

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 5

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.boleiro@ontario.ca

Lawyer for the Attorney General

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TAB 29

1 Court File No. CV-21-77187 ONTARIO SUPERIOR COURT OF JUSTICE BETWEEN: KRISTEN HEEGSMa, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO, SHAWN ARNOLD, BRADLEY CALDWELL, CHRISTINE DELOREY, GLEN GNATUK, TAYLOR GOGO-HORNER, CASSANDRA JORDAN, JULIA LAUZON, AMMY LEWIS, ASHLEY MACDONALD, COREY MONAHAN, MISTY MARSHALL, SHERRI OGDEN, JAHMAL PIERRE, LINSLEY GREAVES and PATRICK WARD - and - CITY OF HAMILTON Applicants Respondent CROSS-EXAMINATION OF WESLEY LOY, on behalf of the Respondent, on his affidavit dated July 25, 2024, held via Zoom Videoconference hosted by the offices of Nimigan Mihailovich Reporting Inc., Hamilton, Ontario, on Friday, August 16, 2024, at 1:25 p.m. EDT APPEARANCES: Sujit Choudhry for the Applicants Sharon Crowe Curtis Sell Michelle Sutherland Nnonyechi Okenwa Bevin Shores for the Respondent Jordan Diacur Vivian Caldas ALSO PRESENT: Jojo Johnson Articling Student NIMIGAN MIHAIOLOVICH REPORTING INC.	3 5 Zoom Videoconference --- Upon commencing on Friday, August 16, 2024, at 1:25 p.m. EDT AFFIRMED: WESLEY LOY CROSS-EXAMINATION BY MR. CHOUDHRY: 1 Q. Mr. Loy, good afternoon. 2 A. Good afternoon. 3 Q. Can you hear me, sir? 4 A. Yes. 5 Q. Good. 6 My name is Sujit Choudhry, as 7 Ms. Shores says. I am one of the lawyers for the 8 applicants in this case. 9 I'm sure that you've been told what 10 this case is. I just need to give you a bit of a 11 sense of what this part of the case is about, if I 12 may, before I ask you a few questions about the 13 affidavit that you provided as evidence. 14 A. Okay. 15 Q. As you know, today I'm 16 cross-examining you on your affidavit, which has 17 been filed by the City in a court case regarding 18 homeless encampments. Your affidavit and this 19 cross-examination on the affidavit will go into 20 evidence before the Court. So as a consequence, 21 NIMIGAN MIHAIOLOVICH REPORTING INC.
2 INDEX PAGE 1 AFFIRMED: WESLEY LOY 3 2 CROSS-EXAMINATION BY MR. CHOUDHRY 3 3 4 5 6 7 8 LIST OF UNDERTAKINGS, REFUSALS, & 9 UNDER ADVISEMENTS 10 11 Undertakings (U/T) found at pages: 12 NONE 13 14 Refusals (REF) found at pages: 15 NONE 16 17 18 19 20 21 22 23 24 25 NIMIGAN MIHAIOLOVICH REPORTING INC.	4 1 it's important that you tell the truth, and I know 2 you've just sworn an oath to tell the truth. 3 If you'd like me to repeat a 4 question, please do. If you would like a moment 5 to collect your thoughts to answer a question, 6 please take it. We're not in a race, although we 7 are on a bit of a clock. But we're not in a race. 8 You may only -- as I'm sure you've 9 been told, you may only have your affidavit and 10 exhibits in front of you and no other material or 11 notes. And could I just ask you to confirm that 12 that is, in fact, the case? 13 A. That's the case. Actually, I 14 don't have my affidavit in front of me. I -- 15 5 Q. Okay. I'm going to put parts 16 of it to you, sir. I don't know if you want to 17 get it. I don't want you to be at a disadvantage 18 if I'm asking you questions about it. Would 19 you like -- 20 MS. SHORES: You can put it on the 21 screen. 22 MR. CHOUDHRY: Okay. I will 23 certainly take him to passages in it, and I'll 24 give him time to refresh his memory as I put it to 25 him. Is that okay, Ms. Shores? NIMIGAN MIHAIOLOVICH REPORTING INC.

