okay. Well, fair warning and
20 no warning are two different things. So did they
21 give you warning but you felt it wasn't adequate?

22 **A. I don't think so.**

23 **144 Q.** I'm still -- I've listened to
24 your answers, Ms. Pierre, but I'm still not sure
25 that I understand what happened. So let's recap.

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1 So you were camped at the Urban
2 Core. Police would come by. You're saying that
3 the police didn't give you any warning that they
4 were going to bulldoze your tent, and you left and
5 then suddenly they bulldozed your tent?

6 **A. Yes.**

7 **145 Q.** No warning whatsoever?

8 **A. I mean, they didn't say they**
9 **were going to bulldoze my tent, no. They didn't**
10 **make me feel like I needed to leave. I felt safe**
11 **there. Many people felt safe there. It was a**
12 **gathering point for many people in the community,**
13 **and many people's things were thrown out.**

14 **And many community members would**
15 **come there to bring us food, clothing and**
16 **toiletries, things that we needed. So it was a**
17 **very bizarre time frame, and understanding how to**
18 **manoeuvre and navigate that type of -- that type**
19 **of stay was difficult.**

20 **146 Q.** When was the last time that
21 you were at your tent before it was, as you say,
22 bulldozed?

23 **A. Like, an hour or so before.**

24 **147 Q.** You said you were out walking
25 your dog at the time?

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1 **A. Yeah.**

2 **148 Q.** Did you actually witness a
3 bulldozer being taken to your tent?

4 **A. I didn't, no.**

5 **149 Q.** How do you know that they
6 bulldozed your tent?

7 **A. That's what I was told and**
8 **what I've seen them do multiple times, and this**
9 **was throw things out.**

10 **150 Q.** Ms. Pierre, this is a very
11 serious allegation, that the police came without
12 warning and bulldozed your tent while you were
13 still using it. So I want to make sure that we
14 get these details. When you came back to --

15 MS. CROWE: Ms. Shores, I think
16 that the question has been asked a few times and
17 answered.

18 MS. SHORES: Well, it's been asked.
19 I don't believe that I've gotten a clear answer.
20 So I'm trying to make sure with this very serious
21 allegation --

22 MS. CROWE: You're approaching it
23 in a way that's suggesting that she's not being
24 transparent with her answer, and she's told you
25 what she remembers about the experience.

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1 MS. SHORES:

2 **151 Q.** There's no indication,
3 Ms. Pierre, in either of your affidavits that your
4 tent has ever been bulldozed, is there?

5 **A. I probably didn't bring that**
6 **up at the time because it's a very traumatic**
7 **experience in which I lost my dog and probably**
8 **didn't want to speak about it because I was very**
9 **angry about it and didn't know how to go about it**
10 **in a way that would be cohesive in how the**
11 **community would want me to behave.**

12 **152 Q.** You said you lost your dog,
13 but you also told me just now that you were out
14 walking your dog when this happened. How did you
15 lose your dog?

16 **A. After I came back to our home**
17 **being destroyed and gone, I was very upset, and in**
18 **a spur of anger, politely placed some things**
19 **around the police station. So they came to talk**
20 **to me and have a discussion, and during that time,**
21 **doggy got away.**

22 **153 Q.** You said "politely placed some
23 things around the police station"?

24 **A. Mm-hmm.**

25 **154 Q.** What do you mean by that?

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1 **A. I politely set down...**
 2 MS. CROWE: Are you hearing the
 3 responses?
 4 MS. SHORES: No. I didn't even
 5 hear that there was a response.
 6 **155 Q.** Ms. Pierre, if you could keep
 7 your voice up, please.
 8 **A. Yeah. At that point in time**
 9 **-- I'm not saying that this was the correct type**
 10 **of behaviour, but I was responding in --**
 11 **responding to a moment of anger the best way I**
 12 **could.**
 13 **So yes, I politely set down a bunch**
 14 **of -- a bunch of needles. They were still in**
 15 **their casing. They weren't uncapped. They**
 16 **weren't a danger to anybody. They were still in**
 17 **their wrapping, and just set it down in and around**
 18 **the station.**
 19 **156 Q.** And in the course of doing
 20 that, you said your dog ran away?
 21 **A. During the time the police**
 22 **were speaking to me, yes.**
 23 **157 Q.** During the time -- I'm sorry,
 24 I didn't catch that.
 25 **A. During the time the police**
NIMIGAN MIHAIOVICH REPORTING INC.

1 **were speaking to me, yes.**
 2 **158 Q.** During the time that you were
 3 speaking with the police?
 4 **A. Yes.**
 5 **159 Q.** Did you ever get your dog
 6 back?
 7 **A. He's staying in Dundas right**
 8 **now. Unfortunately, my living situation hasn't**
 9 **presented the opportunity for me to have him back.**
 10 **160 Q.** But you know your dog's
 11 whereabouts?
 12 **A. Yes.**
 13 **161 Q.** Okay. How did you come to be
 14 aware of your dog's whereabouts after your dog ran
 15 away?
 16 **A. A text message.**
 17 **162 Q.** A text message?
 18 **A. From the sitter.**
 19 **163 Q.** From the sitter?
 20 **A. Yes.**
 21 **164 Q.** So how did your dog get to the
 22 dog sitter?
 23 **A. I don't know.**
 24 **165 Q.** Okay. So your dog ran away,
 25 and somehow it ended up -- you said he? Your dog
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1 ended up with a dog sitter, and they texted you to
 2 say "We have your dog"?
 3 **A. Yes.**
 4 **166 Q.** And your dog's been there ever
 5 since?
 6 **A. Yes.**
 7 **167 Q.** Continuing at paragraph 19 of
 8 your affidavit, you next describe a location where
 9 you stayed in a tent at Beasley Park. For the
 10 time frame, it says "Few times -- about four --
 11 during period of homelessness." Duration of stay,
 12 "Unknown." Outcome, "Police evicted me."
 13 Do you recall at all at what point
 14 during your period of homelessness you would have
 15 been staying at Beasley Park?
 16 **A. About right after -- right**
 17 **after leaving 881.**
 18 **168 Q.** And, again, when you say
 19 "Police evicted me," they come by and tell you,
 20 "You have to leave"?
 21 **A. Yeah.**
 22 **169 Q.** Okay. And did you leave?
 23 **A. Yeah.**
 24 **170 Q.** You took your things with you
 25 when you left?
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1 **A. Yeah. Yes.**
 2 **171 Q.** Thank you.
 3 They came to you in the daytime and
 4 said, "You have to go"?
 5 **A. Yes.**
 6 **172 Q.** The next location you've
 7 listed is "Outside new Hamilton Urban Core," and
 8 again it says "A few times during period of
 9 homelessness." Duration of stay, "Unknown," and
 10 outcome, "Police evicted me."
 11 Again, do you recall when you would
 12 have been staying outside of the new Hamilton Core
 13 -- or, sorry, Hamilton Urban Core?
 14 **A. Um...**
 15 **173 Q.** Sorry, if you gave an answer,
 16 I didn't catch it.
 17 **A. I did not give an answer.**
 18 **I don't recall the time frame.**
 19 **174 Q.** And, again, when the police
 20 evicted you, they came by and said, "You have to
 21 go"?
 22 **A. Yes.**
 23 **175 Q.** Okay. And you abided by that
 24 direction? You left?
 25 **A. Yes.**
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1 **176** Q. You took your things?
 2 **A. Yes.**
 3 **177** Q. Okay. And, again, they came
 4 by during the day and said, "You have to go"?
 5 **A. Yes.**
 6 **178** Q. At paragraph 26 of your June
 7 2022 affidavit, you state, "When I wander the
 8 streets in search of somewhere to stay, I am at
 9 risk of," and then it's handwritten, "being," and
 10 then there's a word there. It looks like it says
 11 "ticked," but I'm not sure that that's what's
 12 intended. Do you know what the first word is?
 13 **A. I'm not sure if it's supposed**
 14 **to be "ticketed" or "tricked" or -- I'm not fully**
 15 **sure.**
 16 **179** Q. Okay. Do you remember what
 17 you intended to say when you were giving this
 18 affidavit?
 19 **A. Yeah, that it's dangerous,**
 20 **that you don't have, like -- your -- your things**
 21 **aren't safe. You're at the risk of being robbed,**
 22 **like, stolen from. You're at the risk of being**
 23 **assaulted. Lots of things can happen. I've seen**
 24 **many --**
 25 **180** Q. You -- oh, sorry, go on.
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1 **A. I was just trying to explore**
 2 **the dangers of -- the dangers and vulnerability of**
 3 **being on the street in that statement.**
 4 **181** Q. You'd agree that people can
 5 steal things from you when you're in an encampment
 6 too; right?
 7 **A. Oh, yeah.**
 8 **182** Q. And there's a risk of being
 9 assaulted if you're in an encampment?
 10 **A. Yeah.**
 11 **183** Q. I'm going to turn next to your
 12 April 27, 2023, affidavit. We've talked about
 13 that a little bit. At paragraph 2 you state:
 14 "I have had my belongings
 15 repeatedly stolen while staying at
 16 Carole Anne's Place, including
 17 laptops, tablets, phones, and
 18 identification." (As read.)
 19 **A. Yeah.**
 20 **184** Q. Again, have you asked for a
 21 place to secure your things at Carole Anne's
 22 Place?
 23 **A. They don't really have a**
 24 **locker system at Carole Anne's Place. The system**
 25 **is different now where the girls have their own**
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1 **rooms. But at the time, it was in a different**
 2 **space where they didn't have lockers or a private**
 3 **spot to really put your things.**
 4 **185** Q. Okay. And those weren't
 5 things that you could keep on you, especially like
 6 your phone? You didn't keep that with you?
 7 **A. If you kept it on you, it**
 8 **could just be stolen from you while you were**
 9 **sleeping.**
 10 **186** Q. I don't believe I asked
 11 before. Just returning to paragraph 3 of your
 12 June 7, 2022, affidavit, so paragraph 3 states
 13 that, at least as of that day, you were on Ontario
 14 Works receiving \$343 per month. I take it -- is
 15 that no longer correct?
 16 **A. No. That's not the same as my**
 17 **income now, no.**
 18 **187** Q. Okay. And how much do you
 19 earn through your job, through Keeping Six and
 20 Carole Anne's Place?
 21 **A. Approximately a thousand a**
 22 **month.**
 23 **188** Q. A month? Okay.
 24 Is that hourly, or is that like a
 25 stipend or something?
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1 **A. No, that's an estimate of my**
 2 **monthly income.**
 3 **189** Q. Okay. Is your rate of pay an
 4 hourly wage?
 5 **A. Yes.**
 6 **190** Q. How much do you earn per hour?
 7 **A. Twenty-something.**
 8 **191** Q. Twenty-something dollars per
 9 hour?
 10 **A. Yes.**
 11 **192** Q. Okay. Are you familiar with a
 12 doctor by the name of Dr. Gillian Wiwcharuk?
 13 **A. Yes.**
 14 **193** Q. Dr. Wiwcharuk wrote a letter
 15 on your behalf, which she has provided in this
 16 proceeding. The letter is dated June 8, 2022.
 17 I've got it up on the screen here.
 18 Do you see that, or do you see a copy in front of
 19 you?
 20 **A. Yep.**
 21 **194** Q. Okay. Dr. Wiwcharuk, at the
 22 second paragraph of this letter, states:
 23 "Ms. Pierre is a trans woman who
 24 suffers from stimulant use disorder
 25 and opiate use disorder." (As
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1 read.)
 2 Do you agree that's correct?
 3 **A. Yes.**
 4 **195 Q.** Okay. Which substances --
 5 well, let me ask: Do you still suffer from
 6 stimulant use disorder or opiate use disorder?
 7 **A. It is a work in progress, but**
 8 **it's getting better.**
 9 **196 Q.** Okay. And when did you begin
 10 suffering from stimulant use disorder and opiate
 11 use disorder?
 12 **A. Probably around the time I**
 13 **became homeless.**
 14 **197 Q.** Okay. And you said it's
 15 improving. So I take it that your usage is
 16 decreasing?
 17 **A. Yes.**
 18 **198 Q.** Okay. Are you in treatment
 19 for those disorders?
 20 **A. I was on a program where I was**
 21 **prescribed Kadian and Dilaudid, but I have since**
 22 **gotten off the program. But I was -- I was doing**
 23 **that pretty recently.**
 24 **199 Q.** Pretty recently. Okay.
 25 And which doctor or treatment
NIMIGAN MIHAILOVICH REPORTING INC.

1 provider oversaw that program?
 2 **A. The Urban Core.**
 3 **200 Q.** The Urban Core.
 4 Do you remember which doctor --
 5 **A. And Samy's Drug -- Samy's --**
 6 **and Samy's pharmacy.**
 7 **201 Q.** Okay. Do you remember -- was
 8 there a doctor that you saw?
 9 **A. Dr. Jill Sheppard.**
 10 **202 Q.** I'm sorry, I didn't catch
 11 that.
 12 **A. Dr. Jill Sheppard.**
 13 **203 Q.** Jill Sheppard. Okay.
 14 Going back to Dr. Jill Wiwcharuk's
 15 letter of June 8, 2022, she describes the
 16 occasions on which you sought help through the
 17 Shelter Health Network, and she states that you
 18 had only been seen on three occasions and all of
 19 them were related to opiate overdoses in 2020. Is
 20 that accurate?
 21 **A. Yeah.**
 22 **204 Q.** Okay. You mentioned
 23 previously at Cathedral that there was an overdose
 24 that precipitated your decision to leave because
 25 you didn't want to go to hospital. Would that
NIMIGAN MIHAILOVICH REPORTING INC.

1 have been one of those overdoses?
 2 **A. Most likely, yes.**
 3 **205 Q.** I see. Dr. Wiwcharuk also
 4 writes:
 5 "Ms. Pierre described this overdose
 6 as entirely unintentional."
 7 You'd agree with that?
 8 **A. Yeah. It's never my intention**
 9 **to overdose.**
 10 **206 Q.** Well, to point a finer point
 11 on it, Dr. Wiwcharuk says:
 12 "She has used a contaminated supply
 13 of methamphetamine and did not know
 14 that there was street fentanyl in
 15 the supply that she had received."
 16 (As read.)
 17 So according to the doctor, Dr. Wiwcharuk, not
 18 only did you not intend to overdose, you didn't
 19 intend to consume the substance that eventually
 20 caused you to overdose; correct?
 21 **A. Yeah. Yes.**
 22 **207 Q.** Okay. In the next paragraph,
 23 Dr. Wiwcharuk goes on to describe that in November
 24 of 2020, she was doing outreach work and saw you
 25 slumped over on the sidewalk and administered
NIMIGAN MIHAILOVICH REPORTING INC.

1 naloxone after she concluded that you had suffered
 2 an opiate overdose. Do you agree with that?
 3 **A. Yeah. Yes.**
 4 **208 Q.** Do you remember that incident
 5 at all?
 6 **A. Yeah.**
 7 **209 Q.** In the second-last sentence of
 8 this paragraph, Dr. Wiwcharuk writes:
 9 "Unfortunately she --"
 10 referring to you
 11 "-- was not at a point where she
 12 was ready to engage with treatment
 13 for her substance use disorders.
 14 Given this, she continues to be at
 15 an extremely high risk of overdose
 16 in the future." (As read.)
 17 Given the evidence that you just gave me, I take
 18 it that it's no longer the case that you're
 19 unready to engage in treatment for substance use
 20 disorder?
 21 **A. Yeah.**
 22 **210 Q.** I worded that question in a
 23 very confusing way. So let me clarify, and I
 24 apologize.
 25 You're now at a place where you're
NIMIGAN MIHAILOVICH REPORTING INC.

1 ready to engage with treatment for substance use
2 disorders; correct?

3 **A. In terms -- I'm definitely**
4 **open to that, yes.**

5 **211 Q.** Just to take that segue, are
6 you exploring treatment, or do you have any plans
7 to obtain treatment for substance use disorders?

8 **A. Like I said, I was -- I was on**
9 **a program recently with a -- a Kadian-Dilaudid**
10 **program. I've since stopped that for the time**
11 **being, and I'm just examining my options and**
12 **trying to take it day by day. But I know I have**
13 **the resources and I have a great network of people**
14 **that I can reach out to and that I can speak with.**
15 **I just need to access it.**

16 **212 Q.** Okay. Another doctor has
17 written a letter on your behalf, Dr. Rachel
18 Lamont. She's written a letter dated May 11,
19 2023. I'll place it up on the screen here. So at
20 the second paragraph of this letter, Dr. Lamont
21 states:

22 "I have known Ms. Pierre since fall
23 2021."

24 Is that correct?

25 **A. Yep.**

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1 **213 Q.** How many times have you -- or,
2 sorry, do you still see Dr. Lamont?

3 **A. Yeah. I just saw her the**
4 **other day.**

5 **214 Q.** How many times have you seen
6 her?

7 **A. We -- I see her -- for care,**
8 **I've seen her probably three or four times. I do**
9 **see her when she works at -- within HAMSMaRT,**
10 **which Keeping Six is kind of a part of. So there**
11 **are times where we see each other at work. But**
12 **when I was seeking her assistance and guidance as**
13 **a doctor, it would have been about three or four**
14 **times.**

15 **215 Q.** Okay. And when you saw her
16 for care or for treatment, what was she treating
17 you for?

18 **A. She was basically there to,**
19 **like, hear my -- like, hear my story and**
20 **understand what was going on with me.**

21 **216 Q.** Okay. And to continue the
22 paragraph, Dr. Lamont states that you have
23 diagnoses of post-traumatic stress disorder,
24 generalized anxiety disorder, depression, and
25 opioid and stimulant use disorders, severe.

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1 I'm just going to ask you about
2 each of those. So post-traumatic stress disorder,
3 do you agree that you have that diagnosis?

4 **A. Yes.**

5 **217 Q.** Who diagnosed you?

6 **A. I'm not sure which doctor was**
7 **the first one to diagnose me with that.**

8 **218 Q.** Okay. Do you remember when
9 you would have been diagnosed with PTSD?

10 **A. I'm not exactly sure when, but**
11 **it was probably after an assault that I**
12 **experienced. It was pretty severe. So that's**
13 **probably where that stems from.**

14 **219 Q.** And when was that assault?

15 **A. 2012, 2013, maybe.**

16 **220 Q.** With generalized anxiety
17 disorder, do you remember when you were diagnosed
18 with that?

19 **A. No.**

20 **221 Q.** Do you remember who diagnosed
21 you?

22 **A. No.**

23 **222 Q.** Okay. And suppose I should
24 ask: Do you agree that's a diagnosis that you've
25 been given?

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1 **A. Yeah.**

2 **223 Q.** How about depression? Do you
3 remember when you were -- or do you agree that's a
4 diagnosis you've been given?

5 **A. I agree, yes.**

6 **224 Q.** Okay. Do you remember when
7 you were diagnosed with depression?

8 **A. Sometime in 2018 -- 2018,**
9 **2019, around there.**

10 **225 Q.** And you don't recall who
11 diagnosed you?

12 **A. I've seen a multitude of**
13 **doctors, and I haven't seen my family doctor in**
14 **quite some time. So I've had visits to the EMS,**
15 **and I've talked to a couple different ones. So --**
16 **but seeing one continuously, not necessarily,**
17 **aside from this and that, but...**

18 **226 Q.** Okay. And you mentioned that
19 you have a family doctor. Who is your family
20 doctor?

21 **A. Dr. Holmes.**

22 **227 Q.** Dr. Holmes.

23 Do you remember Dr. Holmes' first
24 name?

25 **A. No. I just know he's based**

NIMIGAN MIHAIOVICH REPORTING INC.

1 out of Burlington.

2 228 Q. Sorry, Dr. Holmes is in
3 Burlington?

4 A. Yes.

5 229 Q. When was the last time you saw
6 Dr. Holmes, roughly?

7 A. Quite some time ago. I don't
8 recall the date.

9 230 Q. Would it have been within the
10 past year?

11 A. No.

12 231 Q. Okay. Have you seen
13 Dr. Holmes since you began to experience
14 homelessness?

15 A. No.

16 232 Q. Okay. In Dr. Lamont's letter,
17 at the end of the third paragraph, she states:

18 "At one point, several months into
19 living outside, her tent --"

20 referring to your tent

21 "-- was taken down and thrown out
22 as part of a City-led encampment
23 eviction while she was away at a
24 store. She had left her dog in the
25 tent and her dog was gone which she

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1 returned." (As read.)

2 I take it that's the incident that you described
3 to me before?

4 A. Yes. Obviously not exactly in
5 the -- that -- not exactly in that, like, manner,
6 but yes.

7 233 Q. Okay. So Dr. Lamont may have
8 gotten a couple of details wrong, namely that you
9 didn't leave your dog in the tent when this
10 occurred?

11 A. Yeah. Yes.

12 234 Q. Okay. Just going back to that
13 incident with the police at the time that your
14 tent was bulldozed, or at least you believed it
15 was bulldozed, did you make any complaints to the
16 police about that conduct or about that incident
17 other than the sort of --

18 A. Retaliation?

19 235 Q. -- discussion with --

20 A. Um...

21 236 Q. Did you ever submit a formal
22 complaint?

23 A. I had thought about pursuing
24 such but decided against it.

25 237 Q. And when the police were

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1 speaking with you after you went to the police

2 station with the needles, what did they actually

3 say to you in that conversation?

4 A. I don't really recall. I

5 think they were just asking me questions, and I
6 was just really frustrated and upset from the tent
7 incident.

