

COURT OF APPEAL FOR ONTARIO

BETWEEN:

**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

-and-

ATTORNEY GENERAL OF ONTARIO

Intervener

-and-

**INCOME SECURITY ADVOCACY CENTRE and MENTAL HEALTH LEGAL
COMMITTEE**

Moving Parties
(Proposed Intervener Coalition)

**MOTION RECORD OF THE PROPOSED INTERVENER COALITION, the INCOME
SECURITY ADVOCACY CENTRE and the MENTAL HEALTH LEGAL COMMITTEE**

November 14, 2025

PEREZ PROCOPE LEINVEER LLP

1100-55 University Avenue
Toronto, Ontario M5J 2H7

Mercedes Perez (48381L)

Tel: 416-320-1914, ext. 101

Email: mperez@pbplawyers.com

Lisa Leinveer (70361C)

Tel: 647-490-4197

Email: lleinveer@pbplawyers.com

INCOME SECURITY ADVOCACY CENTRE

1500-55 University Avenue
Toronto, Ontario M5J 2H7

Robin Nobleman (71014P)

Tel: 416-597-5820, ext. 5142

Email: robin.nobleman@isac.clcj.ca

Adrian Merdzan (82809I)

Tel: 416-597-5820, ext. 5152

Email: adrian.merdzan@isac.clcj.ca

Lawyers for the Proposed Intervener Coalition

TO:

CIRCLE BARRISTERS

325 Front St. W., Suite 200
Toronto, Ontario M5V 2Y1

Sujit Choudhry (45011E)

Tel: 416-436-3679

Email: sujit.choudhry@circlebarristers.com

MISSISSAUGA COMMUNITY LEGAL SERVICES

130 Dundas St. E., Suite 504
Mississauga, Ontario L5A 3V8

Sharon Crowe (47108R)

Tel: 905-896-2052 ext. 20

Email: sharon.crowe@mcls.clcj.ca

ROSS & MCBRIDE LLP

1 King St. W., 10th Floor
Hamilton, Ontario L8P 1A4

Wade Poziomka (59696T)

Tel: 905-572-5824

Email: wpoziomka@rossmcbride.com

Lawyers for the Appellants

AND TO: GOWLING WLC (CANADA) LLP
1 Main St. W.
Hamilton, ON L8P 4Z5

Bevin Shores (56161F)
Tel: 905-540-2468
Email: bevin.shores@gowlingwlq.com

Jordan Diacur (65860E)
Tel: 905-540-2500
Email: jordan.diacur@gowlingwlq.com

Jennifer King (54325R)
Tel: 905-549-2468
Email: jennifer.king@gowlingwlq.com

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 Bolieiro (60034I)
Tel: 416-551-6263
Email: andrea.bolieiro@ontario.ca

Lawyer for the Attorney General

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COMMITTEE**

Moving Parties
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TAB 1

Court File No.: COA-25-CV-0166

COURT OF APPEAL FOR ONTARIO

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**INCOME SECURITY ADVOCACY CENTRE and MENTAL HEALTH LEGAL
COMMITTEE**

Moving Parties
(Proposed Intervener Coalition)

**NOTICE OF MOTION FOR LEAVE TO INTERVENE OF THE PROPOSED
INTERVENER COALITION, the INCOME SECURITY ADVOCACY CENTRE and the
MENTAL HEALTH LEGAL COMMITTEE**

**THE PROPOSED INTERVENER COALITION, THE INCOME SECURITY
ADVOCACY CENTRE AND THE MENTAL HEALTH LEGAL COMMITTEE**, will make a
motion pursuant to Rules 13.02 and 13.03(2) of the *Rules of Civil Procedure* to the Chief
Justice, the Associate Chief Justice, or a judge designated by either of them on December
12, 2025, at 10:00 a.m., at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

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

THE MOTION IS FOR:

1. An Order granting the coalition of the Income Security Advocacy Centre (“ISAC”) and the Mental Health Legal Committee (“MHLC”) leave to intervene jointly in this Appeal as a friend of the court, on the following terms:
 - (a) ISAC and MHLC may file a factum of no more than 15 pages;
 - (b) ISAC and MHLC may present oral argument at the hearing of the Appeal, for no more than 15 minutes;
 - (c) ISAC and MHLC will not seek, nor be made subject to, any order as to costs; and
 - (d) Such further or other Order as this Honourable Court may deem appropriate.

THE GROUNDS FOR THE MOTION ARE:

1. ISAC is a specialty legal clinic funded by Legal Aid Ontario to advance the rights, interests, and systemic concerns of low-income Ontarians. ISAC is the only legal clinic in Ontario wholly devoted to systemic advocacy on income security issues. ISAC’s work is directly informed by the experiences of communities living in poverty;
2. ISAC has extensive expertise in social assistance issues and poverty alleviation work. Since 2001, ISAC has successfully engaged in test case litigation and public interest interventions on behalf of social assistance recipients, policy advocacy and government consultation to improve income security programs and reduce poverty, public

legal education, and community organizing with and on behalf of people living on a low income in Ontario. ISAC has developed a deep and nuanced understanding of the social assistance regime and the lived experiences of low-income Ontarians;

3. The MHLC has 28 years of experience in advocating for the rights of individuals with mental health and/or addiction issues who are impacted by mental health and other legislation, including through direct advocacy, systemic advocacy, intervening in cases before tribunals and appellate courts, providing legislative submissions, and participating in law reform, training, and education. The membership of the MHLC is comprised of legal practitioners who have special familiarity with, and firsthand day-to-day experience representing this demographic across a wide variety of proceedings in both the civil and criminal justice systems, including in constitutional litigation. MHLC members have been active as counsel, *amicus curiae*, or counsel to interveners in many leading and precedent-setting mental health law cases, including successful *Charter* and injunction homeless encampment cases and on eleven occasions as an intervener before the Supreme Court of Canada (either alone or in coalition);

4. In addition to direct legal representation of persons struggling with mental health and/or addiction challenges, the MHLC has a broad public interest mandate focused on the promotion of the liberty, autonomy, and equality interests of its core client group and has gained a reputation as an expert stakeholder in the area of mental health law;

5. The vast majority of the MHLC's clients face structural, economic, disability-related, and social barriers to accessing justice. Amongst the obstacles MHLC clients face in legal settings is overcoming pervasive stereotypical assumptions about their

credibility and/or reliability. Persons diagnosed with mental health and/or addiction related issues face significant disadvantages in this regard, often having to overcome speculative assumptions about their capacity for accurate, rational thought; their ability to be truthful; and their ability to accurately recall and narrate their lived experiences;

6. This Appeal concerns whether people living in poverty who cannot access local shelters are protected under the *Charter* from eviction when they erect a tent on public property. The issues this appeal raises are of significant importance to the community of clients served by both ISAC and the MHLC. A decision in this appeal may adversely impact vulnerable individuals' already tenuous ability to access justice across a variety of legal forums, including their ability to access the *Charter's* protective and remedial function. A decision in this appeal may also have the effect of imposing harsh but unnecessary evidentiary burdens on vulnerable individuals attempting to access the justice system, even in circumstances where the evidentiary onus does not fall on them;

7. ISAC and MHLC are uniquely positioned to provide a relevant, unique, nuanced, and in-depth perspective. Both organizations are deeply aware of the real impact of stereotypes of people facing mental health and addiction challenges, and the difficulties these client groups face in accessing justice;

8. The coalition has a real, substantial, and identifiable interest in the Appeal because the clients and communities that ISAC and MHLC serve are acutely impacted by the issues raised in the Appeal. The coalition has a significant interest in ensuring that the rights of low-income persons with disabilities are protected and that people with mental health and addiction disabilities are believed when they give evidence in legal

proceedings;

9. The issues raised in this Appeal, including the capacity for people with mental health and addiction disabilities living in poverty to give credible and reliable testimony, are of profound importance to the communities of clients ISAC and MHLC serve and whose rights ISAC and MHLC seek to advance. Poor people struggling with difficult life circumstances, including mental health and/or addiction challenges, disproportionately engage with legal systems due to systemic disadvantage, complex administrative regimes, and the criminalization of poverty. If those with mental health and/or addiction issues are not believed solely on account of their disability, that could prevent them from succeeding across a broad array of potential legal proceedings. This may include attempts to secure income support, to protect their human rights (including liberty, autonomy, and equality), to challenge findings of incapacity, to defend themselves in criminal proceedings, and to raise *Charter* claims, compounding the difficulties they already confront in attempting to access justice;

10. The coalition's submissions will provide a unique, useful, and distinct perspective based on special experience and expertise that is not otherwise available to the Court. If granted leave to intervene by this Court, ISAC and MHLC propose to make two submissions as set out in a draft factum found in Exhibit A of the Affidavit of Melinda Ferlisi:

- (a) Relying on stereotypical reasoning to make credibility and reliability findings is an error of law that harms people with mental health and addiction disabilities;
and

(b) When available evidence can refute an alleged fact, courts cannot take judicial notice of that alleged fact, especially based on stereotypical assumptions;

11. The coalition have been in communication with the Appellants and other proposed interveners to avoid duplication of submissions. If granted leave to intervene, the coalition will continue to work with the parties to ensure that its submissions remain useful and distinct;

12. If granted leave to intervene, the coalition will take no position on the outcome of this Appeal and will not seek to expand the existing record;

13. The coalition will abide by the terms of any timetable on this Appeal if granted leave to intervene, and will not cause delay or prejudice to the parties;

14. The coalition will comply with any terms and conditions that this Honourable Court may set in granting leave to intervene;

15. The coalition will not seek costs in this appeal and requests that no costs be ordered against it; and,

16. Such other grounds as counsel may advise and this Honourable Court permits.

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

- a) Affidavit of Melinda Ferlisi, affirmed November 13, 2025;
- b) Affidavit of Marshall Swadron, affirmed November 14, 2025;
- c) Such further and other material as counsel may advise and this Honourable Court may permit.

November 14, 2025

PEREZ PROCOPE LEINVEER LLP

1100-55 University Avenue
Toronto, Ontario M5J 2H7

Mercedes Perez (48381L)

Tel: 416-320-1914, ext. 101

Email: mperez@pbplawyers.com

Lisa Leinveer (70361C)

Tel: 647-490-4197

Email: lleinveer@pbplawyers.com

INCOME SECURITY ADVOCACY CENTRE

1500-55 University Avenue
Toronto, Ontario M5J 2H7

Robin Nobleman (71014P)

Tel: 416-597-5820, ext. 5142

Email: robin.nobleman@isac.clcj.ca

Adrian Merdzan (82809I)

Tel: 416-597-5820, ext. 5152

Email: adrian.merdzan@isac.clcj.ca

Lawyers for the Proposed Intervener Coalition

TO:

CIRCLE BARRISTERS

325 Front St. W., Suite 200
Toronto, Ontario M5V 2Y1

Sujit Choudhry (45011E)

Tel: 416-436-3679

Email: sujit.choudhry@circlebarristers.com

MISSISSAUGA COMMUNITY LEGAL SERVICES

130 Dundas St. E., Suite 504
Mississauga, Ontario L5A 3V8

Sharon Crowe (47108R)

Tel: 905-896-2052 ext. 20

Email: sharon.crowe@mcls.clcj.ca

ROSS & MCBRIDE LLP

1 King St. W., 10th Floor
Hamilton, Ontario L8P 1A4

Wade Poziomka (59696T)

Tel: 905-572-5824

Email: wpoziomka@rossmcbride.com**Lawyers for the Appellants****AND TO: GOWLING WLC (CANADA) LLP**

1 Main St. W.

Hamilton, ON L8P 4Z5

Bevin Shores (56161F)

Tel: 905-540-2468

Email: bevin.shores@gowlingwlg.com**Jordan Diacur (65860E)**

Tel: 905-540-2500

Email: jordan.diacur@gowlingwlg.com**Jennifer King (54325R)**

Tel: 905-549-2468

Email: jennifer.king@gowlingwlg.com**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 Bolieiro (60034I)

Tel: 416-551-6263

Email: andrea.bolieiro@ontario.ca**Lawyer for the Attorney General**

KRISTEN HEEGSMa, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO, SHAWN ARNOLD, -and-
CASSANDRA JORDAN, JULIA LAUZON, AMMY LEWIS, ASHLEY MACDONALD, COREY
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Appellants