5 1 MS. SHORES: So do you want me to 2 have it ready to put on the screen for you? 3 MR. CHOUDHRY: I'll have it ready 4 and I'll put it on the screen. 5 6 Q. And if there's any parts of 6 the affidavit you want me to scroll to that I 7 haven't put to you, just tell me and I'll take you 8 to it, Mr. Loy. 9 A. Okay. 10 7 Q. Okay. And so let me just -- 11 do you have any questions about those 12 instructions? 13 A. No. 14 8 Q. Okay. Thank you. 15 Okay. So let's just begin. So in 16 paragraph 1 of your affidavit, you state that you 17 are -- you were at the time the data and records 18 coordinator for the Hamilton Paramedic Service, 19 the HPS. Is that still the case? 20 A. Yes, it is. 21 9 Q. And in that role, did you have 22 access to the records that you relied on to 23 prepare this affidavit; that is, the ADRS and the 24 EPCR? 25 A. Yes. NIMIGAN MIHAILOVICH REPORTING INC.	7 6 1 it's flashing. Would you just give me one second, 2 sir. I'm going to try to do it another way. 3 Ms. Shores, if I can't get this 4 working here today, I might have to impose on you 5 to put up the affidavit. Just give me one second. 6 Okay. So hopefully this will be a 7 little bit better. And if not, I'll ask 8 Ms. Shores to give me a hand. 9 So this is -- in paragraph 4, 10 you've listed what you call the updated encampment 11 areas; is that correct? 12 A. Yes. 13 14 Q. Okay. Is it true that -- and 14 so I'm just scrolling down. So it's (a) through 15 (n). So that's correct; right? 16 A. Yes. 17 15 Q. Okay. And for this affidavit, 18 it's correct that you reviewed the ADRS and the 19 EPCR from January 2023 to June 30, 2024; correct? 20 A. Yes. 21 16 Q. And you reviewed those records 22 for the 14 encampment areas? 23 A. Yes. 24 17 Q. And you also reviewed those 25 records for the entire city; correct? NIMIGAN MIHAILOVICH REPORTING INC.
6 1 10 Q. Okay. So I'd like to take you 2 to just a few paragraphs in your affidavit. I'm 3 going to put it up on the screen, if you'll just 4 bear with me for a minute. 5 Mr. Loy, do you see your affidavit 6 there? 7 A. Yes, I do. 8 11 Q. Is it large enough for you, 9 sir, or do you want me to enlarge it? 10 A. It's -- it's large. It's 11 okay. 12 12 Q. Yeah, unfortunately, that's 13 the best I can do. Let me see -- you know what? 14 I think that will be fine for the present 15 purposes. 16 So I first would like to take you 17 to paragraph 4, and sorry for the lag here. So I 18 want to ask you a bit about paragraph 4. 19 So prior to that, I just want to 20 ask you a bit about the Ambulance Dispatching 21 Reporting System and the Electronic Patient Care 22 Records. Do those databases cover the entire 23 city? 24 A. Yes, they do. 25 13 Q. Okay. Excuse me. I'm sorry NIMIGAN MIHAILOVICH REPORTING INC.	8 1 A. Well, I was reviewing the 2 records with respect to these areas. I'm not sure 3 what you mean with respect to the entire city. 4 18 Q. Just simply, sir, that these 5 14 areas don't constitute the entirety of the city 6 of Hamilton, do they? 7 A. No. 8 19 Q. So did you review the records 9 not just for these 14 areas, or did you -- did you 10 also review them for the entire city? 11 A. I only reviewed the records 12 for the -- these specific areas. 13 20 Q. Okay. Thank you for that 14 clarification. 15 Now, sir, I would like to take you 16 to Exhibit A in your affidavit. So I'm just going 17 to scroll down. I think there's a bit of a lag 18 time. There. 19 Sir, do you see Exhibit A? Do you 20 recognize that? 21 A. Yes. 22 21 Q. Now, sir, I'm just looking at 23 this list, and I see that there are 24 different 24 areas identified here. 25 A. Yes. NIMIGAN MIHAILOVICH REPORTING INC.

1 **22** Q. And so could you just help me,
2 in plain English, to understand the difference
3 between -- the relationship between the 14 updated
4 encampment areas and these 24 locations?

5 **A. Can I see back the -- the 14,**
6 **please?**

7 **23** Q. Of course. I'll just take you
8 back up. Give me one second.

9 It's (a) through (n). Can you see
10 those?

11 **A. Yes.**

12 **24** Q. Those are the 14 that you
13 describe as the 14 updated encampment areas.

14 **A. Okay.**

15 **25** Q. Can I take it back to Exhibit
16 A?

17 **A. Yes.**

18 **26** Q. Okay. So let's do that now.

19 I'd like to restate my question, if
20 I may, sir. So at paragraph 4 of your affidavit,
21 you list 14 updated encampment areas, but at
22 Exhibit A you list 24 different areas, and I just
23 would like to understand, if you could explain,
24 please, the relationship between the 14 areas
25 listed in paragraph 4 and the 24 areas you list

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1 here.

2 **A. I believe the 14 areas are**
3 **included in this list of 24, and some of the**
4 **areas -- I guess ten of them -- did not have any**
5 **new data for the period I was asked to update the**
6 **report with.**

7 **27** Q. Okay. So can I ask you a
8 clarifying question about that?

9 **A. Yes.**

10 **28** Q. So the 14 areas that you list
11 at paragraph 4 are found -- match 14 different
12 line items in Exhibit A; correct?

13 **A. They should. I can't really**
14 **check it right now, but they should, yes.**

15 **29** Q. They should.

16 And then there's an additional ten
17 areas that aren't updated encampment areas, but
18 they're on this list?

19 **A. Yes. I said 10 because 24**
20 **minus the 14; right? That's why I would say 10,**
21 **yes.**

22 **30** Q. I'm just trying to understand.

23 And so, I suppose, the data that
24 you are providing, just to help me understand, is
25 it for the 14, or is it for the 24?

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1 **A. The data I'm providing is for**
2 **the entire list. But I believe only 14 of those**
3 **had updated data for the time period up to June**
4 **30, 2024. I forget -- what was the starting time**
5 **period you mentioned?**

6 **31** Q. If I could just help you
7 there, it was from -- I believe your evidence is
8 that the time period was January 1, 2023, to July
9 31, 2024.

