

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' EXHIBIT BOOK – VOLUME 3

CIRCLE BARRISTERS

c/o Sujit Choudhry Professional Corporation
319 Sunnyside Avenue, Toronto ON M6R 2R3

Sujit Choudhry (LSO# 45011E)

Tel: (416) 436-3679

sujit.choudhry@circlebarristers.com

**MISSISSAUGA COMMUNITY LEGAL
SERVICES**

130 Dundas St. E Suite 504

Mississauga ON

L5A 3V8

Sharon Crowe (LSO# 47108R)
Tel: (905) 896-2052 ext 20
sharon.crowe@mcls.clcj.ca

ROSS & MCBRIDE LLP
1 King Street West, 10th Floor
Hamilton, ON L8P 1A4

Wade Poziomka (LSO# 59696T)
Tel: (905) 572-5824
wpoziomka@rossmcbride.com

Lawyers for the Appellants

TO:

GOWLING WLG (CANADA) LLP
One Main Street West
Hamilton, ON L8P 4Z5

Bevin Shores (LSO# 56161F)
bevin.shores@gowlingwlg.com

Jordan Diacur (LSO# 65860E)
Tel: 905-540-2500
jordan.diacur@gowlingwlg.com

Jennifer King (LSO# 54325R)
Jennifer.King@gowlingwlg.com
Tel: 905-540-2468

Lawyers for the Respondent

AND TO:

Ministry of the Attorney General – Constitutional Law Branch
4th Floor, McMurtry-Scott Building
720 Bay Street, Toronto, ON M7A 2S9

Andrea Boleiro
Tel.: 437-551-6263
andrea.bolieiro@ontario.ca

Lawyer for the Attorney General

INDEX TO VOLUME 3

TAB	Document	Page No.
RESPONDENT’S WITNESSES		
<i>TESSA MCFADZEAN</i>		
19.	Affidavit of Tessa MacFadzean, Women’s Services, Good Shepherd Centres, Hamilton sworn October 12, 2021	5
<i>FRANK MISCIONE</i>		
20.	Affidavit of Frank Miscione, Hamilton Police Service sworn October 7, 2021	13
a.	Exhibit A – HPS Report re known encampment locations in City	16
b.	Exhibit B – HPS Computer Aided Dispatch Classifications	24
21.	Supplemental Affidavit of Frank Miscione, Hamilton Police Service dated July 24, 2024	29
a.	Exhibit A – HPS Encampment Calls for Service and Encampment Engagement Team Overview July 22, 2024	32
b.	Exhibit B – HPS Encampment Calls for Service and Encampment Engagement Team Overview Appendix A July 22, 2024	42
<i>JAMES MOULTON</i>		
22.	Affidavit of James Moulton, The Salvation Army, Hamilton sworn October 6, 2021	47
a.	Exhibit A – Job Posting at Booth Centre	57
b.	Exhibit B – Diagram showing arrangements within Booth Centre	61
<i>LEE RYNAR</i>		
23.	Affidavit of Lee Rynar sworn October 6, 2021	66
24.	Supplementary Affidavit of Lee Rynar sworn October 10, 2021	71
<i>MICHELLE SEMONOVITCH</i>		
25.	Affidavit of Michelle Semonovitch sworn October 6, 2021	75

TAB 19

Court File No. CV-21-77187

**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

APPLICATION UNDER Rule 14.05 of the *Rules Of Civil Procedure*

**AFFIDAVIT OF TESSA MCFADZEAN,
DIRECTOR OF WOMEN'S SERVICES, GOOD SHEPHERD CENTRES, HAMILTON
(Sworn October 12, 2021)**

I, **TESSA MCFADZEAN**, of the City of Hamilton in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the Director of Women's Services, Good Shepherd Centres, Hamilton ("**Good Shepherd**"), a position I have held for nearly three years; previously, I was an Assistant Director with Good Shepherd for more than 4 years. Good Shepherd is one of the largest providers of health and human services in the Hamilton area. In my role as Director, Women's Services, I oversee the provision of shelter services to women in the City of Hamilton. As such I have knowledge of the matters set out in this my affidavit. Where I rely on the information of others, I state the source of that information and verily believe it to be true.

Hotel Spaces

2. In or about April, 2020, the City of Hamilton worked with Good Shepherd, other local shelter providers and local hotels to begin providing overflow shelter capacity, if needed, during the COVID-19 pandemic.

3. In terms of local hotels, the City has overseen the relevant contracts. The local shelter providers initially assigned staff members to liaise with hotel staff; in May, 2020, we began to directly operate the hotel spaces on a day-to-day basis.

4. Until September 2, 2020, Good Shepherd worked together with a downtown Hamilton hotel to provide 24 hotel rooms for single homeless women; Good Shepherd operated all of the rooms on one floor of the hotel. As of October 1, 2021, Good Shepherd now works together with a different downtown Hamilton hotel to provide 55 hotel rooms for single homeless women.

5. The hotel rooms comprise a living space for each client, with a locking door, and private washroom. Hotel cleaning staff does much of the daily cleaning work, though shelter staff may do a pre-cleaning. The hotels also provide security; the hotel we work with now provides 24 hour security.

6. Hotel spaces aim to be low-barrier. The services and support provided in the hotel spaces are very similar to those provided in Good Shepherd's own shelter environments. We do not simply provide a hotel room; we engage consistently with our clients. Our program priorities remain safety planning, harm reduction, case management and securing a stable housing situation. Referrals to other shelter locations and transportation is available and

provided. We participate in a weekly prioritization call with other shelter agencies and the City of Hamilton to identify the best place for our clients.

7. The expectations that are in place are essentially the same as those at Good Shepherd's homeless women's shelter (Mary's Place). This includes room checks every 8 hours (we have the hotel's 'Master Key' to all rooms for this purpose), the ability to observe each person coming in and out of the hotel area (to assess any risks or threats, including intoxication, as well as for fire evacuation purposes), and no violence, threats, property damage, or substance trafficking allowed. Substance use that does not involve smoking is not prohibited; employees are monitoring and assessing safety. These expectations are communicated to every client when they first arrive, and are consistently the subject of discussion and reminders. Overlaid on these expectations is a recognition that certain statutory rules must be observed by hotels with respect to all guests, such as no smoking (of tobacco or other substances) and COVID-19 requirements.

8. The purpose of the room checks, like the bed checks in our shelter spaces, is primarily to ensure the safety of our clients, and we do engage with our clients if there are issues of concern. However, room checks also allow us to ensure maximum utilization of our resources; if a room assigned to a client is not being used, we may reassign it to a client who may need it. We would attempt to reach out to the client to determine the reason a room is vacant prior to considering a discharge. If we are told about employment obligations, etc., this would not result in a discharge. We will be flexible where possible and dependent on the demand for space.

9. In some instances, hotel rooms have been accessed by clients for a brief respite

(normally 1 or 2 nights) with the client 'self-discharging' from the hotel after that time. The reason given has generally been that the client does not want to participate in case management.

10. In terms of harm reduction, Public Health has provided Naloxone kits to our hotel sites. Referrals to methadone programs are available. We also have access to withdrawal management programs via the Womenkind program; in fact, Womankind is on-site providing a full time employee overnight. In the several cases where we have had overdoses on site, or injuries due to intoxication and resulting falls, paramedics have attended on site and clients have gone to hospital.

Service Restrictions and Discharges From Hotel

11. Service restrictions and/or discharges from our hotel spaces may be imposed for breaches of our expectations. They are not intended to be penalties, but rather the expected result of conduct that is unsafe.

12. A discharge may also occur if more intensive supports are necessary due to mental health concerns (cases have included building barriers inside rooms, multiple calls to 911 a day, or pulling fire alarms) and other risks (including substance misuse). A discharge involves a client being referred to another shelter space in the City. We do not discharge clients to the street.

13. A service restriction is a period of time, varying in length depending on the underlying reason for the service restriction, in which a client will not be able to access our services. It is important to note that discharge from hotel does not always involve a service restriction.

Service restrictions are rare and, even when they are imposed, they do not apply across the shelter system. We work with clients who are service-restricted with us in order to find them another place to stay.

14. Instances of threats, to Good Shepherd staff and hotel staff, and property damage have occurred at the hotel sites but they have been rare. We have seen cases where our clients have brought intoxicated persons, or persons otherwise considered a risk, onto the premises. There have also been cases where our clients, or another person who knows them, have rented a room on a different floor of the hotel; this has typically been related to drug use and/or sex work. In these cases of breaches of our expectations, discharges, service restrictions and referrals to other sites have followed.

Encampments

15. We have seen clients coming to our shelters and our hotel sites who advise they have previously been staying in the encampments in the City of Hamilton. In some cases, this has led to such clients engaging with case management and accessing housing.

COVID-19 Protocols

16. At our hotel sites, we conduct multiple COVID-19 screenings each day. If a screening is not passed, the client would be isolated and tested. We also offer Monday afternoon preventative testing on a volunteer basis. This presents no barrier to accessing services.

17. While there have been four separate periods since the beginning of the pandemic during which some clients tested positive for COVID-19, we are not currently in an outbreak.

18. Personal Protective Equipment (masks, gowns, shields, gloves, etc.) and related training has been provided to all Good Shepherd staff working at the hotel sites.

19. Masks are provided to our clients, as well; there have been instances of our clients failing to wear masks, often related to mental health acuity. We work with our clients to ensure that COVID-19 prevention steps are fully understood and followed.

20. I make this affidavit in order to clarify and explain the background of and services provided by Good Shepherd in the City of Hamilton and for no other or improper purpose.

SWORN REMOTELY by Tessa Macfadzean of the City of Hamilton before me at the City of Niagara Falls during a 'Zoom' videoconference on October 12, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



JORDAN DIACUR

Commissioner for Taking Affidavits, etc.



TESSA MCFADZEAN

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Hamilton

**AFFIDAVIT OF
TESSA MCFADZEAN,
DIRECTOR, WOMEN'S SERVICES, GOOD
SHEPHERD CENTRES, HAMILTON**

GOWLING WLG (CANADA) LLP
Suite 1500 - One King Street West
Hamilton, ON L8P 1A4

Tel: 905-540-8208

Fax: 905-528-5833

MICHAEL BORDIN (40047W)

Tel: 905-540-2492

michael.bordin@gowlingwlg.com

BEVIN SHORES (56161F)

Tel: 905-540-2468

bevin.shores@gowlingwlg.com

JORDAN DIACUR (65860E)

Tel: 905-540-2500

jordan.diacur@gowlingwlg.com

Lawyers for the Respondent

TAB 20

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 &
SHAWN ARNOLD

Applicants

and

CITY OF HAMILTON

Respondent

**AFFIDAVIT OF Frank Miscione,
HAMILTON POLICE SERVICE
(Sworn October 7, 2021)**

I, **Frank Miscione**, of the City of Hamilton in the Province of Ontario, **MAKE OATH
AND SAY:**

1. I am the Inspector of the Community Mobilization Division of the Hamilton Police Service. In my role as Inspector, I oversee the Crisis Response branch ("**CRB**"). As such I have knowledge of the matters set out in this my affidavit. Where I rely on the information of others, I state the source of that information and verily believe it to be true.

2. The Hamilton Police Service tracks each event that requires police response within their Computer Aided Dispatch (CAD) System. With respect to the encampments in the City of Hamilton (“**City**”) crime analysts employed by the Hamilton Police Service have collected and organized CAD Event statistics to the end of September 2021. Attached hereto and marked as Exhibit “A” is a copy of a report prepared by the Crime Information Analysis Unit with respect to known encampment locations in the City.

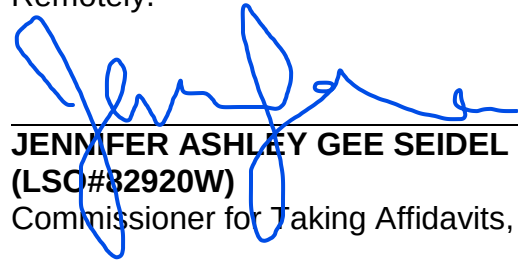
3. I have reviewed the report at Exhibit A and confirm it is accurate to the best of my knowledge. As noted in the report, the report contains a summary of two types of analysis.

4. The first is analysis contained in the report is of statistics at six of the most consistent encampment locations between October 1, 2020 and September 30, 2021. This analysis is found at pages 2 to 5. The first part of the analysis “(1) Encampment Locations – Totals” is a summary of the statistics for all six identified encampment locations. The second part of the analysis – Chart 1a and 1b – sets out the summary of the statistics for each of the six named encampments individually.