8 So I wasn't as cognizant as I would
9 have liked to be, just because I'd experienced so
10 much being taken away from me at that time that it
11 was very hard for me to hold on to, like, reality
12 and have people in view or assert authority over
13 me when so much has been taken away and I felt so
14 violated.

15 238 Q. Returning to Dr. Lamont's
16 letter of May 11, 2023, in the last -- hang on one
17 moment, sorry. I've lost my place.

18 Okay. The first full sentence on
19 page 2, Dr. Lamont says that you've had brief
20 times in the shelter and in the YMCA -- or YWCA,
21 "but has also been asked to leave those spaces due
22 to her complex health needs and those services
23 being unable to offer the required level of
24 support."

25 You didn't describe to me before

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1 when we talked about service restrictions or it

2 being suggested that you go elsewhere from the

3 Booth Centre -- have you ever been told that you

4 should leave a shelter due to your complex health
5 needs?

6 A. I don't know if I've been told
7 that directly, no.

8 239 Q. In the preceding paragraph,
9 Dr. Lamont writes:

10 "Given ongoing severe mental health
11 symptoms, high levels of substance
12 use, and lack of appropriate
13 housing options for Ms. Pierre --"
14 (As read.)

15 Just before we go on, on May 11 of 2023, would you
16 agree that you were exhibiting high levels of
17 substance use?

18 A. Yeah.

19 240 Q. And this is about two weeks,
20 if I understand it, before you became housed on
21 June 1st of 2023; is that accurate?

22 A. Yeah.

23 241 Q. And Dr. Lamont says:

24 "-- and lack of appropriate housing
25 options for Ms. Pierre..."

NIMIGAN MIHAILOVICH REPORTING INC.

1 But, again, approximately two weeks
2 later, you did become housed, and you remain
3 housed to this day; right?

4 **A. Yeah.**

5 **242 Q.** Sorry, that was "Yes"?

6 **A. Yes. Yes, that's correct.**

7 **243 Q.** All right. Dr. Lamont says
8 that you had largely given up on trying to set up
9 a tent because of the trauma that repeated
10 evictions caused. Is that accurate as of May 11,
11 2023?

12 **A. I would say yeah.**

13 **244 Q.** But I do put it to you,
14 Ms. Pierre, that you also hadn't set up tents
15 because you were able to get a spot at Carole
16 Anne's Place or stay in Airbnbs or stay with other
17 people, as you described to me previously; is that
18 correct?

19 **A. Yes. But there have been many**
20 **times where even if momentarily people were to set**
21 **up a tent, that the police were immediately**
22 **called, times at, like, Ferguson Station where a**
23 **friend had -- even just in the sense of, like,**
24 **having that little bit of privacy, it just feels**
25 **so invasive and so -- so -- so surveilled, so**

NIMIGAN MIHAIOVICH REPORTING INC.

1 **observed, and so just -- it just feels like an**
2 **obstruction of privacy and it feels like we're not**
3 **meant to have any.**

4 **245 Q.** And you mentioned Ferguson
5 Station in particular. Is that a time that the
6 police were called on you, I think you said?

7 **A. Yeah. A friend had put up a**
8 **tent and I feel like within, like, half an hour,**
9 **police were coming to tell us to take it down.**

10 **246 Q.** Where -- sorry, when did this
11 happen?

12 **A. I -- I don't recall. I**
13 **believe it was in the springtime, maybe of 2023.**
14 **It was a rainy day. We were just down at Ferguson**
15 **Station, and there was, like, a group of us, and**
16 **one of the girls was tired. So my friend figured**
17 **she'd put up a tent and let her sleep, and then we**
18 **were going to watch a movie, but those plans were**
19 **quickly shut down.**

20 **247 Q.** And Ferguson Station, can you
21 just describe that location?

22 **A. Yeah. Ferguson Station, right**
23 **-- not too far from the police station, in between**
24 **King and Main, with -- they do -- every Wednesday**
25 **they have, like, a barbecue there. There's, like,**

NIMIGAN MIHAIOVICH REPORTING INC.

1 **what seems to be, like, a big shelter light area,**
2 **but, like, nobody can enter or -- nobody can enter**
3 **it, right by the Salvation Army Thrift Store. I**
4 **think it's a community meeting spot, and yeah.**

5 **248 Q.** So it's the sort of like --
6 there's, like, a pavilion there?

7 **A. Yeah.**

8 **249 Q.** And where was the tent that
9 your friend had set up?

10 **A. Probably on the west --**
11 **northwest most side towards King Street, going**
12 **towards the west end of that area.**

13 **250 Q.** Okay. How close to the street
14 was your friend's tent? Do you recall?

15 **A. Not -- not too close. Four or**
16 **five feet, maybe, I guess. Like, it was almost in**
17 **line with the -- the shelter structure that they**
18 **have there.**

19 **251 Q.** Okay. And the sort of shelter
20 structure is -- it takes up most of the footprint
21 of that little park there; right?

22 **A. Yes.**

23 **252 Q.** So there's, like, the shelter
24 structure and then it's paved all around and then
25 you've got the actual sidewalk for the city?

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1 **A. Yeah.**

2 **253 Q.** And so the shelter -- I'm
3 sorry, the tent that your friend had set up, it
4 would have been on the paved portion?

5 **A. Yeah, on the north --**
6 **northwest corner.**

7 **254 Q.** The police -- you said it was
8 the daytime that the police came by?

9 **A. Yeah.**

10 **255 Q.** And the police told you and
11 your friend to leave?

12 **A. To get out of there, yeah.**

13 **256 Q.** And that's what your friend
14 did?

15 **A. Yeah.**

16 **257 Q.** Okay. Have you understood all
17 of the questions that I've asked you today,
18 Ms. Pierre?

19 **A. Yes, I have.**

20 **258 Q.** Okay. Do you wish to change
21 any of your evidence?

22 **A. Not at this point.**

23 MS. SHORES: Okay. Thank you,
24 Ms. Pierre. Those are my questions.

25 MS. CROWE: Thank you.

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1 So we'd like to take another
2 ten-minute break to confer with cocounsel. We'll
3 ensure it's done separately, away from Ms. Pierre.

4 And, Ms. Pierre, during this time,
5 you can't speak to anyone about your testimony;
6 okay? Is that all right?

7 THE WITNESS: Understood.

8 MS. CROWE: Ms. Shores, is that all
9 right?

10 MS. SHORES: Yes. It's a bit
11 unusual, Counsel, but that's all right.

12 MS. CROWE: We will be leaving the
13 room.

14 MS. SHORES: Okay.

15 MS. CROWE: Okay. Ten minutes.
16 Thank you.

17 MS. SHORES: Off record.

18 --- Recess taken at 4:05 p.m.

19 --- Upon resuming at 4:16 p.m.

20 REEXAMINATION BY MS. CROWE:

21 **259** Q. Is it okay if I call you
22 Jammy?

23 **A. Yeah.**

24 **260** Q. Okay, Jammy, just a few
25 questions. I just want to clarify some timelines.

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1 So you said that you -- so when you
2 score your affidavit back in June 2022, you were
3 working as a volunteer peer support worker with
4 Keeping Six. Can you tell us: When did you
5 transition to employment?

6 **A. We -- probably -- I'm not sure**
7 **of the exact date. Like, it was -- I started off**
8 **volunteering, and it was, like, peer led, and then**
9 **eventually, obviously, like, the group grew and we**
10 **ended up getting more government, like, funding**
11 **and such, and so it was probably around that time**
12 **when we started to get, like, cohesive funding to**
13 **actually pay peers who were working at the time.**

14 **261** Q. Okay. Do you remember when
15 that funding came in?

16 --- (Reporter interjection.)

17 --- (Off-the-record discussion.)

18 THE WITNESS: I'm not fully sure
19 when we started to get the funding, but -- yeah,
20 no, I don't recall. I'm sorry.

21 MS. CROWE:

22 **262** Q. That's okay.

23 Do you know what year?

24 **A. '22 or '23, I'm pretty sure.**

25 **263** Q. Okay. And then you've

NIMIGAN MIHAILOVICH REPORTING INC.

1 mentioned that the position with Keeping Six is
2 also a partnership with Carole Anne's Place?

3 **A. Yeah, the Safer Use Space.**

4 **264** Q. The Safer Use Space.

5 And so when did your employment at
6 Carole Anne's Place start?

7 **A. I would work the Safer Use**
8 **Space probably -- probably 2022.**

9 **265** Q. Okay. Do you have any idea
10 what time of year?

11 **A. March or May, I'm pretty sure.**

12 **266** Q. Okay. And how much is your
13 rent?

14 **A. 522.**

15 **267** Q. And so we talked about the
16 number of times that you've been
17 service-restricted from shelters, but then in your
18 affidavit you also talk about times where you were
19 kicked out of shelter. How many times do you
20 think you were kicked out of shelter?

21 **A. Three or four.**

22 **268** Q. Sorry, can we just go back to
23 your rent for a second. Who is your landlord?

24 **A. Good Shepherd.**

25 **269** Q. So is this a private-market

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1 unit, or it's subsidized?

2 **A. I believe -- I'm not sure if**
3 **it's subsidized, but I would say that it's geared**
4 **towards a graduated shelter community.**

5 **270** Q. Sorry, what do you mean by
6 that?

7 **A. Most of the residents have**
8 **previously been unhoused in the shelter system.**

9 **271** Q. Okay. Thank you.

10 And then one last question. So
11 Ms. Shores asked you about a statement that was in
12 Dr. Lamont's report, and I'll just refer you to
13 it. The report states that you have had brief
14 times of shelter at the YWCA and have also been
15 asked to leave those spaces due to your complex
16 health needs and those services being unable to
17 offer the required levels of support.

18 Ms. Shores asked you if you were
19 ever given this as a reason for being asked to
20 leave, and you answered, "No, not told directly."
21 What did you mean?

22 **A. I mean nobody has ever said**
23 **that to me.**

24 **272** Q. What was your understanding?

25 **A. My understanding was -- my**

NIMIGAN MIHAILOVICH REPORTING INC.

1 understanding was that the time period was up --
 2 the 11 months was up -- that there were people who
 3 had outstayed the 11 months at the transitional
 4 living program.

5 273 Q. Okay. So, yes, you're talking
 6 about the transitional living program at the YWCA,
 7 but what about times when you've been asked to
 8 leave shelters?

9 A. The -- I probably blocked -- I
 10 don't recall those times as much, probably because
 11 they weren't the best memories, and I probably try
 12 to glaze over them a little bit. So my
 13 recollection of them isn't too keen. So I do
 14 apologize.

15 And I can be -- not -- I don't want
 16 to say abrasive, but I can be very dismissive,
 17 like, in the sense of not wanting to be
 18 confrontational or continue an unnecessary
 19 argument. I can be very quick to try to keep my
 20 exposure and exit the situation so not to prolong
 21 any, like, argumentation or anything like that.
 22 So I don't -- I don't have too much memory of it.

23 274 Q. Okay. Thank you.

24 A. They were isolated incidents.

25 275 Q. Sorry?

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1 A. They were -- it was an
 2 isolated incident.

3 MS. CROWE: Okay. Thank you.

4 Those are my questions.

5 --- Whereupon the proceedings adjourned at
 6 4:23 p.m.

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NIMIGAN MIHAILOVICH REPORTING INC.

* * * * *

This is to hereby certify that the foregoing is a
 true and accurate transcript of JAHMAL (JAMMY)
 PIERRE to the best of my skill and ability.



Kristy Fulton
 Court Reporter

NIMIGAN MIHAILOVICH REPORTING INC.

TAB 70

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN

Applicants

-and-

CITY OF HAMILTON

Respondent

AFFIDAVIT OF GORD SMYTH 
(affirmed September 29, 2021)

 I, Gord Smyth, of the City of Hamilton, in the Province of Ontario, AFFIRM AND SAY:

1. I have personal knowledge with respect to the facts set out below, except where stated otherwise. Where the information is not based on my personal knowledge, it is based upon information provided by others which I believe to be credible and true.
2. My date of birth is December 23, 1966.
3. I am a person living in an encampment. I became homeless in June of 2021. Prior to this I had not been homeless for 30 years.
4. I was evicted from my rental unit because my landlord filed a notice of termination based on extensive renovations. In other words I was "reno-victed." This is a theme in Hamilton with the skyrocketing rents. Landlords are incentivized to renovate units evicting their longstanding tenants in favour of re-renting the unit, entering into a new lease with a new tenant where they can raise the rent to the current market going rates, that of which I cannot afford with my modest, low income as an ODSP recipient.
5. As an Ontario Disability Support Program ("ODSP") recipient, I am entitled to \$497.00 in shelter allowance from ODSP but since becoming homeless I am only entitled to \$672.00 of the "basic needs" portion of ODSP entitlements.

6. I live with chronic depression and a personality disorder that is managed by medication. As a result of these conditions I have a very difficult time behaving appropriately in congregate settings because I have difficulty managing my anger and reactions when people trigger me. I recognize my limited capacity this way and maintain a good relationship with my doctor and follow my treatment. That being said, even with medication and behaviour management, it is very triggering for me to be in groups and so I am worried about my reactions if I were to be in a congregate setting such as a shelter. Additionally, I am fiercely independent and self-sufficient and have lived independently in my own housing for 30 years, I ~~do~~ ^{did} not need supportive housing.
7. In addition to the above mentioned disabilities I have COPD, diabetes, heart disease and osteo-degeneration in my spine. Since becoming homeless, sleeping rough in a tent on the ground has exacerbated my symptoms and I have lost weight because of stress and a lack of food.
8. As soon as the new landlord assumed my tenancy I anticipated that they would be issuing an eviction. I promptly applied to the City of Hamilton's Access to Housing to be placed on a waitlist for affordable housing or a rent supplement. I was told that the waitlist was 7-10 years long.
9. I could not find an alternative rental unit that I could afford. The average 1 bedroom rental unit in Hamilton is \$1468.00.¹

Encampment history of movement:

10. When it became clear to me that I could not find alternative housing I prepared to live in an encampment, salvaging the personal possessions that I could including my beloved dog. I spent roughly \$2000.00 in supplies to prepare to live outside: additional blankets, a tent, tarps, a generator to charge my phone so that I can have access to services, bottles of water, outside bathroom supplies and supplies to keep waste and garbage organized and clean.
11. I first re-located from my rental unit in mid-June 2021 to the intersection of Strachan and Bay Street but after 7 days I was verbally told to move by a by-law officer. At that time the "protocol" was in place. Prior to by-law enforcement I expected that I had 14 days there and that a housing plan would be in place for me including an assessment through the VISPD tool to assess my "acuity" and housing needs. I was told that the 14 day timelines started ticking with the first tent in the location, not to an individual.
12. I then relocated per the by-law officer's verbal notice to "camp" at Pier 4 in Hamilton and there I was again was told by by-law to vacate. This was done without an assessment and without offering a housing plan.

¹ <https://rentals.ca/national-rent-report>, accessed September 29, 2021

13. Following this eviction I moved to Central Park along Bay Street, in a grassy open space away from a park and the street. After only being there for 3 hours, I was evicted again because there were already tents and their 14 days were up.
14. I then moved to Barton and Caroline Street. Hamilton Police Services did not confront me for being there but after three weeks of staying there, the City of Hamilton By-law advised me that I had to move.
15. I moved back to Central Park along Bay Street, as there were no tents previously there. After being in this new location for roughly 8 hours, I was given 14 days' notice to move by City of Hamilton By-law. The City of Hamilton "Encampment Task Force" attended and gave me 14 days to move even though a VISPDt assessment had not taken place. The following day, Gord, a paramedic, attended and completed the VISPDt acuity assessment tool and told me that I scored a 13. Based on the Protocol I understood that I could now remain encamped indefinitely. My goal though was to secure a new rental because I do not want to be living in a tent.
16. That following Monday I was advised by the City Encampment Task Force that they did not accept the VISPDt administered by Gord and they completed a new one with me which was shorter and had different questions. I was advised that their assessment yielded a score of 11 and accordingly I had to accept shelter or move.
17. I told the Task Force that I would not be moving again and that I will if they return with keys to an apartment.
18. Until I secure a rental unit I prefer to stay at my encampment at Central for several reasons:
 - a) I am in a safe area;
 - b) I am geographically close to medical care such as my family doctor, my cardiologist, my stomach doctor, the doctor that prescribes my anti-psychotic medication and the nurse practitioner I meet with at Urban Core; and,
 - c) I am close to other bathrooms and services.
19. As well, when the Task Force attended, I was advised that Access to Housing did not process my subsidized housing application. I was upset about this and completed a new one and submitted it.
20. I have advocated with City Counsellors to show them how difficult surviving out here is and that I am only here because of gentrification and a lack of affordable housing. I am trying to keep my head above water and ensure that I am safe and do not establish a criminal record. I am living peacefully and respectfully. I am scared that a shelter environment will ruin my mental health and stability because I cannot take all of my possession to shelter, I will be emotionally distraught if I lose my dog, and the congregate setting with other people with mental health issues will trigger my personality disorder

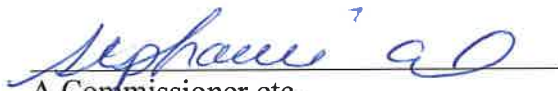
and I do not want that to happen as I know it could trigger police involvement or eviction from the shelter.

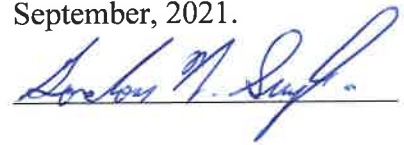
21. Moving from one encampment to another was draining and demoralizing as I always had to start over. This was emotionally and physically draining. Staying at Central for several weeks has been the stability I need to meet my most basic needs and attempt to connect to alternative housing.
22. I was offered a lease which was arranged by a social navigator and this likely would not have happened if I was constantly moving because they would ^{not} have been able to find me to reconnect over signing and coordinating. Unfortunately after an article featuring my in the paper was released, the landlord no longer agreed to rent to me. I thought I had housing for October 1, 2021. It was a punch to the gut to have that landlord cancel my lease. I am at a loss as this type of discrimination against recipients of ODSP is frequent and adds to the difficulty of securing a lease.
23. Having to move again with no alternative appropriate shelter options will continually displace me to other parks and eventually into hiding in the margins. I emotionally and physically cannot manage this. Staying where I am without being moved allows me some piece of mind, continuity and an ability to engage routinely with services without disconnecting from them.
24. The City of Hamilton has not offered me shelter or housing prior to evicting me from encampments.

AFFIRMED BEFOR ME in the
City of Hamilton, this 29 day of
September, 2021

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)
)
)

AFIRMED at the City of
Hamilton, in the Province of
Ontario, this 29 day of
September, 2021.


A Commissioner etc.
LSUC 05404 F



TAB 71

Court File No: CV-21-00077187-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

ASHLEY POFF, DARRIN MARCHAND, GORD SMYTH, MARIO
MUSCATO and SHAWN ARNOLD

Applicants

and

CITY OF HAMILTON

Respondent

Teleconference (Zoom) Cross-examination on affidavit
of

GORDON SMYTH
affirmed on September 29th, 2021,
taken by Nimigan Mihailovich Reporting Inc.,
One James St. S., Suite 701, Hamilton, Ontario,
Canada L8P 4R5,
on OCTOBER 13, 2021

APPEARANCES:

for Plaintiff: MS. STEPHANIE COX
Hamilton Community Legal Clinic

For Defendant: MR. MICHAEL BORDIN
GOWLING

1 INDEX

2 Examination of GORD SMYTH, affirmed 3

3 Examination by MR. MICHAEL BORDIN 3

4 EXHIBITS

5 No exhibits entered.
6

7 GUIDE TO UNDERTAKINGS

8
9 This should be regarded as merely a guide
10 and does not necessarily constitute a full
11 and complete list.
1213
14 UNDERTAKINGS ARE FOUND ON THE FOLLOWING PAGES:15 n/a
16
17

18 Under advisements are found on the following pages:

19 n/a
20
21

22 Refusals are found on the following pages:

23 21.
24
25

GORD SMYTH 3

1 -- Upon commencing at 2:27 p.m.

2 GORD SMYTH, affirmed.

3 EXAMINATION BY MR. BRODIN:

4 BY MR. BORDIN:

5 1 Q. Good afternoon, Mr. Smyth.

6 A. Good afternoon.

7 2 Q. Thank you. I'm the lawyer for the
8 City of Hamilton and I have some questions for you
9 today. I'm just going to ask you though, because
10 it's hard to hear, to keep your voice up when you
11 answer questions.

12 A. Okay. Sure.

13 3 Q. And I understand you swore an
14 affidavit on September 29th, 2021, in your
15 application against the City of Hamilton for an
16 injunction preventing the removal of encampments;
17 correct?

18 A. That is correct.

19 4 Q. And you have a copy of that
20 affidavit in front of you?

21 A. I do, sir.

22 5 Q. Now, I understand that
23 unfortunately in June of 2021 you were evicted or
24 'renovicted', you've indicated by your landlord;
25 correct?

1 A. Yes. It was a 'demeviction'; we
2 were served our notices on March the 2nd.

3 6 Q. Right. But is it as of June 2021
4 that you left and from that point on you became
5 unhoused; correct?

6 A. That's correct.

7 7 Q. Okay. And I just, your affidavit
8 sets it out but I just want to make sure I follow the
9 chronology of where you went after that, okay, sir?

10 A. Sure.

11 8 Q. So I understand from paragraph 11
12 that after you left your rental unit you set up at
13 Strachan and Bay Street; correct?