10 **A. Yes. Okay.**

11 **32** Q. So could you explain what you
12 mean by "no updated data"? I'm not understanding.

13 **A. Meaning there were no**
14 **responses to ten of those areas between January --**
15 **did you say 2023?**

16 **33** Q. January 1, 2023, and July 31,
17 2024.

18 **A. Yes. So there were no updated**
19 **responses, no change in numbers between the**
20 **January 2023 and June 30, 2024.**

21 **34** Q. When you say "no updated
22 responses," I just would like to understand that
23 term a bit more precisely. So what I understand
24 is that your evidence is that you looked at the --
25 at entries in these two databases and you'd, in a

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1 sense, tag them to specific parts of the city for
2 the 14 updated encampment sites.

3 Are you saying that there are ten
4 areas on this list in Exhibit A for which there
5 was no data recorded of any EMS calls during that
6 time period?

7 **A. Yes, I believe so.**

8 **35** Q. Okay. Could you please -- are
9 you able to identify, sir, which of the ten areas
10 on this exhibit there were no EMS calls for?

11 **A. Well, it would be the ten that**
12 **were left off of the -- this list of 24. I can't**
13 **see the list --**

14 **36** Q. I see.

15 **A. -- this list side by side, so**

16 --

17 **37** Q. And can I ask you a follow-up
18 question, then. So there's ten areas here on this
19 list for which there were no EMS calls. Do you
20 know if there are encampments at any of those ten
21 areas?

22 **A. No, I do not.**

23 **38** Q. You don't know.

24 But presumably, sir, because you
25 put this list -- this is not a comprehensive list

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1 of the city of Hamilton, is it?

2 **A. I don't know.**

3 **39 Q.** You don't know.

4 So did you prepare this exhibit,
5 sir?

6 **A. I did, but I was given this**
7 **list by my manager. So I do not know if it's a**
8 **comprehensive list or not.**

9 **40 Q.** So you didn't generate this
10 list yourself?

11 **A. No, I did not.**

12 **41 Q.** And so you don't know if this
13 list contains areas with encampments or not?

14 **A. No, I -- no, I do not.**

15 **42 Q.** Okay. So you don't know if
16 this list covers all the areas with encampments or
17 not in the city; correct?

18 **A. That's correct.**

19 **43 Q.** And you don't know if the list
20 in paragraph 4 contains all the areas with
21 encampments or not in the city; correct?

22 **A. Correct.**

23 **44 Q.** So you were just given a set
24 of instructions and you executed your -- you
25 engaged in data-gathering based on the information

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1 you were provided by somebody else?

2 **A. Correct.**

3 **45 Q.** And you said that was your
4 manager?

5 **A. Yes.**

6 **46 Q.** Sir, could you please, for the
7 record, give us the name and title of your
8 manager?

9 **A. Michael Sanderson, who is the**
10 **chief of the Paramedic Service.**

11 **47 Q.** Okay. So thank you for that.
12 So I guess I'd like to now take you

13 back to the affidavit, to paragraph 8. And so
14 with all those caveats about this information, I
15 want to ask you questions about the information
16 you've provided.

17 Could you confirm it's your
18 evidence that there were 378 dispatches to the
19 updated encampment areas from January to June
20 2024?

21 **A. Yes.**

22 **48 Q.** Okay. Thank you.

23 And, sir, forgive me; I misspoke
24 before. I said that the data covered January 1st
25 to July 31, 2024. That was my mistake. It

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1 covered January 1, 2023, to June 30, 2024. I'm
2 sorry to have misled you there.

3 **A. Okay.**

4 **49 Q.** And so I just want to confirm:
5 In your affidavit, I did not see the number of
6 dispatches for any other areas in the city of
7 Hamilton; is that correct?

8 **A. That's correct.**

9 **50 Q.** Okay. I'd now like to take
10 you to paragraph 9. So here you provide evidence
11 regarding a month-by-month breakdown of dispatches
12 to the updated encampment areas, and you compared
13 on a month-to-month basis dispatches in 2023 and
14 2024; correct?

15 **A. Correct.**

16 **51 Q.** Okay. And is it true that you
17 did not engage in this analysis for any other
18 areas in the city of Hamilton?

19 **A. Correct.**

20 **52 Q.** Okay. And then I'd like to
21 now go down to paragraph 11, and this divides over
22 the page here.

23 Can you read it, sir?

24 **A. Aloud to you?**

25 **53 Q.** No, sir, sorry. Could you

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1 read it to yourself.

2 **A. Okay. Yes.**

3 **54 Q.** Okay good.

4 So in paragraph 11, is it true that
5 you provided the top three types of primary
6 problems in the updated encampment areas for the
7 period from January 2023 to June 2024?

8 **A. Yes.**

9 **55 Q.** Okay. And just so I
10 understand, is this data for the whole of 2023 or
11 just the first six months of 2023?

12 **A. For the whole of 2023,**
13 **continuously from January 2023 through to June**
14 **2024.**

15 **56 Q.** Okay. Great.

16 Just to clarify, because the
17 previous -- the reason I asked that, and I just
18 want to confirm: In paragraph 9, you did a
19 January-to-June analysis for 2023 only; correct?

20 **A. Yes.**

21 **57 Q.** Okay. And so let's go back to
22 paragraph 11. So is it the case that -- it's true
23 that I don't see here comparable statistics for
24 any other areas in Hamilton; is that right?