5. The second analysis in the report contains statistics for the entire City based on searches for the dispatch words “encampment” or “tent”. This analysis is found at pages 6 to 7.

6. Attached hereto and marked as **Exhibit "B"** is a copy of an "Computer Aided Dispatch (C.A.D.) Classifications" document which provides, in chart format, information about how the the codes group in the report.

SWORN REMOTELY by Frank Miscione of the City of Hamilton before me at the City of Hamilton during a 'Zoom' videoconference on October 7, 2021, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



JENNIFER ASHLEY GEE SEIDEL
(LSO#82920W)
Commissioner for Taking Affidavits, etc.

DocuSigned by:
Frank Miscione
2D2D370773134B0...

FRANK MISCIONE

This is Exhibit "A" to the Affidavit of Frank Miscione
sworn remotely at the City of Hamilton, in the Province of Ontario
before me at the City of Hamilton, in the Province of Ontario
on October 7, 2021 in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.

A handwritten signature in blue ink, appearing to be 'J. Seidel', is written over a horizontal line.

Commissioner for Taking Affidavits
JENNIFER ASHLEY GEE SEIDEL
(82920W)



Hamilton Police Service

Encampments

Crime Information Analysis Unit

2021/10/06

Summary

Encampment related calls for service continue to be complex events for first responders. Law enforcement agencies respond to many calls for services at locations where there are encampments. In September 2021, Hamilton Police Service was requested to review activity in the past year related to encampments. Analyzing the data for encampments is challenging, as the data capture processes for both encampments and encampment related activity is not well defined.

The Hamilton Police Service (H.P.S.) in collaboration with St. Joseph's Hamilton Healthcare has piloted and developed programs to assist vulnerable individuals, and persons experiencing a mental health crisis. Meaningful partnerships have allowed the H.P.S. and our community partners to effectively assist vulnerable individuals and with persons with addiction and mental health concerns in a timely manner.

In April 2015, on a pilot basis, the Hamilton Police Service created the Crisis Response Branch (C.R.B.) by combining the following three programs.

- Crisis Outreach and Support Team (COAST)
- Mobile Crisis Rapid Response Team (MCRRT)
- Social Navigator Program (SNP)

For the purpose of this analysis, the Crime Information Analysis Unit has prepared methodology to extract these events from our record management system and computer aided dispatch system (CAD). In 2020, SNP identified on average 34 individual sites. Due to uncertainty with encampments locations, the largest six known park sites were selected as part of the analysis. It is important to note that the CAD event activity statistics only captures activity within a geographical boundary of a park for our uniform patrol responding to calls. It does not include the activity for the proactive work that our social navigator program provides. In 2020, the total number of individuals identified at encampments or sleeping rough by SNP and outreach was 604. It is stretch to discern without hand reviewing records whether the event is encampment related. The second methodology extracts from the CAD system events where the call taker had recorded 'tent' or 'encampment'.

Key findings of the analysis include the following:

Methodology A:

- There were 499 CAD events from October 1 2020 to September 30 2021 for the selected 'encampment' locations
- The top five types of CAD events grouped by type with the highest volumes were the following (sorted volume descending): mischiefs, other (911 advised, ambulance assist, fire, person down, protest, warrants), medical, violent (assault, harassment, shooting, stabbing, weapons) and property (theft, break and enter). Suspicious Person and Trespassing make up the most events that fall within the mischief group.
- Activity for these sites steadily increases from spring months to summer months

CONFIDENTIAL

THIS RECORD, AND THE INFORMATION CONTAINED THEREIN, IS PROVIDED IN CONFIDENCE AND REMAINS THE PROPERTY OF THE HAMILTON POLICE SERVICE (HPS). IT IS NOT TO BE DISCLOSED TO ANY PERSON OR AGENCY WITHOUT THE PRIOR WRITTEN PERMISSION OF THE HPS RECORDS SUPERVISOR OR FOI COORDINATOR

- JC Beemer and Beasley park have the highest event volumes, more than doubling the other selected parks

Methodology B:

- There were 1,103 CAD events where 'encampment' or 'tent' is recorded in the notes section from October 1 2020 to September 30 2021
- The top five types of CAD events with the highest volume where 'encampment' or 'tent' is mentioned is the following (sorted volume descending): mischief, other, medical, property, and violent
- Activity is clustered in the downtown core and near the four points Sheridan hotel in the east end

During the identified timeframe, the below charts represent the Calls For Service for both the MCRRT Team and COAST Team.

MCRRT

Calls For Service			
Total Shifts	1096	PIC CFS	2773
Total Incidents	4373	PIC CFS (Intro To Service)	27
		PIC CFS (No Client Contact Made)	296
		Non-PIC CFS (Proactive Engagement)	228
		Non-PIC CFS (Other)	1049

COAST

Calls For Service			
Total Shifts	361	PIC CFS	498
Total Incidents	1314	PIC CFS (Intro To Service)	337
		PIC CFS (No Client Contact Made)	335
		Non-PIC CFS (Proactive Engagement)	22
		Non-PIC CFS (Other)	122

CONFIDENTIAL

THIS RECORD, AND THE INFORMATION CONTAINED THEREIN, IS PROVIDED IN CONFIDENCE AND REMAINS THE PROPERTY OF THE HAMILTON POLICE SERVICE (HPS). IT IS NOT TO BE DISCLOSED TO ANY PERSON OR AGENCY WITHOUT THE PRIOR WRITTEN PERMISSION OF THE HPS RECORDS SUPERVISOR OR FOI COORDINATOR

(Methodology A) Encampment Select Locations – Totals and Type

The data below summarizes 502 CAD Events at the identified park locations.

Map 1a. Selected Park Locations

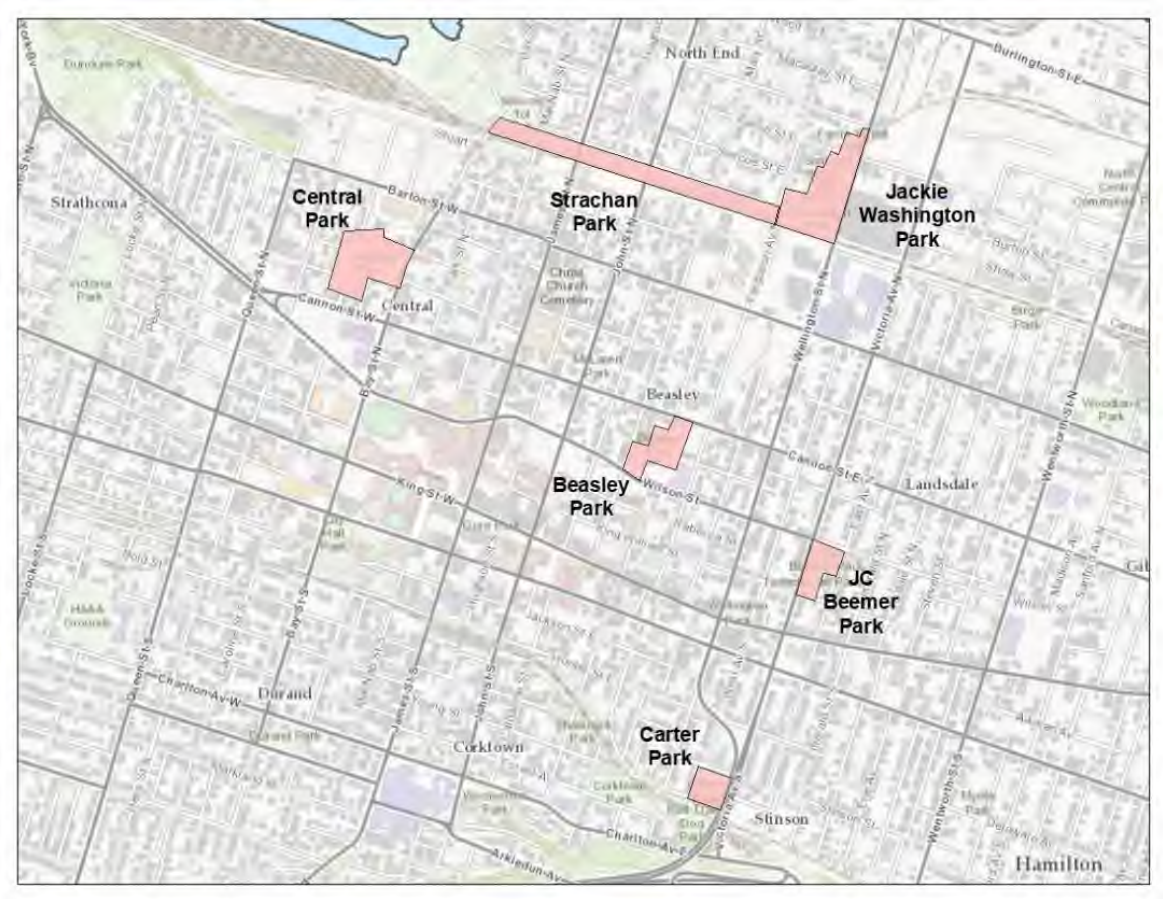


Chart 1a. Park Events by Month

Park	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Total
Beasley Park	17	16	6	9	3	12	15	15	28	34	17	21	193
Beemer Park	9	5	2	4	4	10	12	23	22	24	26	14	155
Carter Park	0	0	2	0	1	3	1	0	0	4	3	1	15
Central Park	11	1	4	4	2	2	9	7	6	9	4	9	68
Jackie Washington Park	3	1	2	0	0	1	0	0	2	0	0	2	11
Strachan Park	4	3	1	1	3	1	5	10	7	9	5	8	57
Total	44	26	17	18	13	29	42	55	64	80	56	55	499

CONFIDENTIAL

THIS RECORD, AND THE INFORMATION CONTAINED THEREIN, IS PROVIDED IN CONFIDENCE AND REMAINS THE PROPERTY OF THE HAMILTON POLICE SERVICE (HPS). IT IS NOT TO BE DISCLOSED TO ANY PERSON OR AGENCY WITHOUT THE PRIOR WRITTEN PERMISSION OF THE HPS RECORDS SUPERVISOR OR FOI COORDINATOR

Chart 1b. Event Categories by Month

Category	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Total
DOMESTIC	2		1		1		1	1	2			4	12
DRUG / ALCOHOL		1		1			4	8	2	10	2	3	31
MEDICAL	5	1	3	4	3	3	9	7	11	20	16	16	98
MISCHIEF	19	5	4	8	4	12	14	10	18	18	16	10	138
OTHER	12	13	5	1	3	7	8	12	24	16	13	15	129
PIC			1			2	2	6	1	6	2	2	22
PROPERTY	5	3	1	1	1	3	4	4	2	6	1	1	32
SEXUAL								2	1			1	4
VIOLENT	1	3	2	3	1	2		5	3	4	6	3	33
Total	44	26	17	18	13	29	42	55	64	80	56	55	499

CONFIDENTIAL

THIS RECORD, AND THE INFORMATION CONTAINED THEREIN, IS PROVIDED IN CONFIDENCE AND REMAINS THE PROPERTY OF THE HAMILTON POLICE SERVICE (HPS). IT IS NOT TO BE DISCLOSED TO ANY PERSON OR AGENCY WITHOUT THE PRIOR WRITTEN PERMISSION OF THE HPS RECORDS SUPERVISOR OR FOI COORDINATOR

(Methodology B) Encampment/Tent Locations – Dispatch Keywords

The data below summarizes 1,103 CAD Events using keywords “encampment” and “tent”