14 A. Correct.

15 9 Q. And you were there for about seven
16 days before you were asked to move on; correct?

17 A. It was approximately seven days,
18 yeah. We were informed by bylaw that it was a first
19 tent appearance, whoever was on the site first,
20 regardless of who showed up afterwards, the first
21 tent had 14 days.

22 10 Q. How many tents were at that
23 location?

24 A. We had five at that time. It was
25 very strict that there were to be no more than five

1 tents.

2 We were informed by bylaw, like, if we
3 put two or more tents under one tarp, it would be
4 considered one tent, but we barely had more than
5 one.

6 11 Q. Right. And then after you
7 relocated from that location, do I understand
8 correctly from paragraph 12 that you then moved to
9 the Pier 4 location in Hamilton?

10 A. That is correct.

11 12 Q. Where is the Pier 4 location?

12 A. Well, it's actually more closer to
13 Bayfront, I just, I recognize it as Pier 4; it's
14 along the rail trail.

15 13 Q. How long were you there?

16 A. So Pier 4 -- probably about
17 another week or so. There were other people already
18 there as well.

19 14 Q. How many tents were there during
20 the time you were there?

21 A. (INAUDIBLE)

22 COURT REPORTER: I didn't hear. I
23 didn't hear that. I'm sorry, I didn't hear that.
24 How many more tents?

25 A. There were -- sorry, there were

GORD SMYTH 6

1 about two or three tents there, but we weren't as a
2 community, we were individuals at that time, so --
3 BY MR. BORDIN:

4 15 Q. Okay. And then after that, I
5 understand from paragraph 13 that you moved to
6 Central Park along Bay Street but there, but just for
7 a couple of hours; correct?

8 A. It was for a few hours. After we
9 had left there, I mean obviously it's a park, you're
10 not allowed to be in there after 11:00 o'clock, so
11 we moved to the -- (INAUDIBLE)

12 COURT REPORTER: You're breaking up.
13 So "We moved to the" what?

14 A. Okay. Okay, perfect. When we got
15 back to Central Park, we were setting up behind
16 mechanical station number 13 for the Hamilton Fire
17 Service; we finally got set up and went to bed about
18 4:00 o'clock in the morning. A gentleman by the
19 name of Brian that represented the City of Hamilton
20 came down and said -- this was at 7:00 o'clock in
21 the morning; he gave us until noon to move, so we
22 had to start packing immediately again and move.

23 BY MR. BORDIN:

24 16 Q. Okay. Sorry. So that's the, just
25 so I understand because it was a little choppy, so

GORD SMYTH 7

1 not your fault, sir, but I was asking about when you
2 moved for a brief period to Central Park along Bay,
3 when you first moved there. And do I understand
4 correctly that this is what you were describing when
5 you say you were at the number 13 location --

6 A. Yes.

7 17 Q. -- of the fire department at --

8 A. That's correct.

9 18 Q. Okay.

10 A. It's in Central Park but it's
11 located behind the tennis courts.

12 19 Q. Okay. And that's the same, you
13 were describing this gentleman, you say his name is
14 Brian, who came from the city at 7:00 in the morning
15 and gave you notice that you had till noon to leave;
16 correct?

17 A. That's correct. And he
18 identified -- he instructed us that it was based on
19 the first tent arrival again.

20 20 Q. Okay?

21 A. And one of the tents that was at
22 that other side of the park had been there 14 days.
23 This was their cleaning day, the day that we
24 arrived.

25 21 Q. Okay. So then at, the next thing

1 that happened is you picked up that day and you
2 moved, and according to paragraph 14, you moved to
3 Barton and Caroline Street where you were there for
4 about three weeks; correct?

5 A. That's correct. 2 Caroline Street
6 North.

7 22 Q. Now, how many tents were in that
8 location during the three weeks?

9 A. One, two, three, four -- five.

10 23 Q. How many individuals in total?

11 A. There was a family with a child,
12 so that would be three; four, five, seven, eight;
13 there would have been eight people there.

14 24 Q. And do you know roughly the dates
15 we're talking about now, when you were at Barton and
16 Caroline Street North?

17 A. It would be prior to August, just
18 prior to August when we were caught by bylaw and
19 told we were on private property, we had to move
20 immediately.

21 25 Q. Okay. And was that during the day?

22 A. Yes, it was; it was in the
23 afternoon.

24 26 Q. All right. And then from there, if
25 I understand correctly from paragraph 15, you moved

1 back to Central Park area along Bay Street; correct?

2 A. Yes, that's correct.

3 27 Q. You say you were there for about
4 eight hours, and then you were given 14 days notice
5 to move from that location; correct?

6 A. That's correct. It was within
7 eight hours. It was, we got set up about 4:00
8 o'clock, I believe; bylaw showed up around noon and
9 gave us our 14-day notice.

10 28 Q. Okay. But just so I understand,
11 you weren't being asked to move that day, you were
12 told you had 14 days within which to move; correct?

13 A. Yeah. Exactly.

14 29 Q. And then at paragraph 16, they,
15 someone attended from the City Encampment Task Force,
16 and there was an issue with the --

17 COURT REPORTER: And what? From the
18 City Encampment --

19 A. Yes, I believe they're navigators.

20 30 Q. Okay.

21 A. I'm sorry.

22 MR. BORDIN: Sorry, Mr. Reporter, I
23 had said City Encampment Task Force.

24 COURT REPORTER: Thank you.

25

1 BY MR. BORDIN:

2 31 Q. And, sir. You've just clarified
3 that you think they were from the social navigators;
4 correct?

5 A. Yes, if it's with regards to the
6 BI's for that, that was Gordon Ramsey, he's a
7 paramedic working on the Social Navigating Network.
8 I guess they are the Encampment Task Force.

9 32 Q. And --

10 A. If you're referring to -- if
11 you're referring to the Hamilton Encampment Support
12 Network, that's another entity altogether.

13 33 Q. Okay. I'm referring to
14 paragraph 16 of your affidavit, but what I really
15 want to ask you is, you were told at some point
16 during those, the 14 days notice you'd received, you
17 were told that you had to accept shelter or move;
18 correct?

19 A. Well, initially they offered me
20 housing in a shelter, and then they recommended
21 putting my dog into, like a care centre while I was
22 trying to transition into housing, and that was also
23 unacceptable.

24 34 Q. Okay. So let me just confirm a
25 couple of things then before we go forward. So --

GORD SMYTH 11

1 A. Sure.

2 35 Q. -- you were offered some kind of
3 housing; correct?

4 MS. CROWE: Sorry, Michael, that
5 question was broken up.

6 MR. BORDIN: Sorry, counsel, I didn't
7 hear what you said.

8 MS. CROWE: What I said is that I
9 didn't hear what you said because the question was
10 just broken up.

11 MR. BORDIN: Okay.

12 36 Q. So I wanted to ask for some
13 clarification of what Mr. Smyth has just said.

14 So I asked, based on paragraph 16, if
15 he was told to accept shelter or move, and I believe
16 Mr. Smyth said that you were offered housing first;
17 correct?

18 A. No, that's not correct.

19 37 Q. Okay. Well, then, maybe I misheard
20 you. I thought you said something about housing, and
21 they were going to shelter your dog somewhere else;
22 is that not what I heard?

23 A. No. It was for me to go to a
24 shelter and to put the dog -- at first it was to go
25 to a shelter, and it was because of my dog that that

1 wasn't possible; and then they offered for me to go
2 to a shelter and put my dog into some kind of
3 supportive care until such time as housing was
4 found; that was before I was offered any housing.

5 38 Q. Okay. And you declined that;
6 correct?

7 A. Absolutely. Yes, I did.

8 39 Q. Okay. Now --

9 A. -- (inaudible) that would prevent
10 me from going there in the first place; it just
11 wouldn't be an option.

12 40 Q. Okay. And then in paragraph 17 you
13 say that you told them if they return with keys to an
14 apartment, you would not be moving again but would if
15 they returned with keys to an apartment; is that
16 correct?

17 A. I told, after a period of time
18 that the housing workers had come several times with
19 offers that were above and beyond affordable, and I
20 continued to tell them no, it's, the way it was
21 happening, I was getting very excited for them to
22 show up and thinking "Good, we have a place, we have
23 a place, we're going to get housed, we're going to
24 get housed," and then they tell us nothing's
25 available; and when they did more work, that if any

GORD SMYTH 13

1 of the apartments that they came to, I believe there
2 were two at the point where, were unacceptable as
3 far as the rent was concerned, it certainly wasn't
4 affordable, they were refused. And I said, "Yes, if
5 you can't come across here with affordable housing
6 for me or a set of keys to my new place, then please
7 stop coming here and giving us bad information. I
8 suffer from depression as bad as it is."

9 Prior to that, Sergeant Pete Wiesner
10 from the Hamilton Police Services had found me an
11 apartment at 123 Bold Street, and we had agreed to
12 go there. We had our 350 subsidy, which was
13 approved. Still with that, plus my \$497 of basic
14 shelter, would bring me to \$847. Originally the
15 rent was 950 plus Hydro, which put me into the
16 unaffordable state.

17 Mr. Weisner, and I believe Liz Prong
18 (phon.) and Kiara worked out that the Hydro would be
19 covered by the city as well due to some 30 percent
20 grant for disability or what have you. So we agreed
21 that the 950 would be suitable; I would have to pay
22 the extra above and beyond my support, but we were
23 willing to do that to get off the Street.

24 I met with the superintendent who
25 filled out all the forms, did all the applications

GORD SMYTH 14

1 between Liz and Kiara. Sergeant Pete Weisner came
2 back, I believe, two days after that and he says
3 "You're in, buddy, guaranteed." He says "You move
4 in October 1st, if not sooner."

5 A day after the elections, he came to
6 the park with Liz and Kiera and he says, "I'm sorry,
7 Gord," he says, "We didn't get the apartment." The
8 owner, or the landlord, did an internet search and
9 didn't like what I was fighting for, which was
10 homelessness, and didn't want me in the building.
11 He said either that or they found something with
12 cash.

13 He apologized for giving me the
14 guarantee, which I didn't find acceptable, given
15 that it was a guarantee, and we haven't seen him
16 since.

17 Since then, again Liz and Kiera came
18 back a couple of times, offered me -- (inaudible)

19 COURT REPORTER: I didn't hear that.
20 I didn't hear that. "Offered me" what?

21 A. They offered a couple of places;
22 one was, I forget the name of the street, but they
23 offered us an apartment; they said, "You have to pay
24 750," and I said, "Well --" or 797, something like
25 that, and I said, "Well, does the 497 plus my 350

1 cover the rent?" And they said, "You have to pay
2 seven hundred and some odd dollars."

3 So basically what they had done in
4 both cases was found market rent, but even after the
5 subsidy, it is far above and beyond affordable, and
6 with my current health, I can't accept that.

7 41 Q. Okay. So do I understand correctly
8 then, that you have, you're still at the Central Park
9 location?

10 A. Yes, sir.

11 42 Q. So effectively you were not --

12 A. They put me out October 1st.
13 Well, there's no place to go.

14 43 Q. Right. Okay. And from this
15 chronology, do I take it you have never stayed in a
16 shelter?

17 A. I have never, I have been totally
18 supportive and independent my entire life, even
19 after my disability came in and I was in affordable
20 housing at \$525 a month, even before the subsidies
21 and the special diets, it was still very difficult
22 to survive, but I managed, knowing that the rent,
23 and it wasn't the case, in the city that the average
24 was \$1,400 a month, I knew I had better start
25 preparing to be homeless.

1 44 Q. So, sir, my question to you was:
2 Do I understand from this chronology you have never
3 stayed at a shelter; is that correct?

4 A. I have never stayed in a shelter
5 at all, no.

6 45 Q. Are you vaccinated?

7 A. I am, sir, fully.

8 46 Q. At the Central Park encampment
9 where you are now, how many tents are there?

10 A. There are currently one, two,
11 three, four, five, six, seven, eight, I believe,
12 eight or nine. There's one being removed today.
13 There's actually been two removed over the last
14 week.

15 47 Q. So you described a number of
16 encampments where you've stayed; when you're staying
17 at these encampments, do, whether it's you or others,
18 do -- and I'm not talking about staff or housing
19 outreach or anything, but people come by the
20 encampments to visit, to socialize?

21 A. Oh, absolutely, all the time. We
22 have, we have a lot of the churches come by to visit
23 with us; we have a lot of neighbours that come by,
24 drop things off, sit and visit with us. The sister
25 of the gentleman, whom I unfortunately found

1 deceased in the park, comes to visit us quite often
2 now as well.

3 48 Q. Sorry, did you, you found somebody
4 who had, someone who had died in the park?

5 A. Yeah, it was a friend of ours from
6 downtown; I had known him for about two, three
7 years.

8 49 Q. What park was that?

9 A. Central Park.

10 50 Q. Central Park?

11 A. That's correct.

12 51 Q. Had he been living in the
13 encampment?

14 A. No, he was visiting with friends
15 at another camp on the opposite side of the park,
16 and Dale, whom we call the preacher, him and I would
17 go around every morning or every other day, check on
18 the different tents and see if they needed anything,
19 because we were equipped to cook, and we had lots of
20 food coming in from the movie industry, again from
21 neighbours, from churches, and just basic people
22 that have seen the news and just wanted to come down
23 and help.

24 52 Q. Do you know how this gentleman
25 died?

1 A. Not to my knowledge. It was my
2 understanding that he self-asphyxiated during the
3 night on this own vomit, but I don't have the
4 reports. We just called 911; they came, they
5 identified him, and it turned out we knew who he
6 was, and the rest is history.

7 53 Q. What is the name and address of
8 your family doctor?

9 A. It's Jos. Civelì (phon.); she's a
10 nurse practitioner. She's at the Urban Core Health
11 Centre on Rebecca Street; I'm not sure of the exact
12 address.

13 54 Q. And where is your cardiologist
14 located?

15 A. My cardiologist is Hugh Sullivan,
16 from Sullivan Cardiology.

17 55 Q. Where is she located?

18 Sorry, I think -- maybe you didn't
19 hear my question. Where is your cardiologist
20 located?

21 A. On Ferguson Street in Hamilton.

22 56 Q. And you have a stomach doctor?
23 Sorry, you have a stomach doctor? Do you have a
24 stomach doctor?

25 A. (inaudible)

1 COURT REPORTER: Excuse me, I missed
2 the start of that answer. "Do you have a stomach
3 doctor?"

4 A. Yes, at the Juravinsky Health
5 Centre at Stephenson -- or at St. Joseph's Hospital
6 on James Street South. I don't remember his name.

7 57 Q. And who prescribes you, what's the
8 name of your doctor who prescribes the antipsychotic
9 medication?

10 A. I'm sorry, you're cutting out.

11 58 Q. What is the name of the doctor who
12 prescribes you your antipsychotic medication?

13 MS. CROWE: Sorry, counsel, you've
14 broken up again.

15 MR. BORDIN: All right. I'll try one
16 more time.

17 59 Q. Can you provide the name of the
18 doctor who prescribed your antipsychotic medication?

19 A. Oh, who prescribes the medication?
20 That is also Dr. Jos. Civeli.

21 60 Q. And Dr. Civeli is located where?
22 In the Urban Core, is that what you said?

23 A. That's correct, Urban Core Health
24 Centre. He prescribes antidepressants. She's aware
25 of my anger issues and anxiety issues with being

1 around other people. And she strengthened that
2 medication saying it was to calm me down as well;
3 and it was confirmed by another doctor that, yes, it
4 should calm me down. And it has; it's worked for
5 the last five years.

6 61 Q. Now, you described that until about
7 a week ago there was eight to nine tents at the
8 Central Park location where you are now; how many
9 people --

10 A. Yes.

11 62 Q. -- were staying, how many people
12 were staying in those tents?

13 A. Two, three, five, seven, nine, 11,
14 probably about 15 people.

15 MR. BORDIN: Thank you. Those are all
16 my questions.

17 WITNESS: Thank you.

18 MR. BORDIN: Thank you, sir.

19 MS. CROWE: I just have a couple of
20 redirect.

21 MR. BORDIN: Sorry, I'd like to hear
22 the question, I guess, before I agree that it's an
23 appropriate question for re-direct.

24 MS. CROWE: Okay. I wanted Gord to
25 provide particulars as to why he did not accept

1 shelter --

2 COURT REPORTER: I'm sorry, I'm sorry,
3 you're breaking up. Could you repeat that?

4 (OFF RECORD)

5 MS. COX: Okay. I wanted to know more
6 about the reasons related to Gord, why he refused
7 shelter -- (inaudible)

8 COURT REPORTER: No, I can't hear you.

9 MR. BORDIN: I think what you're
10 asking, counsel, do you want hear more reasons about
11 why Gord declined housing, and maybe about his dog?

12 My position is that's not a proper
13 question for re-examination. I let him go on and
14 answer the question however he wanted, I didn't cut
15 him off, and it's not appropriate to go back and try
16 to supplement his evidence. I didn't, I didn't
17 prompt those questions, he answered them on his own
18 accord.

19 R/F

20 MS. CROWE: Okay. Nothing further.

21 MR. BORDIN: Thank you, sir.

22 -- Adjourned at 2:51 p.m.

1
2 I HEREBY CERTIFY THE FOREGOING
3 to be a true and accurate
4 transcription of my shorthand notes
5 to the best of my skill and ability.
6

7 -----

8 MARC BEEBE, O.C.R.
9 Computer-Aided Transcription
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TAB 72

Court File No. CV-21-00077817-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**KRISTEN HEEGSMAN, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO,
SHAWN ARNOLD, ET AL.**

Applicants

-and-

CITY OF HAMILTON

Respondent

AFFIDAVIT OF GORD SMYTH
(Sworn March 9, 2023)

1. I, GORD SMYTH of the City of Hamilton in the Province of Ontario, AFFIRM AND STATE:
2. My date of birth is December 23, 1966.
3. I am in receipt of benefits from the Ontario Disability Support Program. In June 2021, I was entitled to \$497.00 in shelter allowance from ODSP, but when I was homeless I was without shelter costs which disentitled me from this portion of the benefit. Without shelter costs, I was only entitled to basic needs benefits in the amount of \$672.00 per month from the period of June 2021 to November 27, 2021.
4. I became homeless for the first time in 30 years in the month of June of 2021.
5. I have the following medical conditions: depression and a personality disorder, COPD, heart condition, diabetic, high blood pressure and osteo degenerative disease.
6. I was evicted from my rental unit because the landlord issued an N13 Notice of Termination, for demolition of the building, in the prescribed form issued by the Landlord and Tenant Board.
7. As soon as I received this N13 Notice of Termination, I began looking for alternative rental units and submitted my application for subsidized housing to Access to Housing. By the time I was required to move, I had not secured alternative housing. I had not received an

offer for subsidized housing from Access to Housing, nor could I find a rental unit that was within my budget.

8. During my search for alternative housing, I was unable to find rental units that I could afford. At that time, in spring of 2021, the average 1 bedroom rental unit in Hamilton was \$1468.00.¹ My total income on ODSP is \$1,169.00, which is an amount well below average rents.
9. Knowing that my termination date was approaching and I had nowhere to go, I began weighing my options. I considered going to a shelter but that would have required me to get rid of my life's possessions. Also, I was wary of what I could afford to spend on a storage unit with my limited income. In weighing my options, I also considered that the men's shelter is a congregate style living with people that I do not know, with users presenting with mental health issues that can result in behaviours that end up triggering my own personality disorder.
10. My personality disorder makes it difficult for me to interact well with others and when I am triggered I have sometimes reacted with violence. I am able to manage my personality disorder on medication for the most part, but it can still be triggered and when it does, I get concerned about my propensity to react violently. Considering the risk that I could become triggered in a congregate setting it was in my best interest to tent outside with my possessions and avoid the risk of altercations in a congregate shelter setting. I was also told by the Encampment Response Task Force that I would not be able to move into a men's hotel shelter with my dog even though I have a medical note stating that they act as a service dog.

Encampment history

11. When it became clear to me that I could not find alternative housing I prepared to live in an encampment, salvaging the personal possessions that I could including my beloved dog who acts as a service dog. I spent roughly \$3000.00 in supplies to prepare to live outside. I purchased additional blankets, a tent, tarps, a generator to charge my phone to remain connected to services, a latrine, bottles of water, and supplies to keep waste and garbage organized and clean.
12. When I became homeless I erected my encampment at the intersection of Strachan and Bay Street, but after 7 days I was verbally by by-law that I had to move. At that time, the "Encampment Protocol" was in place. I expected that I had 14 days to remain at this encampment and that a housing and shelter plan would be in place for me after an individualized needs assessment through the VISPD tool; in compliance with the Encampment Protocol. I was told however that the 14 day timelines started ticking with the first tent in the location, not to an individual. At no point prior to my eviction was an individual assessment administered. I complied with by-law's direction to move because I

¹ <https://rentals.ca/national-rent-report>, accessed September 29, 2021

did not want to risk having my tent torn down by by-law as I had witnessed this at other encampments. I also did not want to risk disposal of my belongings and I did not want non-compliance to result in a ticket that I could not afford to pay, or police involvement that could lead to criminal charges.