25 **A. That's right.**

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1 **58** **Q.** Okay. I'd now like to take
 2 you to paragraph 12. And here in this paragraph,
 3 for the period from January 1, 2023, to June 30,
 4 2024, you take the same data and you code it by
 5 the three top medical categories; correct?

6 **A. Yes.**

7 **59** **Q.** And it's true that, in this
 8 affidavit, you don't perform the same analysis and
 9 provide the same data for any other areas in the
 10 city of Hamilton; correct?

11 **A. Correct.**

12 MR. CHOUDHRY: Okay. Sir, those
 13 conclude my questions. Thank you very much for
 14 your time, and sorry we kept you waiting.

15 THE WITNESS: Thank you.

16 --- Whereupon the proceedings adjourned at
 17 1:43 p.m.

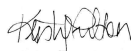
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* * * * *

This is to hereby certify that the foregoing is a
 true and accurate transcript of WESLEY LOY to the
 best of my skill and ability.



Kristy Fulton
 Court Reporter

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TAB 30

COPY FOR: COURT COPY

POFF ET AL V. CITY OF HAMILTON
COURT FILE NO. CV-21-00077187-0000

The Cross-Examination Of
Shawn MacKeigan
October 13, 2021

NIMIGAN MIHAILOVICH REPORTING INC.

COURT FILE NO. CV-21-00077187-0000

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

ASHLEY POFF, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO

AND SHAWN ARNOLD

Applicants

-AND-

CITY OF HAMILTON

Respondent

The Cross-Examination of **Shawn MacKeigan**, on an affidavit sworn October 6, 2021, taken upon affirmation in the above action this, 13th of October, 2021, with all parties appearing remotely in the Province of Ontario.

NIMIGAN MIHAILOVICH REPORTING INC.

APPEARANCES:

For the Moving Parties: Sharon Crowe
Stephanie Cox
Hamilton Community Legal Clinic
For the City of Hamilton: Bevin Shores
Jordan Diacur
Gowlings WLG

S. MacKeigan 13/10/2021

I N D E X

PAGE

WITNESS: Shawn MacKeigan, Affirmed.

Cross-Examination by Ms. Crowe5

EXHIBITS

None noted.

GUIDE TO UNDERTAKINGS, ADVISEMENTS, and REFUSALS:

This should be regarded as a guide and does not
necessarily constitute a complete list:

UNDERTAKINGS:

None noted.

UNDER ADVISEMENTS:

None noted.

REFUSALS:

None noted.

NIMIGAN MIHAILOVICH REPORTING INC.

S. MacKeigan 13/10/2021

1 ---Upon commencing at 6:03 p.m.

2 SHAWN MACKEIGAN,

3 THE WITNESS HEREINBEFORE NAMED,

4 Having been duly sworn by me to testify to the truth,

5 testified on their oath as follows, to wit:

6 CROSS-EXAMINATION BY MS. CROWE:

7 1 Q. Hi, Mr. MacKeigan. I'm going to walk you
8 through some aspects of your affidavit. So we're going to
9 start off with paragraph 10, and your affidavit states
10 that there's no waitlist for what you call housing
11 opportunities in Hamilton, and I just want to clarify that
12 your definition of "housing opportunities" includes both
13 emergency shelter beds and temporary emergency shelter
14 space.

15 Is there a difference between those two
16 services?

17 A. My definition of housing opportunities
18 includes permanent housing placements in the community,
19 both in the public sector and the private market.

20 2 Q. Right. I'm just trying to highlight on --
21 because you list different types of housing opportunities,
22 including emergency shelter beds and temporary emergency
23 shelter spaces.

24 So I'm trying to figure out, is there a
25 difference between those two services?

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S. MacKeigan 13/10/2021

1 **A.** The services in a housing-first system in a
2 coordinated access system, a homelessness experience can
3 be ended at any point. So homelessness begins where it
4 begins and it ends where it ends.

5 So if we are engaged with somebody at an
6 early intervention stage, whether it is before they become
7 homeless, we can work to resolve their homelessness
8 episode at that point. If they are new to an emergency
9 shelter, our efforts are focused on resolving their
10 homelessness experience there. If they move within the
11 system to a temporary or transitional space, we work to
12 resolve their homelessness episode there. If they're at a
13 hotel --

14 3 **Q.** Okay.

15 **A.** That's what I'm trying say.

16 4 **Q.** Mr. MacKeigan, I appreciate your response.
17 What I'm trying to do is to understand exactly what,
18 quote, housing opportunities, are available based on your
19 description of those opportunities.

20 So you've got emergency shelter beds, and
21 then you have -- sorry, what was the other one? Emergency
22 shelter spaces. Are those the same thing?

23 **A.** Emergency, when I said emergency shelter
24 beds and emergency shelter spaces, they may seem
25 synonymous. I meant the hotel, for example, would be a

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S. MacKeigan 13/10/2021

1 shelter-type space.

2 5 Q. Okay. So that's the distinction.

3 A. Yes, I'm sorry. Yes. Sorry.

4 6 Q. Okay. Thank you. And then I just want to
5 talk about a couple other housing opportunities that
6 you're listing, and you say by extension housing loss
7 prevention and homeless diversion assistance.