CITY OF
HAMILTON
Respondent

Court File No. COA-25-CV-0166

	COURT OF APPEAL FOR ONTARIO PROCEEDING COMMENCED AT HAMILTON
	NOTICE OF MOTION OF THE PROPOSED INTERVENER COALITION, the INCOME SECURITY ADVOCACY CENTRE and the MENTAL HEALTH LEGAL COMMITTEE
	PEREZ PROCOPE LEINVEER LLP 1100-55 University Avenue Toronto, Ontario M5J 2H7 Mercedes Perez (48381L) Lisa Leinveer (70361C) 416-320-1914, ext. 101 647-490-4197 mperez@pbplawyers.com lleinveer@pbplawyers.com INCOME SECURITY ADVOCACY CENTRE 1500-55 University Avenue Toronto, Ontario M5J 2H7 Robin Nobleman (71014P) Adrian Merdzan (82809I) 416-597-5820, ext. 5142 416-597-5820, ext. 5152 robin.nobleman@isac.clcj.ca adrian.merdzan@isac.clcj.ca Lawyers for the Proposed Intervener Coalition

TAB 2

Court File No.: COA-25-CV-0166

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**INCOME SECURITY ADVOCACY CENTRE and MENTAL HEALTH LEGAL
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AFFIDAVIT OF MELINDA FERLISI**Affirmed November 13, 2025**

**(In support of the Motion for Leave to Intervene of the Proposed Intervener,
Income Security Advocacy Centre)**

I, **MELINDA FERLISI**, of the City of Richmond Hill, in the Province of Ontario, **do hereby
AFFIRM:**

1. I am the Executive Director at the Income Security Advocacy Centre (“**ISAC**”). As such, I have personal knowledge of the matters deposed herein, except where my knowledge is based on information and belief, which I verily believe to be true.

2. ISAC seeks leave to intervene in this Appeal jointly with the Mental Health Legal Committee.

A. The Income Security Advocacy Centre: Mandate and Organization

3. ISAC is a provincially incorporated, specialty legal clinic that is funded by Legal Aid Ontario to advance the rights, interests, and systemic concerns of low-income Ontarians with respect to income security programs and employment law. ISAC is the only legal clinic in Ontario wholly devoted to systemic advocacy on income security issues. It carries out this law reform mandate through test case litigation, policy advocacy, community development, and public education.

4. ISAC was founded in 2001 and is governed by a community Board of Directors representative of all regions of Ontario. The Board is composed of low-income individuals and advocates with expertise in income security and poverty.

B. The Income Security Advocacy Centre's Work and Expertise

5. ISAC has a unique expertise in provincial and federal income security programs, including social assistance (Ontario Works (“OW”) and the Ontario Disability Support Program (“ODSP”)), Old Age Security, Employment Insurance, the Canada Disability Benefit, the Canada Emergency Response Benefit, and the Canada Pension Plan. ISAC also has expertise in employment law issues for low-wage and precarious workers.

6. ISAC's work is informed through its direct representation of clients, and its relationship with the over 70 local community legal clinics across Ontario who work with Ontario's poorest and most vulnerable residents. In this way, ISAC's work is directly informed by the experiences of communities living in poverty from all over Ontario.

7. As a specialized advocacy clinic with direct input from low-income communities across the province, ISAC is uniquely positioned to assist the Court to appreciate the impacts that this case may have on social assistance recipients living in poverty, particularly persons with mental health disabilities who rely on ODSP.

8. ISAC works directly with low-income people and social assistance recipients through several provincial organizations and networks. For example, ISAC was one of

the founders of the ODSP Action Coalition – an Ontario-wide network that advocates for improvements to ODSP so that people with disabilities can live with justice and dignity. Currently the ODSP Action Coalition has approximately 400 members, made up of people with lived experience of poverty receiving ODSP benefits, as well as disability organizations, community agencies, and anti-poverty groups.

9. ISAC has historically been active with Campaign 2000, a non-partisan network of 120 partners working to address child and family poverty in Canada through public education.

10. ISAC's work addresses systemic issues affecting access to and adequacy of income security programs, including social assistance. An equity lens is an explicit guide for our work. We seek to address the over-representation of historically disadvantaged groups in poverty, including persons living with disabilities, migrants, racialized and Indigenous communities, women and other marginalized genders, and seniors.

C. Involvement in Litigation: Improving Income Security for Vulnerable Groups

11. ISAC's mandate is to conduct test case litigation to reduce poverty, improve access to justice, and achieve income security for vulnerable, equity-seeking groups. ISAC does this work through both direct representation and interventions. ISAC's litigation takes place at administrative tribunals and at all levels of court, and frequently concerns human rights, administrative law, general principles of public law, and the *Canadian Charter of Rights and Freedoms* (the "**Charter**").

Relevant Public Interest Interventions

12. ISAC has intervened in over 20 reported cases. Some of our relevant public interest interventions include:

- (a) **Section 15 *Charter* challenge on the exclusion of refugee claimants from access to subsidized childcare (*Attorney General of Québec v. Kanyinda*, [2024 CanLII 93650](#) (S.C.C.))**: ISAC intervened in this appeal before the Supreme Court of Canada to address the appropriate approach to the s. 15(1) analysis in the context of benefit schemes. ISAC's submissions focused on how to conduct a contextual, intersectional analysis of single-ground discrimination,

and how to incorporate the domino effects of Canada's interconnected benefit schemes into the equality rights test. The matter was argued in May 2025, and the Court's decision is currently under reserve.

- (b) **Charter challenge to prohibiting survival panhandling (*Fair Change v. His Majesty the King in Right of Ontario*, [2024 ONSC 1895](#)):** ISAC intervened in this application before the Ontario Superior Court challenging the constitutionality of Ontario's *Safe Streets Act*. The challenge concerned the *Act*'s prohibition on poor individuals panhandling in certain circumstances, subjecting them to fines and jail time. ISAC argued that the *Act* discriminated against individuals who receive social assistance, contrary to s. 15 of the *Charter*, and that the *Act* hurts individuals' ability to meet their basic needs, contrary to s. 7 of the *Charter*. The Court struck down multiple provisions of the *Act* as unconstitutional.
- (c) **Ontario Human Rights Code challenge to social assistance guide dog benefit (*Ontario (Minister of Children, Community and Social Services) v. Robinson-Cooke*, [2024 ONSC 3556](#) (Div. Ct.)):** ISAC intervened in this judicial review application before the Ontario Divisional Court. The matter concerned whether a social assistance policy that provided a guide dog benefit was discriminatory on the basis of disability. ISAC made submissions on the correct test for discrimination in challenges to government policy, the structure and purpose of the benefits scheme, and the breadth of the Tribunal's remedial discretion. The Court accepted ISAC's arguments in upholding the Tribunal's finding of discrimination.
- (d) **Section 15 Charter challenge to pandemic benefits legislation affecting workers with disabilities (*Jacob v. Canada (Attorney General)*, [2024 ONCA 648](#)):** ISAC intervened in this appeal concerning whether legislation governing pandemic benefits including the Canada Emergency Response Benefit and Canada Recovery Benefit discriminates against workers with disabilities, contrary to s. 15 of the *Charter*. ISAC's arguments addressed the substantive equality analysis required under s. 15 and how this section should be applied

in the context of disability and income security programs. The Court referred to ISAC's submissions in finding a breach of s. 15.

- (e) **Access to the Canada Child Benefit for all children (*Yao v. The King*, [2024 TCC 19](#)):** ISAC intervened in this appeal and *Charter* challenge before the Tax Court of Canada. The matter concerned whether excluding children of refugee claimants and others without immigration status from receiving the Canada Child Benefit is unconstitutional. ISAC submitted that the *United Nations Convention on the Rights of the Child* requires the Court to consider the best interests of the child, and that equality principles must inform the analysis of whether the Canada Child Benefit exclusion breaches section 7 of the *Charter*.
- (f) **Access to judicial review of decisions impacting last resort income benefits (*Yatar v. TD Insurance Meloche Monnex*, [2024 SCC 8](#)):** ISAC intervened in this appeal before the Supreme Court of Canada. The appeal concerned whether a statutory right of appeal on questions of law restricts the availability of judicial review for decisions raising questions of fact or mixed fact and law. The Supreme Court unanimously agreed with ISAC's argument that a limited right of appeal does not affect the availability of judicial review for non-appealable decisions. ISAC highlighted the perspective of people relying on social assistance, who need meaningful access to judicial review to challenge decisions that are non-appealable but which seriously impact their dignity and quality of life.
- (g) **Privacy rights of vulnerable individuals who appear before administrative tribunals (*Sherman Estate v. Donovan*, [2021 SCC 25](#)):** ISAC intervened in this appeal before the Supreme Court. The appeal concerned the test for obtaining sealing orders over confidential and sensitive documents filed with courts. ISAC highlighted the perspective of vulnerable individuals, who are often required to disclose sensitive personal and medical information in administrative proceedings. ISAC argued that protecting these individuals' confidentiality in certain circumstances is in the public interest. The Court

agreed with ISAC's submission that detailed information about family structure and work history could in some cases constitute sensitive information.

- (h) **Challenge to mandatory and exclusive arbitration clauses in employment agreements for vulnerable workers (*Uber Technologies Inc., et al. v. David Heller*, [2020 SCC 16](#)):** ISAC intervened (in coalition with Parkdale Community Legal Services) in this appeal before the Supreme Court. The appeal concerned the permissibility of mandatory and exclusive arbitration clauses under Ontario's *Employment Standards Act, 2000*. The coalition argued that if vulnerable workers are denied access to other forums in which to enforce their rights because of these arbitration clauses, they could face further exploitation.
- (i) **Access to Rental Assistance Program for vulnerable persons dependant on Henson Trusts for support (*S.A. v. Metro Vancouver Housing Corp.*, [2019 SCC 4](#)):** ISAC intervened (in coalition with the HIV & AIDS Legal Clinic Ontario) to challenge the ruling of the British Columbia Court of Appeal that entitlements under Henson Trusts were assets that could be factored into a decision to reject a Rental Assistance Application. ISAC's intervention focused on the importance of Henson Trusts to supporting vulnerable persons, and the unfairness that would result from considering these to be assets for the purpose of receiving rent assistance.
- (j) **Charter challenge to the mandatory victim surcharge (*R. v. Boudreault*, [2018 SCC 58](#)):** ISAC intervened in this appeal dealing with a challenge to a provision of the *Criminal Code* that required everyone convicted of a criminal offence to pay a victim surcharge fee in a set amount, regardless of their ability to pay. ISAC had previously intervened in these cases at the Court of Appeal for Ontario ([2017 ONCA 552](#)) and on the same issue before the Ontario Superior Court in *R. v. Michael* (2015). ISAC's interventions focused on the impact of the law on historically disadvantaged groups living in poverty, including persons with disabilities.

- (k) **Scope of the *Canadian Human Rights Act* (*Canadian Human Rights Commission v. Attorney General of Canada*, [2018 SCC 31](#)):** ISAC intervened (in coalition with four other legal clinics in Ontario and British Columbia) in this appeal concerning whether the *Canadian Human Rights Act* could be used to directly challenge federal legislation alleged to discriminate in the provision of benefits. The coalition argued that the case would affect the forums and legal remedies available to low-income people and workers challenging discrimination in federal government benefits legislation, such as Employment Insurance and the Canada Pension Plan.

- (l) **Access to damage awards under Ontario's *Human Rights Code* (*Abbey v. Ontario (Community and Social Services)*, [2018 ONSC 1899](#) (Div. Ct.)):** ISAC intervened at the Ontario Divisional Court (in coalition with the Council of Canadians with Disabilities and ODSP Action Coalition) in this judicial review application concerning whether the Human Rights Tribunal of Ontario can award damages for discrimination resulting from the application of ODSP Policy Directives. ISAC centered the perspective and interests of persons with disabilities to argue that the *Code* explicitly grants the Tribunal jurisdiction to order human rights damages, and that statutory interpretation requires reading these powers generously to achieve the *Code*'s purposes of preventing and remedying discrimination.

