Court File No. COA-25-CV-0166

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

Plaintiffs (Appellants)

and

CITY OF HAMILTON

Defendant (Respondent in Appeal)

and

HIS MAJESTY THE KING IN RIGHT OF ONTARIO

Intervener

MOTION RECORD OF THE PROPOSED CO-INTERVENERS, CLINIQUE JURIDIQUE ITINÉRANTE AND NIAGARA COMMUNITY LEGAL CLINIC

November 11, 2025

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Plaintiffs (Appellants)

and

CITY OF HAMILTON

Defendant (Respondent in Appeal)

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HIS MAJESTY THE KING IN RIGHT OF ONTARIO

Intervener

NOTICE OF MOTION FOR LEAVE TO INTERVENE OF THE PROPOSED CO-INTERVENERS, CLINIQUE JURIDIQUE ITINÉRANTE AND NIAGARA COMMUNITY LEGAL CLINIC

(Motion for leave to intervene returnable November 14, 2025) (Pursuant to Rules 13.02 and 13.03(2) of the *Rules of Civil Procedure*)

THE PROPOSED CO-INTERVENORS, CLINIQUE JURIDIQUE ITINÉRANTE AND NIAGARA COMMUNITY LEGAL CLINIC, will make a motion pursuant to Rules 13.02 and 13.03(2) of the *Rules of Civil Procedure* to the Chief Justice/Associate Chief Justice for a hearing on the motion, as soon as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order granting Clinique juridique itinérante (CJI) and Niagara Community Legal Clinic (NCLC) leave to intervene jointly in this Appeal as friends of the court, on the following terms:

    (a) the proposed joint interveners may file a factum of no more than 12 pages;

    (b) the proposed joint interveners may present oral argument at the hearing of the Application;

    (c) the proposed joint interveners shall not be granted any costs, nor will costs be awarded against them; and,

    (d) such further or other order as this Honourable Court may deem appropriate.

THE GROUNDS FOR THE MOTION ARE:

1. CJI is a legal clinic with a mission to promote access to justice for the unhoused, who are often helpless in the face of the justice system's complexity. It is the only clinic in Quebec dedicated to advocacy in the context of houselessness law. The CJI provides an array of services, including litigation, access to legal advice/information, referrals, social juridical accompaniment, and help in regularizing legal debts. In these ways, CJI contributes to the social reintegration of unhoused citizens. It is called an "*itinérante*" (mobile) clinic because CJI student-volunteers (from four Quebec law schools and one in Ontario) travel on a monthly basis to twenty-five different shelters and day centres that work with the unhoused community and

marginalized people in Montréal, Quebec City and, since the Fall 2025, in Ottawa. The student-volunteers' work is overseen by lawyers members of the Quebec Bar and the Law Society of Ontario. On an annual basis, 800 unhoused persons consult with the CJI about their legal issues.

2. The originality of the CJI's work lies in its innovative, community-based approach, which allows it to offer a service *in situ* to those in need, providing legal information, support, and assistance in settling judicial debts. The CJI travels to meet unhoused persons in their living environment (outreach service), whether in shelters, day centers they frequent, or on the street where they live.

3. The CJI is a member of the *Mouvement pour mettre fin à l'itinérance à Montréal* (MMFIM), a coalition of non-profit organizations working with unhoused persons, representatives of government institutions and of the business community, researchers and service providers, who have joined forces to tackle the challenge of ending homelessness in Montreal.

4. In Quebec, the Superior Court has recognized that the CJI has public standing interest to engage in litigation on behalf of members of the unhoused community, as described below.

5. In 2021, during the Covid pandemic, the CJI filed an application for judicial review and interim stay in the Superior Court against the Attorney General of Quebec, challenging the constitutionality of a government-imposed curfew (from 8pm till 5am). The CJI argued that the unhoused population suffered serious and irreparable harm as a result of the said curfew. In a judgment dated January 22, 2021, Masse J. invalidated the said decree to the extent that it

applied to individuals experiencing homelessness.[1]

6. In February 2022, the CJI intervened before the Supreme Court of Canada after being granted intervener status in the *Ndhlovu* case to present its view on the impacts and difficulties for unhoused people sentenced to register on the National Sex Offender Registry (NSOR) whose constitutionality was being challenged.[2]

7. In April 2023, the Superior Court recognized that the CJI had the necessary standing, expertise and interest to act in the public interest on behalf of homeless people in the case concerning the eviction of members of the street community who lived under the Ville-Marie Highway in Montreal.[3]

8. In October 2023, the Superior Court recognized that the CJI had the necessary standing, expertise and interest to act in the public interest on behalf of homeless people in the case concerning the eviction of members of the street community who lived on property of the *ministère des Transports et de la Mobilité durable*, along Notre-Dame Street Est, in Montreal.[4]

9. In January 2024, the Superior Court recognized that the CJI had the necessary standing, expertise and interest to act in the public interest on behalf of unhoused people in the case concerning the eviction of members of the street community in the City of Saint-Jérôme.[5]

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[1] *Clinique juridique itinérante c. Procureur général du Québec*, 2021 QCCS 182.
[2] *R. v. Ndhlovu*, 2022 SCC 38.
[3] *Clinique juridique itinérante c. Procureur général du Québec*, 2023 QCCS 1170, at para 27.
[4] Minutes of October 23rd, 2023 audition, *Clinique Juridique Itinérante c. Procureur général du Québec,* court docket number 500-17-127379-231.
[5] *Minutes of January 5th 2024 audition, Clinique Juridique Itinérante c. Ville de Saint-Jérôme,* court docket number 700-17-020156-245.

10. In June 2025, the Superior Court recognized that the CJI had the necessary standing, expertise and interest to act in the public interest on behalf of unhoused people in the case concerning the eviction of members of the street community who lived on property of the *ministère des Transports et de la Mobilité durable*, along Notre-Dame Street Est, in Montreal.[6]

11. The CJI also has experience related to appeal. In 2023, the CJI asked the Quebec Court of Appeal[7] for permission to appeal the interlocutory judgment of members of the street community who lived under the Ville-Marie Highway in Montreal.[8]

12. NCLC is a legal clinic that advances the rights, interests, and systemic concerns of poverty-affected people in Niagara Region. The agency is the result of a merger in 2019 of the two historic Niagara poverty law clinics: Justice Niagara (of Welland) and Niagara North Community Legal Assistance (of St. Catharines). NCLC often serves and advocates for houseless clients in relation to legal matters directly pertaining to their houselessness, e.g. alleged trespass offences, eviction matters, the rights of houseless refugees entering Canada at Niagara Falls and Fort Erie. The majority of NCLC's clients are precariously housed people receiving legal help in the area of eviction prevention and/or eviction delay. NCLC actively monitors the overhead shelter/encampment clearance bylaws of Niagara's municipalities, which laws are directly informed by the case on appeal and by the laws of Hamilton (Niagara's only neighbouring municipality within Canada).