8 To be clear, these programs are for people
9 who are already housed; correct?

10 A. Housing loss prevention would be available
11 to people who are precariously housed.

12 7 Q. Okay.

13 A. Diversion is for people new to
14 homelessness. Early intervention, you know, it combines
15 those. So we're dealing with individuals who are
16 relatively new to homelessness, but that is not limited to
17 people that are new to experiences.

18 So, for instance, if somebody was
19 experiencing homelessness and found themselves sleeping
20 around and they accessed an emergency service within the
21 system, they would receive early intervention and support
22 the same way someone that was new to homelessness would
23 receive. So we would engage --

24 8 Q. Okay.

25 A. -- in an early intervention practice with

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S. MacKeigan 13/10/2021

1 anybody who accesses an emergency space.

2 9 Q. Okay. Thank you. And then you also
3 mention as another type of housing opportunity permanent
4 housing placement in the private market. And so for this
5 category to come into play, an individual has to be able
6 to afford to pay market rent; correct?

7 A. Well, individuals have to be first
8 interested in pursuing those opportunities, and then the
9 affordability conversation is one that we engage in with
10 individuals. There are subsidies, Canada-Ontario Housing
11 Benefits, additional supports and resources that can be
12 made available to individuals through various Housing
13 First programs or Reaching Home funded programs through
14 the municipality.

15 So while affordability is absolutely a
16 question, that's one of the things that we work through
17 with individuals who are interested in pursuing those
18 private market opportunities.

19 10 Q. Okay. And despite these different types of
20 housing opportunities, there are still times where Mission
21 Services doesn't have the room to put someone in a shelter
22 bed or hotel space; is that correct?

23 A. As a part of the system, if we find
24 ourselves at our capacity, we work to resolve the
25 experience by coordinating with our partners to make sure

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S. MacKeigan 13/10/2021

1 that there is a space that is available and accessible.

2 There are different points of -- because
3 people are able to return to the emergency spaces, there
4 are times during the day where we do not know before 10:00
5 at night if somebody is giving up that space or if they
6 are returning to that space. So there are times where we
7 don't know before, say, 10:00 p.m. or 9:00 p.m., if
8 there's going to be a place available.

9 But when individuals present seeking
10 service, we work to coordinate access to space within the
11 entire service, not just our shelter.

12 11 Q. Okay. Paragraph 9 says that Mission
13 Services serves many high-acuity individuals, but despite
14 those efforts, is it not true that there are some
15 high-acuity individuals that Mission Services cannot
16 serve?

17 A. There are instances where individuals,
18 regardless of acuity, depending on a situation or
19 circumstances typically associated with behaviours, where
20 we may not be able to serve them as a result of it
21 impairing or impeding -- maybe not impairing or impeding,
22 affecting the health and safety of either other residents
23 or staff, but it's not necessarily tied to acuity.

24 12 Q. Okay. I'm going to move on to
25 paragraph 14. So you are alleging that organizations such

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S. MacKeigan 13/10/2021

1 as HAMSMaRT and Keeping Six can undermine housing
2 opportunity. As the director of Mission Services, can you
3 confirm that you don't have direct first-hand knowledge of
4 what HAMSMaRT or Keeping Six are communicating to homeless
5 individuals?

6 A. I have -- sorry?

7 13 Q. Sorry, I was just going say, in other
8 words, you're getting this information from staff or other
9 individuals.

10 A. I have information via email that supports
11 that claim. So when I talk about that it can, it can.
12 Anytime in a Housing First system or a coordinated access
13 system when you place readiness or treatment above housing
14 options, that can undermine our ability to move forward
15 where our primary pursuit is working to secure immediate
16 access as quickly as possible for permanent housing
17 placements.

18 But I do have certainly some correspondence
19 that supports that position. I don't -- you know, I
20 understand, when I talked about treatment options and
21 housing readiness, they can bleed into Housing First
22 principles. So it's not uncommon, but I do -- I didn't
23 make that claim unfounded.

24 14 Q. Okay. And so you mentioned organizations
25 such as HAMSMaRT and Keeping Six. Do you know the extent

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1 to which your staff or whoever is reporting this
2 information to you is familiar with the differences
3 between organizations like HAMSMaRT, Keeping Six, and an
4 organization like the Hamilton Encampment Support Network?

5 **A.** The information is generally what we get
6 from clients themselves who have indicated that the reason
7 that they are interested in staying is because they want
8 to work on their addiction issues or they want to stay, in
9 place of pursuing housing or immediately working to pursue
10 housing, want to pursue treatment in place of that.

11 And, again, that's fairly common. We see
12 that a fair bit. But when people are pursuing treatment
13 options inside of emergency spaces, it does slow down what
14 we call outflow from that emergency system. And outflow
15 from the emergency system is what we really require to
16 ensure that there is capacity to support individuals who
17 are experiencing homelessness and working to pursue those
18 housing opportunities.

19 15 **Q.** I want to turn to paragraph 20 of your
20 affidavit where you break down what you call nonvoluntary
21 hotel discharges. So just in plain language, a
22 nonvoluntary hotel discharge is someone getting kicked out
23 of the hotel program; is that correct?