- (m) **Access to justice and privacy at administrative tribunals that serve people in poverty (*Toronto Star v. AG Ontario*, [2018 ONSC 2586](#)):** ISAC intervened (in coalition with the HIV & AIDS Legal Clinic Ontario and ARCH Disability Law Centre) in a *Charter* challenge at the Ontario Superior Court concerning whether the public should have access to records held by administrative tribunals. ISAC brought the perspective of people living in poverty, who may be denied access to justice if the deeply personal information filed with administrative tribunals, such as the Social Benefits Tribunal, is available to the public.

- (n) **Access to justice for social assistance recipients (*OPSEU v. Ontario, unreported, Court File No. CV-14-518213*):** In 2015, ISAC intervened in a *Charter* application brought by the Ontario Public Service Employees Union in the Ontario Superior Court. The application argued that Ontario's new computer system for the management of social assistance programs violated the sections 7 and 15 *Charter* rights of social assistance recipients. ISAC's intervention focused on ensuring access to courts for social assistance recipients who wish to challenge the policies and programs that affect them.
- (o) ***Charter* challenge concerning failure to address homelessness (*Tanudjaja v. Attorney General (Canada)*, [2014 ONCA 852](#)):** ISAC intervened as part of a coalition at both the Ontario Superior Court and Court of Appeal for Ontario in a *Charter* application concerning whether government's failure to address homelessness amounts to a violation of sections 7 and/or 15 of the *Charter*. ISAC's arguments addressed the scope of section 7 of the *Charter*, positive government obligations under the *Charter*, and the justiciability of income security programs.
- (p) **Challenge to the exclusion of persons with addictions from ODSP (*Ontario (Disability Support Program) v. Tranchemontagne*, [2010 ONCA 593](#)):** ISAC intervened in a test case at the Court of Appeal for Ontario concerning whether Ontario discriminated by excluding addictions as a disability for which an applicant could be found eligible for ODSP.

Relevant Test Cases (Direct Representation)

13. ISAC has also acted as counsel on several test cases, including:

- (a) **The Social Benefits Tribunal must provide social assistance recipients with adequate reasons when denying their claims (*M.I. v. Administrator, Ontario Works Region of Peel*, [2024 ONSC 1975](#) (Div. Ct.)):** In an appeal before the Ontario Divisional Court, ISAC successfully represented a domestic abuse survivor who had her income assistance cancelled. She was ordered to pay over \$95,000 for failing to provide information about her estranged spouse.

She had in fact provided information about her spouse, but the Tribunal made procedural fairness errors, and issued boilerplate reasons on reconsideration. The Court agreed with ISAC that the Tribunal breached procedural fairness by providing inadequate reasons and ordered a new hearing.

- (b) **ODSP cannot collect post-secondary education grants if those grants are used to pay for disability accommodation services (2301-00383 (Re), [2023 ONSBT 4668](#))**: ISAC challenged an ODSP practice of collecting provincial grants deemed non-educational from recipients. ISAC represented a student living with disabilities who relied on these grants to pay for psychotherapy and service dog supports that she needed to complete her studies. The Tribunal granted the appeal and found that this ODSP practice did not align with the *Ontario Disability Support Program Act*'s purpose to incentivize and support persons with disabilities in their educational endeavours.
- (c) **Provision of ODSP benefits for storage fees incurred while homeless (A.C. v. Director of the Ontario Disability Support Program, Court File No. 345/20)**: In 2021, ISAC was counsel in an appeal to the Ontario Divisional Court concerning payment of storage fees incurred while a social assistance recipient was homeless. At issue was whether ODSP "shelter allowance" should cover those storage fees. The matter settled before the Divisional Court hearing.
- (d) **Expert evidence at the Social Benefits Tribunal (Charron v. Director of the Ontario Disability Support Program, [2019 ONSC 2747](#) (Div. Ct.))**: ISAC was counsel in an appeal to the Ontario Divisional Court concerning the Tribunal's obligation to consider relevant expert evidence when determining eligibility for ODSP. The Court agreed with ISAC that the Tribunal erred in refusing to consider such evidence.
- (e) **Provision of ODSP benefits for moving fees required to obtain safe housing (J.C. v. District of Thunder Bay Social Services Administration Board, Court File No. DC-19-011-JR)**: ISAC was counsel in a judicial review application to the Ontario Divisional Court concerning coverage of moving fees.

The applicant had severe disabilities related to addiction and moved into safer housing to recover and improve his health. ISAC challenged ODSP's denial of his application to have his moving fees covered by ODSP's Housing Security Fund – Community Homelessness Prevention Initiative. The matter settled before the Divisional Court hearing.

- (f) **Challenge to ODSP Policy Directive on medical travel (*Corrigan v. Ontario (Disability Support Program)*, [2016 ONSC 6212](#) (Div. Ct.)):** ISAC co-counselled with Aboriginal Legal Services in a case challenging an ODSP Policy Directive that limited re-payment for medical transportation to 18 cents per kilometre. The Divisional Court concluded that the Policy Directive was unreasonably low as it did not reflect the true costs of driving.
- (g) **Access to Canada Pension Plan disability benefits (*Osaj v. Canada (Attorney General)*, [2016 FC 115](#)):** ISAC represented an applicant in a successful application for judicial review of a Canada Pension Plan (Disability) case where leave to appeal was denied by the Social Security Tribunal. At issue was whether the Tribunal's interpretation of disability under the Canada Pension Plan created a barrier to access Canada Pension Plan (Disability) benefits.
- (h) **Provision of ODSP benefits for securing wheelchair accessible housing (*W.G. v. District of Thunder Bay Social Services Administration Board*, Court File No. 571/16):** ISAC was counsel in a judicial review application to the Ontario Divisional Court. The applicant was an ODSP recipient with significant disabilities who required a wheelchair and was unable to secure wheelchair accessible social housing. He found a market rent wheelchair accessible home and incurred costs to secure it, including moving costs and a rental deposit. ISAC challenged ODSP's denial of his application to have his moving fees covered by ODSP's Housing Security Fund – Community Homelessness Prevention Initiative. The matter settled before the Divisional Court hearing.

- (i) **Statutory interpretation of government and tribunal powers (*Surdivall v. Ontario (Disability Support Program)*, [2014 ONCA 240](#)):** ISAC successfully represented an appellant at the Court of Appeal for Ontario arguing that the *Ontario Disability Support Program Act* empowers both the Director of ODSP and the Social Benefits Tribunal to waive collection of overpayments in appropriate circumstances. ISAC highlighted the negative impacts that a lack of discretion has on vulnerable persons with disabilities and argued that this was not in accordance with the purpose of the *Act*. Ontario's application for leave to appeal to the Supreme Court was denied.
- (j) **Human rights, the *Charter*, and limitation periods for disability benefits (*Pavon v. Ontario (Disability Support Program)*, [2013 ONSC 4309](#) (Div. Ct.)):** ISAC represented an ODSP recipient in an appeal at the Ontario Divisional Court on the interpretation of a limitation period for appeals to the Social Benefits Tribunal. The Divisional Court accepted ISAC's argument to interpret the legislation in a manner consistent with human rights and *Charter* values, recognizing the right to reasonable accommodation for persons with disabilities.
- (k) **Discrimination and the Special Diet Allowance (*Ball v. Ontario (Community and Social Services)*, [2010 HRTO 360](#); *Martel v. Ontario*, [2012 ONSC 6680](#) (Div. Ct.); *Buklis v. Ontario*, [2013 HRTO 918](#)):** ISAC acted for over 100 clients at the Human Rights Tribunal of Ontario in a series of interconnected challenges alleging disability discrimination in the "Special Diet Allowance" program administered through provincial social assistance programs. In the lead case, the Tribunal found that the program discriminated against persons with disabilities by either excluding or underfunding the special diet for specific health conditions.

D. Policy Advocacy, Community Organizing, and Law Reform

14. In addition to litigation, ISAC is actively involved in policy advocacy, community organizing, and public education relating to income security, poverty, equality, and human rights. ISAC is active at the provincial, federal, and international levels.

15. ISAC staff participate in provincial and federal stakeholder committees, including:
- (a) **Steering Committee on Social Assistance:** A provincial legal clinic network that represents front line caseworkers from each region of the province, specialty clinics, and Legal Aid Ontario's Clinic Resource Office. The Committee addresses systemic social assistance issues. The Ministry Relations Sub-Committee meets regularly with the Ministry of Community and Social Services for consultation and policy advocacy purposes.
 - (b) **Social Benefits Tribunal Stakeholder Group:** ISAC has two seats on a multi-stakeholder advisory committee of the Social Benefits Tribunal. The Committee provides input into policy and administration of the Social Benefits Tribunal, the administrative tribunal that hears appeals from decisions of social assistance administrators.
 - (c) **Employment Insurance and Canada Pension Plan Working Groups:** Group members include legal clinic caseworkers from across Ontario. ISAC co-chairs both Working Groups and organizes regular meetings that discuss both substantive and procedural issues arising out of the two federal income security programs.
 - (d) **Canada Emergency Response Benefit and Canada Recovery Benefit Overpayments Working Group:** ISAC founded and co-chairs this legal clinic working group. The working group meets regularly to discuss overpayment assessments for these benefits that are impacting low-income individuals in Ontario. The group shares information, resources, and strategies for disputing overpayments through internal reviews at the Canada Revenue Agency and judicial review applications at the Federal Court of Canada.
 - (e) **Canada Pension Plan (Disability) Client and Stakeholder Roundtable:** ISAC's staff have historically been a member of this federal Roundtable, which engages in consultations and provides advice to the federal government on the Canada Pension Plan (Disability) program.

16. ISAC also frequently makes written and oral submissions to both the provincial and federal governments on issues relating to poverty and income security. Recent activities at the provincial level include:

- (a) Submissions to the Ontario Human Rights Commission on the systemic discrimination that people living with mental health and addiction disabilities who are precariously housed face when attempting to access and remain within the social safety net;
- (b) Open letter on the inadequacy of social assistance rates for both ODSP and OW recipients, garnering over 230 organization signatories;
- (c) Submissions for Ontario Budget 2025 on needed investments in social assistance and access to justice, increasing the minimum wage, legislating paid sick days, and implementing a comprehensive poverty reduction strategy;
- (d) Submissions on needed investments in social assistance and employment standards protections in Ontario Budget 2024, Ontario Budget 2023, and Ontario Budget 2022;
- (e) Submissions on proposed changes to the Human Rights Tribunal of Ontario's rules of procedure that if implemented would weaken procedural fairness and limit access to justice for unrepresented applicants;
- (f) Joint partners letter on improvements to social assistance in the wake of COVID-19;
- (g) Joint partners letter on ensuring timely and effective adjudication of social assistance appeals at the Social Benefits Tribunal;
- (h) Writer and contributor to the *Income Security: Roadmap for Change* report, after the Ontario government appointed ISAC to advise on transforming Ontario's income security system, including the social assistance regime; and,
- (i) Submissions on the report of the Changing Workplaces Review, on the *Fair Workplaces, Better Jobs Act 2017* (Bill 148).