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[6] *Clinique juridique itinérante c. Procureur général du Québec - Ministère des Transports et de la Mobilité durable du Québec,* 2025 QCCS 2087, para 9.

[7] *Clinique juridique itinérante c. Procureur général du Québec - Ministère des Transports et de la Mobilité durable du Québec,* 2023 QCCA 855, permission to appeal not granted.

[8] *Clinique juridique itinérante c. Procureur général du Québec,* 2023 QCCS 1949.

13. NCLC's work is directly informed by the experiences of communities living in poverty. NCLC's community connections are strengthened through its advocacy and organizing work, its direct representation of clients, input from its Board members with lived experience of poverty/precarious housing, and its relationship with the over 70 community legal clinics across the province who work with Ontario's poorest and most vulnerable residents on a daily basis.

14. Further, NCLC's work is directly informed by regular cooperation with numerous social service agencies serving houseless and precariously housed people in Niagara. These agencies refer clients to NCLC, receive referrals from NCLC, and deeply contribute to NCLC's understanding of the lived experiences of houseless people in our region. Through extensive involvement with local networks of poverty mitigation agencies, building on the leadership of its predecessor-clinics (Justice Niagara and Niagara North Community Legal Assistance), NCLC has gained particular insight into the experiences of houseless and precariously housed people in Niagara who are refugees and/or who experience gender-based violence.

15. In the area of houselessness/encampment law, NCLC is currently providing direct legal support in relation to the constitutional challenge to the *Safer Municipalities Act, 2025*[9] – provincial legislation that directly interacts with the broad category of overhead shelter by-laws at issue in the Appeal.

16. The Appeal raises questions of national importance about how municipalities write and enforce overhead shelter bylaws, about how municipalities interact with police and with

[9] *Safer Municipalities Act, 2025*, SO 2025, c 5.

provincial law in the context of houselessness (and vice-versa), and about the harmful results that can flow from such laws and processes. The Appeal will have a deep impact on laws beyond Hamilton, e.g. in Niagara, and beyond Ontario, e.g. in Quebec.

17. Both CJI and NCLC have real, extensive, and identifiable interest in the issues raised in this Appeal, which will have a distinct impact on houseless and precariously housed people across Canada.

18. The issues raised in this Appeal are of profound importance to the communities of clients CJI and NCLC serve, and whose rights CJI and NCLC seek to advance.

19. The CJI/NCLC submissions will provide a unique, useful, and distinct perspective based on special experience and expertise that is not otherwise available to the Court. If granted leave to intervene by this Court, CJI and NCLC proposes to make submissions concerning the following points:

a. The relevant Quebec jurisprudence particularly clarifies that effects like those of the impugned Hamilton laws certainly do constitute deprivations of life, liberty, and security of the person, for the purposes of the first step of the s.7 test.

b. At the first step of the Charter s.7 test: in order to articulate the full scope of the deprivations to life, liberty, and security of the person that result from the impugned laws, it is important to note that the laws may result in deprivations both

i) through real and potential application in the day and

ii) through real and potential applications in the night.

c. In the lower court decision, Ramsay J not only fails to assess whether the impugned laws are instrumentally rational, thereby failing to apply the normative underpinnings of the relevant case law; he also bases his reasoning on a premise which constitutes an error in fact and law, namely "I have found that the City did not prevent anyone from staying overnight" (para. 69, judgment *a quo*). It is necessary for the Court to decide whether this error is palpable and overriding.

d. Even if Ramsay J's interpretation of the admitted evidence is accepted, the impugned premise is in error: it is the prohibition on sheltering in the legislation itself that engages the Appellants' s.7 rights, and not the degree to which the prohibition is enforced, which could vary from day to day. Section 7 would be hollowed if the premise accurately reflected the test for engagement.

e. At the second step of the s.7 test: it is necessary to consider whether the disproportionality of the Hamilton laws rises to the particular level of grossness suggested by the cases that has assessed the instrumental rationality of overhead shelter laws in contexts of insufficient or inaccessible local shelter beds.

i) It is necessary for the Court to consider whether gross disproportionality is reflected in the laws' total failure in balancing the many options at Hamilton's disposal, short of the ban on overhead

shelter that the City chose.

ii) It is necessary for the Court to consider the laws' potential gross disproportionality in the context of the urban fentanyl crisis, which tends to make the impacts of overhead shelter bans worse. The case law establishes that it is appropriate to take judicial notice of this particular factor.

iii) The laws' potential gross disproportionality needs to be further considered in light of several key factors:

1. the fact that overhead sheltering in day and night saves lives and prevents disease,

2. the fact that state intrusion into a person's decision-making about her health via threat of prosecution (i.e. under the *Trespass to Property Act*) is inherently a weighty deprivation,

3. the laws' at least potentially draconian aspect, and

4. relevant *jus cogens* norms.

f. If the Hamilton laws do violate s.7, it is necessary under s.1 to particularly consider whether the laws are proportionate and whether the laws are minimally impairing. If the laws are disproportionate and not minimally impairing, they are not saved by s.1.

20. CJI and NCLC have been in communication with Appellants' counsel, and with counsel

for other parties applying to intervene, to avoid duplication of submissions. If granted leave to intervene, CJI and NCLC will continue those efforts and will avoid duplication of arguments made by the Appellants, ensure that its submissions are useful and relevant, and will not seek to expand the existing record.

21. CJI and NCLC will abide by the terms of any timetable of this Appeal if granted leave to intervene, and will not cause delay or prejudice to the parties.

22. CJI and NCLC's proposed joint intervention satisfies the requirements of Rules 13.02 and 13.03(2) of the Rules of Civil Procedure for intervention as a friend of the court.