Map 2a. Dispatch Note Locations Hot Spot Map

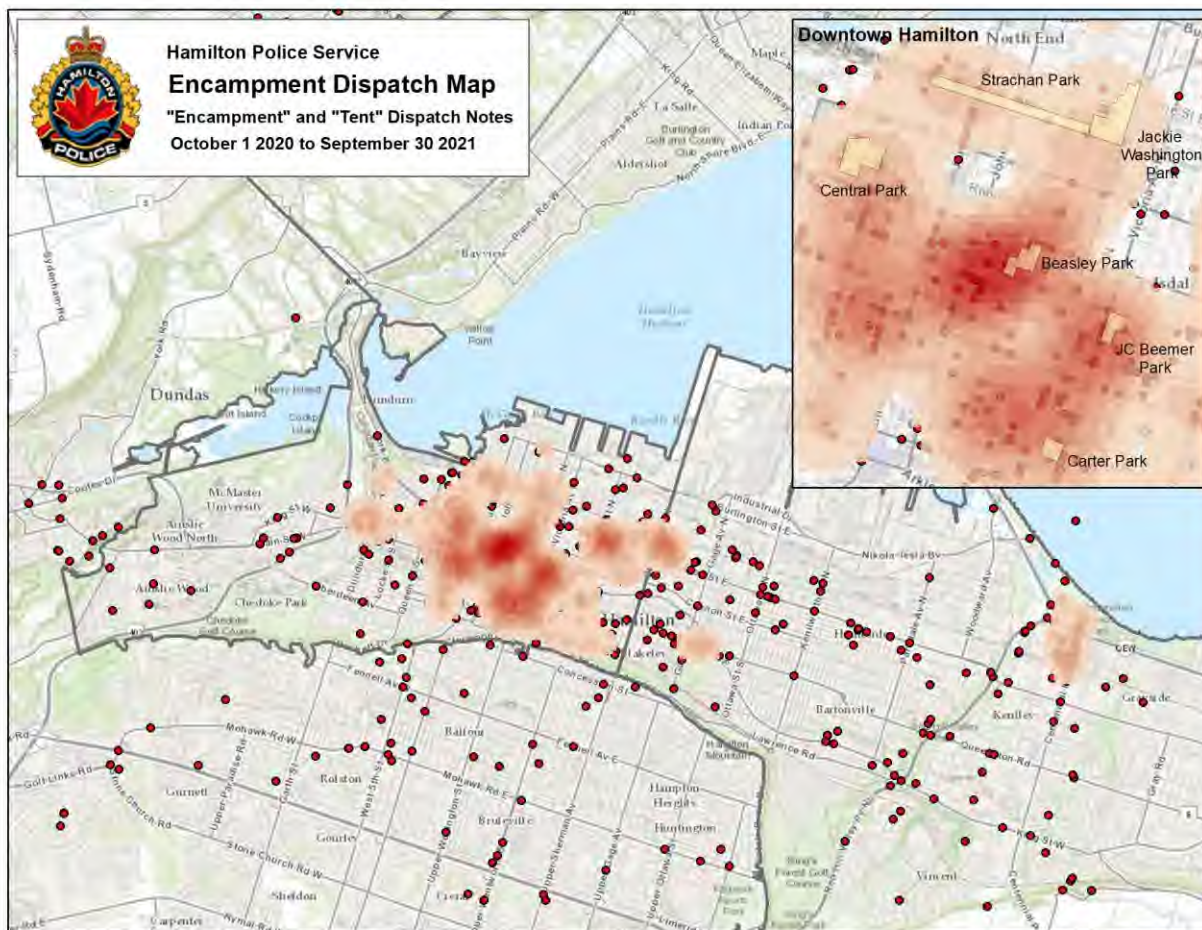


Chart 3a. Event Categories by Month

Category	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Total
DOMESTIC	5	2	3		2	1	3	2	2	4	8	6	38
DRUG / ALCOHOL	2						2	1	1	4	3	4	17
MEDICAL	12	5	3	5	2	5	6	11	3	12	12	11	87
MISCHIEF	53	41	37	15	16	26	51	53	52	78	67	64	553
OTHER	18	9	5	12	2	4	15	16	25	25	21	24	176
PIC	3	6	5	2	2	5	2	4	11	5	6	4	55
PROPERTY	9	1	5	3	3	1	5	12	8	15	10	13	85
SEXUAL			1					1	1	1		3	7
VIOLENT	10	5	2		4	2	3	9	10	13	20	7	85
Total	112	69	61	37	31	44	87	109	113	157	147	136	1103

CONFIDENTIAL

THIS RECORD, AND THE INFORMATION CONTAINED THEREIN, IS PROVIDED IN CONFIDENCE AND REMAINS THE PROPERTY OF THE HAMILTON POLICE SERVICE (HPS). IT IS NOT TO BE DISCLOSED TO ANY PERSON OR AGENCY WITHOUT THE PRIOR WRITTEN PERMISSION OF THE HPS RECORDS SUPERVISOR OR FOI COORDINATOR

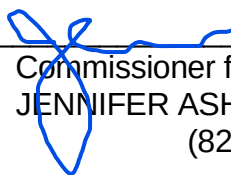
Chart 3c. Top Locations (Where Available)

Location	Count
47 ELGIN ST HAM: @BEASLEY PARK - NORTH END	25
71 REBECCA ST HAM: @HAMILTON URBAN CORE COMMUNITY HEALTH CENTRE	23
501 BARTON ST E HAM: @WOODLANDS PARK	23
1000 MAIN ST E HAM: @GAGE PARK	18
33 CLINTON ST HAM: @LUCY DAY PARK	16
71 MAIN ST W HAM: @CITY HALL	14
105 WALNUT ST S HAM: @SHAMROCK PARK	13
250 PARK ST S HAM: @DURAND PARK	12
68 VICTORIA AV N HAM: @J C BEEMER PARK	11
CENTENNIAL PY N HAM	9
100 FERGUSON AV S HAM: @FERGUSON TOWERS	9
707 KING ST W HAM: @CATHEDRAL PARK	8
168 BAY ST N HAM: @CENTRAL PARK	8
68 VICTORIA AV N HAM: @BEEMER JACK C PARK	7
71 REBECCA ST HAM: @URBAN CORE HEALTH CENTRE	6
101 YORK BV HAM: @FIRST ONTARIO CENTRE	6
195 FERGUSON AV N HAM	6
VICTORIA AV N/KING WILLIAM ST HAM	5
CENTENNIAL PY N/NORTH SERVICE RD HAM	5
WENTWORTH ST S HAM	5
50 VICTORIA AV N HAM: @TWEEDSMUIR PARK	5
32 STINSON ST HAM: @CARTER PARK	5
149 DUNDURN ST N HAM: @ADMIRAL INN	5
175 FERGUSON AV S HAM: @CORKTOWN PARK	5

CONFIDENTIAL

THIS RECORD, AND THE INFORMATION CONTAINED THEREIN, IS PROVIDED IN CONFIDENCE AND REMAINS THE PROPERTY OF THE HAMILTON POLICE SERVICE (HPS). IT IS NOT TO BE DISCLOSED TO ANY PERSON OR AGENCY WITHOUT THE PRIOR WRITTEN PERMISSION OF THE HPS RECORDS SUPERVISOR OR FOI COORDINATOR

This is Exhibit "B" to the Affidavit of Frank Miscione
sworn remotely at the City of Hamilton, in the Province of Ontario
before me at the City of Hamilton, in the Province of Ontario
on October 7, 2021 in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
JENNIFER ASHLEY GEE SEIDEL
(82920W)



Hamilton Police Service

Computer Aided Dispatch Event Code Classifications (Exhibit B)

Crime Information Analysis Unit

2021/10/06

Appendix - Computer Aided Dispatch Classifications

Classification	CAD Event Codes			
Domestic	CAB-J CAB-R CHILDCUST-R	DOM-F DOM-I DOM-J	DOM-R FAM-I FAM-J	FAM-R
Drug / Alcohol	CDSA DRIVECOM DRIVECOM-CMB	DRUG INTOXICATED LLA		
Medical	AMB-10-2000 AMB-A	AMB-ADV CHKOTHER		
Mischief	DISORD DIST-F DIST-P DIST-ST MISCH-CMB MISCH-F	MISCH-I MISCH-J MISCH-R NC NT-A	NT-D PROWL-I PROWL-J SS SUSP-CIR	SUSP-PER SUSP-VEH TRESS TRESS-CMB TRESS-F
Other	911-ADV ADVICE-CMB ANIMAL ASSIST-O CBP ENFRMNT	FIRE-A FIRE-ADV FIRE-F FNDPERS MARINE MP	MP-F MP-RET OPP-ADV PERS-DWN PROACTIVE PROTEST	SPEC DUTY UK-911 UK-PROB UN-GUEST WARRANTS W-PERSON
PIC	MHA FRM PIC RES-COMP	SUICIDE SUICID-F		
Property	ABAN BE-CMB BE-F BE-I BE-J BE-R	FNDPROP FRAUD-CMB FRAUD-R LOOKOUT LOOKOUTN LOSTPROP-CMB	LT-A LT-D OS-C PROP-REM SA-F SA-R	SA-REC THEFT-CMB THEFT-F THEFT-I THEFT-J THEFT-R
Sexual	SEXOFF-F SEXOFF-J SEXOFF-R			
Violent	ASLT-F ASLT-I ASLT-J HARASS ROB-F ROB-J	ROB-R SHOOT-J SHOOT-P STAB-F STAB-J THREAT-F	THREAT-I THREAT-J THREAT-R WEAPON-F WEAPON-I WEAPON-R	

CONFIDENTIAL

THIS RECORD, AND THE INFORMATION CONTAINED THEREIN, IS PROVIDED IN CONFIDENCE AND REMAINS THE PROPERTY OF THE HAMILTON POLICE SERVICE (HPS). IT IS NOT TO BE DISCLOSED TO ANY PERSON OR AGENCY WITHOUT THE PRIOR WRITTEN PERMISSION OF THE HPS RECORDS SUPERVISOR OR FOI COORDINATOR

ASHLEY POFF et al.

Applicants

- and -

CITY OF HAMILTON

Court File No. CV-21-00077187-0000

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**PROCEEDING COMMENCED AT
HAMILTON**AFFIDAVIT OF FRANK MISCIONE,
HAMILTON POLICE SERVICE****GOWLING WLG (CANADA) LLP**Barristers & Solicitors
1 King Street W, Suite 1500
Hamilton ON L8P 1A4

Tel: 905-540-8208

Michael Bordin (LSO#40047W)Tel: 905-540-2492
michael.bordin@gowlingwlq.com**Bevin Shores (LSO#56161F)**Tel: 905-540-2468
bevin.shores@gowlingwlq.com**Jordan Diacur (LSO#65860E)**Tel: 905-540-2500
jordan.diacur@gowlingwlq.com

Lawyers for the respondent

Email for parties served:

Sharon Crowe: crowes@lao.on.caStephanie Cox: coxst@lao.on.ca

TAB 21

Court File No. CV-21-00077187-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

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

APPLICATION UNDER 14.05 OF THE *RULES OF CIVIL PROCEDURE*

AFFIDAVIT OF FRANK MISCIONE

I, Frank Miscione, of the City of Hamilton, in the Province of Ontario, AFFIRM:

1. I am the Inspector of the Community Mobilization Division of the Hamilton Police Service. In my role as Inspector, I oversee the Crisis Response Branch ("CRB"). As such I have knowledge of the matters set out in this my affidavit. Where I rely on the information of others, I state the source of that information and verily believe it to be true.
2. I make this Affidavit as a supplement and update to my affidavit affirmed October 7, 2021.

-2-

3. In order to provide an update as to calls for service regarding encampments and the Hamilton Police Service (“HPS”)’s role in encampment engagement, I have prepared a report entitled “Encampments Calls For Service and Encampment Engagement Team Overview,” (the “Update Report”) which is attached to my affidavit as **Exhibit “A”**. The Update Report is true and accurate to the best of my knowledge.

Encampment Engagement Team

4. As detailed at page 3 of the Update Report, in approximately April of 2023, the City approved funding to support the creation of an Encampment Engagement Team within HPS, composed of two full-time HPS Officers.
5. The Encampment Engagement Team’s role and a summary of their enforcement activities is summarized at pages 3 and 4 of the Update report.

Updated Statistics

6. The HPS Crime Information Analysis Unit have collected and organized updated Computer Aided Dispatch (CAD) event statistics from July 1, 2023 to June 30, 2024. These updated data re discussed at pages 4 through 9 of the Update Report, using two different methodologies:
 - (a) Methodology “A” analyzes CAD events from the five parks with the highest total visits from Encampment Engagement Team;

-3-

- (b) Methodology “B” analyzes CAD events from where the call taker had recorded ‘tent’ or ‘encampment’.

As explained in the Update Report, CAD event activity statistics only captures activity within a geographical boundary of a park for HPS uniform patrol responding to calls. It does not include the activity for the proactive work that the HPS social navigator program or encampment engagement team provides.

7. Exhibit “B” to my affidavit is Appendix A to the Update Report, namely a chart detailing the CAD event codes and their respective classifications, as referenced in the Update Report.

AFFIRMED by Frank Miscione at the City of Hamilton, in the Province of Ontario, before me on July 24, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Bevin Shores

75E43E7F402846F...

Commissioner for Taking Affidavits
(or as may be)

BEVIN SHORES

DocuSigned by:

Frank Miscione

2D2D370773134B0...