17. At the Federal Level, ISAC's recent activities include:

- (a) Written and oral submissions informing the development of regulations for the Canada Disability Benefit at three technical roundtables covering barriers in the application process, appointing representatives and legal capacity, and administrative and appeal processes;
- (b) A line-by-line analysis of the proposed Canada Disability Benefit regulations, with recommendations on what to fix to ensure that the Benefit achieves its aim of reducing poverty for people with disabilities;
- (c) Written and oral submissions at the Senate and written submissions at the House of Commons on Bill C-22 (Canada Disability Benefit) focusing on the need for statutory appeal rights to ensure individuals living with disabilities are able to challenge negative decisions through an accessible, transparent, and timely dispute resolution process;
- (d) Submissions at the 2025 federal pre-Budget process to press for greater income security for all Ontarians, including calls to improve the Canada Disability Benefit, make Employment Insurance reforms, and create a comprehensive regularization program for migrants;
- (e) Written submissions for the Standing Committee on Finance's Study of Inflation in the Current Canadian Economy, outlining proposed actions that the federal government can take to alleviate the disproportionate burden inflation imposes on low-income households;
- (f) Written and oral submissions to the federal government's consultations on reforming the EI program, including improving the program to better meet the needs of low-wage and precarious workers;
- (g) Written and oral submissions to the Standing Senate Committee on Social Affairs, Science and Technology about Bill C-12, *An Act to amend the Old Age Security Act* (Guaranteed Income Supplement), addressing unanticipated negative consequences on low-income seniors who received the Canada

- Emergency Response Benefit and are financially struggling with possible repayment and lost Guaranteed Income Supplement benefits;
- (h) Letter on improvements to Employment Insurance, the Canada Emergency Response Benefit, and other federal benefits in the wake of the COVID-19 pandemic; and,
 - (i) Submissions on improvements to federal benefit programs and funding for provincial social assistance programs as part of a National Poverty Reduction Strategy;

18. ISAC has also participated in United Nations human rights monitoring bodies. ISAC submitted reports to the Committee on the Rights of Persons with Disabilities in 2017, and to the Committee on Economic, Social and Cultural Rights in 2016 for the Sixth Periodic Review of Canada's compliance with the International Covenant on Economic, Social and Cultural Rights. ISAC's submissions addressed how Canada's deepening poverty and inadequate income supports have disproportionately affected marginalized groups, such as persons with disabilities, Indigenous peoples, migrants, racialized communities, women, and older persons. These concerns were reflected in the Committee's final observations.

E. ISAC's Interest and Unique Perspective in this Appeal

19. This Appeal concerns whether people living in poverty who cannot access local shelters are protected under the *Charter* from eviction when they erect a tent on public property. ISAC has a significant and unique perspective in this Appeal because it serves economically disadvantaged people who rely on social assistance supports to survive.

20. In the decision below, Ramsay J. either relied on stereotypes, or improperly took judicial notice, to disregard the testimony of people with mental health and addiction disabilities living in poverty.¹ If this Court upholds Ramsay J.'s findings on this point, this vulnerable population will face negative consequences when appearing in other forums across Ontario. Poor people disproportionately engage with legal systems due to

¹ *Heegsma v. Hamilton (City)*, [2024 ONSC 7154](#), at paras. 24, 26, and 38.

systemic disadvantage, complex administrative rules, and the criminalization of poverty. If those with mental health and addiction disabilities are not believed solely on account of their disability, that could prevent them from succeeding in their attempts to secure income support, to protect their human rights, to challenge findings of incapacity, and to inflict more harm on their already tenuous access to justice.

21. ISAC is a community-based organization that represents the unique perspective and experience of persons with mental health and addiction disabilities who rely on social assistance programs for subsistence. These are the groups who are impacted directly in the present Appeal. According to the record before the Superior Court, all the Appellants are or were on social assistance for at least some of the two years at issue in this proceeding.² ISAC has a significant interest in ensuring that the rights of low-income persons with disabilities are protected and that people with mental health and addiction disabilities are believed.

22. This Court has an opportunity to correct Ramsay J.'s mishandling of the Appellants' evidence and to denounce the impermissible reliance on stereotypes or judicial notice that taint the application reasons. As a specialized advocacy clinic with direct input from low-income communities across Ontario, ISAC is uniquely positioned to provide a nuanced and in-depth understanding of the needs of social assistance recipients who live with complex and varied mental health and addiction disabilities. This perspective can assist the Court in better understanding the impact of its decision.

23. ISAC has many years of experience and expertise in advocacy before various courts and administrative tribunals dealing with poverty law, *Charter*, and human rights matters where the testimony of people with mental health disabilities and addictions is central to resolving the issues. ISAC also has specialized knowledge of the ways in which the social assistance system creates barriers to finding housing for those living in encampments. As a result, ISAC has a demonstrated interest and unique perspective in the Court's decision in this Appeal.

² See, for example, Affidavit of Kristen Heegsma, dated June 7, 2022, at para. 3 [ABC, Vol. 3, at Tab 35]; Affidavit of Linsley Greaves, dated June 2, 2022, at para. 3 [ABC, Vol. 3, at Tab 32]; and Affidavit of Cassandra Jordan, dated June 3, 2022, at para. 6 [ABC, Vol. 3, at Tab 38].

F. ISAC's Proposed Submissions

24. ISAC will provide submissions that are relevant to the Appeal, useful to this Court, and different from those of the other parties.

25. If this Court grants leave to intervene, ISAC proposes to make submissions on the following two points:

(a) Relying on stereotypical reasoning to make credibility and reliability findings is an error of law that harms people with mental health and addiction disabilities; and

(b) When available evidence can refute an alleged fact, courts cannot take judicial notice of that alleged fact, especially based on stereotypical assumptions.

26. ISAC's draft factum is attached hereto as **Exhibit A**.

G. Conclusion

27. ISAC recognizes that an intervenor's role is to provide submissions that are useful and not duplicative of those of the parties. To that end, counsel for ISAC, Robin Nobleman and Adrian Merdzan, have informed me that they have conferred with counsel for the Appellants and with counsel for the other proposed interveners to ensure that ISAC's proposed submissions are not duplicative of their submissions. ISAC is also seeking leave to intervene in coalition with the Mental Health Legal Committee to avoid duplication amongst proposed interveners. ISAC will continue to work with the parties and any interveners granted leave to ensure that its submissions remain useful and distinct.

28. Further, if granted leave, ISAC will take no position on the outcome of this Appeal and will not seek to expand the existing record. ISAC will abide by the terms of any timetable of this Appeal and is prepared to file its finalized factum on any schedule that the Court of Appeal and the parties consider fair. ISAC will not delay or prejudice any of the parties.

29. ISAC has a demonstrated interest in ensuring that the needs and perspectives of the people it represents are brought forward and considered by this Court. ISAC has

developed expertise in the issues raised in this Appeal and will provide submissions that are relevant, useful, and different from the other parties.

AFFIRMED by Melinda Ferlisi at the)
 City of Toronto, in the Province of)
 Ontario, before me on this 13th day of)
 November, 2025)



MELINDA FERLISI



 Adrian Merdzan
 Commissioner for taking Affidavits

This is **Exhibit "A"** referred to in the
Affidavit of Melinda Ferlisi affirmed before me,
this 13th day of November, 2025.

A handwritten signature in dark ink, appearing to read 'A Merdzan', is written above a horizontal line.

Adrian Merdzan
Commissioner for taking Affidavits

COURT OF APPEAL FOR ONTARIO

BETWEEN:

**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

-and-

ATTORNEY GENERAL OF ONTARIO

Intervener

-and-

**INCOME SECURITY ADVOCACY CENTRE and MENTAL HEALTH LEGAL
COMMITTEE**

Moving Parties
(Proposed Intervener Coalition)

**DRAFT FACTUM OF THE PROPOSED INTERVENER COALITION,
INCOME SECURITY ADVOCACY CENTRE and the MENTAL HEALTH LEGAL
COMMITTEE**

PART I – OVERVIEW

1. Harmful stereotypes of people who carry mental health diagnoses and experience addictions abound in our society. When a court's decision is based on these myths, stereotypes, and baseless assumptions, it compromises fairness for affected litigants and undermines confidence in the justice system. Struggles with addiction and other mental health conditions are among the many challenges people may face while unhoused, so any decision affecting the rights of unhoused people must guard against reliance on stereotypes.

2. The Mental Health Legal Committee and the Income Security Advocacy Centre (the "Interveners") jointly intervene in this appeal to highlight the risks of allowing the decision below to stand. The Interveners will make the following submissions:

- A. Relying on stereotypical reasoning to make credibility and reliability findings is an error of law that harms people with mental health and addiction disabilities. Ramsay J.'s reliance on these stereotypes in his reasons could negatively affect decisions in other legal forums where the testimony of people with mental health disabilities is central to resolving the dispute.
- B. When available evidence can refute an alleged fact, courts cannot take judicial notice of that alleged fact, especially based on stereotypical assumptions. Ramsay J.'s improper use of judicial notice affected key findings and tainted his decision on the application.

PART II – FACTS

3. The Interveners do not take a position on the facts of the appeal.

PART III – ISSUES AND ANALYSIS

A. Stereotypical reasoning is an error of law that harms people with mental health and addiction disabilities

i. Relying on stereotypes of mental health and addictions to make credibility and reliability findings is an error of law

4. People struggling with mental health and addictions issues are often subjected to harmful stereotypes.³ Although they are protected from discrimination in the *Charter* and in human rights statutes under the ground of disability, stigmatization and social exclusion continue.⁴

5. Stereotypes capture “widely held ideas and beliefs that are not empirically true”.⁵ When stereotypes make their way into court judgments, they can have particularly egregious effects, both on the people directly affected and more broadly. The Supreme Court of Canada recently affirmed that “myths and stereotypes have no place in a rational and just system of law, as they jeopardize the courts’ truth-finding function. A trial is a truth-seeking process, and reliance on myths and stereotypes distorts the truth.”⁶

6. Reliance on stereotypes in the fact-finding process also undermines substantive

³ *R. v. Swain*, [1991] 1 S.C.R. 933, at 994; *Battlefords and District Co-operative Ltd. v. Gibbs*, 1996 CanLII 187 (S.C.C.), at para. 31.

⁴ *Ontario (Disability Support Program) v. Tranchemontagne*, 2010 ONCA 593, at paras. 121, 126; Ontario Human Rights Commission, “Policy on preventing discrimination based on mental health disabilities and addictions” (18 June 2014), online: <<https://www.ohrc.on.ca/en/policy-preventing-discrimination-based-mental-health-disabilities-and-addictions>>.

⁵ *R. v. Kruk*, 2024 SCC 7, at para. 37.

⁶ *Kruk*, at para. 43; *R. v. Barton*, 2019 SCC 33, at para. 202; *R. v. Pastro*, 2021 BCCA 149 at paras. 42-43.

equality because stereotypes are “**rooted in discrimination and inequality of treatment.**”⁷ This is what makes stereotypes different from generalizations about human behaviour. By avoiding reliance on stereotypes and myths in their assessment of witnesses, courts remove discriminatory barriers and level the testimonial playing field.⁸

7. Since stereotypes can affect the courts’ truth-finding function and substantive equality, assessing credibility based on stereotypical assumptions can be an error of law.⁹ This is well-established in the context of sexual assault complainants in criminal cases, where courts and Parliament have taken action to prevent stereotypes from tainting decisions.¹⁰

8. In *Kruk*, the Supreme Court specifically left the door open to expand the types of stereotypical reasoning that may constitute an error of law beyond stereotypes of sexual assault complainants:

[54] It remains open to all parties in future cases, [...] to argue that trial judges have employed stereotypes rooted in other, analogous forms of **inequality of treatment**, and therefore erred in law.

[57] [...] The concept of a stereotype is not closed and no doubt will continue to evolve in future cases: **the closer an error is to the types of myths and stereotypes pertaining to sexual assault complainants that have been recognized in the jurisprudence, the more likely it is that it will amount to an error of law.**¹¹

9. Myths about sexual assault complainants are not the only category of stereotypes

⁷ *Kruk*, at para. 49 [Emphasis added.].

⁸ *Kruk*, at para. 44. See also, Jennifer Koshan, “Myths, Stereotypes, and Substantive Equality” (29 November 2024), online: <<https://canliiconnects.org/en/commentaries/95632>>.

⁹ See, for example: *R. v. A.R.J.D.*, 2018 SCC 6, at para. 2; *R. v. A.B.A.*, 2019 ONCA 124, at para. 5; *R. v. C.L.*, 2024 SKCA 25 at paras. 19-20.

¹⁰ *Ibid.* See also: *Kruk*, at paras. 40-43; *Barton*, at para. 201.