23. The applicants will also rely on other grounds as counsel may advise and as this Honourable Court may permit.

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

a. The attached, draft factum (Exhibit A).

b. The attached affidavit from Donald Tremblay (Clinique juridique itinérante)

c. The attached affidavit from Aidan Johnson (Niagara Community Legal Clinic)

d. Such further and other material as counsel may advise and this Honourable Court may permit.

November 10, 2025

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EXHIBIT A: DRAFT FACTUM OF THE PROPOSED INTERVENORS, CLINIQUE JURIDIQUE ITINÉRANTE AND NIAGARA COMMUNITY LEGAL CLINIC

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TABLE OF CONTENTS

PART I – OVERVIEW

1. Hamilton's 2021 "Encampment Process" and ss. 3, 17, and 18 of Hamilton By-law 01-219 ("the Hamilton laws") are unconstitutional if the deprivations suffered by the Appellants as a result of the laws' prohibition on overhead shelters are totally out of sync with, or grossly disproportionate to, the importance of parks clear of overhead shelters. The relevant disproportionality reaches the level of grossness only when local shelter beds are insufficient or inaccessible. In the case of the Hamilton laws, it is necessary to consider whether or not gross disproportionality marks the ban on unlicensed day-sheltering, the ban on unlicensed night-sheltering, or both. The deprivations' degree of seriousness is grossly disproportionate if beyond what Canada regards as normative in the context of encampment law.

2. Laws or decisions by public authorities to prevent houseless people from sheltering in public places when there are insufficient or inaccessible shelter spaces, have been recognized by Ontario, Québec and British Columbia courts as violating their s. 7 rights because of gross disproportionality.[10]

PART II – DEFINITION OF THE GROSS DISPROPORTIONALITY PRINCIPLE

3. The gross disproportionality principle is one principle of fundamental justice, to the effect that no law which can result in deprivations totally out of sync with its ends can be allowed to stand.[11] Gross disproportionality is a principle of fundamental justice because fundamental justice is instrumentally rational, i.e. scrutinizes the means that laws use in pursuing their ends.[12] The analysis examines the relative disproportionality between the deprivation and the ends'

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[10] *Victoria (City) v. Adams*, 2009 BCCA 563; *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2023 ONSC 670; *City of Waterloo v. Persons Unknown*, 2025 ONSC 1572; *Clinique juridique itinérante c. Procureur général du Québec - Ministère des Transports et de la Mobilité durable du Québec*, 2025 QCCS 2087.

[11] *Kloubakov*, 2025 SCC 25, para. 140, citing: *Canada (Attorney General) v. Bedford*, 2013 SCC 72, para. 120; *R. v. Malmo-Levine*, 2003 SCC 74, para. 143.

[12] *Canada (Attorney General) v. Bedford*, 2013 SCC 72, para. 107.

importance.[13] Deprivations and ends are totally out of sync if the connection between them is entirely outside the norms accepted in our free and democratic society.[14] The ends' degree of importance, the deprivations' degree of seriousness, and the relative proportionality between them are established by the norms of case law in which the gross disproportionality principle has been applied in relevant contexts. Per Wilson J in *Smith*, the norms of the cases that have defined the spectrum between proportionality and disproportionality in particular contexts are the norms that determine whether an impugned law is not only disproportionate, but grossly so.[15]

PART III – THE TESTS FOR DETERMINATION OF WHETHER THE HAMILTON LAWS ARE IN BREACH OF CHARTER S.7, SUCH THAT THE HARMS CAUSED ARE GROSSLY DISPROPORTIONATE TO THE LAWS' ENDS

4. The s.7 breach test has two steps: (1) analysis of whether the impugned law deprives a person of life, liberty, and/or security of the person; and (2) analysis of whether any proven deprivation is in accordance with fundamental justice.[16] The second step of the s.7 test itself contains two steps, comprising a sub-test ("the *Malmo-Levine* sub-test"): (1) identification of the relevant principle or principles of fundamental justice, and (2) determination of whether the relevant deprivation occurred in accordance with that principle or those principles.[17]

Part IV – FIRST STEP OF THE S.7 BREACH TEST

5. As stated by Cromwell J in *Moriarity*, deprivations under s.7 "are usually easy to identify", when they exist.[18] Hamilton's bans on day-sheltering and night-sheltering caused the sexual

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[13] *Ibid,* at para. 129.
[14] *Ibid, at* para. 120.
[15] *Smith,* [1987] 1 SCR 1045; Aidan Johnson, "Devastating Effects: An Expanded Approach to Assessment of the Potential Gross Disproportionality of Mandatory Minimum Sentences in *R. v. Hills*" (2025) 6 S.C.L.R. para. 19-23.
[16] *R. v. Kloubakov,* 2025 SCC 25, para. 137.
[17] *R. v. Malmo-Levine,* 2003 SCC 74, para. 83.
[18] *R.v. Moriarity,* 2015 SCC 55, para. 25,

assault of at least one Appellant[19], led to non-sexual physical assaults on Appellants,[20] significantly increased the pain of a disabled Appellant in forcing her to move her possessions around constantly[21], caused Appellants the particular neurological impairments related to sleep deprivation[22], and generally made the Appellants much more unhealthy and much more unsafe. Serious deprivations resulting from shelter bans constitute deprivations under s.7.[23]

6. In *Clinique juridique itinérante v. Québec*[24], Barin J recognized that the issue of whether houseless people have a general right under s.7 not to be removed from an encampment on public land when local shelter beds are inaccessible or insufficient, was a serious issue to be tried, particularly in light of the widely recognized deprivations that result from overhead shelter bans.[25] Barin J refers to Cournoyer J's appellate holding in an earlier encampment case, *Clinique itinérante v. Québec*[26], that questions about sheltering restrictions under s.7 are entirely justiciable.[27] In *Clinique juridique itinérante* (2025), Barin J granted the request for a provisional injunction to stop the destruction of thirty houseless people's overhead shelters, on the basis not only that the criteria for injunction were met, but also because s.7 rights were at stake.

7. The Hamilton laws' ends can be succinctly characterized at the first step as maintenance of parks' social benefits. In analyzing the particular harms to the appellants at the first step of the s.7 test, there appears to be a connection between the laws' ends and many of the deprivations, in that the deprivations resulted from clearing parks of overhead shelters.