13. I relocated per the by-law officer's verbal notice to "camp" at Pier 4 in Hamilton. I vacated this location as well after a deadline was issued by by-law. Again, my eviction notice was given without first having completed an assessment of my individual shelter needs.
14. Following the eviction from Pier 4, I moved to Central Park along Bay Street, in a grassy open space away from a park and the street. After only being there for 3 hours, I was evicted again by by-law because there were already tents and their 14 days were up. My eviction notice was issued without an assessment of my individual shelter needs.
15. From Central Park, I moved to Barton and Caroline Street and remained there encamped for three weeks before by-law gave me verbal notice to move. I complied and moved back to Central Park along Bay Street, as there were no tents previously there. After being in this new location for roughly 8 hours, I was given 14 days' notice to move by the City of Hamilton "Encampment Task Force" attended and gave me 14 days to move even though a VISPD assessment had not taken place. The following day, a paramedic attended and completed the VISPD acuity assessment tool and told me that I scored a 13. Based on the Encampment Protocol that was in place at that time, understood that I could now remain encamped indefinitely as a result of my score.
16. That following Monday I was advised by the Encampment Task Force that they did not accept the VISPD administered by the paramedic. They administered a new one with me which was shorter and had different questions. I was advised that I scored an 11 on their assessment and that as a result I was not entitled to encamp. I finally protested with greater conviction than I had before, telling the Encampment Task Force that I would not be moving again and that if they demand that I move, they should be bringing me keys to an apartment to move into.
17. To my surprise, the Encampment Task Force also advised me that my application to Access to Housing was not processed and in response I completed a new application.
18. While I resided in my encampment at Central Park, I advocated for my needs with City Councillors to show them how difficult surviving without a roof over your head is and to explain the hardships associated with being evicted and having to pack up and move from park to park.
19. On July 29, 2021, I provided an interview for the Hamilton Encampment Support Network's Instagram account while I was experiencing homelessness. The interview is attached hereto as **Exhibit "A"** and I endorse the contents therein. This interview sheds light on the challenges faced by me while also struggling with disabilities. I stated that the combination of being disabled and homeless is incredibly difficult. It is challenging to

access basic necessities, such as food, water and shelter, when I am unable to work due to my disabilities.

20. I remained in my tent throughout my duration of homelessness. Despite having extreme hardships in a tent, I knew that a shelter environment was worse. I was scared that a shelter environment would ruin my mental health and stability, which took me time to achieve and that if I were triggered, I would engage in behaviours that would result in me being kicked out and restricted. I also did not want to have to get rid of all of my belongings and start over purchasing them all again on a limited income, had I secured housing, which was my ultimate goal. Going to shelter would have also required getting rid of my dog, the idea of such made me extremely emotionally distraught. The congregate style setting of a shelter would have a significant adverse impact on my mental health.
21. Moving from one encampment to another was emotionally and physically stressful. Staying at Central for several weeks after being pushed along between parks was less exhausting and gave me some stability because I had been evicted from other encampments after hours or only a couple of days after all the work it took to set myself up.
22. Constant displacement was difficult because it occurred when I was sleep deprived, during inclement weather such as rain, wind and the cold, and it was hard to physically manage moving all of my belongings including my mobility scooter and wagon. Every day I was anxiously awaiting an eviction and being displaced again or returning to my temporary tent home to find that it was torn down and thrown out by by-law.
23. Although some housing navigators approach my encampment at the Central Park location to offer me private market rentals, I could not afford to pay the rent for those that were presented to me. Even when I was told a rent subsidy could apply to them, they still well exceeded what I could pay with my income. Prior to this engagement, no social workers or social supports attended my other encampment locations to offer me assistance.
24. During my stay at Central Park, a social navigator with Hamilton Police Services verbally advised me that they found a rental unit for me to move into. I agreed to it, as it was the only one offered that I could afford. Unfortunately the offer was withdrawn by the landlord. After getting my hopes up to move into a rental unit, the news of the withdrawal was a punch in the gut and I felt mentally abused.
25. Staying encamped in one park without having to be displaced into other parks on a routine basis, gave me some piece of mind, continuity and an ability to engage routinely with services without disconnecting from them.
26. Being homeless and residing in a tent was devastating.
27. I lost 50 pounds while I was homeless because of a lack of food and stress.
28. In the first week of November of 2021, housing workers re-attended my encampment and offered me a unit in a City Housing Hamilton owned building. I could afford this because

it is completely subsidized rent. On November 27, 2021, I moved out of the encampment and into my unit where I currently reside.

29. On November 25, 2021, I provided an interview for CBC. A copy of the article is attached hereto as **Exhibit “B”** and I endorse the contents therein. Finding housing after experiencing homelessness is a huge relief, but the trauma and fear of being homeless again will have a lasting impact on my mental and emotional well-being. The constant worry about losing my home led to anxiety, depression, and other mental health issues. Even after securing a stable living situation, the fear and stress that lingers makes it difficult to trust in the stability of my housing situation. The experience of homelessness has also changed my perspective on life and my sense of security in the world, altering my priorities and values. These changes were profound, but they are likely to be permanent, shaping my life and outlook in ways I never expected.
30. Still to this day, I live in constant fear of the possibility of being homeless again.
31. I am happy with my choice to remain encamped because had I not, I would have moved into my new apartment without any of my belongings and I would have suffered the emotional toll of getting rid of my dog for no reason. I believe that by challenging the Encampment Task Force’s demand that I move and protesting bought me more time at Central Park and this continuity of location allowed me to connect with social supports which ultimately led to my current housing. Had eviction been enforced at my last location, I would have moved to hidden areas to avoid displacement and this would have decreased my odds of getting housed because of a loss of connection to supports.
32. Trying to get “survival mode,” out of my head has been very difficult.
33. On December 20, 2022, I provided an interview for the Hamilton Spectator. A copy of the article is attached hereto as **Exhibit “C”** and I endorse the contents therein. As someone who has experienced homelessness and now secured housing, I am acutely aware of the flaws in the way that our country treats its most vulnerable citizens. Prior to my own experience of homelessness, I could not have imagined that anyone living in Canada could be left without safe and secure housing, but I now know that this is sadly not the case. Even with the stress of finding housing removed, the memories and fears of that time will stay with me forever. The constant worry about lack of support, safety, and security, and the fear of becoming homeless again keep me awake at night. I know that I am not alone in feeling this way, and that countless others who have experienced homelessness carry this same burden.
34. This experience has changed me in ways that I never could have predicted. The person I was before homelessness seems distant and unrecognizable to me now. The experience has opened my eyes to the deep injustices in our society, and has shown me that we must do better to support those who are struggling. It is simply not enough to provide emergency shelters or temporary housing solutions; we must work towards a more equitable and just society where everyone has access to safe and secure housing.

35. It is more important than ever that we work towards real solutions that address the root causes of homelessness and provide ongoing support for those who have experienced it. It is my hope that by sharing my own experience, I can raise awareness of this pressing issue and inspire others to take action to make a difference in the lives of those who are struggling.
36. My faith in the government system with regards to having a social net has been greatly diminished. I still find it hard to believe that government officials can treat human beings this way.

Sworn remotely by Gordon Smyth at the City of Hamilton in the Province of Ontario, before me on March 9, 2023 by "Zoom" videoconference in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Emily O'Keefe

Commissioner for Taking Affidavits

Emily O'Keefe LSO#84504L

Gordon Smyth
Gordon Smyth

THIS IS EXHIBIT "A" TO THE
AFFIDAVIT OF GORDON SMYTH
AFFIRMED REMOTELY BEFORE ME AT
THE CITY OF HAMILTON DURING A "ZOOM" VIDEOCONFERENCE
IN ACCORDANCE WITH O.REG. 431/20,
ADMINISTERING OATH OR DECLARATION REMOTELY
THIS 9th DAY of MARCH, 2023
Emily O'Keefe
Emily O'Keefe
LSO NO. 84504L
Commissioner for Taking Affidavits, etc

THIS IS EXHIBIT "B" TO THE
AFFIDAVIT OF GORDON SMYTH
AFFIRMED REMOTELY BEFORE ME AT
THE CITY OF HAMILTON DURING A "ZOOM" VIDEOCONFERENCE
IN ACCORDANCE WITH O.REG. 431/20,
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THIS 9th DAY of MARCH, 2023
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LSO NO. 84504L
Commissioner for Taking Affidavits, etc

Hamilton

'Utter relief': Hamilton encampment resident Gord Smyth finds apartment after months in a tent

'I've never seen the situation as desperate as it is right now,' says doctor who visits encampments

[Dan Taekema](#) · CBC News · Posted: Nov 25, 2021 3:42 PM EST | Last Updated: November 26, 2021



Gord Smyth, 54, pauses for a moment on Nov. 24, 2021 while packing up the encampment he'd been staying at in Hamilton's Central Park for months. (Dan Taekema/CBC)



Gord Smyth spent Wednesday taking down tarps and packing up tents, preparing for what he hopes is his last move for a long time.

As he cleared up the encampment he's called home for the past few months, the 54-year-old had one thing on his mind — the CityHousing Hamilton apartment he's finally secured, or, more specifically, the hot shower it comes with.

"I haven't even been thinking of it as a new place to live. I've been thinking of it as a shower and a bathroom," he said.

"We're gonna be in there for a couple of days scrubbing off six months worth of dirt."

Smyth said he began living on the street in June after he was evicted from his longtime apartment when the property owner decided to demolish it to make way for condominiums.

- ['Back to sleepless nights': Encampment resident fears for future as Hamilton resumes enforcement](#)
- [15% of encampment residents city interacted with have been housed, Hamilton data shows](#)

He set up camp at various sites around the city but said he was moved along every few days or weeks — and in one case after just a few hours — under the city's bylaw barring tents in public spaces.

"It's definitely not camping, it's surviving," Smyth said.

"It's a really hard life. You've got to look after food, you've got to look after your hygiene and a lot of that is impossible."

Looking forward to a comfortable bed

Central Park was where he decided to stand his ground after arriving in August.

Smyth was one of five people who had lived in encampments and was named in an application to Superior Court seeking an injunction to stop the City of Hamilton from tearing them down.

"Moving every two weeks, or moving every day or moving every time you have to move wasn't acceptable," he said on Wednesday.

The attempt for an injunction ultimately failed.

- **Judge rules city can enforce encampment bylaw, attempt for an injunction fails**

But Smyth said advocates and agencies, including police, pushed for him to be allowed to stay in the park while he continued to fight for housing.

On Wednesday he signed a lease for an apartment and collected the keys.

"Relief, utter relief," he said, describing how it felt.

"[I'm] looking forward to sleeping in a comfortable bed, looking forward to not having to run the generator or pay for fuel to stay warm, sleeping in clothes under so many sleeping bags."

City to share plans on Dec. 9

Dr. Jill Wiwcharuk said she believes Smyth's process to find housing was likely sped up by the fact he was allowed to stay in one place. Others haven't been so fortunate.

As a member of the Hamilton Social Medicine Response Team (Hamsmart), the doctor said she visits multiple encampments each week and is struck by the desperation she sees there.

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Dr. Jill Wiwcharuk is an inner city doctor who works primarily with people who are homeless and struggling with addictions. (Shelter Health Network)

"Every time I'm at an encampment I'm having people tell me how much they want to get inside," said Wiwcharuk.

"Time and time again people are coming to me asking for help getting inside and there is simply not enough space."

That's especially true for women and couples, she said, adding she's "disgusted" it took until October for city staff to acknowledge [there aren't enough shelter beds](#), particularly for women.

In a statement to CBC the city said it appreciates the situation is "difficult for all involved — those experiencing homelessness, concerned residents, and staff on the front lines."

Spokesperson Aisling Higgins said 166 shelter spaces have been added to the system during the pandemic, but did recognize that even with the increased capacity, there are "some occasions" where there's more need than there are beds.

Staff will provide a "snapshot of housing and homelessness in Hamilton," including plans for winter and changes to the shelter system, which would be shared during a [Dec. 9 meeting](#), she said.

A 'desperate' situation

Wiwcharuk said the impact of shelter and housing shortages can already been seen in "horrific" outcomes, including two suspected overdose deaths this week alone.

"I've never seen the situation as desperate as it is right now," she said. "It's awful."

Smyth said securing an apartment was a big weight off his shoulders.

But despite finding a permanent place to live, "it's not over."

He pointed to other encampments across the city, including at [J.C. Beemer Park](#) where a fire destroyed several tents and people's belongings on Wednesday morning.



Smyth smiles while take a break from packing up his tents and tarps. Despite finding an apartment, he said encampment residents across the city continue to face struggles. (Dan Taekema/CBC)

"It's devastating. It's not going to go away," said Smyth.

"It can happen to anybody and if you're not prepared best find a tent and some place to hide because that's the only option the city has right now."

Smyth still counts himself among those at risk and said the fear that a knock on the door could send him right back to an encampment is there, at the back of his mind.

"The fear never goes away," he said. "It's always going to be present."

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HAMILTON REGION

Evicted and homeless, Gord Smyth squatted in a downtown park. Now he's housed but forever scarred

Hamilton man who lost his apartment to demolition, is calling for strong tenant policies

By **Teviah Moro** Spectator Reporter

Tue., Dec. 20, 2022 | 5 min. read

JOIN THE CONVERSATION

A hot shower. A freshly baked cake. A locked door. A roof over his head.

The simple things have made the difference for [Gord Smyth](#) after a period of homelessness in a downtown Hamilton park.

"I wake up. I see what the weather's going to be like, and, just one day at a time, plan my day," Smyth says.

But the spectre of somehow again landing on the street still haunts him more than a year after moving into a CityHousing highrise.

"You always have that fear that it can happen again. I don't think that will ever leave me."

Smyth [became homeless](#) in June 2021 after his landlord told him and others to clear out their James Street North apartments ahead of demolition plans.

The 55-year-old, whose ordeal lasted until late November that year, sees the same scenario leaving others in the lurch without strong policies to protect renters when homes are knocked down for redevelopment.

If city regulations had forced his former landlord to set up him with another apartment at roughly the same rent, he wouldn't have wound up pitching a tent in a downtown park, Smyth says.

"It would have made a difference — 100 per cent."

The city is working on such rental-replacement regulations to set conditions for demolitions and condo conversions aimed at retaining affordable units and casting a safety net for displaced tenants.

But tenant advocates — including [Hamilton ACORN](#), which Smyth has joined — are concerned recently passed provincial housing legislation could derail that effort. They are holding a news conference at Smyth's former apartment building Tuesday to draw attention to the issue.

A provision in [Bill 23](#) — the More Homes Built Faster Act — allows the minister of Municipal Affairs and Housing to impose "limits and conditions" on local powers to regulate demolitions and conversions.

What that will mean for Hamilton's ongoing efforts remains unclear.

The ministry says the legislative clause doesn't wipe out such municipal bylaws, in Toronto and Mississauga, for instance, but opens the door for analysis.

"While the goal of those rental replacement bylaws may be to preserve affordable rental units, it may also be limiting the supply of new rental units and leading to deteriorating housing stock," a ministry spokesperson wrote in an email.

"That is why we are seeking feedback on what measures, if any, are needed to ensure best practices are in place to help promote additional supply of revitalized rental housing stock while also continuing to protect tenants."

City planning director Steve Robichaud figures the minister, through Bill 23, may want to evaluate to what degree demolished buildings should be replaced "like for like."

For example, if a tenant loses a one-bedroom apartment in Stoney Creek for \$800 a month with free parking, should those very conditions be replicated?

"Is it exactly the same, or can it just be a unit at the same rent price adjusted for inflation?" Robichaud asks.

Generally, the city's goal "at the very least" is to ensure demolished units are replaced and displaced tenants land in affordable homes, he says.

A staff report into the initiative notes there "have not been a large number of rental units" demolished in Hamilton in past years, but with planning policy emphasizing building density in urban areas, "redevelopment pressures have been increasing."

On that front — the gentrification of affordable, older apartments into more expensive rentals — Bill 23 won't help, Smyth argues.

"It's just all around bad," he says of the wide-reaching legislation that also affects conservation authorities, local planning and development charges, sparking protests and [pushback from municipalities](#).

Before he became homeless, the former systems analyst who'd fallen on hard times after a car accident years earlier, lived in a modest bachelor pad in a small, older building on James Street North at Ferrie Street.

At around \$500 a month, Smyth could afford the rent on his meagre disability pension.

"I was happy. I was comfortable. That was home," he says, noting there were 13 units between two neighbouring buildings.

But as the property changed hands, from one corporation and [would-be developer](#) to another, Smyth saw the writing on the wall:

He was about to lose his home of about five years and wouldn't be able to afford the escalated market rates.

Moreover, downtown demolition regulations (which Robichaud said the city aims to build upon and expand across urban Hamilton) didn't extend to his North End address.

So Smyth braced for life on the streets, spending time with homeless people to learn how to survive.

"So in some sense, I was lucky. I had years to prepare, whereas some people, they don't."

He pitched a tent and set up camping gear — cooking appliances, heaters, a generator, an outdoor showering kit — in Central Park off Bay Street North, hunkering down with Daisy, his pint-sized pooch.

Smyth, who, like others, was reluctant to stay in shelters, found himself on the front lines of the city's [homelessness crisis](#) and the overlapping tribulations of addiction, [overdoses](#), theft and violence.

He witnessed tragic death that summer, coming across a [man deceased in a tent](#) on the other side of the park.

"The survival skills that I picked up during that time, I don't think will ever leave me."

His stay in the park, in defiance of a city bylaw, also sparked testy exchanges with authorities in a [political climate](#) that called for encampment clearings.

To make matters worse, some passersby would hurl obscenities at him, Smyth recalls.

"You know, they had no idea who I was, but they would scream, 'Go out a get a job, you bum!'"

As summer turned to fall, he watched his physical and mental health deteriorate, while he held out hope for an affordable apartment.

Now, more than a year later, he's better, seeing a dietician for his diabetes. He's also picking up hobbies again, revisiting his passion for photography.

"I never in a million years thought anything like that would happen to me, and now I know it can happen to anyone."

But what's just as unbelievable to him — galling, in fact — is that nothing has yet materialized on the empty parcel of land where his home was knocked down over a year ago.

“Which is a year that we could still be there.”



Teviah Moro is a reporter at *The Spectator*. tmoro@thespec.com

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TAB 73

COURT FILE NO. CV-21-77187

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

KRISTEN HEEGSMa, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO, SHAWN ARNOLD, BRADLEY CALDWELL CHRISTINE DELOREY,

GLEN GNATUK, TAYLOR GOGO-HORNER, CASSANDRA JORDAN, JULIA LAUZON, AMMY LEWIS, ASHLEY MACDONALD, COREY MONAHAN, MISTY MARSHALL, SHERRI OGDEN, JAHMAL PIERRE, LINSLEY GREAVES and PATRICK WARD

Applicants

-AND-

CITY OF HAMILTON

Respondent

The Cross-Examination of Gord Smyth, on an Affidavit dated March 9, 2023 taken upon affirmation in the above action this, 28th of August, 2024, , conducted via videoconference hosted by the offices of Nimigan Mihailovich Reporting Inc.

APPEARANCES:

For the Applicants:

SHARON CROWE

CURTIS SELL

MICHELLE SUTHERLAND

For the City of Hamilton:

JORDAN DIACUR

JOJO JOHNSON

Gowling WLG (Canada) LLP

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EXHIBITS

GUIDE TO UNDERTAKINGS, ADVISEMENTS, and REFUSALS:

This should be regarded as a guide and does not necessarily constitute a complete list:

UNDERTAKINGS:

(None noted.)

UNDER ADVISEMENTS:

(None noted.)

REFUSALS:

(None noted.)

--- Commencing at 1:00 p.m.

GORD SMYTH,

THE WITNESS HEREINBEFORE NAMED,

Having been duly sworn by me to testify to the truth,

testified on their oath as follows, to wit:

CROSS-EXAMINATION BY MR. DIACUR:

1 Q. Sir, could you confirm that your date of birth is December 23rd, 1966.

A. That is correct.

2 Q. And your last name is spelled S-M-Y-T-H?

A. Correct.

3 Q. Okay, thank you.

A. You're welcome.

4 Q. Just in terms of that date of birth, that would make you not quite 58 years old; is that right?

A. A few more months to go yet.

5 Q. Okay. So 57 currently?

A. Yes.

6 Q. And so, sir, I have questions for you today about an affidavit provided in this matter. The date on it is March 9, 2023. I understand you also provided a previous affidavit on which you were already cross-examined in September of 2021.

A. That's correct.

7 Q. The questions today are simply about the

March 9, 2023, affidavit so I want to confirm whether or not you have a copy of that available to you?

A. I do.

8 Q. Okay. I also have a copy and my plan would be to put a copy on the screen so that everybody can see, but I'm going to take you to certain parts of that affidavit and I'll have certain questions for you about it and you're free to look at the screen or look at the hardcopy. No issues there.

Can you confirm for me where you are checking in from today?

A. 181 Jackson Street West, City Housing Hamilton.

9 Q. And is that your residence?

A. My apartment.

10 Q. Okay. And is that your residence?

A. That's my apartment, yes.

11 Q. That's great, thank you. And how long have you lived in Hamilton?

A. Well, I moved back to Hamilton in 2014.

Prior to that, it was probably 20 years prior, if not more.

12 Q. Okay. But are you from Hamilton originally?

A. No.

13 Q. No. So you move to Hamilton previously; moved away; moved back?

A. Correct.

14 Q. Okay, Understood. And you've been living in Hamilton since 2014?

A. That's correct.

15 Q. So the last 10 years consistently Hamilton?

A. Yes.

16 Q. Okay. And I understand from having reviewed your affidavit there's a couple of pieces of information about your personal history, particularly in the newspaper article that's attached as Exhibit C to your affidavit?