¹¹ *Kruk*, at paras. 54, 57 [Emphasis added.].

courts have accepted as influencing triers of fact. The Supreme Court has found that the use of racial stereotypes can affect the assessment of witnesses.¹² Other courts have found it necessary in family law cases to guard against reliance on the myth that women make false allegations of intimate partner violence to gain a strategic advantage.¹³

10. Myths and stereotypes about people with disabilities, particularly mental health disabilities, are precisely the type of harmful and well-established stereotype the Supreme Court intended to target in *Kruk*.¹⁴ Stereotypes of people struggling with mental health and addiction issues are deeply rooted in inequality of treatment. As noted by the Supreme Court in *Swain*:

There is no question but that the mentally ill in our society have suffered from historical disadvantage, **have been negatively stereotyped and are generally subject to social prejudice.**

The stigma of mental illness can be very damaging [...] [it is] apparent **that an accused's credibility could be irreversibly damaged by the Crown's raising evidence of insanity.**¹⁵

More recently, in *Ontario (Attorney General) v. G.*, the Supreme Court affirmed that “[p]eople with mental illnesses face persistent stigma and prejudicial treatment in Canadian society, which has imposed profound and widespread social, political, and legal disadvantage on them.”¹⁶

11. The Supreme Court has already recognized, in the context of assessing a witness

¹² See, for example: *R. v. Williams*, [1998 CanLII 782](#) (S.C.C.); *R. v. Parks*, [1993 CanLII 3383](#) (Ont. C.A.), leave to appeal to S.C.C. ref'd [1994 CanLII 19087](#).

¹³ See *K.M.N. v. S.Z.M.*, [2024 BCCA 70](#).

¹⁴ *Kruk*, at para. 46. See, for example: *Saadati v. Moorhead*, [2017 SCC 28](#), at paras. 21-22; *Eldridge v. British Columbia (Attorney General)*, [1997 CanLII 327](#) (S.C.C.), at para. 56; *Winko v. British Columbia (Forensic Psychiatric Institute)*, [1999 CanLII 694](#) (S.C.C.), at paras. 35-39, 61; and *Tranchemontagne*, at para. 121.

¹⁵ *Swain*, at , [973-974](#), [994](#) [emphasis added].

¹⁶ *Ontario (Attorney General) v. G.*, [2020 SCC 38](#), at para. 1.

with a mental health disability, that “[o]ver-reliance on generalities can perpetuate harmful myths and stereotypes about individuals with disabilities, which is inimical to the truth-seeking process, and creates additional barriers for those seeking access to justice.”¹⁷ Pursuant to the guidance in *Kruk*, reliance on these stereotypes is an error of law attracting a standard of correctness.¹⁸

12. A particularly pernicious myth is that people that carry a mental health diagnosis cannot be believed. Courts have soundly rejected this myth about mental health. The mere fact that a person has a history of psychiatric treatment or mental health challenges, as most of the Appellants do, “cannot be taken as indicative of the potential unreliability of [their] testimony”.¹⁹ Any suggestion of unreliability must be based on cogent evidence, rather than stereotype or myth.²⁰ It is “impermissible to draw a direct line between mental illness and testimonial unreliability without evidence linking the two”.²¹

ii. Ramsay J. committed an error of law by relying on stereotypes in assessing the credibility and reliability of the Appellants

13. Ramsay J. impermissibly drew a direct line between the mental health and drug use of the Appellants and the alleged testimonial unreliability of all thirteen Appellants. He then used that inference to decide key legal issues. He set aside the one Appellant with a physical disability, Mr. Smyth, and proceeded to dismiss the evidence of all other Appellants who “have mental issues or drug problems which can affect perception and memory”.²² Ramsay J. went on, at para. 38, to state that where the Appellants gave

¹⁷ *R. v. Slatter*, [2020 SCC 36](#), at para. 2 [Emphasis added.].

¹⁸ *Kruk*, at para. 96.

¹⁹ *R. v. O'Connor*, [1995 CanLII 51](#) (S.C.C.), at para. 143.

²⁰ *Ibid.*

²¹ *R. v. To*, [2019 ONCJ 849](#), at para. 24.

²² *Heegsma v. Hamilton (City)*, [2024 ONSC 7154](#), at paras. 23-24 [“Decision”].

evidence that they were evicted as night approached, “I do not believe them”, without any explanation as to whom or why. This sweeping rejection cannot be “a finding about the witnesses based on the evidence”, as the Respondent claims.²³

14. In making these blanket findings, Ramsay J. failed to engage with evidence on the record about memory, addiction, and mental health. Courts cannot presume that a history of substance use or mental health issues compromises memory – this requires evidence.²⁴ The evidence of Ms. Heegsma’s family physician and psychiatrist, for example, was that while people are intoxicated with opioids, their executive functioning and memory may be impaired, but this impairment would not extend to periods of time when they were not intoxicated.²⁵ There was no evidence to suggest that each of the Appellants were intoxicated at the time of their evictions or while giving testimony.

15. Instead, the medical evidence was that people who use drugs or have mental health diagnoses may have similar recall to people who do not.²⁶ But Ramsay J. found the opposite. He then relied on that finding to make a credibility assessment that resulted in a ruling that the City had not carried out overnight evictions.²⁷

16. In fact, the Appellants who experienced overnight evictions were unshaken on cross-examination about their experiences of being awoken from sleep and told to leave

²³ Factum of the Respondent, at para. 66.

²⁴ See, for example: *R. v. D.B.*, [2022 SKCA 76](#), at para. [36](#); *R. v. Boucher*, [2005 SCC 72](#), at para. [34](#); *O’Connor*, at para. [143](#).

²⁵ Cross-examination Transcript of Dr. Timothy O’Shea, p. 207, Q 50-51 [ABC, Vol. 6, Tab 86] [“Dr. O’Shea XE Transcript”]; Cross-examination Transcript of Dr. Rachel Lamont, p. 110, Q 97 [ABC, Vol. 6, Tab 80].

²⁶ Dr. O’Shea XE Transcript, p. 206, Q 40 [ABC, Vol. 6, Tab 86]. See also Factum of the Appellants, paras. 75-76.

²⁷ Decision, at paras. [24](#), [38](#).

encampments while it was still dark.²⁸ Even if any single Appellant was unsure, years later, about the date of those evictions or the details surrounding them, it was inappropriate for Ramsay J. to dismiss the evidence of all Appellants wholesale on that basis. The only way to justify this blanket credibility assessment is by using stereotypes about the perception and memory of people who use drugs or have mental health conditions. This was an error of law that had consequences. Had Ramsay J. not summarily rejected this evidence, a finding that even one Appellant was evicted overnight could have supported a s. 7 breach.²⁹

iii. Accepting Ramsay J.’s approach has negative implications for people with mental health disabilities in other proceedings

17. If this Court allows Ramsay J.’s approach to stand, other adjudicators will have this Court’s permission to assess the reliability and credibility of people with mental health and addiction disabilities based on myths and stereotypes. People with mental health and addiction disabilities are often primary witnesses in proceedings that affect their rights and interests.

18. For example, appeals before the Social Benefits Tribunal (“SBT”) can determine a person’s eligibility for last-resort income support through the Ontario Disability Support Program (“ODSP”). A central question in these appeals is whether an appellant qualifies as a “person with a disability” under the relevant statute.³⁰ Proceedings at the SBT often

²⁸ Misty Marshall Affidavit (May 12, 2022), p. 107, para. 28 [ABC, Vol. 4, Tab 53]; Misty Marshall XE Transcript (August 15, 2024), pp. 121-122, Q 187-196 [ABC, Vol. 4, Tab 55]; Lindsay Greaves XE Transcript (August 15, 2024), pp. 42-43, Q 101-110 [ABC, Vol. 3, Tab 34]; Sherry Ogden XE Transcript (August 24, 2024), pp. 58-59, Q 133-167 [ABC, Vol. 5, Tab 66]; Corey Monahan XE Transcript (August 15, 2024), p. 144, Q 206 and p.153, Q411, 418 [ABC, Vol. 4, Tab 58]; and Corey Monahan Continued XE Transcript (August 30, 2024), pp.157-158, Q 466-468 [ABC, Vol. 4, Tab 59].

²⁹ *Canada (Attorney General) v. Bedford*, [2013 SCC 72](#), at para. [123](#).

³⁰ [Ontario Disability Support Program Act, 1997](#), S.O. 1997, c. 25, Sch. B, s. [4](#).

turn on the credibility and reliability of an appellant's testimony..³¹ Many appellants have mental health disabilities, including addictions or histories of drug use. Those disabilities may be the very reason why they require support from ODSP. If those with mental health and addiction disabilities were not believed solely on account of their disability, that could prevent them from succeeding in their appeals and bar them from receiving much-needed income support. This disadvantage would run contrary to this Court's recognition in *Tranchemontagne* that people with addiction disabilities are equally deserving of support from ODSP..³²

19. The Divisional Court, reviewing an SBT decision, has held that applying stereotypical reasoning to draw inferences from the testimony of a person with an addiction disability was an error of law..³³ The Consent and Capacity Board ("CCB") has similarly recognized that engaging in stereotypical reasoning when assessing the testimony of people diagnosed with a serious mental illness is impermissible..³⁴ If this Court upholds Ramsay J.'s faulty reliance on stereotypical assumptions to assess credibility and reliability, this could undermine these decisions and influence future cases.

20. The testimony of people who carry mental health or addiction diagnoses is equally central in many forums where fundamental liberty, autonomy and equality rights are at stake, including at human rights tribunals, the CCB, the Ontario Review Board ("ORB"), civil guardianship applications, and criminal trials as complainants, accused persons, and

³¹ See, for example: *1707-06168R (Re)*, [2022 ONSBT 338](#), at paras. [11-32](#); *1409-10738 (Re)*, [2015 ONSBT 4235](#), at paras. [20-25](#); *1410-12019 (Re)*, [2016 ONSBT 797](#), at paras. [15-18](#); *1309-09193R (Re)*, [2015 ONSBT 4563](#), at paras. [29-30](#), [43](#); *1308-07756 (Re)*, [2014 ONSBT 2138](#), at paras. [18-19](#), [27](#), [41](#); *1308-08179 (Re)*, [2014 ONSBT 1603](#), at para. [20](#); and *1901-00654 (Re)*, [2019 ONSBT 3099](#), at para. [13](#).

³² *Tranchemontagne*, at paras. [121](#), [125-126](#).

³³ *Sparks v. Director of the Ontario Disability Support Program*, [2023 ONSC 5570](#) (Div. Ct.), at paras. [38-40](#).

³⁴ See *EO (Re)*, [2016 CanLII 68756](#) (Ont. C.C.B.).

other types of witnesses.

21. If stereotypes are permitted to infect legal proceedings in these forums, including by laying the foundation for judicial notice, individuals struggling with mental health and/or addiction issues will face harsh and undue evidentiary burdens to disprove those stereotypes. This would create an uneven testimonial playing field.³⁵ This burden would exist even in forums, such as the CCB and ORB, where the evidentiary onus does not rest with the individual with mental health and/or addiction issues.³⁶

22. Moreover, if stereotypes can inform testimonial assessments of credibility and/or reliability, individuals experiencing mental health and/or addiction issues will be forced to make tactical decisions not required of other litigants. For example, will they need to always call evidence to corroborate their testimony? Will they need to secure funding to retain expert witnesses to provide opinion evidence on the impacts (if any) of mental health related symptoms on memory and perception? If generally considered not credible and reliable, what additional steps will they have to take, aside from their own direct testimony, to contradict admissible hearsay evidence in administrative hearings (such as those before the CCB and ORB)? How will stereotypical assumptions about their testimonial veracity and accuracy affect their decision to testify, especially in circumstances where they carry no evidentiary onus and where they are not compellable witnesses, but where it might otherwise strategically be helpful for them to testify?

23. Persons with mental health conditions and addictions often experience poverty and

³⁵ *Kruk*, at para. 44.

³⁶ *Gligorevic v. McMaster*, [2012 ONCA 115](#), at para. 60; *Starson v. Swayze*, [2003 SCC 32](#), at para. 77; *Winko*, at para. 54.

social marginalization and may face opposing parties with more extensive resources in cases where their rights are at stake (for example, the state in criminal prosecutions and social assistance appeals, forced psychiatric detention/treatment, incapacity findings, and *Charter* litigation). If this Court accepts Ramsay J.'s reliance on stereotypes, vulnerable litigants would face steep financial and practical barriers to countering stereotypes, which would undermine their access to justice, corrupt the truth-seeking function of courts and tribunals, and in turn undermine the rule of law and public confidence in the justice system. This scenario perpetuates discrimination and inequality of treatment.