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[19] Affidavit of Julia Lauzon, p. 138 (ABC Vol. 3, Tab 41).
[20] Supplementary Affidavit of Kristen Heegsma, p. 61, para. 2 (ABC, Vol. 3, Tab 36); Affidavit of Darrin Marchand, p. 80 (ABC, Vol. 5, Tab 50).
[21] Cross-Examination of Cassandra Jordan, p. 129, Question 139 (ABC Vol. 3, Tab 37).
[22] Affidavit of Misty Marshall, paras. 11, 24-27, 29 [ABC Vol. 4, Tab 53]; Affidavit of Jahmel "Jammy" Pierre, p. 69, paras. 25-26 (ABC, Vol. 5, Tab 67).
[23] *Victoria (City) v. Adams, 2009 BCCA 563,* para. 107-110, applying: *R. v. Parker,* [2000] O.J. No. 2787 (ON CA).
[24] *Clinique juridique itinérante c. Procureur général du Québec - Ministère des Transports et de la Mobilité durable du Québec,* 2025 QCCS 2087.
[25] *Ibid,* paras. 101 and 134.
[26] *Clinique juridique itinérante c. Procureur général du Québec - Ministère des Transports et de la Mobilité durable du Québec,* 2023 QCCA 855.
[27] *Ibid,* at para. 62.

Pursuant to *Adams*, "it cannot be said that the prohibition on the erection of shelter 'bears no relation to' the legislative goal, or that the connection between the restrictions and the legislative objectives is only theoretical."[28]

PART V – SECOND STEP OF THE S.7 BREACH TEST

(a) First step of the *Malmo-Levine* sub-test

8. As stated above, a principle of fundamental justice at stake in this case is the potential gross disproportionality of the Hamilton laws. Pursuant to *Adams*, the principles of fundamental justice that particularly assess instrumental rationality are relevant to analysis of potential s.7 deprivations in the context of overhead shelter bans.[29]

(b) Second step of the *Malmo-Levine* sub-test

9. The question at this second step is whether the harms to the appellants are totally out of sync with the particular benefits of parks clear of overhead shelters (in both day and night).

(b)(i) Normative determination of whether the deprivations are grossly disproportionate to the laws' ends

10. At the second step of the *Malmo-Levine* sub-test (determination of whether the deprivations are in accordance with the relevant principle of fundamental justice), the gross disproportionality principle is to be applied normatively. In *Kloubakov*, Jamal J assessed the potential gross disproportionality and broader instrumental rationality of the laws criminalizing procurement and receipt of material benefit from prostitution in large part by applying the norms of *Bedford*. In *Bedford* itself, McLachlin CJ pointed to the lower court's error in failing to apply the norms of relevant precedent when assessing the potential gross disproportionality of the impugned solicitation laws.[30] By virtue of being the norms of a principle of fundamental justice,

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[28] *Victoria (City) v. Adams*, 2009 BCCA 563, para. 122.
[29] *Victoria (City) v. Adams*, 2009 BCCA 563.
[30] *Canada (Attorney General) v. Bedford*, 2013 SCC 32, para. 150-159.

the norms of the gross disproportionality principle are found in the cases and traditions that define how the state is to deal with its citizens.[31]

11. Ramsay J not only fails to conduct a gross disproportionality analysis, thereby failing to apply the normative underpinnings of *Adams*[32] and *Persons Unknown (Waterloo) 2023*[33]*;* he also bases his reasoning on a premise which constitutes an error in fact and in law, namely "I have found that the City did not prevent anyone from staying overnight" (para 69, judgment *a quo*). The factual record contradicts this statement, and Ramsay J's rejection of all affidavit evidence referring to removals constitutes a palpable and overriding error, which this Court is called upon to rectify.

12. However, even if his dismissal of evidence is accepted, the premise is in error, because it is the prohibition on sheltering in the legislation itself that engages the Appellants' s.7 rights, and not the degree to which the relevant authorities chooses to enforce the said prohibition, which could vary from day to day. If this were the test for engagement, s.7 would be utterly hollowed. Ramsay J errs in law by saying that because the prohibition is not enforced despite the prohibition in the by-laws, there is no s.7 issue to be addressed.

13. Valente J in *Persons Unknown (Waterloo) 2023* finds that the prohibition of the erection of shelter necessary to protect the homeless against serious harm, where there is no access to low-barrier shelter spaces, constitutes a violation of all three s.7 rights.[34] Further, Valente J finds that the impugned by-law is grossly disproportionate:

> Given that the accepted purpose of the By-Law is to prevent physical damage to the Designated Premises and disruption to the Region's operations as well as the use and enjoyment of the Designated Premises by others, I find that the proposed eviction of the Encampment residents is grossly disproportionate to the By-Law's goal. In short, the

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[31] *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, 2004 SCC 4, para. 8.
[32] *Victoria (City) v. Adams*, 2009 BCCA 563.
[33] *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2023 ONSC 670.

[34] *Ibid*, paras. 97, 101, 104.

impact of the enforcement of the By-Law is "completely out of sync with the object of the law."[35]

14. Gibson J in *Persons Unknown (Waterloo) 2025* reiterated the finding of Valente J when issuing an interlocutory injunction to prevent City from removing people sheltering on the same site:

> Justice Valente held that these deprivations of the s.7 *Charter* rights to life, liberty, and security of the person were not in accordance with the principles of fundamental justice because enforcement of the Code of Use By-Law against residents of this encampment site was overbroad and grossly disproportionate in relation to the By-Law's objectives. Those objectives included preventing disruption to the Region's operations and promoting use and enjoyment of Region premises. Justice Valente declared the By-law constitutionally inoperative insofar as it applied to prevent encampment residents from living on and erecting temporary shelters at the site, under circumstances where the number of people experiencing homelessness exceeded the available and accessible shelter beds in the Region. However, he directed that the Region could apply for an order to terminate the declaration upon it being in a position to satisfy the Court that the Code of Use By-law no longer violated the s. 7 *Charter* rights of the encampment residents. The Region has not done so, nor did the Region appeal the decision.[36]

These cases now constitute the normative standards for an analysis of gross disproportionality.