24 **A.** That would be somebody who would be asked
25 to leave for behavioural-type issues, not separate and

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1 distinct certainly from restrictions. It doesn't mean
2 that they are prohibited from coming back, but asked to
3 leave for behaviours or failure to meet expectations, you
4 know, specifically if I spoke to the hotel, which is what
5 you are asking about.

6 We have to work with a private market
7 partner, and, you know, oftentimes if we find ourselves in
8 a situation where that private market partner is
9 uncomfortable or believes that the individual is
10 responsible, has done something that they don't feel that
11 they can have them in the hotel, then that results in a
12 nonvoluntary discharge, yes. They ask them to leave.

13 16 Q. Right. So with these nonvoluntary
14 discharges, how do you know when someone is able to
15 return?

16 A. We usually communicate that to the
17 individual. So instances like that, we've had certainly
18 individuals that have returned, left and returned. So we
19 just communicate that to the individual. We usually
20 communicate that to people that they're working with as
21 well that they would be welcome to return.

22 Sometimes it's a result of partnership
23 breakdowns, but, you know, we've in some instances asked,
24 you know, because we serve plenty of couples, sometimes we
25 ask one partner to leave and have the other partner stay,

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1 and that can happen. Again, not a restriction, but a
2 nonvoluntary discharge where the relationship becomes a
3 challenge and one partner is uncomfortable with the other
4 partner being there.

5 17 Q. Okay. So just looking at the number that
6 you provided, 469 between April 2020 and October 6, 2021.
7 So that's about an average of one person per day being
8 involuntarily discharged?

9 A. It could be. If that's the math, yes.

10 18 Q. Okay. And in the same period, in
11 paragraph 21, you've got 144 people service-restricted.
12 So my understanding, and you can correct me, is that a
13 service restriction entails a more defined period where
14 the person can't access services; is that correct?

15 A. That would be correct.

16 19 Q. And the period of restriction can range
17 quite a bit from, you know, a matter of hours, days,
18 months, and even years in some circumstances; is that
19 correct?

20 A. At the hotel, any sort of indefinite
21 restriction is generally brought on by the partner
22 provider where damages may have occurred and individuals
23 are unable to return. The restrictions, you're right, can
24 range. Some are limited in time and others can be more
25 extensive. It depends on the nature of the restriction

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1 and the actions that resulted -- or the actions that
2 occurred that resulted in the restriction.

3 20 Q. Okay. So is paragraph 21 meant to refer to
4 service restrictions from hotels or hotels and shelters?

5 A. Meant to refer to restrictions from hotels.

6 21 Q. Okay. Thank you. Those are my questions.

7 MR. BORDIN: Thank you, counsel.

8 ---Whereupon the examination concluded at 6:17 p.m.

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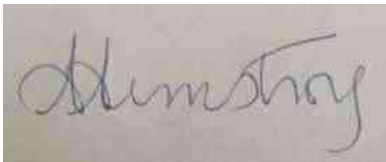
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I hereby certify the foregoing is a full, true, and correct transcription of all of my oral stenographic notes to the best of my ability so taken at the Cross-Examination of SHAWN MACKEIGAN, given under oath before me on the 13th of October, 2021.

Amy Armstrong, CVR-RVR

A rectangular box containing a handwritten signature in dark ink. The signature appears to read "Armstrong" in a cursive script.

Certified Realtime Verbatim Reporter

Certified Commissioner of Oaths

Certified this 14th of October, 2021.

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TAB 31

COURT FILE NO. CV-21-77187

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

KRISTEN HEEGSMAN, DARRIN MARCHAND, GORD SMYTH, MARIO
MUSCATO, SHAWN ARNOLD, BRADLEY CALDWELL CHRISTINE DELOREY,
GLEN GNATUK, TAYLOR GOGO-HORNER, CASSANDRA JORDAN,
JULIA LAUZON, AMMY LEWIS, ASHLEY MACDONALD, COREY MONAHAN,
MISTY MARSHALL, SHERRI OGDEN, JAHMAL PIERRE, LINSLEY
GREAVES and PATRICK WARD

Applicants

-AND-

CITY OF HAMILTON

Respondent

The Cross-Examination of Inspector Frank Miscione, on an Affidavit dated July 24, 2024 taken upon affirmation in the above action this, 22nd of August, 2024, . conducted via videoconference hosted by the offices of Nimigan Mihailovich Reporting Inc.

APPEARANCES:

For the Applicants:

SUJIT CHOUDHRY

Haki Chambers Global

For the Hamilton Community Legal Clinic:

CURTIS SELL

For the City of Hamilton:

BEVIN SHORES

JOJO JOHNSON

Gowling WLG (Canada) LLP

I N D E X

PAGE

WITNESS: INSPECTOR FRANK MISCIONE

Cross-Examination by MR. CHOUDHRY 4

EXHIBITS

(None marked).

GUIDE TO UNDERTAKINGS, ADVISEMENTS, and REFUSALS:

This should be regarded as a guide and does not necessarily constitute a complete list:

UNDERTAKINGS:

None noted.

UNDER ADVISEMENTS:

None noted.

REFUSALS:

None noted.

1 -- Commencing at 1:00 p.m. --

2 INSPECTOR FRANK MISCIONE: Affirmed.

3 CROSS-EXAMINATION BY MR. CHOUDHRY:

4 1 Q. Inspector Miscione, thank you for coming

5 this afternoon. For the record, my name is

6 Sujit Choudhry. I am one of the lawyers for the

7 Applicants in this matter. I'm just going to begin by

8 giving a bit of introduction to preface my

9 cross-examination of you today, sir.