B. When available evidence can refute an alleged fact, courts cannot take judicial notice of that alleged fact, especially based on stereotypical assumptions

24. Courts must be cautious about taking judicial notice because “what ‘everyone knows’ may be wrong”.³⁷ Ramsay J. appears to have taken judicial notice of several key facts that led to his finding that the Appellants did not experience overnight evictions. Where evidence on the record contradicts an alleged fact, a court cannot take judicial notice of that alleged fact, especially where that notice is based on stereotypical assumptions.

25. The threshold for judicial notice is strict. A court may properly take judicial notice of facts that are either:

- (1) so notorious or generally accepted as not to be the subject of debate among reasonable persons; or
- (2) capable of immediate and accurate demonstration by resort to readily accessible sources of indisputable accuracy.³⁸

³⁷ *R. v. Spence*, [2005 SCC 71](#), at para. [51](#).

³⁸ *R. v. Find*, [2001 SCC 32](#), at para. [48](#).

26. Matters amenable to judicial notice and those that require expert evidence are not compatible, because matters that are the proper subject of expert evidence are, by definition, neither notorious nor capable of immediate and accurate demonstration..³⁹

27. The judicial notice inquiry is context specific. A court ought to consider the particular purpose for which a fact will be used, with the need for notoriety and certainty increasing directly with the centrality of the “fact” to the disposition of the controversy..⁴⁰ A high level of certainty is required when the subject of judicial notice is central to the court’s assessment of credibility..⁴¹ In *Charter* cases such as this, courts should be “careful to keep judicial notice on a relatively short leash”..⁴²

28. Except for those circumstances where judicial notice may properly be taken, a trial judge commits an error of law, reviewable on a standard of correctness, if they make a finding of fact for which there is no supporting evidence..⁴³

i. Ramsay J. erred by improperly taking judicial notice of key facts

29. Ramsay J. improperly took judicial notice in ways that affected his findings on key issues and tainted his approach to the case. It is especially problematic for judges to take judicial notice without the benefit of submissions from the parties, as Ramsay J. did here. Doing so compromises the perception of procedural fairness by denying the parties an opportunity to respond and point to evidence that contradicts the judge’s assumptions..⁴⁴ The following are a few examples of his inappropriate use of judicial notice, which amount

³⁹ *R. v. J.M.*, [2021 ONCA 150](#), at para. [35](#); *D.B.*, at paras. [26](#), [35](#), [40](#).

⁴⁰ *Spence*, at para. [65](#); *J.M.*, at para. [33](#).

⁴¹ *J.M.*, at paras. [54-55](#).

⁴² *Spence*, at para. [64](#).

⁴³ *D.B.*, at para. [24](#).

⁴⁴ *J.M.*, at para. [37](#); *R. v. R.M.*, [2023 BCCA 455](#), at para. [122](#).

to legal errors.

30. First, Ramsay J. either relied on stereotypes, as described in paragraphs 13-16 above, or on his own personal assumptions when finding that substance use and mental health impair memory, taking implicit judicial notice of that purported effect. In doing so, he ignored the medical evidence that contradicted his assumptions.⁴⁵

31. In taking implicit judicial notice of the effect of substance use and mental health issues on memory, Ramsay J. also disregarded the fact that the incidents in question required only basic recall. Being awoken from sleep, evicted, and sleeping rough or wandering the city at night are major events a person is likely to remember, regardless of any difficulty they may have recalling exact dates or details. Even where a witness is unable to recount precise details and communicate “‘the when and the where of an event’ with precision, that deficiency should not be taken to ‘mean that they have misconceived what happened to them and who did it’”; the focus should not be on peripheral details but on the core of the story.⁴⁶ The Appellants who experienced overnight evictions were unshaken on cross-examination with respect to the fact of their evictions and their effect of preventing overnight sheltering.⁴⁷

⁴⁵ Cross-examination Transcript of Dr. Rachel Lamont, p. 110, Q 97 [ABC, Vol. 6, Tab 80]; Dr. O’Shea XE Transcript, p. 206, Q 40, and p. 207, Q 50-51 [ABC, Vol. 6, Tab 86]. See also Factum of the Appellants, paras. 75-76.

⁴⁶ *C.L.*, at para. 35; *R. v. W.(R.)*, [1992] 2 S.C.R. 122, at 133-134; *R. v. A.M.*, 2014 ONCA 769, at paras. 9-11; *R. v. Solivio*, 2022 SKCA 117, at paras. 21-26; *R. v. Okemaysim*, 2021 SKCA 33, at para. 57; and *R. v. Morin-Poitras*, 2022 ABCA 216, at paras. 3-7.

⁴⁷ Misty Marshall Affidavit (May 12, 2022), p. 107, para. 28 [ABC, Vol. 4, Tab 53]; Misty Marshall XE Transcript (August 15, 2024), pp. 121-122, Q 187-196 [ABC, Vol. 4, Tab 55]; Lindsay Greaves XE Transcript (August 15, 2024), pp. 42-43, Q 101-110 [ABC, Vol. 3, Tab 34]; Sherry Ogden XE Transcript (August 24, 2024), pp. 58-59, Q 133-167 [ABC, Vol. 5, Tab 66]; Corey Monahan XE Transcript (August 15, 2024), p. 144, Q 206, and p. 153, Q411, 418 [ABC, Vol. 4, Tab 58]; and Corey Monahan Continued XE Transcript (August 30, 2024), pp.157-158, Q 466-468 [ABC, Vol. 4, Tab 59].

32. Second, Ramsay J. took implicit judicial notice in the face of contradictory evidence in finding that having private showers and storage space for belongings in shelters was “impossible”.⁴⁸ This finding underpinned his rejection of the *Waterloo* decision, which found a s. 7 breach in the absence of sufficient accessible shelter spaces.⁴⁹ In fact, the evidence indicated that some shelters did provide storage space for belongings and offered private showers.⁵⁰ In addition, City-funded hotel rooms used as temporary shelters had private showers.⁵¹

33. Finally, Ramsay J. articulated his own stigmatizing beliefs about people who use substances, which were not supported by the record. Although these beliefs may not have been central to his disposition of the dispute between the parties, they coloured his decision and reveal his underlying stereotypical assumptions. At para. 26, Ramsay J. states:

Persons who use substances are a difficult demographic to help. **They often do not prioritize shelter.** Their addiction takes priority over compliance with shelter rules, collecting their chattels from storage, **maintaining relationships with family**, following up on meetings with potential supports and attending medical appointments. **And, of course, money they spend on drugs is money that cannot be used for rent and food.**⁵²

34. There was ample evidence that lack of accessible and affordable housing was the

⁴⁸ Decision, at para. [72](#).

⁴⁹ Decision, at para. [73](#); *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2023 ONSC 670, at paras. [101](#), [104](#).

⁵⁰ Affidavit of James Moulton, The Salvation Army, dated July 31, 2024, at paras. 13-14, 23 [ABC, Vol. 10, Tab 140]; Cross-examination Transcript of James Moulton, The Salvation Army, dated August 26, 2024, p. 257, Q 91-92 [ABC, Vol. 10, Tab 140]; Affidavit of Tessa McFadzean, Women’s Services, Good Shepherd Centres, dated July 26, 2024, at para. 12 [ABC, Vol. 10, Tab 136].

⁵¹ Affidavit of Shawn MacKeigan, Mission Services, dated October 6, 2021, at paras. 2-6 [Exhibit Book, Vol. 2, Tab 13].

⁵² Decision, at para. [26](#) [Emphasis added.].

barrier, rather than the Appellants deprioritizing shelter.⁵³ Witnesses for the Respondent confirmed that average rent for a room in a rooming house – the least expensive form of private housing available – was between \$750-\$1,200 at the relevant time. This is higher than the total monthly income a single person on Ontario Works, the basic form of social assistance, can receive.⁵⁴

35. With respect to difficulty maintaining family relationships, not only was there no evidence of strained family relationships for the reasons Ramsay J. cited, but many Appellants also managed to maintain family relationships *in spite of* their mental health and addiction disabilities. Darrin Marchand maintains relationships with his brother, niece, and nephew.⁵⁵ Corey Monahan's mother visits him on most days and provides him with emotional support.⁵⁶ Cassandra Jordan has stayed with her mother in her mother's rent-geared-to-income apartment, but was unable to stay with her for too long without putting her mother's subsidy at risk.⁵⁷ Sherri Ogden stays in a tent in her mother's backyard when she is able.⁵⁸ Mario Muscato sometimes stays with his cousin in his cousin's apartment.⁵⁹ Every month he sends money to his youngest daughter.⁶⁰

⁵³ Affidavit of Shawn MacKeigan, Mission Services, dated July 29, 2024, at para. 7 [ABC, Vol. 10, Tab 138]; Cross-examination Transcript of Shawn MacKeigan, dated August 21, 2024, p. 211, Q 70, and p. 212-213, Q 81-82, and p. 214, Q 97-99 [ABC, Vol. 10, Tab 139]. Mr. MacKeigan identified rooming house rent as ranging between approximately \$750-\$1,200 per month for a room in Hamilton in 2024. Cross-examination Transcript of James Moulton, The Salvation Army, dated August 26, 2024, p. 253, Q 27-35 [ABC, Vol. 10, Tab 141]. Mr. Moulton identifies the cost of a room in a rooming house as \$900-\$1,000 per month.

⁵⁴ [O. Reg. 134/98](#), ss. [41-42](#), under the [Ontario Works Act, 1997](#), S.O. 1997, c. 25, Sch. A.

⁵⁵ Cross examination Transcript of Darrin Marchand, pp. 8-9, Q 24-31 [ABC, Vol. 4, Tab 48].

⁵⁶ Cross examination Transcript of Corey Monahan, p. 12, Q 53-55 [ABC, Vol. 4, Tab 58].

⁵⁷ Affidavit of Cassandra Jordan, dated June 3, 2022, at para. 18 [ABC, Vol. 3, Tab 38]; Cross examination Transcript of Cassandra Jordan, p. 12, Q 43 [ABC, Vol. 3, Tab 39].

⁵⁸ Cross examination Transcript of Sherri Ogden, pp. 43-44, Q 270-274 [ABC, Vol. 5, Tab 66].

⁵⁹ Cross examination Transcript of Mario Muscato, p. 9, Q35 [ABC, Vol. 5, Tab 63].

⁶⁰ Cross examination Transcript of Mario Muscato, pp. 47-48, Q 235-238 [ABC, Vol. 5, Tab 63].

36. Ramsay J.'s statement implies that the Appellants were unhoused because they spent money on drugs that could have gone towards rent. To the contrary, most of the Appellants had **no** money to spend on rent because they were surviving on social assistance. Ontario Works and ODSP, Ontario's two social assistance programs, provide separate amounts for basic needs and shelter.⁶¹ A social assistance recipient only receives the amount for shelter if they can prove ongoing shelter costs.⁶² As the Appellants argued at first instance, people who are unhoused cannot prove shelter costs and therefore receive no money to put towards rent.⁶³ An unhoused single person on Ontario Works receives only \$343 per month, leaving little for adequate food and other necessities.⁶⁴ The evidence was clear that the high cost of housing and social assistance rules were the main barriers to securing housing, rather than extravagant spending on drugs. Ramsay J. ignored that evidence in favour of his personal views. This was an error of law.

PART IV – CONCLUSION

37. Courts must base decisions that affect the *Charter* rights of people who are unhoused on evidence. Relying on stereotypical reasoning to make credibility and reliability findings or to take improper judicial notice are errors of law. This Court ought to consider the effect of these errors not only on the Appellants, but on the justice system, on people with mental health disabilities, and on people without a place to shelter at night.

⁶¹ See, for example: Affidavit of Kristin Heegsma, dated June 7, 2022, at para. 3 [ABC, Vol. 3, Tab 35]; Affidavit of Linsley Greaves, dated June 2, 2022, at para. 3 [ABC, Vol. 3, Tab 32]; Affidavit of Cassandra Jordan, dated June 3, 2022, at para. 6 [ABC, Vol. 3, Tab 38].

⁶² [O. Reg. 134/98](#), s. [40](#).

⁶³ Applicants' Hearing Factum, dated November 25, 2024, at Schedule B, pp. 712-718 [ABC, Vol. 1, Tab 20].