15. It is thus necessary to consider whether the Hamilton laws' ban on day-sheltering is grossly disproportionate pursuant to the norms established in *Adams* and the *Persons Unknown 2023* and *2025* cases. *Adams* held that the impugned laws could be justified under s.7 if they permitted night-sheltering while requiring night shelters to be torn down in the morning. In examining the justifiable, less restrictive alternatives to the impugned laws, *Adams* paired the hypothetical requirement that night shelters be torn down in the morning with a hypothetical demarcation of some parklands as available for sheltering and of other parklands as unavailable for sheltering. "The City could require the overhead protection to be taken down every morning, as well as prohibit sleeping in sensitive park regions" (emphasis added). [37] The court's

[35] *Ibid*, para. 119.
[36] *City of Waterloo v. Persons Unknown*, 2025 ONSC 1572, para. 35.
[37] *Adams*, at para. 116.

suggestion is that it would not be grossly disproportionate to ban sheltering on some pieces of land at all times, if sheltering was allowed on other pieces of land at all times, and/or allowed on still other pieces of land, but only at certain times. The relevant gross disproportionality thus consists in the laws' total failure in balancing the many options at Hamilton's disposal, short of the total ban it chose, in terms of means.

16. Further, in assessing the potential grossness of any disproportionality marking the laws, it is necessary to consider the laws in the context of the urban fentanyl crisis, which tends to make the impacts of overhead shelter bans much worse.[38] As noted in *Matsqui-Abbotsford Impact Society v Abbotsford*, it is appropriate to take judicial notice of the fact that particular harms flowing from an overhead shelter ban are exacerbated by the toxic drug crisis, which impacts on houseless people more severely than non-houseless people, and which impacts on houseless people more severely still when they are deprived of the social connections that group encampments can provide.[39]

17. Further, it is necessary to consider the potential gross disproportionality of the Hamilton laws in light of the norms of proportionality in *Canada v. PHS Community Services Society*.[40] Like the safe injection site considered in *PHS*, day-sheltering and night-sheltering save lives. McLachlin CJ found in PHS that the state's refusal to exempt the site from the possession laws was grossly disproportionate.[41] She particularly held that the deprivations to vulnerable people's health, including heightened risks of death and disease, were totally out of sync with the health and safety goals of the possession laws and of the exemption regime.

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[38] *Matsqui-Abbotsford Impact Society v Abbotsford (City)*, 2024 BCSC 1902, at para. 129.
[39] *Ibid*, at para. 129-131.
[40] *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44.
[41] *Ibid*, para. 133.

18. Further, it is necessary to consider the Hamilton laws' potential gross disproportionality in light of the norms of proportionality in punishment stated in *Hills*. Discussing gross disproportionality, Martin J held in *Hills* that the proportionality principle particularly ensures, through its limiting function, that there is "justice for offenders". Further, the proportionality principle "serves the common good" particularly by preventing injustice in punishment.[42] These norms apply because the Hamilton laws' means centrally include investigation and police enforcement pursuant to the *Trespass to Property Act*, which in turn relate to conviction and sentencing. (*Adams* held that the fact that the impugned sheltering laws did not necessarily lead to prosecution in each case was not a factor pointing to absence of instrumental irrationality.[43]) As Rosenberg J held in *Parker*, state intrusion into a person's decision-making about her health via threat of prosecution is inherently a weighty deprivation.[44]

19. Further, in assessing the laws' potential gross disproportionality, it is necessary to consider whether the laws are unduly harsh pursuant to the norms of a paradigmatic example of gross disproportionality: a "law with the purpose of keeping the streets clean that imposes a sentence of life imprisonment for spitting on the sidewalk".[45] Again, the norms that determine whether a law is excessively harsh (or otherwise contrary to fundamental justice) are found in the cases and traditions that define how the state is to deal with its citizens.[46] *Bedford* found that the solicitation laws were like the hypothetical laws imposing life imprisonment for spitting, in that the solicitation laws drove prostitutes to solicit in more remote and thus more dangerous places. This draconian deprivation was grossly disproportionate to the importance of curtailing the nuisances of public solicitation.

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[42] *Hills*, para. 57.
[43] Adams, at para. 147.
[44] *R. v. Parker*, 49 OR (3d) 481 (ON CA), at paras. 102-103.
[45] Kloubakov, at para. 140, citing Bedford at para. 120.
[46] Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General), 2004 SCC 4, at para. 8.

20. The gross disproportionality principle may thus apply to a law with the goal of maintaining parks that deprives a vulnerable houseless person of health, safety, and dignity because she needs to sleep outside under a pitched tarp. Further, the analogy is potentially suggested in the fact that the Hamilton laws facilitate policing and prosecution under the quasi-criminal *Trespass to Property Act*: the laws punish day-sheltering and night-sheltering, at least sometimes with a $10,000 fine that no houseless person could afford.[47] Section 7 analysis does not turn on a formal distinction between different areas of law[48], e.g. criminal law versus the law of provincial offences. Rather, the analysis turns on the severity of the impugned law's impact on s.7 interests.

21. Further, the normatively gross disproportionality of the Hamilton laws may be suggested by the particular norms of international justice recognized in *Adams* as relevant to assessing sheltering laws' instrumental rationality.[49] The deprivations and ends associated with the Hamilton laws appear particularly out of sync in light of *ICECSR* art. 11(1), which establishes a right to not be deprived of adequate shelter or of opportunities for continuous improvement of living conditions.[50] *Jus cogens* norms are themselves principles of fundamental justice.[51] In assessing potential gross disproportionality, it is thus particularly appropriate to refer to them.

PART VI – APPLICATION OF CHARTER S.1

22. In order to be saved by s.1, a law must be proportionate and minimally impairing.[52] Thus, if the Hamilton laws violate s.7, it will be necessary to consider whether Hamilton could have made the laws less impairing by permitting either day-sheltering or night-sheltering instead

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[47] *Trespass to Property Act*, R.S.O. 1990, c. T.21, s.2.
[48] *Charkaoui v. Canada*, 2008 SCC 38, at para. 53.
[49] *Adams*, at para. 33-35.
[50] *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 U.N.T.S. 3, Can. T.S. 1976 No. 46, 6 I.L.M. 360.
[51] *Kazemi Estate v. Islamic Republic of Iran*, 2014 SCC 62, at para. 151.
[52] *Michaud*, 2015 ONCA 585, at paras. 82, 122.

of banning both, by designating parts of particular parks as shelter areas, and/or by regulating encampments without resort to prosecution-adjacent measures.