FRANK MISCIONE

This is Exhibit "A" to the Affidavit of Frank Miscione
AFFIRMED remotely at the City of Hamilton, in the Province of Ontario
before me at the City of Hamilton, in the Province of Ontario,
on this 24th day of July, 2024, in accordance with
O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Bevin Shores

75E42E7F402846F...

Bevin Shores (56161F)

*Commissioner for Taking Affidavits
(or as may be)*



Hamilton Police Service

Encampments Calls For Service and Encampment Engagement Team Overview

Inspector Frank Miscione,
Crime Information Analysis Unit

2024/07/22

Summary

Encampment related calls for service continue to be complex events for first responders. Law enforcement agencies respond to many calls for services at locations where there are encampments. In September 2021, Hamilton Police Service was requested to review activity in the past year related to encampments. Analyzing the data for encampments is challenging, as the data capture processes for both encampments and encampment related activity is not well defined. In 2024, additional data was requested.

Background

The Hamilton Police Service (HPS) Crisis Response Branch (CRB) in partnership with a number of community agencies, developed multiple responses to support vulnerable and marginalized individuals and those experiencing mental health issues.

In April 2015, Hamilton Police created the Crisis Response Branch (CRB) by combining the following three programs:

- Crisis Outreach and Support Team (COAST). Police officers in plain clothes and St Joseph's Hospital mental health workers.
- Mobile Crisis Rapid Response Team (MCRRT). Police officers in uniform and St. Joseph's Hospital mental health workers.
- Social Navigator Program (SNP). Police officers in uniform and Emergency Medical Services (EMS) paramedics.

In 2022, the CRB expanded to include:

- Rapid Intervention Support Team (RIST). Police officers in uniform and eight members from seven different community outreach organizations.
- Encampment Engagement Team (EET). This pilot program provides support for Municipal Law Enforcement Officers (MLEO) with dedicated police officers.

These programs have decreased the number of persons being brought to hospital emergency departments and increased the number of individuals being connected with social service agencies. The initiatives have reduced apprehension rates, improved care for clients, and lessened the impact on the judicial and health care system.

CONFIDENTIAL

THIS RECORD, AND THE INFORMATION CONTAINED THEREIN, IS PROVIDED IN CONFIDENCE AND REMAINS THE PROPERTY OF THE HAMILTON POLICE SERVICE (HPS). IT IS NOT TO BE DISCLOSED TO ANY PERSON OR AGENCY WITHOUT THE PRIOR WRITTEN PERMISSION OF THE HPS RECORDS SUPERVISOR OR FOI COORDINATOR

Encampment Engagement Team (EET)

In April of 2023, two Constables were assigned full time to the Encampment Engagement Team (EET) and funded by the City of Hamilton as part of the Coordinated Encampment Response Team (CERT).

Between April 2023 and August 2023 The Encampment Engagement Team was responsible for:

- Encampment identification
- Encampment assessment and prioritization
- Outreach and support services
- Partnering with Municipal Law Enforcement to coordinate encampment clean up
- Responding to calls for service at encampments
- Verifying location of encampment and de-confliction
- Supporting Municipal Law Enforcement in By-Law enforcement of the Road allowance By-Law
- Sharing information with City of Hamilton partners
- Proactive patrol of former encampment sites

In August of 2023, Hamilton City Council voted to adopt and implement an official City of Hamilton Encampment Protocol.

Prior to September 2023, the Encampment Engagement Team supported Municipal Law Enforcement (MLE) in their enforcement of the road allowance and By-law 01-129 in any park where a deemed safety risk was present. When the Encampment Protocol was initiated in August 2023 it was designed as a housing first approach and therefore the Encampment Engagement Team took on a different role. They would be called to an encampment after attempts were made by the Housing Focused Street Outreach (HFSO) team and MLE to gain compliance had failed. EET would accompany MLE for the issuance of Notice of Non-Compliance and then re-attended to check on that compliance. If compliance had not been met a Notice of Trespass was issued by MLE. EET would then be given the file for the purposes of enforcing the Trespass to Property Act.

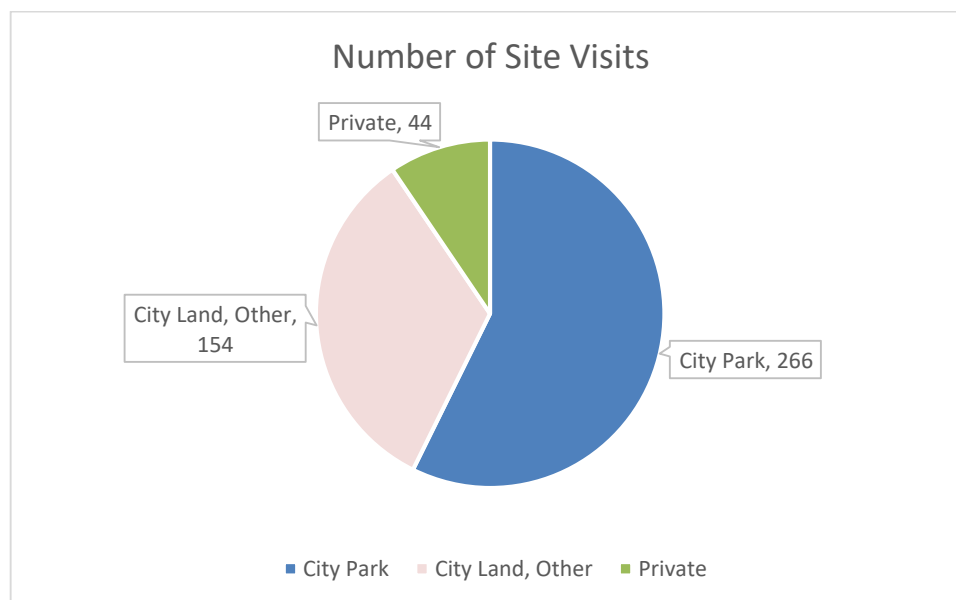
For private property, the Encampment Engagement Team would receive an authorization letter from the land owner requesting that police remove the encampment on their property.

From April 13th 2023 to December 21st 2023, the Encampment Engagement Team completed 464 site visits. Of the 464 sites visited, 266 were City Parks, 154 were other City lands such as road allowance, and 44 were private property.

CONFIDENTIAL

THIS RECORD, AND THE INFORMATION CONTAINED THEREIN, IS PROVIDED IN CONFIDENCE AND REMAINS THE PROPERTY OF THE HAMILTON POLICE SERVICE (HPS). IT IS NOT TO BE DISCLOSED TO ANY PERSON OR AGENCY WITHOUT THE PRIOR WRITTEN PERMISSION OF THE HPS RECORDS SUPERVISOR OR FOI COORDINATOR

Figure 7 EET Site Visit Types 2023



From September 1st 2023 to December 31st 2023 the Encampment Engagement Team assisted MLE in issuing 278 notices (Non-compliance or Trespass) at locations that were not in compliance with the City of Hamilton Encampment Protocol.

The team worked alongside MLE and Parks staff who did the clean ups of abandoned sites and clean around of existing sites. Their role was to keep staff safe, keep the peace, and to mitigate any situation that would arise.

From September 1st 2023 to December 31st 2023 Encampment Engagement Team spent 127 hours enforcing those notices.

From January 1st 2024 to June 30st 2024 Encampment Engagement Team visited 509 sites, assisted Municipal Law Enforcement with the issuance 383 notices (Notice of Non-compliance or Trespass) and Spent 200 hours enforcing those notices.

Enforcement is defined as gaining compliance to the protocol. No use of force was used on any person during these enforcement hours and no person was arrested or charged for refusing to leave an encampment.

For the purpose of this analysis, the Crime Information Analysis Unit has prepared methodology to extract these events from our record management system and computer aided dispatch system (CAD). In 2021, the analysis focused on the largest six known park sites with encampments. In 2024, the approach is the same, but the areas of interest have shifted to a focus of five new parks with highest total visits from Encampment Engagement Team. The areas are different due to the transient nature of encampments. It is important to note that the CAD event activity statistics only captures activity within a geographical

CONFIDENTIAL

THIS RECORD, AND THE INFORMATION CONTAINED THEREIN, IS PROVIDED IN CONFIDENCE AND REMAINS THE PROPERTY OF THE HAMILTON POLICE SERVICE (HPS). IT IS NOT TO BE DISCLOSED TO ANY PERSON OR AGENCY WITHOUT THE PRIOR WRITTEN PERMISSION OF THE HPS RECORDS SUPERVISOR OR FOI COORDINATOR

boundary of a park for our uniform patrol responding to calls. It does not include the activity for the proactive work that our social navigator program or encampment engagement team provides. It is stretch to discern without hand reviewing records whether the event is encampment related. The second methodology extracts from the CAD system events where the call taker had recorded 'tent' or 'encampment'.

Key findings of the analysis include the following:

Methodology A:

- There were 395 CAD events from July 1 2023 to June 30 2024 for the selected 'encampment' locations
- The top five types of CAD events grouped by type with the highest volumes were the following (sorted volume descending): mischiefs, other (911 advised, ambulance assist, fire, person down, protest, warrants), medical, property (theft, break and enter) and person in crisis. Suspicious Person and Trespassing make up the most events that fall within the mischief group.
- Activity for these sites steadily increases from spring months to summer months
- City Hall and Gage Park have the highest event volumes in the past year

Methodology B:

- There were 2,659 CAD events where 'encampment' or 'tent' is recorded in the notes section from July 1 2023 to June 30 2024
- The top five types of CAD events with the highest volume where 'encampment' or 'tent' is mentioned is the following (sorted volume descending): mischief, other, medical, property, and person in crisis
- Activity is clustered in the downtown core

CONFIDENTIAL

THIS RECORD, AND THE INFORMATION CONTAINED THEREIN, IS PROVIDED IN CONFIDENCE AND REMAINS THE PROPERTY OF THE HAMILTON POLICE SERVICE (HPS). IT IS NOT TO BE DISCLOSED TO ANY PERSON OR AGENCY WITHOUT THE PRIOR WRITTEN PERMISSION OF THE HPS RECORDS SUPERVISOR OR FOI COORDINATOR

(Methodology A) Encampment Select Locations – Totals and Type

The data below summarizes 395 CAD Events at the identified park locations.

Map 1a. Selected Park Locations



Chart 1a. Park Events by Month

Encampment Location	2023						2024						Total
	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	
Bayfront Park	2	2	4	5	2	3	3	2	3	5	17	23	71
City Hall	12	20	8	12	6	3		3	22	4		19	109
Gage Park	3	5	3	9	3	2	9	1	6	12	9	24	86
JC Beemer / Tweedsmuir	11	12	10	6	1	5	6	2	4	5	1	14	77
Wellington Park	4	2	2	7	5	4	2	6	1	8	5	6	52
Total	32	41	27	39	17	17	20	14	36	34	32	86	395

CONFIDENTIAL

THIS RECORD, AND THE INFROMATION CONTAINED THEREIN, IS PROVIDED IN CONFIDENCE AND REMAINS THE PROPERTY OF THE HAMILTON POLICE SERVICE (HPS). IT IS NOT TO BE DISCLOSED TO ANY PERSON OR AGENCY WITHOUT THE PRIOR WRITTEN PERMISSION OF THE HPS RECORDS SUPERVISOR OR FOI COORDINATOR

Chart 1b. Event Categories by Month

Top 5 Encampments	2023						2024						
Total	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
DOMESTIC	2		1	1						1	1	2	8
DRUG / ALCOHOL		3	1	2					1	1		2	10
MEDICAL	6	8	7	5	3	6	4	4	8	5	2	12	70
MISCHIEF	7	17	10	15	5	3	7	4	11	13	11	30	133
OTHER	6	7	4	8	5	3	8	4	10	7	8	17	87
PIC	4	1	2	1	1			1	2	2	3	3	20
PROPERTY	1	1		2	1	1			1	1	5	2	15
SEXUAL												3	3
VIOLENT	6	4	2	5	2	4	1	1	3	4	2	15	49
Total	32	41	27	39	17	17	20	14	36	34	32	86	395

(Methodology B) Encampment/Tent Locations – Dispatch Keywords

The data below summarizes 2,659 CAD Events using keywords “encampment” and “tent”

Map 2a. Dispatch Note Locations Hot Spot Map**CONFIDENTIAL**

THIS RECORD, AND THE INFORMATION CONTAINED THEREIN, IS PROVIDED IN CONFIDENCE AND REMAINS THE PROPERTY OF THE HAMILTON POLICE SERVICE (HPS). IT IS NOT TO BE DISCLOSED TO ANY PERSON OR AGENCY WITHOUT THE PRIOR WRITTEN PERMISSION OF THE HPS RECORDS SUPERVISOR OR FOI COORDINATOR