⁶⁴ [O. Reg. 134/98](#), s. [42](#).

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

A handwritten signature in black ink, appearing to read "Mercedes Perez", written over a horizontal line.

**Mercedes Perez, Lisa Leinveer,
Robin Nobleman, and Adrian Merdzan**
Lawyers for the Proposed Intervener Coalition

SCHEDULE A: LIST OF AUTHORITIES**JURISPRUDENCE**

1. *Battlefords and District Co-operative Ltd. v. Gibbs*, [1996 CanLII 187](#) (S.C.C.)
2. *Canada (Attorney General) v. Bedford*, [2013 SCC 72](#)
3. *Eldridge v. British Columbia (Attorney General)*, [1997 CanLII 327](#) (S.C.C.)
4. *EO (Re)*, [2016 CanLII 68756](#) (Ont. C.C.B.)
5. *Gligorevic v. McMaster*, [2012 ONCA 115](#)
6. *Heegsma v. Hamilton (City)*, [2024 ONSC 7154](#)
7. *K.M.N. v. S.Z.M.*, [2024 BCCA 70](#)
8. *Ontario (Attorney General) v. G.*, [2020 SCC 38](#)
9. *Ontario (Disability Support Program) v. Tranchemontagne*, [2010 ONCA 593](#)
10. *R. v. A.B.A.*, [2019 ONCA 124](#)
11. *R. v. A.M.*, [2014 ONCA 769](#)
12. *R. v. A.R.J.D.*, [2018 SCC 6](#)
13. *R. v. Barton*, [2019 SCC 33](#)
14. *R. v. Boucher*, [2005 SCC 72](#)
15. *R. v. C.L.*, [2024 SKCA 25](#)
16. *R. v. D.B.*, [2022 SKCA 76](#)
17. *R. v. Find*, [2001 SCC 32](#)
18. *R. v. J.M.*, [2021 ONCA 150](#)
19. *R. v. Kruk*, [2024 SCC 7](#)
20. *R. v. Morin-Poitras*, [2022 ABCA 216](#)
21. *R. v. O'Connor*, [1995 CanLII 51](#) (S.C.C.)
22. *R. v. Okemaysim*, [2021 SKCA 33](#)

23. *R. v. Parks*, [1993 CanLII 3383](#) (Ont. C.A.), leave to appeal to S.C.C. ref'd [1994 CanLII 19087](#)
24. *R. v. Pastro*, [2021 BCCA 149](#)
25. *R. v. R.M.*, [2023 BCCA 455](#)
26. *R. v. Slatter*, [2020 SCC 36](#)
27. *R. v. Solivio*, [2022 SKCA 117](#)
28. *R. v. Spence*, [2005 SCC 71](#)
29. *R. v. Swain*, [\[1991\] 1 S.C.R. 933](#)
30. *R. v. To*, [2019 ONCJ 849](#)
31. *R. v. W.(R.)*, [\[1992\] 2 S.C.R. 122](#)
32. *R. v. Williams*, [1998 CanLII 782](#) (S.C.C.)
33. *Saadati v. Moorhead*, [2017 SCC 28](#)
34. *Sparks v. Director of the Ontario Disability Support Program*, [2023 ONSC 5570](#) (Div. Ct.)
35. *Starson v. Swayze*, [2003 SCC 32](#)
36. *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, [2023 ONSC 670](#)
37. *Winko v. British Columbia (Forensic Psychiatric Institute)*, [1999 CanLII 694](#) (S.C.C.)
38. 1308-07756 (Re), [2014 ONSBT 2138](#)
39. 1308-08179 (Re), [2014 ONSBT 1603](#)
40. 1309-09193R (Re), [2015 ONSBT 4563](#)
41. 1409-10738 (Re), [2015 ONSBT 4235](#)
42. 1410-12019 (Re), [2016 ONSBT 797](#)
43. 1707-06168R (Re), [2022 ONSBT 338](#)
44. 1901-00654 (Re), [2019 ONSBT 3099](#)

SECONDARY SOURCES

1. Jennifer Koshan, “Myths, Stereotypes, and Substantive Equality” (29 November 2024), online: <<https://canliiconnects.org/en/commentaries/95632>>.
2. Ontario Human Rights Commission, “Policy on preventing discrimination based on mental health disabilities and addictions” (18 June 2014), online: <<https://www.ohrc.on.ca/en/policy-preventing-discrimination-based-mental-health-disabilities-and-addictions>>.

SCHEDULE B: TEXT OF STATUTES, REGULATIONS, AND BY-LAWS

STATUTES

A. [Ontario Disability Support Program Act, 1997](#), S.O. 1997, c. 25, Sch. B

Person with a disability

4 (1) A person is a person with a disability for the purposes of this Part if,

- a. (a) the person has a substantial physical or mental impairment that is continuous or recurrent and expected to last one year or more;
- (b) the direct and cumulative effect of the impairment on the person's ability to attend to his or her personal care, function in the community and function in a workplace, results in a substantial restriction in one or more of these activities of daily living; and
- (c) the impairment and its likely duration and the restriction in the person's activities of daily living have been verified by a person with the prescribed qualifications. 1997, c. 25, Sched. B, s. 4 (1).

Determination

(2) A determination under this section shall be made by a person appointed by the Director. 1997, c. 25, Sched. B, s. 4 (2).

REGULATIONS

A. [O. Reg. 134/98](#) under the [Ontario Works Act, 1997](#), S.O. 1997, c. 25, Sch. A.

PART VI CALCULATION OF ASSISTANCE

GENERAL RULE

40. (1) The amount of income assistance for a benefit unit shall be calculated on a monthly basis by determining the budgetary requirements of the benefit unit in accordance with sections 41 to 44.1, reducing that amount in accordance with sections 44.2 to 47.2 and subtracting from that amount the income of the benefit unit, determined in accordance with sections 48 to 54. O. Reg. 134/98, s. 40 (1); O. Reg. 261/06, s. 6; O. Reg. 479/07, s. 2; O. Reg. 226/08, s. 2.

(2) Despite subsection (1), the budgetary requirements for a recipient in the month in which falls the recipient's effective date for eligibility, as determined by the administrator under [section 25](#) of the [Act](#),

- (a) with respect to shelter, shall be deemed to be the lesser of,

- (i) the amount the administrator has determined for one full month's shelter cost, and
 - (ii) the amount of the recipient's actual shelter costs that remain unpaid on the effective date; and
- (b) with respect to basic needs, shall be prorated based on the number of days remaining in the month beginning with the effective date. O. Reg. 377/05, s. 5.

GENERAL BUDGETARY REQUIREMENTS

41. (1) The budgetary requirements for an applicant or recipient to whom sections 43, 44 and 44.1 do not apply shall be equal to the sum of the following amounts:

1. The amount payable for basic needs determined in accordance with the following Table:

TABLE

Number of Dependants other than a Spouse	Number of Dependants 18 Years or Older	Number of Dependants 0-17 Years	Recipient Amount in dollars	Recipient and Spouse Amount in dollars
0	0	0	343	494
1	0	1	360	494
1	1	0	623	652
2	0	2	360	494
2	1	1	623	652
2	2	0	781	826
3	0	3	360	494
3	1	2	623	652
3	2	1	781	826
3	3	0	956	1,001

For each additional dependant, add \$175 if the dependant is 18 years of age or older or \$0 if the dependant is 0 to 17 years of age.

2. If the applicant or recipient resides north of the 50th parallel and is without year round road access, an amount determined in accordance with the following Table:

TABLE

Number of Dependants other than a Spouse	Recipient Amount in dollars	Recipient and Spouse Amount in dollars
0	272	403
1	430	502
2	526	602

For each additional dependant, add \$102.

3. The amount payable for the cost of shelter calculated under section 42.
4. Subject to subsection (2), for the month in which the administrator receives an application for a special diet allowance and is satisfied that a member of the benefit unit requires a special diet allowance because of a medical condition set out in

Schedule 1 to [Ontario Regulation 564/05](#) (Prescribed Policy Statements) made under the Act and for each succeeding month, up to and including the month in which the administrator requests a new application and a reassessment of the requirement for a special diet allowance, an amount that is the lesser of, for each member of the benefit unit,

- i. the sum of the amounts determined by the administrator in accordance with Schedule 1 to [Ontario Regulation 564/05](#), and
- ii. \$250.

5. A monthly amount for personal needs due to advanced age equal to \$44 with respect to each member of the benefit unit who has attained the age of 65 years.

6. For the month in which an approved health professional confirms that a member of the benefit unit is pregnant and for each succeeding month up to and including the month in which the pregnancy ends, and subsequently, if the member of the benefit unit is breast-feeding, for each succeeding month up to and including the month in which the infant is 12 months of age, a nutritional allowance equal to,

- i. \$50, if an approved health professional confirms that the person requires a non-dairy diet, or
- ii. \$40, otherwise. O. Reg. 134/98, s. 41; O. Reg. 227/98, s. 19; O. Reg. 32/00, s. 10; O. Reg. 171/04, s. 4; O. Reg. 417/04, s. 2; O. Reg. 294/05, s. 11; O. Reg. 565/05, s. 2 (1); O. Reg. 19/06, s. 1; O. Reg. 464/06, s. 2; O. Reg. 266/07, s. 2; O. Reg. 479/07, s. 3; O. Reg. 226/08, s. 3; O. Reg. 361/08, s. 2; O. Reg. 179/09, s. 1; O. Reg. 380/09, s. 2; O. Reg. 379/10, s. 2; O. Reg. 16/11, s. 2 (1); O. Reg. 301/11, s. 2; O. Reg. 347/11, s. 2; O. Reg. 205/12, s. 2; O. Reg. 200/13, s. 1; O. Reg. 221/13, s. 4; O. Reg. 48/14, s. 1; O. Reg. 164/14, s. 1; O. Reg. 177/15, s. 1; O. Reg. 228/16, s. 1; O. Reg. 282/17, s. 3; O. Reg. 402/18, s. 1.

(2) For the purposes of paragraph 4 of subsection (1), in order to establish for the administrator that a member of the benefit unit requires or, in the case of a reassessment continues to require, a special diet allowance, the member shall submit to the administrator the following:

- 1. A special diet allowance application form approved by the Director, specifying the medical condition for which the special diet allowance is being requested and completed by an approved health professional and by the member.
- 2. Additional information respecting his or her requirement for a special diet allowance because of a medical condition as requested by the administrator under subsection 36 (2).
- 3. An additional application form approved by the Director and completed by an approved health professional, other than the health professional who completed the application form under paragraph 1 or any earlier forms, as requested by the administrator. O. Reg. 16/11, s. 2 (2); O. Reg. 347/11, s. 2.

(3) REVOKED: O. Reg. 12/14, s. 2.

SHELTER

42. (1) In this section,

“shelter” means the cost for a dwelling place used as a principal residence with respect to any of the following:

1. Rent, other than amounts paid for parking and cable.
2. Principal and interest on a mortgage or loan incurred to purchase the dwelling place or to make repairs that the administrator determines are necessary in order for the property to continue to be used as a dwelling place.
3. Occupancy costs paid under an agreement to purchase the dwelling place.
4. Taxes.
5. Premiums for an insurance policy with respect to the dwelling place or its contents.
6. Reasonable and necessary payments, approved by the administrator, for the preservation, maintenance and use of the dwelling place.
7. Common expenses required to be contributed for a condominium unit or a co-operative housing unit except that portion of the common expenses allocated to the cost of energy for heat.
8. The following utilities, if they are not included in rent or common expenses:
 - i. An energy source used for household purposes other than for heat.
 - ii. Water and sewage.
 - iii. Rental of a furnace and a hot water heater.
9. Rent under a land lease.
10. The cost of energy for heat. O. Reg. 134/98, s. 42 (1); O. Reg. 227/98, s. 20 (1, 2); O. Reg. 165/99, s. 6.