PART VII – CONCLUSION

23. In total, several normative factors must be considered in assessing the potential gross disproportionality of the Hamilton laws under the second step of the *Malmo-Levine* sub-step:

(i) whether the deprivations were caused in a context of insufficient or inaccessible shelter beds;

(ii) whether Hamilton failed to employ alternative approaches that would have been mitigating;

(iii) the fact that the toxic drug crisis worsens the harms of being without overhead shelter;

(iv) the fact that the laws increased the likelihood that one or more of the Appellants would die;

(v) the fact any intrusion into health decision-making through threat of prosecution weighs with extra heaviness in s.7 analysis;

(vi) whether the laws are draconian; and

(vii) relevant *jus cogens* norms, which may weigh toward gross disproportionality.

24. All of which is respectfully submitted.

November 10, 2025

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Court File No. COA-25-CV-0166

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

Plaintiffs (Appellants)

and

CITY OF HAMILTON

Defendant (Respondent in Appeal)

and

HIS MAJESTY THE KING IN RIGHT OF ONTARIO

Intervener

AFFIDAVIT OF DONALD TREMBLAY
Affirmed November 13, 2025
(In Support of the Motion for Leave to Intervene of the Proposed Co-Interveners, Clinique juridique itinérante and Niagara Community Legal Clinic)

I, Donald Tremblay, of the City of Rosemere in the Province of Quebec, do hereby AFFIRM:

24. I am the exeuctive director of the Clinique juridique itinérante. I have personal knowledge of the matters deposed to herein, except where my knowledge is based on information and belief, in which case I believe them to be true.

25. CJI seeks leave to intervene in this matter along with Niagara Community Legal Clinic. Our submissions focus particularly on correct application of the tests relevant to s.7 and s.1 of

the Charter of Rights and Freedoms in this matter, with particular consideration of the principle of fundamental justice that the deprivations resulting from a law are not to be grossly disproportionate to the law's ends.

26. As a specialized advocacy clinic focused on the rights of houseless people, particularly including constitutional rights in the context of encampments, CJI is expert in presenting appellate arguments. CJI is uniquely positioned to assist this Court in understanding the deep implications of the present matter for houseless people across Canada.

27. The Appeal raises questions of national importance about how municipalities write and enforce overhead shelter bylaws, about how municipalities interact with police and with provincial law in the context of houselessness (and vice-versa), and about the harmful results that can flow from such laws and processes. The Appeal will have a deep impact on laws beyond Hamilton, e.g. in Niagara, and beyond Ontario, e.g. in Quebec.

A: **Clinique juridique itinérante: Mandate and Organization**

28. CJI is a legal clinic with a mission to promote access to justice for the unhoused, who are often helpless in the face of the justice system's complexity. It is the only clinic in Quebec dedicated to advocacy in the context of houselessness law. The CJI provides an array of services, including litigation, access to legal advice/information, referrals, social juridical accompaniment, and help in regularizing legal debts. In these ways, CJI contributes to the social reintegration of unhoused citizens. It is called an "*itinérante*" (mobile) clinic because CJI student-

volunteers (from four Quebec law schools and one in Ontario) travel on a monthly basis to twenty-five different shelters and day centres that work with the unhoused community and marginalized people in Montréal, Quebec City and, since the Fall 2025, in Ottawa. The student-volunteers' work is overseen by lawyers members of the Quebec Bar and the Law Society of Ontario. On an annual basis, 800 unhoused persons consult with the CJI about their legal issues.

29. The originality of the CJI's work lies in its innovative, community-based approach, which allows it to offer a service *in situ* to those in need, providing legal information, support, and assistance in settling judicial debts. The CJI travels to meet unhoused persons in their living environment (outreach service), whether in shelters, day centers they frequent, or on the street where they live.

30. The CJI is a member of the *Mouvement pour mettre fin à l'itinérance à Montréal* (MMFIM), a coalition of non-profit organizations working with unhoused persons, representatives of government institutions and of the business community, researchers and service providers, who have joined forces to tackle the challenge of ending homelessness in Montreal.

B. The Clinique juridique itinérante's Work and Expertise

31. In Quebec, the Superior Court has recognized that the CJI has public standing interest to engage in litigation on behalf of members of the unhoused community, as described below.

32. In 2021, during the Covid pandemic, the CJI filed an application for judicial review and interim stay in the Superior Court against the Attorney General of Quebec, challenging the

constitutionality of a government-imposed curfew (from 8pm till 5am). The CJI argued that the unhoused population suffered serious and irreparable harm as a result of the said curfew. In a judgment dated January 22, 2021, Masse J. invalidated the said decree to the extent that it applied to individuals experiencing homelessness.[53]

33. In February 2022, the CJI intervened before the Supreme Court of Canada after being granted intervener status in the *Ndhlovu* case to present its view on the impacts and difficulties for unhoused people sentenced to register on the National Sex Offender Registry (NSOR) whose constitutionality was being challenged.[54]

34. In April 2023, the Superior Court recognized that the CJI had the necessary standing, expertise and interest to act in the public interest on behalf of homeless people in the case concerning the eviction of members of the street community who lived under the Ville-Marie Highway in Montreal.[55]

35. In October 2023, the Superior Court recognized that the CJI had the necessary standing, expertise and interest to act in the public interest on behalf of homeless people in the case concerning the eviction of members of the street community who lived on property of the *ministère des Transports et de la Mobilité durable*, along Notre-Dame Street Est, in Montreal.[56]

36. In January 2024, the Superior Court recognized that the CJI had the necessary standing,

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[53] *Clinique juridique itinérante c. Procureur général du Québec*, 2021 QCCS 182.
[54] *R. v. Ndhlovu*, 2022 SCC 38.
[55] *Clinique juridique itinérante c. Procureur général du Québec*, 2023 QCCS 1170, at para 27.
[56] Minutes of October 23rd, 2023 audition, *Clinique Juridique Itinérante c. Procureur général du Québec,* court docket number 500-17-127379-231.

expertise and interest to act in the public interest on behalf of unhoused people in the case concerning the eviction of members of the street community in the City of Saint-Jérôme.[57]

37. In June 2025, the Superior Court recognized that the CJI had the necessary standing, expertise and interest to act in the public interest on behalf of unhoused people in the case concerning the eviction of members of the street community who lived on property of the *ministère des Transports et de la Mobilité durable*, along Notre-Dame Street Est, in Montreal.[58]

38. The CJI also has experience related to appeal. In 2023, the CJI asked the Quebec Court of Appeal[59] for permission to appeal the interlocutory judgment of members of the street community who lived under the Ville-Marie Highway in Montreal.[60]

C. **Proposed Submissions**

39. CJI and NCLC have been in communication with Appellants' counsel, and with counsel for other parties applying to intervene, to avoid duplication of submissions. If granted leave to intervene, CJI and NCLC will continue those efforts and will avoid duplication of arguments made by the Appellants, ensure that its submissions are useful and relevant, and will not seek to expand the existing record.