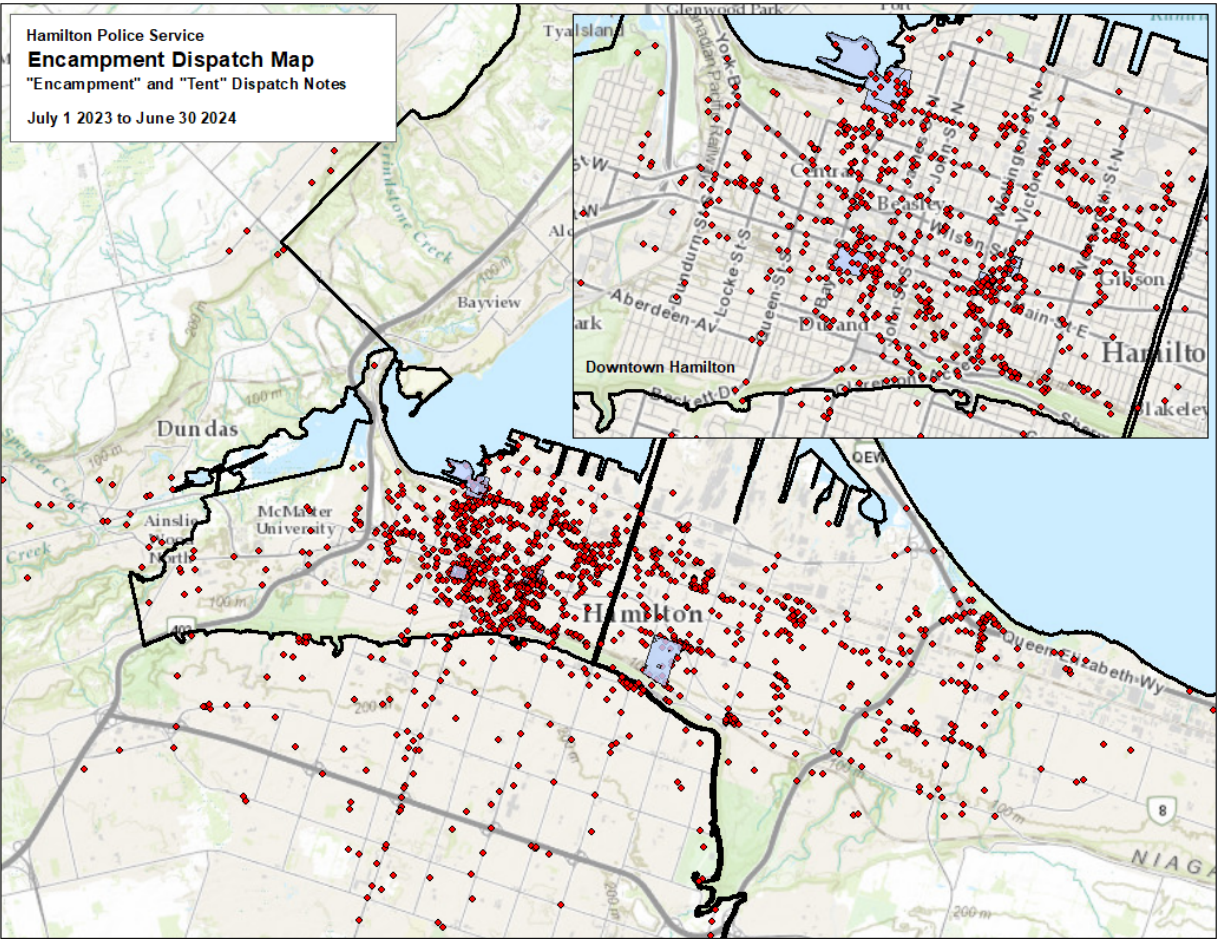


Chart 3a. Event Categories by Month

Keywords	2023						2024						
Total	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
DOMESTIC	11	7	7	8	6	8	2	5	6	9	12	18	99
DRUG / ALCOHOL	8	8	5	3		1		2	1	3	3	9	43
MEDICAL	17	18	23	17	18	16	11	9	14	20	14	46	223
MISCHIEF	126	117	99	108	74	56	54	43	61	76	104	205	1123
OTHER	51	46	55	34	49	55	35	46	52	45	46	105	619
PIC	18	17	12	10	8	14	6	7	15	10	7	14	138
PROPERTY	18	18	12	14	10	10	10	4	4	9	15	25	149
SEXUAL	1	3		1	1			1				4	11
VIOLENT	26	23	40	22	13	10	6	6	15	16	25	52	254
Total	276	257	253	217	179	170	124	123	168	188	226	478	2659

Chart 3c. Top Locations (Where Available)

CONFIDENTIAL

THIS RECORD, AND THE INFROMATION CONTAINED THEREIN, IS PROVIDED IN CONFIDENCE AND REMAINS THE PROPERTY OF THE HAMILTON POLICE SERVICE (HPS). IT IS NOT TO BE DISCLOSED TO ANY PERSON OR AGENCY WITHOUT THE PRIOR WRITTEN PERMISSION OF THE HPS RECORDS SUPERVISOR OR FOI COORDINATOR

Location	Count
1000 MAIN ST E HAM: @GAGE PARK	54
68 VICTORIA AV N HAM: @J C BEEMER PARK	47
71 MAIN ST W HAM: @CITY HALL	46
1570 MAIN ST E HAM: @MONTGOMEREY PARK	31
501 BARTON ST E HAM: @WOODLANDS PARK	29
91 EAST AV S HAM: @BISHOPS PARK	27
75 MACNAB ST S HAM: @YWCA	27
130 YORK BV HAM: @SIR JOHN A MACDONALD PUBLIC SECONDARY SCHOOL	27
200 HARBOUR FRONT DR HAM: @BAYFRONT PARK	22
1501 BARTON ST E HAM: @FAIRFIELD PARK	22
32 STINSON ST HAM: @CARTER PARK	21
168 BAY ST N HAM: @CENTRAL PARK	18
516 KING ST W HAM: @VICTORIA PARK	17
935 CONCESSION ST HAM: @MOUNTAIN DRIVE PARK	14
160 WENTWORTH ST N HAM: @CATHY WEVER PUBLIC ELEMENTARY SCHOOL	13
399 KING ST E HAM: @WELLINGTON PARK	12
1124 MAIN ST E HAM: @DOLLARAMA	12
68 VICTORIA AV N HAM: @BEEMER JACK C PARK	11
1100 MAIN ST E HAM: @DELTA PARK	11
369 BAY ST N HAM: @BAYFRONT PARK	10

CONFIDENTIAL

THIS RECORD, AND THE INFORMATION CONTAINED THEREIN, IS PROVIDED IN CONFIDENCE AND REMAINS THE PROPERTY OF THE HAMILTON POLICE SERVICE (HPS). IT IS NOT TO BE DISCLOSED TO ANY PERSON OR AGENCY WITHOUT THE PRIOR WRITTEN PERMISSION OF THE HPS RECORDS SUPERVISOR OR FOI COORDINATOR

This is Exhibit "B" to the Affidavit of Frank Miscione
AFFIRMED remotely at the City of Hamilton, in the Province of Ontario
before me at the City of Hamilton, in the Province of Ontario,
on this 24th day of July, 2024, in accordance with
O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Bevin Shores

75E43E7E402846E

Bevin Shores (56161F)
Commissioner for Taking Affidavits
(or as may be)



Hamilton Police Service

Encampments Calls For Service and Encampment Engagement Team Overview Appendix A

Inspector Frank Miscione
Crime Information Analysis Unit

2024/07/22

Appendix - Computer Automated Dispatch Classifications

Classification	CAD Event Codes			
Domestic	CAB-J CAB-R CHILDCUST-R	DOM-F DOM-I DOM-J	DOM-R FAM-I FAM-J	FAM-R
Drug / Alcohol	CDSA DRIVECOM DRIVECOM-CMB	DRUG INTOXICATED LLA		
Medical	AMB-10-2000 AMB-A	AMB-ADV CHKOTHER		
Mischief	DISORD DIST-F DIST-P DIST-ST MISCH-CMB MISCH-F	MISCH-I MISCH-J MISCH-R NC NT-A	NT-D PROWL-I PROWL-J SS SUSP-CIR	SUSP-PER SUSP-VEH TRESS TRESS-CMB TRESS-F
Other	911-ADV ADVICE-CMB ANIMAL ASSIST-O CBP ENFRMNT	FIRE-A FIRE-ADV FIRE-F FNDPERS MARINE MP	MP-F MP-RET OPP-ADV PERS-DWN PROACTIVE PROTEST	SPEC DUTY UK-911 UK-PROB UN-GUEST WARRANTS W-PERSON
PIC	MHA FRM PIC RES-COMP	SUICIDE SUICID-F		
Property	ABAN BE-CMB BE-F BE-I BE-J BE-R	FNDPROP FRAUD-CMB FRAUD-R LOOKOUT LOOKOUTN LOSTPROP-CMB	LT-A LT-D OS-C PROP-REM SA-F SA-R	SA-REC THEFT-CMB THEFT-F THEFT-I THEFT-J THEFT-R
Sexual	SEXOFF-F SEXOFF-J SEXOFF-R			
Violent	ASLT-F ASLT-I ASLT-J HARASS ROB-F ROB-J	ROB-R SHOOT-J SHOOT-P STAB-F STAB-J THREAT-F	THREAT-I THREAT-J THREAT-R WEAPON-F WEAPON-I WEAPON-R	

CONFIDENTIAL

THIS RECORD, AND THE INFORMATION CONTAINED THEREIN, IS PROVIDED IN CONFIDENCE AND REMAINS THE PROPERTY OF THE HAMILTON POLICE SERVICE (HPS). IT IS NOT TO BE DISCLOSED TO ANY PERSON OR AGENCY WITHOUT THE PRIOR WRITTEN PERMISSION OF THE HPS RECORDS SUPERVISOR OR FOI COORDINATOR

KRISTEN HEEGSMA et al.

- and -

CITY OF HAMILTON

Court File No. CV-21-00077187-0000

Applicants

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
HAMILTON

AFFIDAVIT OF FRANK MISCIONE
AFFIRMED JULY 24, 2024

GOWLING WLG (CANADA) LLP
Barristers & Solicitors
One Main Street West
Hamilton, ON L8P 4Z5

Tel: 905-540-8208

Bevin Shores (LSO#56161F)
Tel: 905-540-2468
bevin.shores@gowlingwlg.com

Jordan Diacur (LSO#65860E)
Tel: 905-540-2500
jordan.diacur@gowlingwlg.com

Lawyers for the respondent

File Number: H227899

TAB 22

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 &
SHAWN ARNOLD

Applicants

and

CITY OF HAMILTON

Respondent

**AFFIDAVIT OF JAMES MOULTON,
EXECUTIVE DIRECTOR OF THE SALVATION ARMY, HAMILTON**

[intentionally left blank]

**AFFIDAVIT OF JAMES MOULTON,
EXECUTIVE DIRECTOR OF THE SALVATION ARMY, HAMILTON
(Sworn October 6, 2021)**

I, **JAMES MOULTON**, of the City of Hamilton in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the Executive Director, Housing and Support Services at the Salvation Army, Hamilton (the “**Salvation Army**”). The Salvation Army is an international charitable organization that has grown to become the largest non-governmental direct provider of social services in Canada. The Salvation Army operates a number of ‘Divisions’ across Canada; the City of Hamilton is located within the Ontario Division. In my role as Executive Director, I oversee the provision of shelter services to men in the City of Hamilton. As such I have knowledge of the matters set out in this my affidavit. Where I rely on the information of others, I state the source of that information and verily believe it to be true.

2. The Salvation Army was founded in London, England by William Booth in 1865. The Salvation Army began operating in Hamilton in 1904, when a shelter for men experiencing poverty, addiction and homelessness was first opened on York Boulevard in downtown Hamilton. Currently, the Salvation Army continues to offer shelter services to men at 94 York Boulevard in Hamilton, at a facility called the Hamilton Booth Centre (named for William Booth, the “**Booth Centre**”).

3. All of the Emergency Shelter services offered at the Booth Centre are free.

Staffing

4. The Salvation Army employs a number of staff members at the Booth Centre. Staff is divided between Support staff and Program staff. Staffing levels vary by time of day, from

a minimum of three to four staff members on site during the night, up to about ten staff members on site during the day. At least one manager is 'on call' 24 hours per day.