10 A. All right.

11 2 Q. Some of this has already been covered by

12 Ms. Shores but I would like to get it on the record as

13 well.

14 So, as you know, I'm cross-examining you on

15 your affidavit that would have been filed by the City in a

16 court case regarding homeless encampments; and your

17 affidavit and this cross-examination will be put into

18 evidence before the Court, and so it is therefore

19 important, and I know you know this, that you need to tell

20 the truth.

21 A. Yes.

22 3 Q. In addition, if you would like me to repeat

23 a question, please do. If you'd like to take a moment to

24 collect your thoughts to answer a question, please do.

25 You are entirely free to refer to your

1 affidavit and exhibits in answering a question. You can
 2 consult them there. I'm also going to put them on the
 3 screen so if you want me to scroll up or down to a part of
 4 the affidavit, I will do so, and you can refresh your
 5 memory and take as long as you need to reread something.
 6 Okay?
 7 A. Thank you, yes.
 8 4 Q. And so if I do happen to want to put
 9 anything else up on the screen or ask you questions, I'll
 10 put it up on the screen and give you plenty of time to
 11 review things.
 12 Okay?
 13 A. Yes.
 14 5 Q. Okay. So, sir, do you have any questions
 15 about what I just said?
 16 A. I have no questions.
 17 6 Q. Okay. Thank you. So I'm going to now put
 18 up your affidavit on the screen, and I'm going to adjust
 19 things here a bit from my end, just if you could bear with
 20 me.
 21 Do you see the PDF on the screen?
 22 A. I do. It's the first page of the
 23 affidavit.
 24 7 Q. Yes. Is that big enough for you? Should I
 25 enlarge it?

1 A. It's good at the moment.
 2 8 Q. Let me just do the best I can. Here, how
 3 is that? Is that better?
 4 A. That's good, yes.
 5 9 Q. Okay. And if you can't read it or you need
 6 me to adjust it, do, because everybody's got different
 7 computers at their end.
 8 Okay?
 9 A. Yeah.
 10 10 Q. So this is your affidavit and I can take it
 11 as the date this is the one you swore most recently. I
 12 just have a couple of questions about it, if I could.
 13 A. Yes.
 14 11 Q. So I would like to take you down to
 15 paragraph 6, please. And I'm going to -- it's a paragraph
 16 that runs over two pages. So let me just begin by letting
 17 you read, reread paragraph 6 to refresh your memory. So
 18 you can start with the portion of paragraph 6 that's on
 19 this page.
 20 A. Okay.
 21 12 Q. Okay. Can I go down?
 22 A. You can go down.
 23 13 Q. Okay. And then you can read to the end of
 24 paragraph 6 here.
 25 A. [Reading].

1 Okay. You can proceed.
 2 14 Q. Okay. So I just want to ask a couple of
 3 questions about this. And so the -- your affidavit states
 4 that:
 5 "The HPS
 6 Crime Information Analysis Unit
 7 collected and organized this
 8 data[...]"
 9 Correct?
 10 A. That's correct. Yes.
 11 15 Q. So you didn't collect and organize it
 12 yourself?
 13 A. The CAD event data is what they collected
 14 and organized. The Encampment Engagement Team statistics
 15 in the second part of it is something that my team outside
 16 of CIAU would do.
 17 16 Q. So outside of CIAU? Sorry?
 18 A. Sorry.
 19 17 Q. Can you just spell that out for us?
 20 A. Yes, sorry about that. Crime Information
 21 Analysis Unit. We referred to this as the acronym "CIAU".
 22 So that's the word, "Crime Information Analysis Unit" if I
 23 say CIAU that is what I am referring to it.
 24 So the CIAU collects the CAD data
 25 information and the Crisis Response Branch collects the

1 Encampment Engagement Information.
 2 18 Q. Okay. And just to understand the CIAU
 3 is -- I'm highlighting here in paragraph 6. That's what
 4 you have referred to; correct?
 5 A. That's correct, yes.
 6 19 Q. And when you say that:
 7 "Your unit collects the encampment
 8 engagement[...]"
 9 How is that distinct from the CAD data that
 10 is the basis for your affidavit?
 11 A. The CAD data or computer-aided dispatch is
 12 a call for service that comes in to our memo and
 13 dispatchers and is given to our uniform patrol officers.
 14 That is the CAD data.
 15 The encampment engagement information comes
 16 from their engagement within the community. They are
 17 working with the coordinated response team for the City of
 18 Hamilton and that is captured in their logs that comes to
 19 our unit each day.
 20 There generally is not CAD information
 21 necessarily on the encampment engagement engagement as
 22 there is with a 9-1-1 call to 9-1-1 dispatchers which is
 23 captured in the CAD events.
 24 20 Q. Okay. And just so I'm understanding
 25 because I'm trying to understand you talked about two

1 pieces of data.

2 Does this document try to put those pieces

3 of data together?

4 A. They do not. They give separate reports on

5 those data.

6 21 Q. Okay. That helps.

7 So I just want to take you now to Exhibit A

8 which I have pulled up here and this is the -- do you

9 recognize this document?