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[57] *Minutes of January 5th 2024 audition, Clinique Juridique Itinérante c. Ville de Saint-Jérôme,* court docket number 700-17-020156-245.

[58] *Clinique juridique itinérante c. Procureur général du Québec - Ministère des Transports et de la Mobilité durable du Québec,* 2025 QCCS 2087, para 9.

[59] *Clinique juridique itinérante c. Procureur général du Québec - Ministère des Transports et de la Mobilité durable du Québec,* 2023 QCCA 855, permission to appeal not granted.

[60] *Clinique juridique itinérante c. Procureur général du Québec,* 2023 QCCS 1949.

40. The CJI/NCLC submissions will provide a unique, useful, and distinct perspective based on special experience and expertise that is not otherwise available to the Court. If granted leave to intervene by this Court, CJI and NCLC proposes to make submissions concerning the following points:

a. The relevant Quebec jurisprudence particularly clarifies that effects like those of the impugned Hamilton laws certainly do constitute deprivations of life, liberty, and security of the person, for the purposes of the first step of the s.7 test.

b. At the first step of the Charter s.7 test: in order to articulate the full scope of the deprivations to life, liberty, and security of the person that result from the impugned laws, it is important to note that the laws may result in deprivations both

    iii) through real and potential application in the day and

    iv) through real and potential applications in the night.

c. In the lower court decision, Ramsay J not only fails to assess whether the impugned laws are instrumentally rational, thereby failing to apply the normative underpinnings of the relevant case law; he also bases his reasoning on a premise which constitutes an error in fact and law, namely “I have found that the City did not prevent anyone from staying overnight” (para. 69, judgment *a quo*). It is necessary for the Court to decide whether this error is palpable and overriding.

d. Even if Ramsay J’s interpretation of the admitted evidence is accepted, the

impugned premise is in error: it is the prohibition on sheltering in the legislation itself that engages the Appellants' s.7 rights, and not the degree to which the prohibition is enforced, which could vary from day to day. Section 7 would be hollowed if the premise accurately reflected the test for engagement.

e. At the second step of the s.7 test: it is necessary to consider whether the disproportionality of the Hamilton laws rises to the particular level of grossness suggested by the cases that has assessed the instrumental rationality of overhead shelter laws in contexts of insufficient or inaccessible local shelter beds.

    iv) It is necessary for the Court to consider whether gross disproportionality is reflected in the laws' total failure in balancing the many options at Hamilton's disposal, short of the ban on overhead shelter that the City chose.

    v) It is necessary for the Court to consider the laws' potential gross disproportionality in the context of the urban fentanyl crisis, which tends to make the impacts of overhead shelter bans worse. The case law establishes that it is appropriate to take judicial notice of this particular factor.

    vi) The laws' potential gross disproportionality needs to be further considered in light of several key factors:

        1. the fact that overhead sheltering in day and night saves lives and prevents disease,

2. the fact that state intrusion into a person's decision-making about her health via threat of prosecution (i.e. under the *Trespass to Property Act*) is inherently a weighty deprivation,

3. the laws' at least potentially draconian aspect, and

4. relevant *jus cogens* norms.

f. If the Hamilton laws do violate s.7, it is necessary under s.1 to particularly consider whether the laws are proportionate and whether the laws are minimally impairing. If the laws are disproportionate and not minimally impairing, they are not saved by s.1.

D: Conclusion

1. CJI has a demonstrated interest and expertise in ensuring that the needs and perspectives of the houseless people it represents are considered by the Court in this motion. Canadian municipalities are entrusted with an extraordinary degree of power over the lives of houseless people. The extensive experience of CJI and NCLC will permit submissions that are relevant, useful, and distinct.

AFFIRMED REMOTELY by Donald Tremblay, stated as being located in the City of Rosemère, in the Province of Quebec, before me at the City of St. Catharines in the Regional Municipality of Niagara, this 13th of November, 2025.

VICKI LYNNE DOIDGE
NOTARY PUBLIC
39
ONTARIO

DONALD TREMBLAY

Court File No. COA-25-CV-0166

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

Plaintiffs (Appellants)

and

CITY OF HAMILTON

Defendant (Respondent in Appeal)

and

HIS MAJESTY THE KING IN RIGHT OF ONTARIO

Intervener

AFFIDAVIT OF AIDAN JOHNSON
Affirmed November 12, 2025
(In Support of the Motion for Leave to Intervene of the Proposed Co-Interveners, Clinique juridique itinérante and Niagara Community Legal Clinic)

I, Aidan Johnson, of the City of St. Catharines in the Province of Ontario, do hereby AFFIRM:

1. I am the executive director of Niagara Community Legal Clinic (NCLC). I have personal knowledge of the matters deposed to herein, except where my knowledge is based on information and belief, in which case I believe them to be true.

2. NCLC seeks leave to intervene in this matter along with our coapplicant, Clinique juridique itinérante. Our submissions focus particularly on correct application of the tests relevant to s.7 and s.1 of the Charter of Rights and Freedoms in this matter, with particular consideration of the principle of fundamental justice that the deprivations resulting from a law are not to be grossly disproportionate to the law's ends.

3. As an Ontario poverty law clinic with particular experience in serving the houseless and the precariously housed in numerous contexts, including bylaw matters and other conflicts with municipal institutions, NCLC is uniquely positioned to assist this Court in understanding the deep implications of the present matter for houseless people across Niagara, Ontario, and Canada.