5. Support staff includes cleaners, who are on site 24 hours per day, dedicated to cleaning tasks only and trained in WHMIS, and kitchen workers, including two trained chefs who prepare community meal services.

6. Program staff are divided between managers, shift supervisors, case workers and front desk staff. The current Manager has a Masters of Social Work. The current Shift Supervisor has a Social Service Worker diploma. Many of our case workers also have a Bachelor's of Social Work, but are required to have a Social Service Worker (SSW) designation, or related education and two years of case work experience. Our front desk staff are required to have a Social Services diploma or equivalent in training and experience.

7. All of our staff members have various levels of additional training, as well, which includes at minimum non-violent crisis intervention (NVC) training, de-escalation training, and first aid training (including mental health first aid and administration of naloxone for opiate overdoses). Attached hereto and marked as **Exhibit "A"** is a copy of a recent job opportunity posting at the Booth Centre listing the experience and education required for our staff.

Shelter Services

8. There are very few barriers to accessing services at the Booth Centre. We request identification (or at least a name and date of birth) from our clients, and we try to determine where they have been staying previously. We assist in various ways, depending upon the

client's needs. This can include immediate needs like food, rest and a shower, as well as more long-term needs that case workers can assist with, such as: securing identification if they do not have any; connecting with the Ontario Disability Support Program and/or Ontario Works programs; assessing health needs; directing clients to legal or immigration assistance; and locating housing. Assisting in finding appropriate stable housing is always a focus.

9. The Booth Centre uses a computer program called 'HIFIS', which stands for 'Homeless Individuals and Families Information System'. HIFIS is a comprehensive data collection and case management program. It integrates us with the other agencies operating shelters in the City, i.e. Mission Services and Good Shepherd, allowing us to share— instantaneously, in real time—information and provide it to the City of Hamilton, as well. HIFIS enables us to find another shelter for a client if the Booth Centre does not have a bed for the client. It allows all shelters to track the progress of a client with the end-goal of finding suitable more permanent housing.

10. The Booth Centre provides numerous services to our clients, including laundry facilities and detergent, hygiene products, clean beds and bedding, footwear and clothing, computer access, telephone access, transportation access (including bus tickets and taxi fare), three hot meals per day, access to medical care, and a focus on locating a stable housing situation via our case workers.

11. The Booth Centre offers 82 beds, available 24 hours a day, 365 days a year, recently renovated in a combination of dormitory-style spaces, individual rooms and isolation spaces. Each of our beds comes with a locker that can be locked. An additional 10 sleeping areas

can also be made available as an emergency overflow, if needed. Attached hereto and marked as **Exhibit “B”** is a diagram showing the arrangements within the facility.

12. The Booth Centre has group bathrooms, much like a school, with toilets, urinals, sinks and showers. There are also several individual bathrooms.

13. The Booth Centre has implemented a number of COVID-19 protocols, including: providing community meal services outside, integrated into a ‘soup van’ program; enhanced cleaning (frequency and intensity and more focus on common touch areas); and provision of personal protective equipment (“**PPE**”) to staff (masks, gloves, gowns, face-shields) and clients (masks). Physical distancing markers have also been added.

14. Voluntary COVID-19 testing for all clients has been added to the weekly available health care at the Booth Centre. If any client who enters the Booth Centre fails the Public Health screening process for COVID-19, the Booth Centre provides isolation spaces until a test confirms. The City provides an isolation centre for anyone who tests positive, so that they can still be sheltered and have access to services. We also have a mandatory vaccine policy for all staff and volunteers, whom are to be fully vaccinated according to Health Canada guidelines by November 15, 2021, with reasonable accommodation prior to that date. Notably, this vaccine mandate does not apply to or prevent services from reaching clients, who are in emergency housing conditions.

15. The Booth Centre has complied with all Public Health directives regarding COVID-19 as they have changed throughout the pandemic in order to make the Booth Centre safe for our clients, and we have consulted with Public Health for this purpose.

Expectations for Clients

16. The Booth Centre has a series of expectations for clients. These expectations are in place to ensure ensure the safety of all of our clients and staff. The expectations include:

- a) Nightly check-in;
- b) No violence, and no abuse (including shouting, threats, insults, etc.);
- c) No theft or interference with the property of others;
- d) No smoking in the building;
- e) No guests;
- f) No drug use or dealing drugs on site; and
- g) No animals (service animals excepted).

17. Our expectations are communicated to all clients upon arrival. At present, check-in procedures also include COVID-19 screening.

18. The Booth Centre is monitored by staff and by security cameras.

19. Breaches of expectations are dealt with by a progressive engagement strategy. Case workers and other staff always seek to work out an issue before any warnings are given or sanctions are imposed. There are typically many conversations before sanctions are imposed. We take into account the work done with client in the past, the seriousness of the incident, and how to best address the behaviour in question.

20. When breaches of expectations result in service restrictions for clients, the service restrictions are not intended to be punitive, and they are tailored to be as minimal as possible. For example, if a client is found to have shouted threats at staff or another client, that client may be asked to take a walk to calm down. If repeated, they may be restricted from accessing services for a specified period of time, or they may be transferred to another shelter.

21. The imposition of a full or permanent 'ban' from our services would only occur in exceptional circumstances. There is an internal appeal process, as well, which clients can access.

a. Violence and theft

22. Reports are taken of any violence or theft that occurs on the Booth Centre's premises. While acts of violence between clients can occur, staff are there to intervene and trained to de-escalate/respond in accordance with our policies and procedures. Incidents of violence will result in a time-limited service restriction from the Booth Centre. However, we work to find other available shelter spaces for the client.

23. Thefts do occur, but lockers for our clients' personal property assist in preventing theft and allow our clients to feel safe. Generally, our clients are respectful of each other. The cameras in place at the Booth Centre can assist in recovering anything stolen if a date and time of the event is known. Hamilton Police Services is called in appropriate circumstances. Staff will also speak with any individuals involved to seek to curb the behaviour and decrease risk. Our renovations have helped with this, as individual spaces do assist.

c. Drug users can access services

24. Many police and EMS calls placed by the Booth Centre are for suspected drug overdoses and medical emergencies.

25. There is no expectation that our clients cannot be drug users, or that they will not be using drugs while accessing our services; however, we do expect that drugs will not be used or sold on site. This is for the protection of other clients who may be battling addictions and for other safety reasons. A safe injection site is available to clients in the City of Hamilton, roughly a 5-minute walk from the Booth Centre.

d. Animals are not allowed

26. We have found it is not possible to balance the safety of our clients with allowing animals at the Booth Centre, which was not built with accommodating animals in mind.

27. The concerns that led to our expectation that animals will not be brought on site have included: allergies, which can be aggravated in a dormitory-like setting; the creation of loud noises, particularly at night; and issues encountered with dogs (i.e. aggressive dogs, as well as fears of being near large dogs).

e. No 'curfew'

28. Bed checks are conducted during the night, to ensure our beds are being used. First bed check occurs at 10 p.m. This is standard across all men's shelters in Hamilton and is sometimes called a 'curfew'. However, unlike under a formal curfew, clients are not prohibited from leaving the Booth Centre after 10 p.m. Often, clients will leave during the

night, for a variety of reasons. We ask that they advise whether they will be returning. If they do, their bed may be held for them. If, however, a client has left without advising that they will return, it is possible that the bed will not be held and will be reallocated to another client who needs it. A client would have to miss 2 bed checks at a minimum before the bed could be reassigned.

29. If a bed is reallocated, any belongings that were left behind are collected for pick up at the front desk. If a bed is not needed by another client, it may remain available. This process is intended to ensure no beds or resources are wasted.

30. Clients can be checked into a bed on their first night at the shelter anytime during the night.

31. The bed checks also serve the purpose of acting as safety checks on the wellbeing of clients.

No Lack of Shelter Capacity

32. The Booth Centre works closely with shelters operated by other providers in the City of Hamilton. All of these shelters report daily on their capacity, allowing spaces to be tracked and located when needed.

33. I can confirm that no-one has been turned away from shelter services due to lack of space during the COVID-19 pandemic. At all times, we have been able to locate a space for all persons who have sought shelter services, and there have always been empty beds available, either at the Booth Centre, at the other local shelters and/or at the additional locations that have been added and made available such as local hotels.

34. While we are not currently experiencing any active cases of COVID-19, the Booth Centre has experienced a total of 45 positive cases for clients, and 15 positive cases for staff, since the beginning of the pandemic. No deaths have resulted.

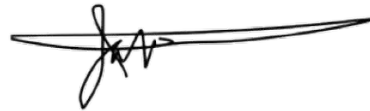
35. We have access to voluntary COVID-19 testing at the Booth Centre on a regular basis, and results are available quickly. A total of 1554 COVID-19 tests have been administered at the Booth Centre as of September 24, 2021.

36. I make this affidavit in order to clarify and explain the background of and services provided by Salvation Army in the City of Hamilton and for no other or improper purpose.

SWORN REMOTELY by James Moulton of the City of Hamilton before me at the City of Niagara Falls during a 'Zoom' videoconference on October 6, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



JORDAN DIACUR (65860E)
Commissioner for Taking Affidavits, etc.



JAMES MOULTON

This is **Exhibit “A”** to the Affidavit of James Moulton sworn remotely before me, during a ‘Zoom’ videoconference on Oct. 6, 2021.

A handwritten signature in cursive script, appearing to read "Diocur".

A Commissioner, etc.



Giving Hope Today

EMPLOYMENT OPPORTUNITY

The Salvation Army - Ontario Division

Job Title:	CASE WORKER	Competition #:	
Department:	PROGRAM	Position Type:	Temporary, full-time (Contract-fixed term)
Salary Range:	\$22.21 per hour	Unionized:	YES
Posting Date:	Sept 22, 2020	Posting Expiry:	September 30, 2020
Location:	94 York Blvd, Hamilton ON		

TERMS AND CONDITIONS

This is a temporary, full-time position based upon 37.5 hours per week. Flexibility in scheduling is required. The work schedule is determined in consultation with your supervisor and may vary according to requirements of responsibility. Applicable shifts include a ½ hour unpaid meal break. The operational hours of this facility are **7:00 am – 3:00 pm.**

Shifts: Monday to Friday, 7:00 a.m. to 3:00 p.m.

Start Date: asap

End Date: March 31, 2021

Interested applicants must respond in writing with a cover letter and resume.

We thank all applicants, however, only those candidates to be interviewed will be contacted.

MISSION AND VALUES

The Salvation Army exists to share the love of Jesus Christ, meet human needs and be a transforming influence in the communities of our world. Each position contributes to the mission of The Salvation Army.

Watch/read inspiring stories from some of those who have been helped through The Salvation Army's programs:

[The Salvation Army Support](#)

[Fleeing from Persecution](#)

[Open House: Poverty isn't always easy to see](#)

The Salvation Army Canada and Bermuda has four core values:

Hope: We give hope through the power of the gospel of Jesus Christ.

Service: We reach out to support others without discrimination.

Dignity: We respect and value each other, recognizing everyone's worth.

Stewardship: We responsibly manage the resources entrusted to us.