A. Mm-hmm.

17 Q. It indicates that formally you were a systems analyst; is that correct?

A. That's correct.

18 Q. And for what period of time did you work as a systems analyst?

A. From, I believe, 2004 to 2008.

19 Q. Okay. And what happened in 2008 to end that employment?

A. They found out that I was lying on a lot of stuff which was pretty much most of my life as far as jobs were concerned. So I left there and went to Spain to

become an English teacher.

20 Q. Okay. So in or about 2008, you move to Spain for a period of time?

A. That's correct.

21 Q. Okay. And where did you work as a systems analyst?

A. For myself.

22 Q. Okay. So you were like a consultant or freelance?

A. Yes, freelance.

23 Q. Okay. And how long did you work as an English teacher in Spain?

A. About five years.

24 Q. So that would be until about 2013?

A. That's correct.

25 Q. Okay. And at that point what happened?

A. Termination of employment. Not enough students for classes and cost of living. So that sent me back to Canada.

26 Q. Okay. You move back to Canada in 2013. Did you move back directly to Canada Hamilton at that time?

A. Correct.

27 Q. Okay.

A. I was back in 2014.

28 Q. Okay. Understood. So in terms of the timeline I think I've got it straight and that all lines up. Thank you.

A. Okay.

29 Q. So that clarifies that issue.

I understand that you've been in receipt of ODSP monthly since November of 2018; is that right?

A. That's correct.

30 Q. There's also a reference in that same article at Exhibit C to your affidavit to a disability pension. So do you receive a disability pension in addition to ODSP?

A. No.

31 Q. Okay. Because I'm going to put up on the screen.

A. That would be referring to the same thing, ODSP.

32 Q. Okay. That is really what I want to get at. So I'm going to put it up on the screen now. This is your affidavit sworn March 9, 2023. Can you see that all right?

A. Mm-hmm.

33 Q. I'm going to jump to that article. It is, as I said, it Exhibit C to your affidavit and I will scroll up to the top just so that you can see that is what

I am referencing.

A. Mm-hmm.

34 Q. There are a couple of articles attached to your affidavit. But there at Exhibit C is an article of the Hamilton Spectator dated December 20th, 2022. And it is entitled:

"Evicted and homeless, Gord Smyth
squatted in a downtown park. Now he's
housed but forever scarred[...]"
And you can see that?

A. Yes.

35 Q. Okay. And if I scroll down to the second page of this, there's a reference here:

"At around \$500 a month, Smyth could
afford the rent on his meagre disability
pension."

A. Yes, it's ODSP.

36 Q. Okay. And is it true that at that time the ODSP allowance was around \$500 a-month?

A. No. It was less. It was about \$468 a-month, if I'm not mistaken.

37 Q. And is that simply the shelter portion of the ODSP or that is all the ODSP you were receiving?

A. That is the shelter portion.

38 Q. Okay. But you were in receipt of what we

would sort of the principal or main portion of the ODSP as

well?

A. Is this prior to or after being homeless?

39 Q. Well, I'd suppose my question does go to

both but I appreciate the distinction you are drawing. So

from November 21st, 2018, when you first began receiving

ODSP --

A. Mm-hmm.

40 Q. -- did you receive both the shelter portion and the main and principal portion?

A. Yes.

41 Q. Okay. And so when there's a reference in this article to around \$500 a-month that simply the shelter portion of the ODSP?

A. That's the shelter portion of the ODSP, correct.

42 Q. Understood. And so when -- and, again, I should show you but the journalist who wrote this article

is Teviah Moro. When he references a pension, that is

just an error. It is actually social assistance from the province?

A. That's correct, yes.

43 Q. Okay.

A. And the 500 a-month is what I was actually paying there. It was actually 525 a month, I believe,

there.

44 Q. Understood.

A. Yeah.

45 Q. Was that rent controlled and geared to income --

A. No.

46 Q. -- and that ODSP portion was considered to be sufficient for it?

A. No, that was their market rent, correct.

47 Q. So it was market rent. Okay.

And I understand that from your affidavit

which I will scroll back up to, a period of time in which

you were unsheltered was from June of 2021 --

A. Mm-hmm.

48 Q. -- until November of 2021; do I have that correct?

A. It would have been. Yes, that's correct.

It would have been the 30th of June.

49 Q. Yeah, so June 30th to be more precise.

June 30th of 2021 until I understand November 27th, 2021;

is that correct?

A. Correct. That is correct.

50 Q. Okay. And there's a reference here in

paragraph 4 of your affidavit. You indicated you became homeless for the first time 30 years in the month of June

2021.

Were you previously homeless before this in the prior 30 years?

A. No. Prior to that I was still living with family.

51 Q. So when you say that you are referencing

prior to --

A. Yes, I'd spent 30 years of my life being self-sufficient to that point, yes.

52 Q. Okay, that clarifies that. I just wanted

to understand what you meant by that statement.

I understand, sir, that you have used a mobility scooter in the past; is that right?

A. I have, yes. I now have an electric

wheelchair.

53 Q. Yes. That was my next question. I also

saw a reference to a wheelchair. It's an electric

wheelchair?

A. It is, yes.

54 Q. And do you use that for mobility purposes?

A. Yes, I do.

55 Q. And do you always use that for mobility

purposes or do you have limited mobility?

A. Outside of the apartment. It being a small apartment, I can move around not too bad. But, yes, any

time, I'm out I'm in the chair.

56 Q. Okay. And in terms of the electric wheelchair that you have currently, where did you get that?

A. I purchased it. It's a self-purchase. It's the same with the scooter.

57 Q. So that was also purchased. It wasn't provided by any healthcare organization or any sort of charity? It was purchased?

A. No. At that time, I didn't qualify for it.

58 Q. Okay. Understood, okay. So the next paragraph in your affidavit, paragraph 5, you indicate a number of medical conditions?

A. Yes.

59 Q. And so I would like to go through these one at a time.

A. Okay.

60 Q. And the question in each case is going to be about when it was diagnosed. So first on the list is depression.

A. Mm-hmm.

61 Q. When was that condition diagnosed for you?

A. Shortly after I came back so it would have been in 2014.

62 Q. Okay.

A. Late 2014, early 2015.

63 Q. Do you recall which medical practitioner you saw and who diagnosed of that?

A. Jo Seveli.

64 Q. And is that a family physician?

A. She's a nurse practitioner. I don't have a family doctor.

65 Q. Okay.

A. She's with the Urban Core, Hamilton Urban, yeah.

66 Q. No. That's helpful. Thank you. And the next on the list is a personality disorder.

A. Mm-hmm.

67 Q. Are you able to be more specific? What personality disorder are you referencing?

A. I don't do well with crowds or with a lot of people. It really starts to bother me to the point where I would get aggressive or very angry --

68 Q. No. I'm not talking about the effects of it.

A. -- and I would lose --

69 Q. Do you know if it has a name medically?

A. No. I don't.

70 Q. Okay. And would it be the same nurse practitioner that diagnosed that?

A. Yes.

71 Q. And roughly the same time in 2014?

A. Correct.

72 Q. Had you ever had any mental issue diagnosed before that time?

A. No.

73 Q. Was it communicated to you whether it was something that you had been living with undiagnosed or whether it was something new that developed?

A. When I was talking with my -- I don't know what you would call him, I guess, a psychologist or -- he had mentioned that it was possible that I had lived with that my entire life based on the information I had given them and how I have always felt.

74 Q. Well, actually that's my next question.

A. Okay. To me what I assumed was normal, it turned out it wasn't.

75 Q. Okay. And had you been treated subsequent to diagnosis for the personality disorder?

A. Still under treatment, yes.

76 Q. And you referenced a psychiatrist or a psychologist.

A. Yes.

77 Q. Is that the same person who's been treating you throughout this period?

A. No, no. That was simply for, I guess, diagnostic purposes.

78 Q. Okay. And so you are currently receiving treatment. How long have you been receiving treatment?

A. Since 2015.

79 Q. Okay. So it has been consistent from the time of diagnosis?

A. Yes, it's a medication?

80 Q. And in terms of the depression that we were just discussing are you also receiving medication for that?

A. That is correct.

81 Q. Is it the same medication or different?

A. It's basically the same medication. One is for depression. The other is a mood stabilizer.

82 Q. Okay. All right. So I understand on this list there are a number of other conditions listed.

A. Yes.

83 Q. Some are, rather than being mental issues like depression and a personality disorder, they are physical issues.

A. Mm-hmm.

84 Q. And so COPD is next on the list. Can you tell me when that was diagnosed?

A. Again, 2015.

85 Q. '15. And was that the nurse practitioner again?

A. Correct.

86 Q. And --

A. Plus other doctors at Stephenson Memorial and Hamilton General. I had to go there for a bunch of test and they were the ones that concluded it was COPD, but it was reported through the nurse practitioner.

87 Q. Okay. Understood. And Stephenson General? I'm not sure I'm familiar with that. Where is that?

A. No. Hamilton General.

88 Q. Stephenson Memorial you said.

A. Yeah.

89 Q. Where is Stephenson Memorial?

A. In Alliston.

90 Q. Okay.

A. And then St. Joseph -- sorry, I'm thinking Alliston. St. Joseph's Hospital here in Hamilton.

91 Q. Yes.

A. On James Street South.

92 Q. No. I'm familiar with St. Jo's in Hamilton. But Stephenson Memorial is in Alliston?

A. But that was a mistake on my part as far as naming goes.

93 Q. Oh, so you have not been there?

A. I was there many, many years ago as a teenager.

94 Q. Understood. That's fine, I just wanted to clarify.

A. It's the meds.

95 Q. Yes. Got it. And in terms of the next on the list here, the heart condition. Are you able to tell me what heart condition?

A. I had the onset of heart disease. Since that time, it's progressed to heart disease and I now have an internal cardio defibrillator installed.

96 Q. Okay.

A. My heart operates at about 52 per cent.

97 Q. Okay. And that's something that you've been told by a medical practitioner?

A. Told and gone through the operation.

98 Q. Right. So no understood. There would have been an operation involved.

A. Yes. That was the Cardiology Department at Hamilton General.

99 Q. And what was I diagnosed for you?

A. Almost two years ago I guess. I would have to check my card, but I've had the defibrillator now for almost two years.

100 Q. Okay. No. I think that sufficient to

establish the timeframe. Thank you.

A. Okay.

101 Q. Diabetes is next on the list. When was that diagnosed?

A. Again, the same time.

102 Q. So same time meaning two years ago or the same time meaning roughly 2015?

A. Roughly 2015, yes. I was feeling run down and out, and went to the doctors, and that's when all the tests began. And they found a lot. It's probably why I wasn't feeling too good.

103 Q. Understood. I can see there were a couple of diagnoses at that time.

A. Mm-hmm.

104 Q. High blood pressure.

A. Yes.

105 Q. Was that diagnosed at that same time in 2015?

A. Yes.

106 Q. And last on the list is osteo degenerative disease. And I understand you were involved in a car accident?

A. That's correct.

107 Q. Was this as a result of the car accident?

A. No.

108 Q. So this is unrelated this osteo degenerative disease?

A. Yes, this is all prior to.

109 Q. Okay. And when was that diagnosed, osteo degenerative disease?

A. Probably, I would say between 2016 and 2017 was when the pain really started to get worse.

110 Q. Okay. And it was diagnosed at time. You went and saw a physician because of the pain and they diagnosed that?

A. That's correct.

111 Q. And in terms of the car accident you were involved in, when did that happened?

A. I would have to say early 2014. Somewhere around there. It was prior to me going to the doctor's.

112 Q. That's helpful to know that. That clears up the timeline, thank you.

A. Mm-hmm.

113 Q. So turning to paragraph 6 of your affidavit.

A. Yes.

114 Q. You indicate that you were:

"Evicted from a rental unit[...]"

This is the rental unit on James Street North; is that right?

A. That's correct.

115 Q. And that was referenced in your initial affidavit in 2021.

A. Yes.

116 Q. That building was being demolished and so the eviction related to the demolition?

A. Correct.

117 Q. How long had you been at that address on James North?

A. Since 2014. That's when I moved in.

118 Q. That's where you moved in when you came back to Hamilton?

A. Well, when I came back to Canada, I was looking around for an affordable place and as I had mentioned, that was affordable at that time. I was on unemployment when I first came back, and yeah, it was 525 a-month, I believe, it was or 500 a-month and that was the only place in the City.

That was the only place in multiple cities that I could find that was affordable, hence coming back to Hamilton.

119 Q. Understood. Actually that was my next question about the amount of rent at that place.

You mentioned that you qualified for unemployment when you returned to Canada. How long did

that continue?

A. For about six months and then during that time and going through my diagnosis at the hospitals and the doctors, they had transitioned me to social assistance. And then prior to that after diagnosis, it was determined that I should be on Disability.

120 Q. Okay, Understood. And as we said, that actually occurred in November of 2018?

A. Yes.

121 Q. Okay. All right. So the next paragraph in your affidavit, paragraph 7. I will put that on the screen now.

A. Yes.

122 Q. I indicate or I understand that it's indicated here you began looking for alternative rental units when you received the Notice of Termination from the landlord on James Street North?

A. Yes, that's when I upped my search. We had been notified by several purchasers starting three years prior to that that the building was sold, and we knew at that time based on the current growth of the City, that we were probably going to end up looking for another place to live because they would certainly raise the rents.

We were outside of the downtown Hamilton protected areas so there were 13 of us there in total.

There was four of us prior to the building coming down.

But I had been searching since then. Once we received the N13 Notices, it was a very intensive search. It was looking at all possibilities, shelters, hotels, what have you.

123 Q. Understood. No. That helps clarify. I understand that you submitted what is called an Access to Housing Application prior to this eviction; is that correct?

A. That is correct.

124 Q. Roughly March of 2021?

A. Yeah, but it was never filed.

125 Q. Yeah. I had a question for you about that and we will get to that when we get to that part of your affidavit.

A. Okay.

126 Q. So when we get to that, we can clarify that point.

A. Mm-hmm.

127 Q. I certainly will ask you about that.

But it is referenced in Exhibit C, that article that you had seen the writing on the wall. I think is the phrase that you had used --

A. Yes.

128 Q. -- with Mr. Moro. So that is what you mean

that you had some advance notice with the eviction and begin looking?

A. I knew I was in trouble, yes.

129 Q. So I'm going to scroll down to paragraph 8. So the next paragraph in your affidavit.

A. Mm-hmm.

130 Q. There is a footnote in this paragraph and it is a reference to a link at the bottom of the page, "rentals.ca".

You can see that?

A. Mm-hmm.

131 Q. Can you confirm for me you didn't create the website rentals.ca?

A. No.

132 Q. And you are not affiliated with rentals.ca?

A. No.

133 Q. And you're not aware of any data or methods that rentals.ca may use?

A. No.

134 Q. And you haven't produced a copy of the webpage as it existed, as you say here, it was accessed on September 29, 2021; is that right?

A. I believe so.

135 Q. This affidavit was sworn in 2023. You indicated you accessed the webpage --

A. I did. I did access that page well as a lot of others just looking for rent.

136 Q. Yes. But, to be clear, a copy of that website as it existed on September 29, 2021, has not been produced?

A. Not to my knowledge, no.

137 Q. All right. So just scrolling back up and moving to the next paragraph, paragraph 9, you indicate that you considered going to a shelter?

A. Mm-hmm.

138 Q. But that would have required you to get rid of your life's possessions?

A. That's correct.

139 Q. Okay. Why is that the case?

A. Well, because you are only allowed to bring a bag of clothes to a shelter. You are not allowed to bring any personal items such as keepsakes or appliances. Necessities. Just the basics.

140 Q. Well, so I suppose the follow-up question to that is did you look into storing any of your life's possessions?

A. Yes. And unaffordable.

141 Q. Okay. So even given ODSP income, and the fact that shelter would be provided in an emergency shelter in any case for free, it was insufficient to rent

a storage unit?

A. The housing portion of the ODSP is removed.

142 Q. I understand. But if you don't have rent to pay for --

A. Yeah. If I have roughly \$125 a month to look for a place to live, I think that's pretty much evident that that wouldn't happen. And that was part of the difficulty of becoming homeless, losing that support and making less than a half or receiving less than half of what the market rent was at that time basically made it impossible for me to get housing.

143 Q. You also said --

A. And plus --

144 Q. Sorry, I didn't mean to cut you off. Continue, please.

A. Oh. Once I found out about the shelter system, because I hadn't explored any of that before, I realized that that coupled with my health conditions and my service dog, and at that time they weren't allowing them, it would have been far more detrimental for me to go there.

145 Q. But you also say that you might have found congregant living triggering; is that right?

A. Yes, absolutely. Again, I don't do well with groups.

146 Q. And so as I understand it, you never contacted a shelter at all or stayed in one; is that right?

A. I have contacted them. I never stayed in them.

147 Q. Okay. And so not having stayed in one, you don't know whether or not it would have triggered you or assisted you?

A. Oh, absolutely I did. Again, three years prior to, I started hanging around these shelters and communicating with the people that were there trying to get myself familiarized with that type of lifestyle because I knew it was coming.

And it was over those two and a half years that I realized I'm not going to do well there. It's going to... my opinion at that time was the government was trying to put me into a little small cell somewhere so that they wouldn't have to deal with me.

148 Q. I understand that that's your opinion. But I want to confirm.

A. You can confirm I did enough.

149 Q. No. I want to confirm this. The fact that you have never stayed in a shelter means you cannot say whether or not it would have triggered you or assisted you?

A. Oh, I can pretty much guarantee it would have.

150 Q. Based on conversations that you had with individuals.

A. Based on life experience. Based on life experience with groups. It would have been a community setting. A group setting. You eat together. You sleep together. You do your chores together. That's --

151 Q. That's an assumption you are making about emergency shelters.

A. No. That's a medical fact, sir.

152 Q. Well, no. To be clear, you never stayed in an emergency shelter at all; correct?

A. Thank God, no.

153 Q. Okay. Now at paragraph 10, you reference your dog.

A. Yes.

154 Q. You reference them as a service dog and you reference a medical note stating that they act as a service dog.

A. That's correct.

155 Q. You have not produced medical note stating that your dog is a service dog; correct?

A. No. That's incorrect. I do have a note.

156 Q. No. I understand that you have it. You

state in your affidavit that you have one.

A. Yes.

157 Q. But it's not been produced in this

litigation. I don't have a copy of it; is that correct?

A. I honestly can't answer that.

158 Q. Okay.

A. I thought I did but I can't be sure.

159 Q. Did you ask shelter staff about your dog and options for your dog?

A. Yes. That was provided to me by the encampment support workers I guess you could say.

160 Q. And what were the options that were presented?

A. I couldn't take the dog to the shelter. I couldn't take the dog to a hotel. And they only started that five months after I was homeless. I hadn't seen any housing workers prior to that.

161 Q. Were any options provided in terms of boarding or fostering the dog?

A. No.

162 Q. Did you look into options such as fostering or boarding the dog?

A. No. It's a service dog. It has to be with me 24/7.

163 Q. Now, is it the case, and you referenced

this in paragraph 10, that you will sometimes respond or

react violently to certain stimuli?

A. Absolutely.

164 Q. Have you become violent in the past?

A. Yes.

165 Q. Has that led to any criminal issues or any actual violence that involved another person?

MS. CROWE: Sorry, what the relevance of that question?

MR. DIACUR: Well, he states that he reacts violently and I'm examining him on his statement. It's directly relevant to a statement in his affidavit.

MS. CROWE: What is the relevance of the details of any past criminal charges?

MR. DIACUR: He states that he has reacted violently in the past. I'm asking what the result of that was. It's directly relevant to a statement in the affidavit.

MS. CROWE: Okay.

THE WITNESS: Their relevancy is I have never been convicted of any criminal offense.

BY MR. DIACUR:

166 Q. Have you ever been violent to another person?

A. Absolutely.

167 Q. Now, you state here as well that you decided it was in your best interest not to go into a shelter?

A. Correct.

168 Q. That's correct?

A. That is correct.

169 Q. And that was a choice that you made?

A. Absolutely based on my -- what do you call it -- my mental condition.

170 Q. And you are not aware of shelter availability at that time in June 2021, as you didn't look into going into a shelter?

A. Oh, absolutely I did, and as reported before, there was no space.

171 Q. Okay. So you decided not to go into a shelter but you checked whether there was availability anyway?

A. Yes, that's correct.

172 Q. Okay.

A. Yes.

173 Q. You indicate as well that you spent a significant amount of money -- and this is at paragraph 11 of your affidavit.

A. Mm-hmm.

174 Q. Roughly \$3,000 for supplies to prepare to

live outside?

A. Yes.

175 Q. And was that all of your savings at that time?

A. That and some. I had prepared for a couple of years. Again, it was three years when we found out the building was sold. And at that time, that's when I started looking for another place to rent. And, again, rents being 30 to 40 per cent more than my total receipt from ODSP guaranteed that that was impossible so I had to start thinking about survival.

176 Q. Paragraph 12 of your affidavit, I have a couple of questions for you to establish the timeline that is expressed in this paragraph and the next few paragraphs.

A. Mm-hmm.

177 Q. You indicate that you first encamped at Strachan and Bay Street; is that right?

A. Yes. That's correct.

178 Q. You say when you became homeless that's where you first --

A. That's the very first place I went.

179 Q. So that day you went there in June of 2021?

A. Yes.

180 Q. Okay. And in terms of why you didn't

remain there, you indicate that after seven days you were given verbal notice by Bylaw that you had to move?

A. That's correct.

181 Q. And upon receiving that notice, you did move; correct?

A. Oh, yes, yes.

182 Q. How long were you there at Strachan and Bay?

A. Seven days.

183 Q. Okay. So it was immediate upon your arrival seven days notice?

A. Immediately. It was always immediately.

184 Q. And so if we go through to paragraph 13, you say:

"I relocated per the bylaw officer's verbal notice[...]"