4. The Appeal raises questions of national importance about how municipalities write and enforce overhead shelter bylaws, about how municipalities interact with police and with provincial law in the context of houselessness (and vice-versa), and about the harmful results that can flow from such laws and processes. The Appeal will have a deep impact on laws beyond Hamilton, e.g. in Niagara, and beyond Ontario, e.g. in Quebec.

A: **Niagara Community Legal Clinic: Mandate and Organization**

5. NCLC is a legal clinic that advances the rights, interests, and systemic concerns of poverty-affected people in Niagara Region. The agency is the result of a merger in

2019 of the two historic Niagara poverty law clinics: Justice Niagara (of Welland) and Niagara North Community Legal Assistance (of St. Catharines). NCLC often serves and advocates for houseless clients in relation to legal matters directly pertaining to their houselessness, e.g. alleged trespass offences, eviction matters, the rights of houseless refugees entering Canada at Niagara Falls and Fort Erie. The majority of NCLC's clients are precariously housed people receiving legal help in the area of eviction prevention and/or eviction delay. NCLC actively monitors the overhead shelter/encampment clearance bylaws of Niagara's municipalities, which laws are directly informed by the case on appeal and by the laws of Hamilton (Niagara's only neighbouring municipality within Canada).

6. NCLC's work is directly informed by the experiences of communities living in poverty. NCLC's community connections are strengthened through its advocacy and organizing work, its direct representation of clients, input from its Board members with lived experience of poverty/precarious housing, and its relationship with the over 70 community legal clinics across the province who work with Ontario's poorest and most vulnerable residents on a daily basis.

7. Further, NCLC's work is directly informed by regular cooperation with numerous social service agencies serving houseless and precariously housed people in Niagara. These agencies refer clients to NCLC, receive referrals from NCLC, and deeply contribute to NCLC's understanding of the lived experiences of houseless people in our region. Through extensive involvement with local networks of poverty mitigation

agencies, building on the leadership of its predecessor-clinics (Justice Niagara and Niagara North Community Legal Assistance), NCLC has gained particular insight into the experiences of houseless and precariously housed people in Niagara who are refugees and/or who experience gender-based violence.

8. In the area of houselessness/encampment law, NCLC is currently providing direct legal support in relation to the constitutional challenge to the *Safer Municipalities Act, 2025*[1] – provincial legislation that directly interacts with the broad category of overhead shelter by-laws at issue in the Appeal.

9. NCLC has real, extensive, and identifiable interest in the issues raised in this Appeal, which will have a distinct impact on houseless and precariously housed people in Niagara. The issues raised in this Appeal are of profound importance to the communities of clients CJI and NCLC serve, and whose rights CJI and NCLC seek to advance.

C. Proposed Submissions

10. CJI and NCLC have been in communication with Appellants' counsel, and with counsel for other parties applying to intervene, to avoid duplication of submissions. If granted leave to intervene, CJI and NCLC will continue those efforts and will avoid

[1] *Safer Municipalities Act, 2025*, SO 2025, c 5.

duplication of arguments made by the Appellants, ensure that its submissions are useful and relevant, and will not seek to expand the existing record.

11. The CJI/NCLC submissions will provide a unique, useful, and distinct perspective based on special experience and expertise that is not otherwise available to the Court. If granted leave to intervene by this Court, CJI and NCLC proposes to make submissions concerning the following points:

a. The relevant Quebec jurisprudence particularly clarifies that effects like those of the impugned Hamilton laws certainly do constitute deprivations of life, liberty, and security of the person, for the purposes of the first step of the s.7 test.

b. At the first step of the Charter s.7 test: in order to articulate the full scope of the deprivations to life, liberty, and security of the person that result from the impugned laws, it is important to note that the laws may result in deprivations both

    i) through real and potential application in the day and

    ii) through real and potential applications in the night.

c. In the lower court decision, Ramsay J not only fails to assess whether the impugned laws are instrumentally rational, thereby failing to apply the

normative underpinnings of the relevant case law; he also bases his reasoning on a premise which constitutes an error in fact and law, namely "I have found that the City did not prevent anyone from staying overnight" (para. 69, judgment *a quo*). It is necessary for the Court to decide whether this error is palpable and overriding.

d. Even if Ramsay J's interpretation of the admitted evidence is accepted, the impugned premise is in error: it is the prohibition on sheltering in the legislation itself that engages the Appellants' s.7 rights, and not the degree to which the prohibition is enforced, which could vary from day to day. Section 7 would be hollowed if the premise accurately reflected the test for engagement.

e. At the second step of the s.7 test: it is necessary to consider whether the disproportionality of the Hamilton laws rises to the particular level of grossness suggested by the cases that has assessed the instrumental rationality of overhead shelter laws in contexts of insufficient or inaccessible local shelter beds.

    i) It is necessary for the Court to consider whether gross disproportionality is reflected in the laws' total failure in balancing the many options at Hamilton's disposal, short of the ban on overhead shelter that the City chose.

    ii) It is necessary for the Court to consider the laws' potential gross disproportionality in the context of the urban fentanyl

crisis, which tends to make the impacts of overhead shelter bans worse. The case law establishes that it is appropriate to take judicial notice of this particular factor.

iii) The laws' potential gross disproportionality needs to be further considered in light of several key factors:

1. the fact that overhead sheltering in day and night saves lives and prevents disease,

2. the fact that state intrusion into a person's decision-making about her health via threat of prosecution (i.e. under the *Trespass to Property Act*) is inherently a weighty deprivation,

3. the laws' at least potentially draconian aspect, and

4. relevant *jus cogens* norms.

f. If the Hamilton laws do violate s.7, it is necessary under s.1 to particularly consider whether the laws are proportionate and whether the laws are minimally impairing. If the laws are disproportionate and not minimally impairing, they are not saved by s.1.

D: Conclusion

12. NCLC has a demonstrated interest and expertise in ensuring that the needs and perspectives of the houseless and precariously housed people it represents are considered by the Court in this motion. Canadian municipalities are entrusted with an extraordinary degree of power over the lives of houseless people. CJI and NCLC's extensive experience will permit submissions that are relevant, useful, and distinct.

AFFIRMED BEFORE ME

in the City of Hamilton

in the Province of Ontario, this

12th day of November, 2025.

C. Michael Ollier
Barrister & Solicitor

AIDAN JOHNSON

COURT OF APPEAL FOR ONTARIO
PROCEEDING COMMENCED AT HAMILTON

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