JOB DESCRIPTION

RESPONSIBILITIES

- Work closely with the Program Manager and Case Work team, assess shelter clients' individual needs
- Focus on early intervention/diversion by engaging and screening clients immediately upon their accessing the shelter and leverage their assets and strengths to exit the shelter quickly into alternate housing, return to their current housing and rental unit searching.
- Develop resources by locating housing options and create partnerships to execute efficient and effective referrals to rental units.
- Meet with higher barriers clients when diversion is not possible and assist them in setting realistic personal goals to enable them to move out of the shelter and along the housing continuum to more suitable accommodations
- Maintain regular follow-up with each client to achieve their goals
- Make appropriate referrals to other services, both in-house and to partner agencies in the community, as necessary.
- Assist clients as advocates for benefits, housing needs to include evictions, landlord negotiations and access to community resources.
- Assist in development of positive working relationships with other agencies serving those at risk of homelessness.
- Work with each client to develop and/or strengthen their goal plan according to individual goals and objectives
- Assist in completing all necessary paperwork



Giving Hope Today

EMPLOYMENT OPPORTUNITY

The Salvation Army - Ontario Division

- Complete concise and accurate case notes and files on each client
- Attend shift change meetings, case conferences, staff meetings, training workshops as required and authorized
- Demonstrate familiarity with The Salvation Army Booth Centre's policies and procedures
- Record any appropriate information in Log Books, on HIFIS and/or Incident Reports, if appropriate
- Be available to offer support to enable the client to maintain his housing, if appropriate
- Meet with Program Manager for regular supervision and engage in formal evaluation meetings
- Represent The Salvation Army Hamilton Booth Centre in a professional and effective manner
- Other duties as assigned by the Program Manager

QUALIFICATIONS

- Minimum of Social Service Worker (SSW) diploma or Bachelor of Social Work (BSW) from a recognized college/university; post graduate studies in a related field would be a definite asset
- Minimum of two years of related experience in a social services setting, preferably in a shelter
- Excellent oral and written communication skills and effective interpersonal skills
- Must be computer literate and efficient in Windows and Microsoft Office Experience using HIFIS preferred
- Ability to assist clients to effectively establish, implement and meet their individual life goals, particularly as it relates to their housing
- Demonstrated ability to work with the homeless and socially disadvantaged individuals
- Demonstrated ability to work with and show compassion to those suffering from mental illness and/or addiction
- Maturity and ability to exercise sound judgement and boundaries in a shelter environment
- Ability to work with marginalized clients that may harbor anger and resentment towards helping professions
- Ability to work both independently and under supervision
- Ability to lift/move 40 lbs. (18.14 kgs)
- Ability to organize and prioritize multiple tasks in a fast-paced environment
- Knowledge of Community-based resources
- Possess current First Aid, NVCI and CPR certificates
- Provide an original copy of a Background Check with vulnerable sector screening that is satisfactory to The Salvation Army, in its sole discretion, is required. The screening is secured either through the National Canadian Policy Information Centre (CPIC) or through a local police detachment
- May require screening through The Salvation Army Abuse Registry
- Support for and an understanding of the mission and purpose of The Salvation Army in Canada and the mission statement of The Salvation Army Booth Centre

NOTE: Alternative combinations of education and experience may be considered.

This is a contract full time position based at a very busy 24/7 facility

This is a unionized position.

Interested applicants must respond in writing with a cover letter and resume.

We thank all applicants, however, only those candidates to be interviewed will be contacted.

The Salvation Army will accommodate candidates as required under applicable human rights legislation. If you require a disability-related accommodation during this process, please inform us of your requirements.

Internal Applicants, please advise Department Heads of your intentions prior to submitting your application.



Giving Hope Today

60

EMPLOYMENT OPPORTUNITY

The Salvation Army - Ontario Division

Applications Accepted via:

Email: Carol_Montgomery@can.salvationarmy.org

Attention: Carol Montgomery

Fax: 905-525-3555

Mailing Address: The Salvation Army Hamilton Booth Centre, 94 York Blvd., Hamilton ON L8R 1R6

Attention: Annie Williams, Program Manager

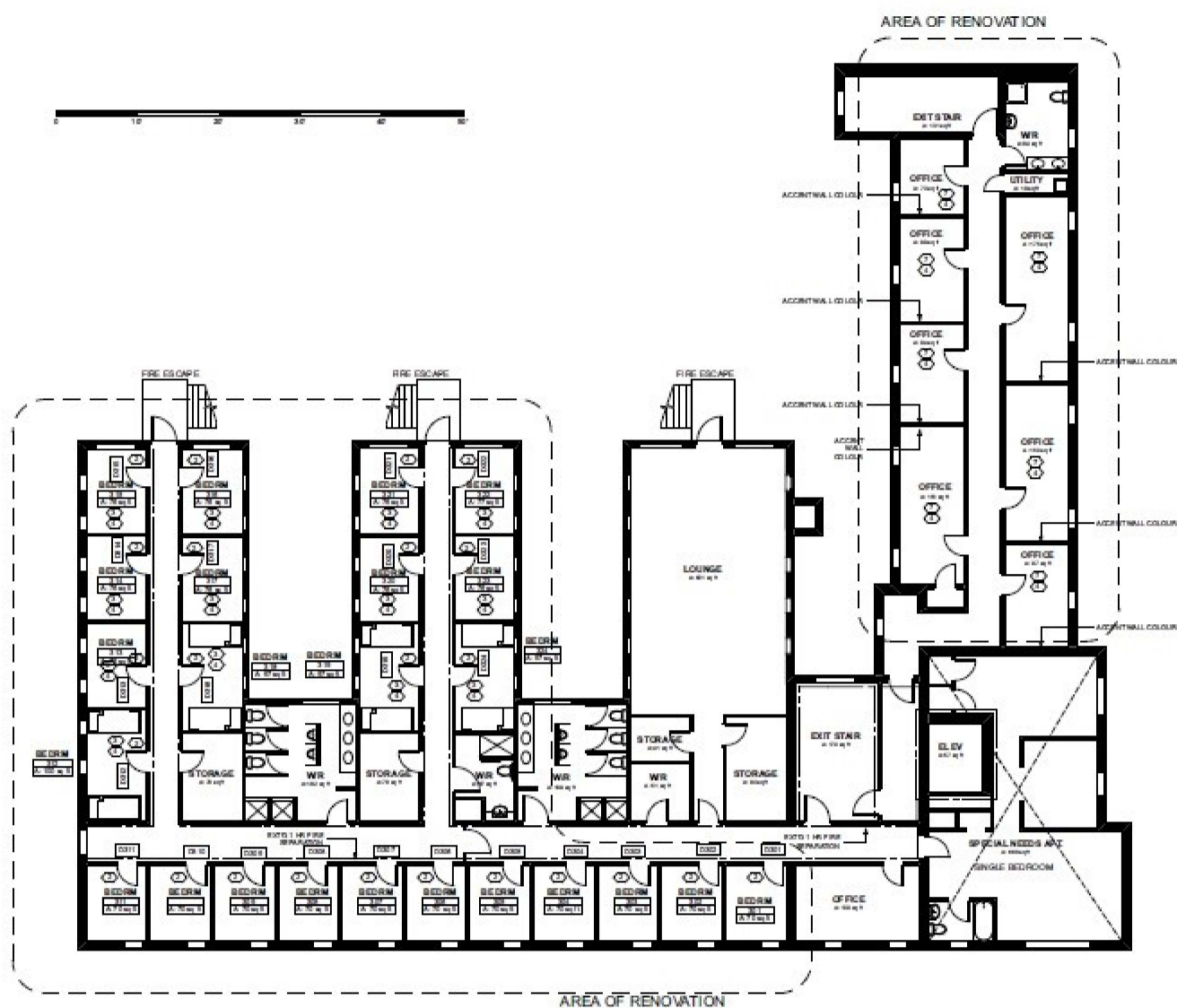
Please, no phone calls.

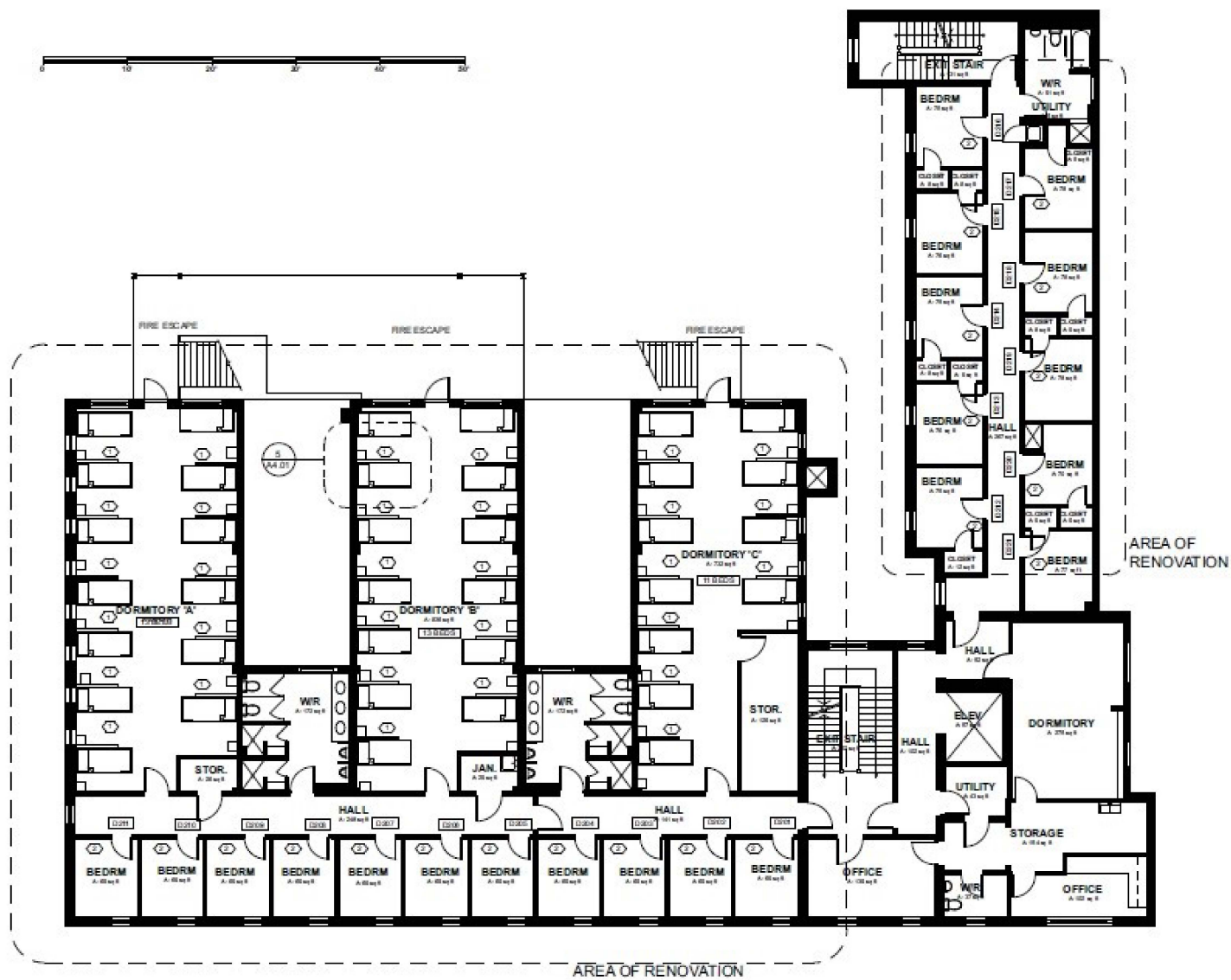


This is **Exhibit “B”** to the Affidavit of James Moulton sworn remotely before me, during a ‘Zoom’ videoconference on Oct. 6, 2021.

A handwritten signature in cursive script, appearing to read "Diacur".

A Commissioner, etc.





ASHLEY POFF et al.

Applicants

- and -

CITY OF HAMILTON

Court File No. CV-21-00077187-0000

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
HAMILTON

**AFFIDAVIT OF JAMES MOULTON,
EXECUTIVE DIRECTOR OF THE SALVATION ARMY,
HAMILTON**

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
1 King Street W, Suite 1500
Hamilton ON L8P 1A4

Tel: 905-540-8208

Michael Bordin (LSO#40047W)

Tel: 905-540-2492
michael.bordin@gowlingwlg.com

Bevin Shores (LSO#56161F)

Tel: 905-540-2468
bevin.shores@gowlingwlg.com

Jordan Diacur (LSO#65860E)

Tel: 905-540-2500
jordan.diacur@gowlingwlg.com

Lawyers for the respondent

Email for parties served:

Sharon Crowe: crowes@lao.on.ca

Stephanie Cox: coxst@lao.on.ca

TAB 23

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 &
SHAWN ARNOLD

Applicants

and

CITY OF HAMILTON

Respondent

AFFIDAVIT OF LEE RYNAR

[intentionally left blank]

**AFFIDAVIT OF LEE RYNAR
(SWORN OCTOBER 6, 2021)**

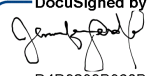
I, Lee Rynar, of the City of Mississauga, in the Province of Ontario, **MAKE OATH
AND SAY:**

1. I am the Supervisor of Operations and Enforcement with the City of Hamilton. I have knowledge of the matters contained in this Affidavit and where such information has been gained from others, I have stated the source of that information and believe it to be true.
2. On September 17, 2021, the Municipal Law Enforcement (“**MLE**”) Officers did not make any enforcement efforts regarding encampments.
3. On September 20, 2021, JC Beemer Park had three sites (tents) present. The MLE Officers issued a two-hour notice of contravention. Two sites left voluntarily. While one site remained. The park staff/ contractors cleared the garbage/ debris from the two vacated sites. Afterwards, protesters arrived and surrounded the one remaining site. The MLE staff left the area when the protesters arrived.
4. On or around September 21, 2021, at JC Beemer Park, the two sites that left returned shortly thereafter.
5. On September 26, 2021, at JC Beemer Park, the MLE returned to ask the three sites to leave. No further action was taken by the MLE.
6. As of October 6, 2021, the MLE Officers have asked occupants of the Durand Park Encampment to leave on a few occasions. However, the MLE Officers did not attend the

Durand Park Encampment on September 20, 2021 nor did they take any further action with respect to the site.