A. Mm-hmm.

185 Q. And you went to Pier 4 in Hamilton. That's up on the Bayfront?

A. Yes, that's correct.

186 Q. And I understand there was notice given to you and you moved from Pier 4; is that right?

A. Yes, that's correct.

187 Q. And, again, how long were you there at Pier 4?

A. Only a few days.

188 Q. But was the notice given to you after a few days or again immediately?

A. Immediately. As soon as you put a tent up they are there immediately.

189 Q. So a few days at Pier 4. Paragraph 14 you indicate that you move from Pier 4 to Central Park along Bay Street?

A. Yes.

190 Q. In a grassy space?

A. Yes.

191 Q. Okay. And you indicate that after three hours you were evicted because there were already tense there and the 14-day period had expired?

A. That's correct.

192 Q. And so you indicate that you weren't able to remain there?

A. That's right, yes. I got there at about 3:00 o'clock in the morning after have finally packed up and moved out of the other place at noon. I had just got set up and went to bed and Bylaw was there at about 7:00 o'clock in the morning.

193 Q. So that morning, you know, the sun comes up, and Bylaw is there?

A. 14 days are up. You've got to pack up.

You have got until noon to pack up and get out. I remember the day very clearly. It was windy and cold. It was raining.

194 Q. Do you remember the actual date?

A. No. I don't.

195 Q. Okay.

A. But I do remember the day very well.

196 Q. And then we have from that place, Central Park, a moved to Barton and Caroline Street?

A. Correct, yes.

197 Q. And was this a park area at Barton and Caroline Street?

A. No. An empty lot owned by the City. I

went there to hide because I couldn't take moving anymore so I said I have to go some place where nobody will find me.

198 Q. And so you were there for three weeks?

A. Yes.

199 Q. And then, again, Bylaw gave verbal notice to move?

A. Bylaw came through and said you have to

leave now. Not any length of time. You have to pack up and leave now. You are on private property. You're not allowed to be here. You have to leave now.

200 Q. Okay. And well, that is the question that

I have for you is how did you conclude that the property that you were encamped on was owned by the City?

A. Because it wasn't being used by anybody or anything. City trucks would come in once in a while dump loads and leave.

201 Q. And it's from that that you concluded that it was owned by the City of Hamilton?

A. Yes. I assumed the whole northend was owned by the City of Hamilton.

202 Q. So it was an assumption that it was owned by the City it may have been owned by a private property owner?

A. To my knowledge. I don't know. I just go by what the Bylaw said. They said I was on private property and that I needed to leave.

203 Q. And so the move from that Barton and Caroline Street property was back to Central Park; is that right?

A. It was back to Central Park, that's right.

204 Q. And so say after eight hours there was this further 14 days notice provided?

A. Not even. It was roughly about eight hours. It was the same day I set up after that day they had come and said you've got your 14 days.

205 Q. I want to clarify that. You are back to

the place where this was this notice already given?

A. Yes.

206 Q. Central Park?

A. Yes.

207 Q. They didn't come in and say you can't be here at all?

A. No.

208 Q. There was 14 days period that was provided?

A. Correct.

209 Q. Okay. And I see in this paragraph, paragraph 15 there is a reference to what I pronounce as VI-SPDAT assessment?

A. Yes.

210 Q. And I understand it's indicated here that you had not done one?

A. No.

211 Q. And that a paramedic gave you an assessment tool and there was a score given of 13; is that right?

A. He came down and did the assessment himself, yes.

212 Q. I understand that subsequently another VI-SPDAT was taken by you?

A. Yes.

213 Q. But that it had different questions?

A. Yes. The City has approached me. The

housing support workers had approached me and said there

was a decision that they're not going to accept the

VI-SPDATs from the paramedics; that they were to conduct themselves.

214 Q. Okay. Is it possible that the assessment tool that the paramedic was using was not actually a VI-SPDAT, but some other tool?

A. To my knowledge, it was the City that was using another form aside from the actual tool as it had no medical information. It had no medical questions? Nothing like that. It eliminated everything that originally gave me the 13 score.

215 Q. But the two test were different?

A. Completely different.

216 Q. And were you given a copy of this other VI-SPDAT that the paramedic submitted?

A. I was not.

217 Q. All right. So paragraph 16 -- and this is where we come to the VI-SPDAT that was administered subsequently?

A. Yes.

218 Q. This is administered by the Encampment Task Force?

A. That's correct.

219 Q. And the Encampment Task Force go through

the VI-SPDAT questions with you and you scored 11; is that right?

A. That is correct.

220 Q. And I understand that it was at this point that you said you would not be moving again unless you were brought keys to an apartment?

A. That's very accurate.

221 Q. And who did you envision had these keys and would be bringing them to you?

A. The housing workers that continually showed up every day to say, Hey, we might have something for you. Hey, we are working on this.

And every time they came back it was well above and beyond what I could afford.

222 Q. Were you envisioning that this apartment, that keys would be provided? Would be free or were you expecting to be paying for it?

A. I was expecting to be paying for it. I wanted it to be in my housing support. My housing support needed to cover it. If it didn't, then I had conditions that it would be unaffordable should I have to pay above and beyond that.

223 Q. Okay. And paragraph 17 is where we come to what we were discussing earlier. The Encampment Task Force indicated earlier that your

application, your Access to Housing Application was not processed?

A. It was not processed, that's correct. That was five months after being homeless?

224 Q. Were you told why?

A. No.

225 Q. Was there some error in the application itself?

A. No.

226 Q. There may have been?

A. To my knowledge, no, I was never informed otherwise.

227 Q. Okay. And I understand that a new Access to Housing Application was completed at that time?

A. That's correct.

228 Q. Do you recall what timeline we are when the Encampment Task Force told you, you needed to file a new Access to Housing Application?

A. It would have been late September or early October of '21.

229 Q. Okay. And I'm going to scroll down to paragraph 20 of your affidavit you indicate in this paragraph that[...]"

Despite having extreme hardships in a tent[...]"

A. Yes.

230 Q. "I know living in a shelter environment was worse?"

A. Yes.

231 Q. And we have established that you have never resided in a shelter.

A. Correct.

232 Q. And I will put it to you that you can't know that it was worse.

A. Again, based on medical evidence and personal experience being in a crowd situation, I can guarantee you, sir, it would have been much worse.

233 Q. So you were worried that you would behave badly but you can't be sure of that.

A. I'm pretty sure it would have happened. That's why I was worried. I thought if I went there and I go off, I'm going to be in a heap of shit. So, no.

234 Q. I hear what you are saying but you were not sure.

A. Yeah. I would rather be safe than sorry.

235 Q. You would agree that pretty sure is not sure.

MS. CROWE: Mr. Jordan --

MR. DIACUR: That's not --

THE WITNESS: A hundred --

MS. CROWE: Asked and answered.

THE WITNESS: -- sir, that I would have been fucked there.

MR. DIACUR: No. I'm clarifying what the witness just stated.

MS. CROWE: You've repeatedly asked the same question and he has given the same answer.

MR. DIACUR: No, I have not.

MS. CROWE: He has given the same answer.

THE WITNESS: Sir, you have several times.

BY MR. DIACUR:

236 Q. He has said that he's pretty sure and it's important.

A. Okay. I will rephrase. I guarantee.

237 Q. Pretty sure is not sure.

A. I guarantee.

238 Q. Now, you are saying you guarantee.

A. I've explained this to you several times. You've asked me the question several times.

239 Q. Well, no.

A. Now you are getting an example. This is an example of how I get.

MS. CROWE: Mr. Diacur, that's a refusal for any further questions along this line. I do believe that it's been asked and answered.

MR. DIACUR: For the record, the witness is screaming at me.

MS. CROWE: Well, for the record, you have refused to listen to --

THE WITNESS: I've explained my health condition and my mental condition. What part of that do you not understand?

MR. DIACUR: The witness is continuing to scream.

THE WITNESS: Sir.

MR. DIACUR: This is a completely separate area of the affidavit.

MS. CROWE: Okay.

MR. DIACUR: The statements are different and I'm asking clarifying questions.

MS. CROWE: I believe, with respect, that the questions that are being asked.

MR. DIACUR: I understand your refusal counsel.

MS. CROWE: Thank you.

MR. DIACUR: And I will move on.

MS. CROWE: Thank you.

BY MR. DIACUR:

240 Q. For the record, these are relevant and important questions that are being refused.

A. That have been answered several times, sir.

241 Q. So, sir, you state here that you were concerned about losing possessions --

A. Yes.

242 Q. -- if you moved into a shelter?

A. Yes.

243 Q. And, again, you can't be sure that possessions would have been lost if you had moved into a shelter.

A. I guarantee they would have. I wasn't allowed to take them with me.

244 Q. Would you agree that it would have been better for your dog not to go through extreme hardships in a tent?

A. Absolutely not. It would have been worse for me. It is a service dog.

245 Q. Okay. Well, I'm not talking about you. I'm talking about the dog.

A. So am I, sir.

246 Q. Would it not have been better for your dog not to go through what you refer to as extreme hardships in a tent?

A. No.

247 Q. If I move on to paragraph 23 you state that apartments were offered to you as you were demanding; is

that right?

A. That is correct.

248 Q. You say that you could not afford them?

A. That's correct.

249 Q. Did you look into rent subsidies available from the City Hamilton?

A. They had said that there were rent

subsidies in there and they were over 60 per cent of my

income. I was only given three choices. The first two

exceeded far of what I could afford. The third one was

City Housing; and if I had refused City Housing they would

stop their support and not offer help anymore.

250 Q. So you consider that 65 per cent of your

income was too much?

A. That's correct.

MS. CROWE: I'm sorry, can I just clarify

was it 65 or 60 per cent was the answer?

BY MR. DIACUR:

251 Q. I believe he said 65 per cent.

A. It was about 65 per cent.

MS. CROWE: Thank you.

BY MR. DIACUR:

252 Q. And I understand the answer to that

question.

So at paragraph 27 you indicate:

"I lost 50 pounds while I was homeless

because of a lack of food and stress."

What was your weight before and after your

period of homelessness?

A. I was about 280 when I became homeless and

about 225-230 when I got housing.

253 Q. Paragraph 28 of your affidavit, you

indicate that you were housed in November of 2021; is that

right?

A. That's correct, yes. November 27th, 2021.

254 Q. We establish that date earlier, thank you.

Is that subsidized rent or is it --

A. No.

255 Q. -- an apartment that is free?

A. Market rent.

256 Q. So it's market rent, again, now.

Okay. And you remain and that same

apartment today?

A. That's correct.

257 Q. And you can afford that with supports?

A. Yes.

258 Q. So as I understand it, your episode of

homelessness was roughly five months from beginning to

end?

A. Six months, yes.

259 Q. The end of June to the end of November is five months, is it not?

A. Okay. Yes.

260 Q. All right. So moving on to paragraph 31

you indicate that you believe the protesting and refusing

to move expedited your housing being obtained. That's

your belief?

A. Yes, it is.

261 Q. You were put on and access to housing list

and you received access to housing. That's not

surprising; right?

A. It is considering it is a 10 to 12-year

waiting period. I know several people that are still

homeless that are still on that list that haven't received

any support.

262 Q. Right. Well, the waitlist in your case was

about two months after you submitted your new Access to

Housing Application in September; right?

A. Correct, I assume it was because of all of

the media.

263 Q. That's an assumption --

A. That's an assumption, yes.

264 Q. And the individuals that have waited

longer, you don't know what their personal circumstances

are? The reasoning --

A. Aside from living with them for

five months, no.

265 Q. Okay. And you indicate in paragraph 31

that you would have moved to hidden areas to avoid

displacement?

A. Absolutely.

266 Q. And not obtained housing?

A. That's correct.

267 Q. And that is what you were referring to

earlier? Moving to the empty lot that you were told you

couldn't remain in?

A. Yes.

268 Q. But you would agree with me that at this

point it's hypothetical because you obtained housing?

A. Yes. However, based on survival and the

fact I was being asked to move constantly, hiding would

have been my best option.

269 Q. You indicate that doing that would have

decreased your chances of getting housed?

A. Guaranteed.

270 Q. Is that the same assumption on the flipside

of it your belief is that making a protest led to your

housing being obtained in the first place?

A. If they don't know where I am, they can't

find me.

271 Q. Okay. Well, sir, thank you for attending and answering my questions. Those are all my questions for you.

A. Thank you, sir. And I apologize for losing control. But, again, that's what happens when I get confronted or shelter would not have been successful guaranteed.

272 Q. Okay. I appreciate you attending and answering, sir.

A. Thank you.

RE-EXAMINATION BY MS. CROWE:

273 Q. I was muted, sorry.
Thank you, Mr. Smyth, I just have a couple of questions for you for redirect. Okay?

So paragraph 23 is when you referenced some potential rental or options that you thought were unaffordable because it was roughly about 65 per cent of your income?

A. Yes.

274 Q. When those properties were presented to you do you remember if utilities were included in the rent?

A. No. They were not.

275 Q. Okay. When you were living at James Street North what percentage of your income was your rent?

A. About 33 per cent. It was about a third of my total income.

276 Q. Thank you. Those are my questions.

---Concluded at 1:48 p.m.

I hereby certify the foregoing is a full, true, and correct transcription of all of my oral stenographic notes to the best of my ability so taken at the Cross-Examination of GORD SMYTH, given under oath before me on the 28th of August, 2024.

Amy Armstrong, CVR-RVR

Certified Realtime Verbatim Reporter #7305

Certified Commissioner of Oaths

Certified this 30th of August, 2024

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yeah [9] 11/3 11/19 14/10 17/13 21/16 23/12 23/13 26/5 41/20 year [1] 47/12 years [16] 4/15 5/21 6/7 7/13 11/25 12/3 12/8 18/1 18/22 18/24 19/6 22/19 27/9 27/14 32/6 32/6 yes [78] 4/18 5/17 6/8 7/10 9/11 9/17 10/11 10/22 11/17 12/8 12/9 12/14 12/16 12/19 12/21 12/25 13/14 15/1 15/20 15/23 16/8 16/18 17/19 18/6 18/19 19/8 19/16 19/19 20/3 20/21 21/4 22/9 22/13 22/18 23/24 24/3 25/3 25/22 26/24 28/17 29/2 29/10 30/5 31/18 31/20 32/2 32/19 32/24 33/6 33/6 33/20 33/23 34/9 34/11 34/18 35/10 35/18 36/8 37/2 37/4 37/13 37/20 37/23 37/25 38/21 41/1 41/4 44/4 44/6 46/10 46/21 46/25 47/3 47/8 47/22 48/12 48/15 49/19 yet [1] 4/16 you [279] 4/7 4/12 4/15 4/19 4/21 4/22 5/2 5/2 5/6 5/7 5/10 5/10 5/18 5/19 5/23 6/1 6/15 6/18 7/2 7/5 7/8 7/11 7/20 7/21 8/3 8/11 8/20 8/25 9/10 9/23 9/25 10/5 10/6 10/9 10/18 11/13 11/24 11/24 12/2 12/6 12/6 12/11 12/12 12/20 12/22 12/23 13/3 13/3 13/13 13/22 14/2 14/3 14/11 14/14 14/15 14/22 15/4 15/7 15/8 15/11 15/18 15/21 15/25 16/3 16/4 16/10 16/23 17/12 17/25 18/7 18/21 19/1 19/21 20/8 20/12 20/17 20/22 20/22 21/8 21/11 21/11 21/24 21/24 21/25 22/15 22/16 23/5 23/7 23/13 23/20 23/22 23/23 23/25 24/1 24/10 24/12 24/12 24/15 24/20 24/21 24/24 24/25 25/8 25/9 25/11 25/15 25/16 25/20 26/3 26/12 26/14 26/22 26/22 27/1 27/6 27/7 27/8 27/21 27/23 27/23 27/24 27/25 28/3 28/7 28/7 28/8 28/9 28/12 28/15 28/18 28/18 28/22 28/25 28/25 29/1 29/8 29/11 29/21 29/25 30/1 30/4 30/23 31/1 31/1 31/7 31/8 31/10 31/11 31/15 31/16 31/21 31/21 32/13 32/17 32/17 32/20 32/20 32/21 32/23 32/25 33/1 33/1 33/2 33/4 33/7 33/14 33/18 33/22 33/22 33/24 34/2 34/4 34/6 34/7 34/12 34/13 34/16 34/16 34/23 35/1 35/4 35/17 35/21 35/22 35/23 35/24 36/1 36/1 36/2 36/6 36/25 37/5 37/15 37/17 37/22 38/15 39/1 39/1 39/5 39/5 39/5 39/8 39/9 39/11 39/15 39/16 40/5 40/16 40/17 40/17 40/22 41/5 41/8 41/8 41/12 41/13 41/13 41/14 41/18 41/18 41/21 42/10 42/17 42/17 42/18 42/21 43/3 43/7 43/20 43/22 44/2 44/2 44/5 44/7 44/8 44/12 44/17 44/21 44/24 44/25 44/25 45/3 45/3 45/5 45/13 45/21 45/25 46/7 46/8 46/11 46/17 46/20 47/5 47/5 47/9 47/10 47/17 47/24 48/3 48/4 48/9 48/10 48/10 48/13 48/14 48/18 49/1 49/3 49/4 49/8 49/10 49/13 49/14 49/15 49/16 49/20 49/21 49/23 50/3 you're [4] 4/13 5/8 24/17 35/23 you've [7] 6/4 8/6 18/14 34/25 36/24 42/6 42/19 your [55] 4/7 4/10 5/14 5/16 6/10 6/11 6/12 8/10 8/20 8/24 9/4 11/11 11/24		

TAB 74

Court File No. CV-21-00077817-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

**KRISTEN HEEGSMA, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO,
AND SHAWN ARNOLD, ET AL.**

Applicants

-and-

CITY OF HAMILTON

Respondent

AFFIDAVIT OF CLAIRE BODKIN

SWORN MAY 5, 2023

I, Doctor Claire Bodkin, of the City of Hamilton in the Province of Ontario, do hereby AFFIRM:

1. I have personal knowledge with respect to the facts set out below, except where stated otherwise. Where the information is not based on my personal knowledge, it is based upon information provided by others which I believe to be credible and true.

2. I am a Physician and the Co-Medical Director of Hamilton Social Medicine Response Team (HAMSMaRT). HAMSMaRT is an organization of health providers and community organizers providing community-centred care to people experiencing homelessness, including encampment residents. I have worked with HAMSMaRT for three years.
3. I have known Mr. Greaves for approximately ten months, and have provided medical care to him on two occasions.
4. I authored the April 24, 2023 report attached hereto as Exhibit “A” and endorse the contents therein.

Sworn remotely by Claire Bodkin at the City of Hamilton in the Province of Ontario, before me on May 5, 2022 by “zoom” videoconference in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Sharon Crowe
Commissioner for Taking Affidavits



Claire Bodkin

THIS IS EXHIBIT "A" TO THE
AFFIDAVIT OF CLAIRE BODKIN
AFFIRMED REMOTELY BEFORE ME AT
THE CITY OF TORONTO DURING A "ZOOM" VIDEOCONFERENCE
IN ACCORDANCE WITH O.REG. 431/20,
ADMINISTERING OATH OR DECLARATION REMOTELY
THIS 5TH DAY OF MAY, 2023



SHARON CROWE

Commissioner for Taking Affidavits, etc.

Dr. Claire Bodkin
HAMSMaRT

140 King St East, Suite 101
Hamilton, Ontario, L8N 1A5

Phone: 833-426-7678
Fax: 833-563-2210

Date:	<u>2023/04/27</u>
To:	
Address:	<div></div>
Phone:	
Fax:	

Patient:	<u>GREAVES, LINSLEY</u>
Address:	<u>NFA, Hamilton, ON</u>
Phone:	
Birthdate:	<u>1969/10/23</u>
Health Card No:	

To Whom It May Concern

I assessed Linsley Greaves on December 15 2022 in my outpatient clinic. He was brought in my paramedics, and presented with 2 weeks of worsening left foot infection and worsening right soft tissue injury. He had been repeatedly evicted from his encampment locations by the City of Hamilton in the few weeks prior, and his belongings kept getting wet, while the weather was fluctuating above and below freezing. This had led to tissue injury and infection of both feet.

On examination of the left foot, there was extensive skin sloughing/desquamation of ankle and hindfoot on dorsal side with capillary bleeding across ulcerated area; skin more intact midfoot then more sloughing forefoot. The first toe was autoamputated, with ulceration in this area, then other toes insensate and gangrenous without signs of circulation. There was an intensely foul odour.

On examination of the right foot, there was edema and erythema over midfoot and forefoot, and gangrenous blackened toes with loss of sensation and no evidence of circulation.

I was concerned for osteomyelitis (bone infection), dry gangrene (dead or necrotic tissue), wet gangrene (dead or necrotic tissue with superimposed bacterial infection of the dead tissue), and cellulitis (skin infection). I sent him immediately to the emergency department, where he was admitted, and ultimately underwent amputation of his left leg below the knee.