10 A. I do, yes.

11 22 Q. Okay. So I'm going to go scroll down to

12 page 6 and we can look at any other page you would like

13 to. But I will have a couple of questions about page 6.

14 A. Okay.

15 23 Q. So here I kind of put on the screen the

16 descriptions of methodology A and your descriptions of

17 methodology A and methodology B.

18 Do you recognize those?

19 A. I do, yes.

20 24 Q. I just have a couple of questions about

21 each of these.

22 A. Sure.

23 25 Q. So for methodology A, you say here that:

24 "There were 395 CAD events from

25 July 1, 2023, to July 30, 2024 for the

1 selected encampment locations".

2 Just to clarify, are those the five parks?

3 A. That's correct.

4 26 Q. What are those five parks again for the

5 record?

6 A. It is reported in the affidavit.

7 27 Q. Sure. I can scroll for it if you like or

8 you can look there.

9 A. Give me one second. I can take a look

10 because I have it here.

11 28 Q. Sure. And if you could help me I can look

12 at where you are referring to in your affidavit as well.

13 A. Sure, one second. So if you look at the

14 last page of the affidavit at Appendix A.

15 29 Q. Okay. I'm just scrolling down.

16 A. Yes.

17 30 Q. I'm just going to reduce it in size a bit.

18 A. Yes. So that page there --

19 31 Q. Yes.

20 A. -- would outline the top five parks where

21 we are seeing activity counted from the CAD data.

22 32 Q. Okay.

23 A. Those are the count for the calls per

24 service which is the basis between how we delineate what

25 the top five parks are.

1 33 Q. Okay. And so I'm looking at this list

2 here. There seem to be more than five lines on this list.

3 A. Yes, correct.

4 34 Q. So are these from the five parks that you

5 referred to or are these the five parks?

6 A. There are several parks here. What we've

7 done here is we have outlined the CAD data from the top

8 five.

9 35 Q. Can you identify for me the top five?

10 A. Gage Park.

11 36 Q. Okay.

12 A. J.C. Beemer Park.

13 37 Q. Right.

14 A. City Hall.

15 38 Q. Right.

16 A. And --

17 39 Q. Okay. That's four. And Woodlands?

18 A. And Woodlands Park.

19 40 Q. So it's just these five here that helps me.

20 Thanks.

21 A. So the CAD data I mentioned in

22 methodology A would come from the calls for service at

23 those parks.

24 41 Q. Okay. Great, thanks. I'm going to go back

25 to that page I had you on before if I could because I

1 would like to just ask you a question about this; right?

2 A. One second, if you don't mind. I'm just

3 referring back to some data here. Okay, go ahead.

4 42 Q. Okay. Are we good?

5 A. Yes. We are good.

6 43 Q. Okay. All right. So just a question.

7 From Methodology A only, it had events that you described

8 in your affidavit are only for those five parks; right?

9 They are not for other encampment locations and they

10 aren't for the rest of the city?

11 A. That is correct.

12 44 Q. Okay.

13 A. It's not based on the park itself. It's

14 based on what the City of Hamilton determines the park

15 boundaries are of that park.

16 45 Q. Okay. Thanks. And I just want to ask you

17 a couple of questions about methodology B if I could?

18 A. Sure.

19 46 Q. I'm trying to compare methodology B and

20 methodology A.

21 So I want to just state my understanding to

22 you and if you could just tell me if I am correct or not?

23 A. Sure.

24 47 Q. So methodology A is reports and analyses

25 CAD event data from the five parks but methodology B isn't

1 confined to the five parks?

2 A. Correct.

3 48 Q. It's based on calls from the city as a

4 whole; right?

5 A. That is correct. It's the word "tent" or

6 the word "encampment" are recorded in those sections from

7 the dispatchers. So if the word or encampment is

8 mentioned by a call taker or the word tent is mentioned by

9 a call taker that's mentioned in the notes from the CAD

10 call and they able to extract all the calls where the word

11 tent or encampment are mentioned.

12 So it doesn't mean that it's just from

13 those five parks. What we are seeing is the activity

14 clustered in the downtown core area.

15 49 Q. Okay. And so but not just from those five

16 parks?

17 A. Yes, that's correct.

18 50 Q. Okay. Just so I'm clear, in this affidavit

19 you don't provide evidence about the CAD event data for

20 the City as a whole where the notes don't mention

21 encampment or don't mention tent.

22 A. I do not.

23 51 Q. Okay. I think, those are all my questions

24 for you today, Inspector. Thank you very much for your

25 time.

1 A. My pleasure.

2 -- The examination concluded at 1:12 p.m. --

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I hereby certify the foregoing is a full, true, and correct
transcription of all of my oral stenographic notes to the best
of my ability so taken at the Cross-Examination of INSPECTOR
FRANK MISCIONE, given under oath before me on the 22nd of
August, 2024.

Amy Armstrong, CVR-RVR

Certified Realtime Verbatim Reporter #7305

Certified Commissioner of Oaths

Certified this 28th of August, 2024

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Heegsma et al
Appellants (Applicants)

-and-

CITY of HAMILTON
Respondent (Respondent)

Court File No.COA-25-CV-0166

Ontario
Court of Appeal

EXHIBIT BOOK - VOLUME 5

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