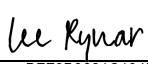
7. As of October 6, 2021, MLE Officers have asked occupants of the Wellington Encampment to leave. However, the MLE were not at the Wellington Encampment on September 20, 2021 nor did they take any further action with respect to the site.

SWORN by Lee Rynar of the City of Mississauga, in the Province of Ontario, before me at the City of Hamilton, in the Province of Ontario, on October 6, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

D4D9283B860B4EE...

Commissioner for Taking Affidavits

**JENNIFER ASHLEY GEE SEIDEL
(82920W)**

DocuSigned by:

BCEB93821C104F7...
LEE RYNAR

RCP-E 4D (February 1, 2021)

ASHLEY POFF et al.

Applicants

- and -

CITY OF HAMILTON

Court File No. CV-21-00077187-0000

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
HAMILTON

AFFIDAVIT OF LEE RYNAR

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
1 King Street W, Suite 1500
Hamilton ON L8P 1A4

Tel: 905-540-8208

Michael Bordin (LSO#40047W)

Tel: 905-540-2492
michael.bordin@gowlingwlg.com

Bevin Shores (LSO#56161F)

Tel: 905-540-2468
bevin.shores@gowlingwlg.com

Jordan Diacur (LSO#65860E)

Tel: 905-540-2500
jordan.diacur@gowlingwlg.com

Lawyers for the respondent

Email for parties served:
Sharon Crowe: crowes@lao.on.ca
Stephanie Cox: coxst@lao.on.ca

TAB 24

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

**SUPPLEMENTARY AFFIDAVIT OF LEE RYNAR
(SWORN OCTOBER 10, 2021)**

I, Lee Rynar, of the City of Mississauga, in the Province of Ontario, **MAKE OATH
AND SAY:**

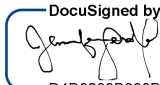
1. I am the Supervisor of Operations and Enforcement with the City of Hamilton. I have knowledge of the matters contained in this Affidavit and where such information has been gained from others, I have stated the source of that information and believe it to be true.
2. Encampments remain for varying amounts of time. There are many reasons for this. The City exercises discretion in how it deals with encampments and their removal. I know of an encampment that has been in place since before the COVID pandemic was declared. Other encampments will set up for a few days and then relocate.
3. The amount of time that the City of Hamilton's six step Encampment Process pursuant to the Encampment Response Update (PED21188/HSC20038(c)) takes to implement varies. Theoretically, it can be completed within a few days. However, in practice, it takes at least a few days. The reasons for this can vary, including encampment occupants not being responsive to Municipal Law Enforcement's requests for voluntary

compliance; encampment occupants needing time to find suitable housing, protestors blocking access, availability of resources, and timing/coordination between agencies, either within the City or externally, such as the Hamilton Police Service.

4. For greater clarity, the six step Encampment Process would not be completed in less than one day. I am not aware of the Encampment Process ever taking less than a few days.

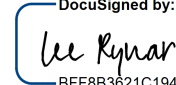
5. MLE officers endeavour to leave encampments before sundown. Sometimes we end up staying past sundown because we are still speaking with the occupants. The MLE believes that educating and building rapport with members of the encampments is critical towards them being responsive to our requests. The latest we would be present at an encampment site is roughly around 8:00 to 9:00 pm. These later attendances do not result in the removal of encampments immediately after we leave. Encampments are not taken down as the night is approaching.

SWORN by Lee Rynar of the City of Mississauga, in the Province of Ontario, before me at the City of Hamilton, in the Province of Ontario, on October 10, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

D4D9283B860B4FF

Commissioner for Taking Affidavits

**JENNIFER ASHLEY GEE SEIDEL
(82920W)**

DocuSigned by:

BFF8B3621C194F7...

LEE RYNAR

RCP-E 4D (February 1, 2021)

ASHLEY POFF et al.

Applicants

- and -

CITY OF HAMILTON

Court File No. CV-21-00077187-0000

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
HAMILTON

**SUPPLEMENTARY
AFFIDAVIT OF LEE RYNAR**

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
1 King Street W, Suite 1500
Hamilton ON L8P 1A4

Tel: 905-540-8208

Michael Bordin (LSO#40047W)

Tel: 905-540-2492
michael.bordin@gowlingwlq.com

Bevin Shores (LSO#56161F)

Tel: 905-540-2468
bevin.shores@gowlingwlq.com

Jordan Diacur (LSO#65860E)

Tel: 905-540-2500
jordan.diacur@gowlingwlq.com

Lawyers for the respondent

Email for parties served:

Sharon Crowe: crowes@lao.on.ca

Stephanie Cox: coxst@lao.on.ca

TAB 25

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

AFFIDAVIT OF MICHELLE SEMONOVITCH

I, MICHELLE SEMONOVITCH, of the City of Hamilton in the Province of Ontario, MAKE OATH AND
SAY:

1. I am an employee of the City Hamilton as such I have knowledge of the matters set out in my affidavit. Where I rely on the information of others, I state the source of that information and verily believe it to be true.
2. I am employed by the City of Hamilton as a Street Outreach Coordinator with the Assertive Housing Focused Street Outreach Team (the "HFSOT"). The HFSOT is under the purview of the Residential Care Facilities Subsidy Program and Emergency Shelter Services within the Housing Services Division of the City of Hamilton's Healthy and Safe Communities Department. As well, I am seconded to De dwa da dehs nye s Aboriginal Health Centre.
3. The HFSOT was created in approximately October 2020. Prior to working with the HFSOT, I worked for the City of Hamilton as a Coordinator with the Mental Health and Street Outreach Team. In total, I have been employed with the City of Hamilton for approximately 18 years.

4. The HFSOT was created, in part, to connect the City's street outreach efforts more directly with housing services.
5. Within my role as Street Outreach Coordinator for HFSOT, my responsibilities include, among other things:
 - a. Connecting with unhoused people in the City of Hamilton and referring them to appropriate resources such as housing, physical and mental health and addiction support;
 - b. Helping individuals apply for or access income supports, such as Ontario Works, Ontario Disability Support Program (ODSP), or Canada Emergency Response Benefit (CERB);
 - c. Helping individuals obtain identification, if they do not have any, which assists them in accessing resources;
 - d. Arranging housing, medical, Ontario Works and/or other appointments for individuals who need assistance in accessing these resources on their own;
 - e. Attending the above-noted appointments with individuals to make introductions and provide assistance;
 - f. Attending the Shelter Health Network with individuals to make introductions and provide assistance; and
 - g. During the COVID-19 Pandemic, connecting individuals with supportive services related to the COVID-19 Pandemic, including distributing personal protective equipment such as masks, gloves, and sanitizer; connecting them with vaccination clinics, both site-based and mobile; and connecting them with COVID-19 testing.

6. The HFSOT has six full-time team members, including me; plus a Supervisor who is also a full time employee. We operate from Monday through Friday 8:00 am to 8:00 pm, and Saturday and Sundays from 8:00 am to 4:00 pm.
7. The HFSOT is community-based as opposed to office based. HFSOT workers perform their jobs primarily out in the community.
8. The HFSOT makes connections with people experiencing homelessness, or people who attend at encampments, in two main ways: one, by proactively going out into the community to connect with the people we serve; and two, a result of referrals from the public or City employees who observe a tent or a person experiencing homelessness in a park or similar location.
9. Once the HFSOT receives a referral, we attend at the location to introduce ourselves to whomever may be residing there, and offer assistance with the services outlined above.
10. Members of the HFSOT will attend an encampment in pairs to connect with the individuals located at an encampment.
11. Whenever possible, members of the HFSOT do their work on site with our clients where they are located in order to connect them with the assistance they need promptly and effectively.
12. Although the locations of encampments may change, and although individuals may relocate from one encampment to another, my team and I generally are able to keep in contact with the clients we serve and ensure continuity of support.
13. Through my work with the HFSOT, and in my work with the Mental Health and Street Outreach Team, I have observed encampments throughout the City of Hamilton (the "Encampments").
14. When I have attended the Encampments, I have observed such things as:
 - a. Fires,

- b. Collapsed tents;
- c. Debris and garbage;
- d. Drug use and intoxication;
- e. Drug paraphernalia;
- f. Rodents.

15. Additionally, over approximately the past year, I have observed at the Hamilton Encampments:

- a. An increase in the presence of graffiti and damage to public structures in the parks where Hamilton Encampments are located;
- b. Increasingly relaxed adherence to COVID precautions, specifically the use of masks and physical distancing;
- c. Anger directed at people within the Encampments by others. For example, on one occasion I witnessed a member of the public throwing Timbits at people in an Encampment. I have witnessed members of the public yelling at people in the Encampments, and also yelling at members of the HFSOT, expressing dissatisfaction at the presence of the Encampments.

16. Not all of the above conditions are present at all Encampments at all times, but I have observed these conditions regularly.

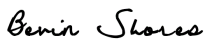
17. My observation of the conditions in the Encampments lead me to be concerned for the safety of the people in the Encampments. These concerns include the fire hazard posed by the presence of fires and flammable debris; the health risk due to COVID precautions not being followed consistently by people in the Encampments; and the presence of the Encampments creating a

target for criminal behaviour, such as people not living in the Encampments attending at the Encampments to obtain or use drugs; and violence directed at the people in the Encampments.

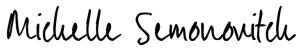
18. It has also been my observation that the presence of Encampments in parks makes the parks less accessible to other members of the public who are not living in the Encampments. For example:

- a. Parents of young children have approached me while I have been onsite, and have informed me that they are hesitant to allow their children to use playgrounds and splash pads in the parks where Encampments are located, as they do not want children to witness the drug use taking place in the Encampments or are concerned for their children's safety;
- b. The presence of used needles and pipes on the ground, which poses a safety risk to people walking in the parks. Members of the HFSOT who attend at parks where Encampments are located need to watch carefully where they are walking due to this risk. I have observed used needles on the ground are persistently present even when there are sharp disposal containers available for the needles to be safely disposed of.

SWORN REMOTELY via Docusign by)
 MICHELLE SEMONOVITCH of the City of)
 Hamilton before me at the City of Hamilton)
 during a 'Zoom' videoconference on)
 10/6/2021 in accordance with)
 O. Reg. 431/20, Administering Oath or)
 Declaration Remotely.)

DocuSigned by:

 75E43E7F402846F...

BEVIN SHORES
 LSO No. 56161F
 Commissioner for Taking Affidavits, etc.

DocuSigned by:

 0384072F674944D...
 MICHELLE SEMONOVITCH

ASHLEY POFF et al.

Applicants

- and -

CITY OF HAMILTON

Court File No. CV-21-00077187-0000

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
HAMILTON

AFFIDAVIT OF MICHELLE SEMONOVITCH

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
1 King Street W, Suite 1500
Hamilton ON L8P 1A4

Tel: 905-540-8208

Michael Bordin (LSO#40047W)

Tel: 905-540-2492
michael.bordin@gowlingwlq.com

Bevin Shores (LSO#56161F)

Tel: 905-540-2468
bevin.shores@gowlingwlq.com

Jordan Diacur (LSO#65860E)

Tel: 905-540-2500
jordan.diacur@gowlingwlq.com

Lawyers for the respondent

Email for parties served:

Sharon Crowe: crowes@lao.on.ca

Stephanie Cox: coxst@lao.on.ca

Heegsma et al
Appellants (Applicants)

-and-

CITY of HAMILTON
Respondent (Respondent)

Court File No.COA-25-CV-0166

Ontario
Court of Appeal

EXHIBIT BOOK - VOLUME 3

CIRCLE BARRISTERS

319 Sunnyside Avenue
Toronto, ON M6R 2R3
Sujit Choudhry (LSO# 45011E)
sujit.choudhry@circlebarristers.com

MISSISSAUGA COMMUNITY LEGAL SERVICES

130 Dundas St. E Suite 504
Mississauga ON
L5A 3V8
Sharon Crowe (LSO# 47108R)
sharon.crowe@mcls.clcj.ca

ROSS & MCBRIDE LLP

1 King Street West, 10th Floor, Hamilton, ON L8P 1A4
Wade Poziomka (LSO# 59696T)
wpoziomka@rossmcbride.com

Counsel to the Appellants