~~It is my medical opinion that the repeated eviction of Mr. Greaves from his encampment during wet weather with temperatures around 0 degrees celsius resulted in repeated freezing and thawing of tissue, and this directly caused frostbite and subsequent wet gangrene requiring amputation of his left leg below the knee, leaving him permanently disabled.~~



Claire Bodkin MD CCFP

TAB 75

COURT FILE NO. CV-21-77187

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

KRISTEN HEEGSMAS, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO, SHAWN ARNOLD, BRADLEY CALDWELL CHRISTINE DELOREY, GLEN GNATUK, TAYLOR GOGO-HORNER, CASSANDRA JORDAN, JULIA LAUZON, AMMY LEWIS, ASHLEY MACDONALD, COREY MONAHAN, MISTY MARSHALL, SHERRI OGDEN, JAHMAL PIERRE, LINSLEY GREAVES and PATRICK WARD

Applicants

-AND-

CITY OF HAMILTON

Respondent

The Cross-Examination of Dr. Claire Bodkin, on an Affidavit dated May 5, 2023 taken upon affirmation in the above action this, 6th of September, 2024, conducted via videoconference hosted by the offices of Nimigan Mihalovich Reporting Inc.

APPEARANCES:

For the Applicants:

For the Hamilton Community Legal Clinic:

SHARON CROWE

For the Community Legal Clinic of York Region:

MICHELLE SUTHERLAND

NONYE OKENWA

BENJAMIN HOGNESTAD

For the City of Hamilton:

JORDAN DIACUR

JOJO JOHNSON

Gowling WLG (Canada) LLP

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EXHIBITS

GUIDE TO UNDERTAKINGS, ADVISEMENTS, and REFUSALS:

This should be regarded as a guide and does not necessarily constitute a complete list:

UNDERTAKINGS:

(None noted).

UNDER ADVISEMENTS:

(None noted).

REFUSALS:

[1] 37/25.

1 --- Commencing at 12:21 p.m.

2 DR. CLAIRE BODKIN,

3 THE WITNESS HEREBEFORE NAMED,

4 Having been duly sworn by me to testify to the truth,

5 testified on their oath as follows, to wit:

6 CROSS-EXAMINATION BY MR. DIACUR:

7 1 Q. So, ma'am, I have questions for you today

8 principally about your affidavit that was sworn

9 May 5th, 2023. I want to make sure that you have a copy

10 of that available to you.

11 Do you have a copy, either a hard copy or

12 an electronic copy?

13 A. I can open it up, yeah. Just give me a

14 second.

15 2 Q. My plan would also be to put it on the

16 screen so that everybody can see it so if we reference it,

17 we'd all be looking at the same thing. But please feel

18 free to either refer to that or a copy that you have.

19 But other than that, other than your

20 affidavit or the documents that are put to you, you are

21 not to refer to any other notes or documents.

22 Understood?

23 A. Understood.

24 3 Q. Okay. And actually, I'll do that now. I

25 will share my screen and make sure that everybody can see

1 it. So can you see what's on the screen now, your

2 affidavit sworn May 5th, 2023?

3 A. Yeah.

4 4 Q. Okay. And so you just so I understand

5 correctly, you have not provided a copy of your CV or

6 curriculum vitae in this matter; correct?

7 A. I have not.

8 5 Q. And you have not provided any studies or

9 evidence regarding the capacity or the sufficiency of the

10 shelter system in the City of Hamilton?

11 A. I have not.

12 6 Q. And you have not provided a signed document

13 called either an Acknowledgement of Expert's Duty or a

14 Form 53 in this matter; correct?

15 A. I have not.

16 7 Q. And so, Dr. Bodkin, what do you consider

17 your role to be in this litigation?

18 A. I was Linsley's treating physician when he

19 presented with the injury -- with the infection and injury

20 that immediately preceded his amputation.

21 8 Q. Okay. And so you would be giving evidence

22 specifically about that subject?

23 A. Yes.

24 9 Q. And do you consider yourself to be

25 independent in this matter?

1 A. Yes.

2 10 Q. And by that I mean you do not favour one

3 side or the other?

4 A. I mean, I think I have a duty to my medical

5 responsibility, like my medical license, to provide

6 truthful and honest, yeah, like assessment of the

7 situation. So yeah, I think that in the matter

8 specifically of just discussing Linsley's assessment,

9 treatment and injury, I am required by my license to give

10 my independent medical advice, which doesn't mean that I

11 don't have an opinion about things, but it doesn't impact

12 or affect my assessment and management of his medical

13 condition, which is the only thing that I'm speaking to in

14 this case.

15 11 Q. Understood. Thank you.

16 So you did reference Mr. Greaves. You are

17 authored what is referred to in your affidavit at

18 paragraph 4, I should say, as the April 24, 2023, report

19 attached as Exhibit A to your affidavit, and you endorse

20 the contents of that document; correct?

21 A. Yes.

22 12 Q. Okay. I'm going to go to that document. I

23 will jump down to Exhibit A, and I will put it up on the

24 screen. I can see on the first page of it that it is

25 dated April 27, 2023, or at least the entry in the records

1 of what you referred to as HAMSMaRT is dated April

2 27 2023.

3 The document itself doesn't have a date on

4 it. So one thing I wanted to clarify with you is it is

5 referred to the April 24, 2023, report in your affidavit,

6 but it's dated April 27 on the face of the document.

7 Do you recall which of the two dates the

8 document was prepared on?

9 A. I don't. I would assume that I had

10 probably drafted a first copy and then maybe I needed to

11 print it again and that's why the new date is on it, but I

12 actually don't remember.

13 13 Q. Okay. Understood. I just wanted to see if

14 there was a clarification on that. But it was sometime

15 around the end of April of 2023 that it was prepared; is

16 that fair?

17 A. Yes, absolutely. And I provided care to

18 him the previous December 2022.

19 14 Q. Understood. Okay. And the document

20 itself, I put it on the screen here, it opens, "To whom it

21 may concern."

22 Who was the intended recipient of this

23 report?

24 A. So this was a request from the legal team

25 to provide a report for this litigation on the medical

1 care that I had provided to Linsley Greaves. And I know
 2 the formatting is odd, but it is all one document. It's
 3 just that our electronic medical record apparently cannot
 4 format things properly.

5 15 Q. Understood. Okay. You got provided the
 6 request or instructions that you received from the
 7 Applicants' lawyers in your affidavit or in this report;
 8 correct?

9 A. My instructions were just to write a report
 10 on the care that I provided.

11 16 Q. Is there any additional correspondence,
 12 emails, letters, or notes of any phone calls between you
 13 and the Applicants' lawyers regarding this matter?

14 A. There's no notes of any phone calls. There
 15 was communication just in the last day around a part that
 16 was in my original affidavit that you or your team wanted
 17 struck from the affidavit, but that's it.

18 And there was some communication before the
 19 affidavit around just trying to find Linsley to get him to
 20 sign a release of information so that I could write this
 21 with his consent. And it took us some time to actually
 22 find him and get him to sign that because of -- because
 23 he's living outside and moving around, but that was it.

24 17 Q. Okay. And I guess that was obtained?
 25 A. Yeah.

1 18 Q. And was there any correspondence
 2 specifically about your instructions to provide this
 3 document?

4 A. I think it was truly just -- yeah, it was
 5 truly just can you comment on this medical care. I don't
 6 think there was anything besides that.

7 19 Q. Okay. And did you prepare this document on
 8 your own or did the Applicants' lawyers assist you?

9 A. No. I prepared it on my own.

10 20 Q. Did you review the Notice of Application in
 11 this matter prior to preparing this document at Exhibit A
 12 to your affidavit?

13 A. No.

14 21 Q. Did you speak with Linsley Greaves prior to
 15 preparing it?

16 A. Yes, because I needed to get the consent
 17 signed.

18 22 Q. Okay. So I had understood that the consent
 19 came after the fact. So the consent was actually obtained
 20 prior to the preparation of this document?

21 A. Yes.

22 23 Q. Okay. And did you review Mr. Greaves'
 23 affidavit dated June 2nd, 2022, prior to preparing this
 24 document at Exhibit A to your affidavit?

25 A. No, no. The timeline on that doesn't make

11

12

1 sense, does it?

2 24 Q. Well, this document --

3 A. I came on in April. Oh, 2023.

4 25 Q. Yeah. So his --

5 A. Okay.

6 26 Q. So his affidavit was prepared the
 7 previously year in June 2022.

8 A. No. No.

9 27 Q. Have you reviewed that affidavit prior to
 10 today?

11 A. No.

12 28 Q. Have you reviewed any of the evidence in
 13 this matter, any of the other affidavits from the
 14 Applicants?

15 A. I reviewed Dr. Rachel Lamont's affidavit,
 16 yes.

17 29 Q. Okay. And I understand that you did not
 18 provide any reply evidence to the affidavit of Dr. Koivu?

19 A. I don't know that that is so. I don't
 20 think so.

21 30 Q. Okay. Understood. That makes sense. If
 22 you are not even aware of it, then I can understand that
 23 response.

24 Okay. So my understanding is that you
 25 practice family medicine and have been in that practice

1 area since September of 2021; do I have that right?

2 A. Sort of, yeah. So I practice family
 3 medicine. I work both in an inner-city setting where I
 4 provide care that's focused to people who use drugs, and
 5 then I actually also work as a rural locum physician, so
 6 I'm a family doctor that provides emergency medicine,
 7 in-patient care, long-term care. I'm like an old-school
 8 general practitioner with a particular focus on the care
 9 of people who use drugs.

10 31 Q. Understood. Thank you for that. That's
 11 helpful. So I'm going to scroll back up quickly to your
 12 affidavit, paragraph 2.

13 You state here that -- it says that as well
 14 as being a physician, you are the Co-Medical
 15 Director of Hamilton Social Medicine Response Team or
 16 HAMSMaRT.

17 A. Yeah, I was at the time that I wrote this
 18 affidavit. I'm on parental leave right now.

19 32 Q. Okay. So you are away from HAMSMaRT, but
 20 will be returning once your parental leave is over?

21 A. That's a good question. As of right now,
 22 yes.

23 33 Q. Okay. Well, I understand that can be
 24 somewhat up in the air for sure.

25 You understand that HAMSMaRT previously

1 sued the City of Hamilton, along with two of the current
 2 applicants in this matter, Mr. Caldwell and Ms. MacDonald;
 3 correct?
 4 A. Yes.
 5 34 Q. And that was in 2020?
 6 A. Yes. I mean, it was a loosely affiliated
 7 group of people at that point in time. It was not like an
 8 incorporated organization, but, yes, I do understand that.
 9 35 Q. And would you agree that HAMSMaRT is, among
 10 other things, an advocacy organization?
 11 A. I would.
 12 36 Q. All right. There is also one other
 13 document I would like to show you. It's an email in your
 14 name that is attached to an affidavit of a Lisa Nussey,
 15 N-U-S-S-E-Y.
 16 I'm going to put it on the screen now. So
 17 this is -- and I should scroll up so that you can see it.
 18 This is Exhibit B to the affidavit.
 19 MS. CROWE: Sorry, counsel. Before you
 20 continue, we have withdrawn this affidavit.
 21 BY MR. DIACUR:
 22 37 Q. I understand, but it is a document that was
 23 disclosed to us, and it's in the name of this witness, so
 24 I'd like to put it to her, and I have a couple of
 25 questions for her about it.

1 So this is listed as Exhibit B to the
 2 affidavit of Lisa Nussey. And it was sworn on
 3 July 13, 2023. And if I scroll down, there is on this
 4 page here, page 3 of 12 -- it's identified in the bottom
 5 left-hand corner -- an email from info@HAMSMaRT.ca, but
 6 the email itself is signed, it appears anyway, by you,
 7 Claire Bodkin, on behalf of HAMSMaRT; is that fair?
 8 A. Yes.
 9 38 Q. And the email is dated April 29 2020. We
 10 can see that in the top right-hand corner?
 11 A. I actually can't see it. Let me see if I
 12 can --
 13 39 Q. I can try to zoom in on it. I realize it
 14 is a bit small. Let's see if that's better. How is that?
 15 A. Yeah.
 16 40 Q. Top right-hand corner, April 29 2020, can
 17 you see that?
 18 A. Yeah.
 19 41 Q. And this email was sent by you in your
 20 name?
 21 A. Yeah.
 22 42 Q. And given that it was sent in
 23 April of, 2020, it was sent a couple of months before that
 24 previous lawsuit we were just discussing that included
 25 HAMSMaRT in 2020?

1 A. Yes.
 2 43 Q. And this is copied to a number of people,
 3 including Jason Farr@Hamilton.ca; correct?
 4 A. Yes.
 5 44 Q. And Jason Farr was a city councillor at
 6 that time?
 7 A. Yes.
 8 45 Q. And the greeting in this email is to
 9 Councillor Farr only, "Hi, Councillor Farr," correct?
 10 A. Yes.
 11 46 Q. and you state in this email that -- in the
 12 third sentence:
 13 "Dismantling encampments further
 14 destabilizes people."
 15 This is you lobbying a city politician and
 16 advocating against dismantling encampments; correct?
 17 A. Like -- so I'm -- can I just ask Sharon,
 18 like should we keep going here? Am I okay to answer
 19 things? Like what's the --
 20 47 Q. It's a relevant question, so you are
 21 required to answer it.
 22 MS. CROWE: I will object as needed,
 23 Dr. Bodkin. Thank you.
 24 THE WITNESS: Okay. Yes.
 25

1 BY MR. DIACUR:
 2 48 Q. You would agree that you are at least in
 3 part an advocate who has engaged with the City of Hamilton
 4 specifically on the subject of encampments?
 5 A. Yeah. Yes, I would.
 6 49 Q. Okay. So I'm going to jump back to your
 7 affidavit now. It's just going to take me a second to do.
 8 I'll do that via the index to this document, pull it back
 9 up.
 10 So we are back on the cover page of your
 11 affidavit sworn May 5th, 2023. In paragraph 3 of your
 12 affidavit you indicate that you have known, Mr. Greaves,
 13 so Linsley Greaves, for approximately 10 months and have
 14 provided medical care to him on two occasions.
 15 A. Yeah.
 16 50 Q. Now, in terms of the medical care provided,
 17 was that diagnostic care, was it medical treatment, or was
 18 it both?
 19 A. So in both cases he needed a higher level
 20 of care than what I could provide as a community-based
 21 physician. So it was taking a history, doing a physical
 22 examination.
 23 In one of those instances, it was actually
 24 my colleague that took over his care at that time, so I
 25 didn't even finish the assessment and plan part of it.

1 In the December 2022 instance, I assessed
2 him. I did provide treatment in the form of pain
3 management and then calling the hospital to advocate for
4 him to be seen by the emergency room doctor in a timely
5 fashion and to give them handover on why I was sending him
6 to the emergency room.

7 And then his treatment continued in the
8 emergency room and then as an admitted inpatient at the
9 Hamilton General Hospital.

10 51 Q. Okay. And you mentioned the time in
11 December of 2022 that you saw Mr. Greaves. When was the
12 other time that you provided medical care to him?

13 A. So -- and again -- like, I don't -- in
14 terms of medical care -- so it was July 2022. I did see
15 him. I did, like, take a look at his foot at that point
16 in time. But then I immediately called over a colleague
17 who took over his care.

18 So it was a very, like, brief, brief
19 interaction. And yeah, you know, I was acting in my
20 capacity as a physician in that I, like, saw him, assessed
21 him, and then asked another colleague to come over and
22 take over.

23 But it was a very brief interaction in
24 July of 2022.

25 52 Q. Okay. Who was the colleague?

1 A. Dr. Lauren Cook-Chaimowitz.

2 53 Q. I will take you now back to that report,
3 the April 24 or 27th, 2023 report, Exhibit A to your
4 affidavit, and I will scroll down to it.

5 So you do say here that Mr. Greaves was
6 brought to your outpatient clinic by paramedics.

7 A. Yeah.

8 54 Q. Is that common? I would think that they
9 would take him to the hospital; right?

10 A. Yeah, that's a good question. So we have a
11 program in Hamilton called Social Navigator.

12 55 Q. Mm-hmm.

13 A. And they are paramedics that specifically
14 do a lot of work and outreach with people who face all
15 sorts of social barriers, but a lot of them are people
16 deprived of housing.

17 And so they often will bring people to our
18 HAMSMaRT clinic because we offer drop-in care to people in
19 a timely way where they don't need to wait hours and
20 hours, say, at the emergency room. So if they can treat
21 somebody in an out-patient setting, it's often better for
22 the patient, and it's better for the healthcare system for
23 that to happen.

24 In this case, they brought him to me and I
25 assessed him and determined that, unfortunately, it was

1 not amenable to outpatient treatment, so than I referred
2 him on to the emergency room. But actually that's quite
3 common that Social Navigator would bring patients to us.

4 56 Q. Understood. That's helpful.

5 You indicate here that Mr. Greaves
6 presented with two weeks of worsening left foot infection
7 and worsening right soft tissue injury.

8 Based on what you've told me, you didn't
9 see him in the two weeks previous; correct?

10 A. No. But as a physician, like, the very
11 basis of my practice is taking a history, a detailed
12 history. So I ask people about, you know, what's been
13 happening, what's led up to this, what were things like.

14 And I document that in contemporaneous notes as part of
15 my -- then I move on to the physical examination and then
16 the assessment is based on the combination of history and
17 physical examination.

18 57 Q. Understood. But you would agree that the
19 timeline, two weeks of worsening of foot infection, for
20 example, that's based on Mr. Greaves' self-report?

21 A. That and also Social Navigator paramedics
22 had been seeing him as well. So they also were able to
23 corroborate that.

24 58 Q. Okay. That's helpful as well.

25 Would you agree that getting a baseline for

1 a patient is important in terms of being able to tell
2 whether they are getting better or worse?

3 A. I mean, I work as an emergency room
4 physician, so actually a lot of my job is assessing people
5 in the moment who I haven't met before where I'm making an
6 assessment on the basis of history and physical exam
7 within, you know, a few minutes kind of thing.

8 So it's not that it doesn't have value, but
9 actually no, I don't see it as a core part of the
10 assessment in this particular instance.

11 I didn't need to see him before in order to
12 make the assessment and diagnosis and plan that I made
13 that day.

14 59 Q. Okay. And you indicate here that he was
15 repeatedly evicted -- and when I say "he," I mean
16 Mr. Greaves -- was repeatedly evicted from his encampment
17 location in the two weeks previous by the
18 City of Hamilton.

19 That's something that was reported to you.
20 You didn't witness repeated evictions of Mr. Greaves from
21 encampments; correct?

22 A. No. It was reported to me by Mr. Greaves
23 and by the Social Navigator paramedics.

24 60 Q. Understood. Was the specific number of
25 evictions reported to you?

1 A. No. What was relevant to his medical care
2 was just that he had lots of risk factors for non-freezing
3 cold injury or trench foot and lots of risk factors for
4 frostbite related to the -- like his belongings getting
5 wet and then his tissue in his feet getting frozen and
6 thawed.

7 So the number of evictions was not
8 particularly important, only that it happened, you know,
9 more than once and that the result of that was this
10 particular exposure that led to this particular injury.

11 61 Q. Okay. Was it reported to you how long
12 Mr. Greaves was able to stay at an encampment between any
13 of the evictions?

14 A. No. I didn't ask him. No, I didn't.

15 62 Q. Was it reported to you whether Mr. Greaves
16 was offered indoor shelter at the time of any encampment
17 dismantlement?

18 A. It was not, no. It wasn't reported. I
19 don't know if it was offered.

20 63 Q. Was it reported to you whether Mr. Greaves
21 was offered any assistance in finding somewhere else to
22 go?

23 A. It was not reported, no.

24 64 Q. Was it reported to you what kind of tent
25 Mr. Greaves had in his encampments?

1 A. No, it was not reported.

2 65 Q. Was it reported to you whether Mr. Greaves
3 had sufficient shelter in an encampment to protect him
4 from the elements?

5 A. I mean, in the context of the repeated
6 evictions, it was not sufficient. In terms of what it was
7 like two weeks prior to this, like, getting moved around a
8 lot and the temperatures changing -- yeah, you know what,
9 I actually can't recall, and I didn't document it in my
10 notes, so...

11 66 Q. Okay. And you do state in this document
12 your medical opinion that it was what you call, quote:

13 "The repeated eviction of
14 Mr. Greaves from his encampment that
15 directly caused frostbite and
16 subsequent wet gangrene, requiring
17 amputation of his left leg below the
18 knee."

19 A. Yes.

20 67 Q. That is accurate?

21 A. It is.

22 Sorry, Sharon. Can I just ask you? I
23 thought that the affidavit was changing, although that is
24 my medical opinion.

25 MS. CROWE: Yes. Can we go off record for

1 a moment?

2 MR. DIACUR: Sure, but it is unusual for
3 the witness to be asking counsel questions.

4 --OFF-THE-RECORD DISCUSSION

5 ---RECESS TAKEN AT 12:45 p.m.

6 ---UPON RESUMING AT 12:52 p.m.

7 BY MR. DIACUR:

8 68 Q. So, ma'am, I would like to take you through
9 to an affidavit that was sworn by Linsley Greaves in this
10 matter. It's dated June 2nd, 2022, as I said, previously.

11 And I'd like to take you particularly to
12 paragraph 31 of his affidavit, the second-last paragraph.
13 As you can see here from the jurat, it was sworn
14 June 2nd, 2022, signed by Linsley Greaves.

15 He says in paragraph 31 of his affidavit
16 that he ended up getting frostbite on his left foot and
17 toes, quote, last winter. So that would be
18 December of 2021 to March 2022, given when his
19 June 2nd, 2022, affidavit was sworn; correct?

20 A. Yeah. Sometime in that winter, yeah.

21 69 Q. And that's about one year prior to when you
22 saw him in December of 2022; right?

23 A. Yes.

24 70 Q. And he says in paragraph 32 of his
25 affidavit that he saw Dr. Wlucharuk on June 2nd, 2020, the

1 same day that he swore this affidavit, for treatment of
2 the frostbite.

3 That's roughly three to six months after he
4 says the frostbite occurred in the first place; right?

5 A. Yes. Roughly, yes.

6 71 Q. And he says in paragraph 31 that his foot
7 had been getting steadily worse and that Dr. Wlucharuk
8 told Mr. Greaves that day, June 2nd, 2022, he was going to
9 lose his left big toe, that he was going to be an amputee.
10 That's when Mr. Greaves' foot injury was diagnosed;
11 correct?

12 A. So different foot injury. I agree that
13 this is like a -- because he spent so much time outside
14 he's had repeated injuries in terms of frostbite and then
15 trench foot or non-freezing cold injury. So he's had
16 recurrent injuries.

17 And once you get frostbite once and have
18 damage to the vasculature in your foot once, you're going
19 to be at further risk with further exposures. But they
20 are not the same injury, no. Or it's like a much further
21 escalation and evolution with a new injury, like new
22 frostbite, new non-freezing cold injury.

23 Does that makes sense?

24 72 Q. I think so. And you are saying that --

25 A. He's had frostbite more than once.

1 73 Q. Frostbite can re-occur; is that what you
2 are saying?
3 A. Yeah. And that when I saw him, it was a
4 new injury. Like at that point in time, that left big toe
5 had already auto amputated, which I think is in my
6 affidavit, that the toe was gone. But he then had a new
7 injury again, another episode of frostbite and
8 non-freezing cold injury.
9 74 Q. Well, that's where I'm going with my
10 questions. It does say here that Dr. Wiwcharuk indicated
11 he was going to lose his left big toe and that amputation
12 was indicated. You would agree with that?
13 A. Sorry. So amputation just means lost of a
14 digit or a limb; right? And so he was an amputee from his
15 left big toe, which is very different than losing your leg
16 below the knee, which is the amputation he had like
17 immediately after I saw him.
18 So yes, he would be an amputee of his left
19 big toe. But that is not the same in terms of function or
20 degree of injury or like, you know -- that we call it auto
21 amputation, so it falls off on its own, you don't need a
22 major surgery, versus a below knee amputation, which is a
23 major orthopedic surgery.
24 75 Q. Certainly amputation of a toe is far better
25 than amputation of a leg below the knee.

1 You would agree with that?
2 A. Yes.
3 76 Q. And he was told at this time, in
4 June of 2022, that an amputation was indicated?
5 A. No, no, no. Of his left big toe, not of
6 his leg.
7 77 Q. I understand. But he was told that an
8 amputation was the indicated treatment for his injury in
9 June of 2022.
10 A. It wasn't -- I disagree. It was not the
11 indicated treatment. It was the inevitable outcome. He
12 auto amputated that toe. He did not have surgery.
13 78 Q. I understand that it auto amputated, but
14 Dr. Wiwcharuk is saying that his toe needed to be cut off
15 and amputated.
16 A. No. She's not saying that. She's saying
17 that is the inevitable outcome.
18 79 Q. What other treatment is there for this
19 issue?
20 A. So in an immediate frostbite situation,
21 there is hyperbaric treatment if it is caught early
22 enough.
23 80 Q. Sorry. I want to be clear. I'm not
24 talking about immediate treatment. I'm talking after
25 three to six months, when a doctor is saying that this toe

1 needs to be amputated, it is going to be lost, what
2 treatments other than amputation are available?
3 A. So she is not saying that it needs to. She
4 is saying that that is the inevitable outcome, like that
5 is just what will happen. That is the course of things,
6 and there is nothing that can be done to reverse that.
7 81 Q. Sure. I heard your answer on that subject.
8 But other than amputation, after three to six months of a
9 progressive injury due to frostbite, what other treatments
10 are there than amputating?
11 MS. CROWE: This has been asked and
12 answered.
13 MR. DIACUR: No, it hasn't.
14 THE WITNESS: I did not see him and treat
15 him at that time. I don't know why we're --
16 BY MR. DIACUR:
17 82 Q. But I'm asking you as a physician, other
18 than amputation, after three to six months of a frostbite
19 injury, what other treatments are there?
20 A. So I think that that question would
21 actually be better directed at a vascular surgeon or
22 somebody who specializes in thermal injuries. Like,
23 that's not my area of expertise.
24 83 Q. So you are not able to answer the question?
25 A. If there's other things besides auto

1 amputation at that point in time? I mean, I didn't see
2 him.
3 And in terms of speaking generally to the
4 management of frostbite injuries after three to six
5 months, no, that's not my area of expertise. No, I can't
6 answer it.
7 84 Q. You would agree that on the basis of
8 Mr. Greaves' own evidence, he presented to you in
9 December of 2022 with a months' old frostbite injury?
10 A. No. That's not what I'm saying. He had a
11 new frostbite injury and a new non-freezing cold injury
12 that occurred during the two weeks prior to when I saw him
13 in a further part of his foot.
14 85 Q. So he had the original injury, and you are
15 saying that there was a further injury?
16 A. Yes.
17 86 Q. How did you determine that there was a
18 further injury?
19 A. Sorry. So I did a history. I asked him
20 what's been going on, what's changed about your foot,
21 what's changed about your skin, what's changed about --
22 like, what is going on there.
23 I also got collateral from the
24 Social Navigator paramedics that had been seeing him.
25 Then I did a physical examination.

1 And then I came to my assessment which is
2 that, yes, in the two weeks prior -- I mean, you are right
3 that he was, like, already vulnerable to this kind of
4 injury because he had had frostbite before. He had had an
5 auto amputation of the toe before. It had some impairment
6 to his circulation before for sure. And those are also
7 things when you are doing a history that you take into
8 account.

9 But that is not the same as he had a new
10 injury, indeed, in the two weeks prior to when I saw him.

11 87 Q. And how did you determine that? Was it
12 solely from his self-reporting to the paramedics,
13 Social Navigator?

14 A. And from seeing him. You cannot have a
15 massive -- like, so I was concerned for osteomyelitis,
16 bone infection. I was concerned for wet gangrene, which
17 is infected gangrenous tissue. You can't have that
18 untreated for months and months and months and months and
19 not go into sepsis.

20 Like, it just -- that timeline does not --
21 it would be extraordinarily unusual to have the level of
22 tissue damage that he had and for that to be possible for
23 months at a time without having a full body infection.

24 88 Q. Right. And that's ultimately my point. I
25 mean, untreated frostbite can lead to an infection,

1 gangrene, skin sloughing, desquamation, bleeding,
2 ulceration, and eventually auto amputation, all of the
3 things that you list in your report; right?

4 A. So auto amputation typically is just in
5 digits. It's not typically what would happen with a limb.

6 89 Q. No, understood. But untreated frostbite
7 can lead to infection, worsening infection, gangrene, skin
8 sloughing, desquamation, bleeding, ulceration, and
9 eventually auto amputation; you would agree with that?

10 A. Yes, it can.

11 90 Q. And that's actually what happened here in
12 the case of Mr. Greaves; correct?

13 A. I think where we disagree is on the
14 timeline, though. Like, I don't agree with you -- this
15 was not brewing for a year. This was -- he had a prior
16 injury. He kept having recurrent injuries, and then he
17 had this one that was particularly bad.

18 91 Q. No. So I think I see what you are saying.
19 So he did have untreated frostbite for months; you would
20 agree with that?

21 A. No. No, no, I would not agree with that.

22 92 Q. Okay.

23 A. I do not agree with that.

24 93 Q. So he sees Dr. Wiwcharuk here?

25 A. Yeah.

1 94 Q. In his own words, June 2nd, 2022?

2 A. Yeah.

3 95 Q. And he's talking about frostbite that he
4 got last winter?

5 A. Yes.

6 96 Q. So that's three to six months previously?

7 A. Sure, yes.

8 97 Q. He had untreated frostbite for months?

9 A. Okay. But frostbite is not a full body
10 experience; right? Like a local area of tissue freezes
11 and thaws.

12 98 Q. His left foot and toe, as he says. That
13 was the area that was affected.

14 A. I don't know if it was his whole foot or,
15 because I didn't see him then. I didn't assess him then.
16 I didn't treat him then.

17 99 Q. I understand. I'm asking you about his
18 evidence. He says his left foot and toes.

19 A. He doesn't say, "my whole foot." He
20 doesn't say the entire foot. He says on his left foot. I
21 don't know what part of the left foot that means.

22 100 Q. So you are saying that you can't say
23 whether or not he had untreated frostbite for months,
24 based on his own evidence?

25 A. I don't think -- so, frostbite itself is

1 just the process of freezing and thawing tissue; right?

2 So that happens in a discrete amount of time.

3 And then there may be residual damage from
4 the frostbite injury; right? So damage to the blood
5 vessels, damage to the tissue. And then you have this
6 dead or devitalized tissue with poor circulation that then
7 becomes more -- more at risk of either future episodes of
8 frostbite and non-freezing cold injury and becomes more
9 vulnerable to things like infections, because we don't
10 have as good blood supply there to help you fight
11 infections.

12 But then he had another injury, right, like
13 another episode of tissue either freezing and thawing,
14 which is frostbite, or of non-freezing cold injury, which
15 is where the tissue gets wet around cold. There's a lot
16 of vasoconstriction that happens. There's, again, damage
17 to the tissue which is not frozen all the way through.

18 And so what I am saying, and I feel like I
19 said ten times now, is that he did have frostbite, yes.

20 And then after that frostbite, he had tissue damage. That
21 was the sequela or the outcome of the frostbite. And then
22 he had the toe auto amputation. I agree. That is what's
23 here.

24 Then he had months where I didn't see him
25 as a doctor. And then I saw him and I did what I do as a

1 physician who does primary care and does emergency
 2 medicine all the time, which is that I took a history, I
 3 did physical examination, and then I made an assessment
 4 and a diagnosis, and then I arranged for appropriate care,
 5 because it wasn't what I could provide in my outpatient
 6 clinic.

7 But I want to be really clear that this is
 8 not just one static injury that happened over the course
 9 of a year, that the frostbite episodes are the freezing
 10 and thawing of tissue, that the non-freezing cold injury
 11 or trench foot is the immersion in cold, like usually
 12 cold, wet environments and causing vasoconstriction and
 13 damage to the tissue.

14 And once that is damage damaged, like, the
 15 immediate treatment for frostbite is rewarming, but there
 16 is still this sequela of the damage itself in terms of
 17 tissue damage and in terms of susceptibility to infection.

18 And there was a new episode of that that
 19 happened in the two weeks prior to when I saw him.

20 101 Q. That's what I'm asking you to clarify. So
 21 we've established that untreated frostbite can lead to
 22 infection.

23 You would agree with that?

24 A. So what I would agree with is that
 25 untreated damage tissue after frostbite can lead to

1 infection.

2 102 Q. Okay. And an untreated infection can
 3 spread. You would agree with that?

4 A. Yes.

5 103 Q. So how did you determine that it was a new
 6 injury that was caused in the two weeks prior -- so you
 7 saw him in December of 2022 -- and not a worsening or
 8 spreading of the infection that went untreated that began
 9 in or around, based on his own evidence, in the winter of
 10 2021-2022?

11 A. So respectfully, I'm here on my own time.
 12 I am unpaid. And I have already answered that question,
 13 which is that you cannot have the level of tissue damage
 14 that he had on his foot and for that -- sorry, cannot --
 15 it is extremely unlikely. I won't say cannot, because in
 16 medicine nothing is 100 per cent.

17 It is extremely, extremely unlikely that
 18 you would have the level of tissue damage that he had when
 19 I saw him and for that to have been going on for longer
 20 than maybe two and a half weeks or three weeks. But,
 21 like, it would not have gone on for that long at that
 22 level without spreading.

23 That is extremely unlikely. And I've
 24 already answered that question.

25 104 Q. Well, in terms of spreading, I mean, we are

1 talking about an individual whose toe had auto amputated.

2 MS. CROWE: Mr. Diacur, I have to
 3 interject. The question has been asked and answered over
 4 and over. She's repeatedly explained that she feels that
 5 this is a distinct injury and was not connected to the
 6 original frostbite in the winter of 2021.

7 So I think it is time to move on.

8 BY MR. DIACUR:

9 105 Q. Well, I disagree, but I am prepared to move
 10 on.

11 Are you aware that Mr. Greaves has
 12 indicated that he is or was a user of crystal meth?

13 A. It actually wasn't the focus of my
 14 treatment for him, but I was aware of that, yeah.

15 106 Q. And you would agree that crystal meth,
 16 there are impurities in it that can cause neuropathy,
 17 particularly in the extremities?

18 A. So, I mean, it does act a vasoconstrictor,
 19 which can then in turn, in some people, lead to
 20 neuropathy.

21 107 Q. And neuropathy is nerve damage, in layman's
 22 terms?

23 A. Yeah.

24 108 Q. Neuropathy can lead to loss of sensation in
 25 the extremities?

1 A. It usually is painful first, but sometimes
 2 it can lead to loss of sensation.

3 109 Q. And when there is a loss of sensation, the
 4 patient's injuries to the extremities may not be treated
 5 properly as a result; would you agree with that?

6 A. This is really conjecture outside of --
 7 maybe conjecture is a legal word I'm using wrong, but we
 8 are moving beyond what I actually know about Linsley and
 9 his specific condition and situation.

10 110 Q. I'm asking you in general about a user of
 11 crystal meth and somebody who suffered from neuropathy.
 12 They can lose sensation. It's possible that an injury
 13 might occur and not be treated properly as a result.

14 As a general proposition, would you agree
 15 with that?

16 MS. CROWE: Mr. Diacur, she's indicated
 17 that she can't speak to that in the context of
 18 Mr. Greaves, and she's here to give evidence with respect
 19 to his experience.

20 BY MR. DIACUR:

21 111 Q. No. That's not true at all. She's here to
 22 give relevant evidence that's applicable to this matter.
 23 It is not limited to Mr. Greaves whatsoever.

24 So the question is --

25 MS. CROWE: It should be limited to what is

1 in her affidavit and what her knowledge --

2 MR. DIACUR: Absolutely not. No. Not even

3 close, counsel. No.

4 MS. CROWE: Okay, Mr. Diacur, I'm going to

5 ask you --

6 MR. DIACUR: Any relevant question -- any

7 relevant question --

8 MS. CROWE: I'm going to ask you again to,

9 first of all, let me finish my questions and my comments

10 and to use a respectful tone when we're speaking to each

11 other.

12 MR. DIACUR: No, no. That is a ridiculous

13 objection, counsel. It is not limited to the four corners

14 of her affidavit.

15 MS. CROWE: I think your response is

16 ridiculous.

17 MR. DIACUR: No. It is not limited in any

18 way to the four corners of this witness's affidavit.

19 MS. CROWE: And her knowledge.

20 MR. DIACUR: She can answer relevant

21 questions that.

22 MS. CROWE: Well, I guess that's where we

23 disagree, then. I disagree that what you are asking is

24 relevant, and so that's a refusal.

25 ---REFUSAL

1 BY MR. DIACUR:

2 112 Q. Okay. Well, that is a completely different

3 matter. But that refusal is -- again, it is ridiculous.

4 It's a relevant question.

5 Was drug use neuropathy and untreated

6 injury considered as a potential causative factor in terms

7 of Mr. Greaves' foot issues?

8 A. I mean, I was mostly focused, honestly, on

9 getting him to the right level of care. Like at that

10 point in time, the focus was on the fact that he had this

11 massive infection that needed timely treatment.

12 And so whether or not crystal

13 methamphetamine contributed to it wasn't a primary driver

14 in me referring him to the hospital.

15 Yeah. Yeah. And then in terms of whether

16 it contributed to his injury --

17 113 Q. No. That's not the question.

18 A. No?

19 114 Q. Did you consider as a differential

20 diagnosis the possibility that his injury was either

21 caused or contributed to by his drug use, neuropathy, loss

22 of sensation?

23 A. And, sorry. How does that apply to my

24 assessment and treatment of him?

25 115 Q. I'm asking you if you did any sort of

1 differential diagnosis. Did you?

2 A. So, a different -- I mean, yes. I laid it

3 out in my affidavit, which is the differential diagnosis

4 is osteomyelitis, wet gangrene, dry gangrene.

5 Can we go back to my --

6 116 Q. I can put it back up on the screen for you.

7 That's what I'm asking you --

8 A. I guess the thing --

9 117 Q. I'm not asking you about the possible knock

10 on effects, let's call them, in layman's terms of the

11 injury.

12 I'm asking you about the diagnosis of the

13 cause. Did you consider any other potential causes,

14 including Mr. Greaves' drug use, including neuropathy

15 which may flow from it, and including --

16 A. So I think I see what you are saying. So

17 rarely, almost never, would somebody's diagnosis be due to

18 one thing. Right? If you have a heart attack, it's

19 probably age, it's genetics, it's smoking, it's

20 environmental. All of those sorts of things.

21 So in terms of considering what could have

22 contributed, yes, I did consider that crystal

23 methamphetamine could have contributed to things in a more

24 distal way.

25 In terms of proximal issues, so then the

1 most immediate cause leading to his injury and

2 presentation, no, I did not consider it as part of the

3 most proximal causes, because I do not think, and still

4 don't think that, you know, smoking crystal

5 methamphetamine that day or that week or two weeks prior

6 contributed.

7 However, I did think -- and it's not in my

8 affidavit. I can appreciate that. I did think that, you

9 know, months prior using crystal methamphetamine could

10 have been, one, not the direct, just to be clear, very

11 clear, not the direct reason, but could have been a

12 contributing factor, along with other factors, to his

13 overall presentation, yes.

14 118 Q. What other factors did you consider?

15 A. So the fact that he had a prior injury in

16 terms of the frostbite before and tissue damage before.

17 119 Q. So having existing tissue damage is also a

18 potential causative factor for new injury?

19 A. So causative is not the word I would use.

20 It doesn't meet the causative criteria. It is a risk

21 factor, for sure. That's a risk factor. Smoking anything

22 is a risk factor, whether that's cigarettes or

23 methamphetamine or whatever. That is a risk factor.

24 Age is a risk factor in terms of -- not

25 getting frostbite, like, that doesn't have to do with it,

1 but the ability of the body to, like, modulate its
 2 response to cold and exposure and the ability of -- like,
 3 also just in terms of atherosclerosis and other forms of
 4 peripheral vascular disease. So those would be the main
 5 things that would be potential risk factors.
 6 However -- and like the main reason, just
 7 to be clear, of me thinking of what are the main
 8 contributing factors to him having this infection have
 9 nothing to do with litigation. They have to do with what
 10 can we actually do to prevent worsening of this and
 11 prevent this from happening again. They're for his
 12 health.
 13 And the main factor in that was getting
 14 cold and getting wet. Those were the main factors. Those
 15 were the main preventable things that we could -- I
 16 reviewed my clinic notes immediately prior to this, and it
 17 says, like, there's no way that he's going to be able to
 18 recover from an infection if he's constantly on the move
 19 and can't get his antibiotics and he's constantly getting
 20 wet. He really needs to be admitted to hospital so that
 21 he can be in one place and be dry so that he can get
 22 treatment for this, because at that point in time I
 23 worried that he would need an amputation, but I didn't
 24 know that that was what was going to happen.
 25 And sometimes the treatment for these

1 infections is intravenous antibiotics, and they are able
 2 to salvage the tissue. So at that point in time, that was
 3 my thinking.
 4 120 Q. Okay. Well, I think that was actually in
 5 answer to my earlier question.
 6 You mentioned medical notes or records that
 7 have not been produced in this matter. Why didn't you
 8 include these other contributing factors that you just
 9 mentioned in your report prepared for purposes of this
 10 litigation?
 11 A. Because I was focusing on the most proximal
 12 factors that led to the situation.
 13 121 Q. Your report doesn't say the most proximal
 14 factors. It says it's the direct cause.
 15 A. I guess we interpret proximal differently.
 16 I would interpret direct as this is the thing that
 17 happened right before the thing -- the other thing that
 18 happened. That's direct, rather than indirect causes.
 19 122 Q. And you don't mention any other
 20 contributing factors, including the ones that you now say
 21 that you did consider?
 22 A. Yeah, fair enough. Again, I was looking at
 23 direct causes. Yeah. And -- yeah, anyway. We won't go
 24 there.
 25 MR. DIACUR: Okay. Well, thank you very

1 much, Doctor. I appreciate you attending and answering.
 2 Those are all my questions.
 3 MS. CROWE: Thank you, Dr. Bodkin. If you
 4 can just give me a moment to look at my notes and see if
 5 there's anything further that I'd like to ask you about.
 6 ---OFF THE RECORD AT 1:15 p.m.
 7 MS. CROWE: Thank you very much for your
 8 time, Dr. Bodkin. I don't have any other questions for
 9 you.
 10 --- The examination concluded at 1:16 p.m.
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I hereby certify the foregoing is a full, true, and correct
 transcription of all of my oral stenographic notes to the best
 of my ability so taken at the Cross-Examination of DR. CLAIRE
 BODKIN, given under oath before me on the 6th of September,
 2024.

Amy Armstrong, CVR-RVR

Certified Realtime Verbatim Reporter #7305
 Certified Commissioner of Oaths
 Certified this 7th of September, 2024

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Heegsma et al
Appellants (Applicants)

-and-

CITY of HAMILTON
Respondent (Respondent)

Court File No.COA-25-CV-0166

Ontario
Court of Appeal

APPEAL BOOK - VOLUME 5

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