(2) The following rules apply for calculating the cost of shelter:

1. Determine the actual cost payable for shelter under subsection (1).
2. Determine the maximum amount payable for shelter in accordance with the following Table:

TABLE	
Benefit Unit Size	Maximum Monthly Shelter Allowance Amount in dollars
1	390
2	642
3	697
4	756
5	815
6 or more	844

3. Subject to paragraph 4, the amount payable for shelter shall be the lesser of the amount determined under paragraph 1 and the maximum amount determined under paragraph 2.
4. If the cost of energy for heat exceeds the maximum amount payable for shelter under paragraph 2, the cost payable for shelter shall be the cost of energy for heat.
5. If an applicant or a recipient is a tenant of an authority or agency that provides low rental housing accommodation on behalf of Canada, Ontario or a municipality, shelter does not include that portion of the rent for which the applicant or recipient is liable with respect to a person living in that rental accommodation who is not a member of the benefit unit. O. Reg. 134/98, s. 42 (2); O. Reg. 227/98, s. 20 (3); O. Reg. 272/98, s. 4; O. Reg. 417/04, s. 3; O. Reg. 464/06, s. 3; O. Reg. 266/07, s. 3; O. Reg. 361/08, s. 3; O. Reg. 380/09, s. 3; O. Reg. 310/10, s. 2; O. Reg. 379/10, s. 3; O. Reg. 301/11, s. 3; O. Reg. 205/12, s. 3; O. Reg. 221/13, s. 5; O. Reg. 164/14, s. 2; O. Reg. 177/15, s. 2; O. Reg. 228/16, s. 2; O. Reg. 282/17, s. 4; O. Reg. 402/18, s. 2.

KRISTEN HEEGSMa, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO, SHAWN ARNOLD, -and-
CASSANDRA JORDAN, JULIA LAUZON, AMMY LEWIS, ASHLEY MACDONALD, COREY
MONAHAN, MISTY MARSHALL, SHERRI OGDEN, JAHMAL PIERRE, and LINSLEY GREAVES
Appellants

CITY OF
HAMILTON
Respondent

Court File No. COA-25-CV-0166

	COURT OF APPEAL FOR ONTARIO PROCEEDING COMMENCED AT HAMILTON
	AFFIDAVIT OF MELINDA FERLISI
	INCOME SECURITY ADVOCACY CENTRE 1500-55 University Avenue Toronto, Ontario M5J 2H7
	Robin Nobleman (71014P) 416-597-5820, ext. 5142 robin.nobleman@isac.cicj.ca Adrian Merdzan (828091) 416-597-5820, ext. 5152 adrian.merdzan@isac.cicj.ca Lawyers for the Moving Party, the Income Security Advocacy Centre

TAB 3

COURT OF APPEAL FOR ONTARIO

BETWEEN:

**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

-and-

ATTORNEY GENERAL OF ONTARIO

Intervener

-and-

**INCOME SECURITY ADVOCACY CENTRE and MENTAL HEALTH LEGAL
COMMITTEE**

Moving Parties
(Proposed Intervener Coalition)

AFFIDAVIT OF MARSHALL SWADRON**Affirmed November 14, 2025**

**(In support of the Motion for Leave to Intervene of the Proposed Intervener,
Mental Health Legal Committee)**

I, **MARSHALL SWADRON**, of the City of Toronto, in the Province of Ontario, **do solemnly**
AFFIRM:

1. I am a lawyer licensed to practice law in the Province of Ontario. I have served as the Chair of the Mental Health Legal Committee ("**MHLC**") since 2009 after serving as

Acting Chair from 2006 to 2009. As such, I have knowledge of the matters described in this affidavit. Where I have received information from others, I believe it to be true.

2. I am a member of the law firm Swadron Associates. Since my call to the bar in 1989, I have represented clients with mental health issues in the areas of civil, criminal, administrative, and constitutional law. I have served as *amicus curiae* in matters involving persons with mental health issues before the Superior Court of Justice and the Court of Appeal for Ontario, and have acted as counsel to the MHLC before the Supreme Court of Canada. As a lawyer representing clients with mental health and/or addiction issues for many years, and as Chair of the MHLC, I am aware of the economic, structural, disability-related, and legal barriers to accessing justice faced by clients of MHLC members. These barriers include ongoing stereotypical assumptions often relied upon to undermine our clients' testimonial credibility and/or reliability, even in the face of corroborating evidence.

3. The MHLC seeks to intervene jointly with the Income Security Advocacy Centre ("**ISAC**") in the present appeal to offer a unique and useful perspective on the harms that flow from unequal treatment and discriminatory reasoning in the assessment of testimonial credibility and/ or reliability of our combined client groups.

4. The MHLC has 28 years of experience in advocating for the rights of individuals with mental health and/or addiction challenges who are impacted by mental health and other legislation, including intervening in cases before tribunals and appellate courts, providing legislative submissions, and participating in training and education. The membership of the MHLC is comprised of legal practitioners who have special familiarity with representing this vulnerable demographic across a wide variety of proceedings in both the civil and criminal justice systems, including constitutional litigation. If granted leave to intervene, the MHLC will draw upon this expertise to offer this Court a unique perspective, informed by the firsthand day-to-day representation of our clients within legal systems.

I. MHLC's Background, Expertise and Experience Relevant to this Appeal

A. *Background of the Mental Health Legal Committee*

5. The MHLC is a coalition of lawyers and community legal workers practicing in mental health law. It was formed in February 1997 and has approximately 55 members across the Province of Ontario. The Chair of the MHLC is elected by its members. The MHLC receives no funding and operates on the volunteer contribution of services by its members. The MHLC has been involved in a wide variety of law reform, legal interventions, community development, and public education as outlined below.

6. The MHLC meets, virtually at present, to discuss legal issues pertaining to mental health law, policy, and practice. It works with advocates within both the civil and forensic psychiatric systems. Our committee provides a forum in which legal practice issues including institutional, individual, and systemic concerns can be aired, discussed and addressed, and offers peer mentorship.

7. Lawyer and community legal worker members of the MHLC are committed advocates for the rights of persons with mental health/cognitive/intellectual issues and/or addiction, and other individuals who come into contact with legal systems and structures addressing mental health, addiction, and/or mental capacity. Each member is required to sign the MHLC statement of principles. The statement of principles emphasizes liberty, autonomy, and access to justice concerns, as follows:

Consumers of mental health services have the same rights as other Ontarians. To the extent that laws restrict the rights of mental health consumers to protect them or to protect others, those restrictions should be the minimum necessary having regard to the circumstances of the individual.

The law may also be a means by which mental health consumers can secure entitlements which will help them function in a society with a reasonable quality of life. Lawyers and community legal workers can play an important role in assisting mental health consumers to secure and exercise their rights and entitlements.

8. Since its inception in 1997, the MHLC's advocacy has taken many forms. The scope of the MHLC's activities has included direct advocacy, systemic advocacy, public

education, policy work, and community development regarding the legal needs of the MHLC's core client demographic.

9. Community legal workers employed by Legal Aid clinics who also participate in the MHLC's work have daily contact in the community with persons with mental health and/or addiction issues and provide legal support, education, and assistance to these individuals.

10. Our lawyer members represent clients in all areas where mental health issues arise, including the civil, criminal, constitutional, and administrative law contexts. Often, our members assist clients in challenging restrictions on their liberty and autonomy, such as involuntary detention (civil or forensic), findings of incapacity to consent to treatment and the forced administration of psychiatric medications. MHLC lawyers represent clients in all areas where capacity and civil detention arise, most notably before the Ontario Consent and Capacity Board (CCB) and in the Superior Court of Justice. The CCB reviews civil involuntary psychiatric detention, community treatment orders, treatment and financial incapacity findings, the withdrawal of life support measures, re-integration of long-term patients into the community, and related issues.

11. Our lawyer members regularly represent unfit and Not Criminally Responsible (NCR) accused clients in Part XX.1 *Criminal Code* proceedings before the Ontario Review Board (ORB), as well as clients before the criminal courts, including Mental Health Courts. In addition, our members' practices include *Charter of Rights and Freedoms* litigation, coroners' inquests, human rights proceedings, complaints against health professionals, and civil litigation related to mental health matters (including guardianship applications).

12. MHLC members also regularly represent complainants in pre-trial evidentiary applications in sexual assault criminal prosecutions, including in third party records applications where an accused person seeks the production and admissibility of psychiatric or other therapeutic records.

13. MHLC members are active in appeal work at all levels of court. Individual members have acted as counsel, *amicus curiae*, or counsel to interveners in many leading and precedent-setting mental health law cases. Some examples include:

- *M(A) v Benes*, (1999) 46 OR (3d) 271 (CA) (a constitutional challenge to the provisions of the *Health Care Consent Act, 1996* that allow the CCB to override treatment decisions of substitute decision-makers for incapable persons);
- *R v LePage*, [1999] 2 SCR 744 (a constitutional challenge to ss 672.47 and 672.54 of the *Criminal Code* respecting NCR accused);
- *Pinet v St. Thomas Psychiatric Hospital*, 2004 SCC 21 (see para 17 below);
- *Mazzei v British Columbia (Director of Adult Forensic Psychiatric Services)*, 2006 SCC 7 (an appeal concerning the role of Review Boards in making orders and attaching conditions relating to the supervision of treatment of NCR accused, including culturally appropriate treatment for an Indigenous accused);
- *Gligorevic v McMaster*, 2012 ONCA 115 (establishing that a psychiatric patient at a hearing to review a finding of treatment incapacity has a right to effective assistance of counsel);
- *PS v Ontario*, 2014 ONCA 900 (see para 18 below);
- *Thompson v Ontario (Attorney General)*, 2016 ONCA 676 (a constitutional challenge to provisions of Ontario's *Mental Health Act* that created a statutory scheme for forced community treatment and expanded the criteria for involuntary committal in a psychiatric facility);
- *ES v Joannou*, 2017 ONCA 655 (an appeal asking whether the CCB is a court of competent jurisdiction to grant *Charter* remedies to involuntary psychiatric patients); and
- *Ontario (Attorney General) v G*, 2020 SCC 38 (a successful challenge to the constitutionality of the provincial sex offender registry, based on equality grounds).

14. MHLC lawyer members have also served as *amicus curiae* at the trial level, including in two successful encampment eviction cases: *The Regional Municipality of Waterloo v Persons Unknown and to be Ascertained*, 2023 ONSC 670 and *The Corporation of the City of Kingston v Doe*, 2023 ONSC 6662. More recently, MHLC lawyer

members were appointed *amicus curiae* in a successful interlocutory injunction application, preventing enforcement of a by-law to evict homeless residents from a Kitchener encampment pending determination of their *Charter* challenge to that by-law: *The Regional Municipality of Waterloo v Persons Unknown and to be Ascertained*, 2025 ONSC 4774.

15. MHLC lawyer members have also appeared at coroners' inquests investigating the deaths of clients with mental health and/or addiction issues. Many of the inquests investigated deaths within state institutional settings such as psychiatric facilities, long-term care homes, and prisons. Some examples include: the death of Joshua Durnford, an 18-year old who died awaiting trial at the Maplehurst Detention Centre of neuroleptic malignant syndrome (an adverse effect of antipsychotic medication) (2001); the death of Jeffrey James, a forensic patient who died while physically restrained in hospital (2005); the death of Keigo White, an inmate on the medical unit of Toronto's Don Jail who died after methadone treatment was withheld (2008); the deaths of DM and GA, young people within the meaning of the *Youth Criminal Justice Act* who took their lives while awaiting trial in youth detention centres; inquest into the death of Ashley Smith who died in Grand Valley Institution for Women (2012-2013); the death of Jeff Munro, a young man with mental health and addiction issues who was killed by another inmate while both were detained on the psychiatric unit at Toronto's Don Jail (2014); the death of Attila Csanyi, a young man with mental health and addiction issues who died of an overdose after being unlawfully evicted from a Residential Care Facility (2024); and the death of Soleiman Faqiri, a 30 year old man diagnosed with schizophrenia who died at the Central East Correctional Centre while awaiting a mental health assessment and after being assaulted and restrained by prison guards (his death was ultimately ruled a homicide) (2024).

16. The MHLC has provided countless hours of education (both on legal issues and tribunal practices) to stakeholders in the law and mental health systems, including lawyers, law students, forensic and other psychiatrists, adjudicators, Crown prosecutors, judges, police, psychiatric patients, and their family members.

B. The MHLC's Contributions as an Intervener before the Supreme Court of Canada and Other Courts

17. The MHLC has extensive experience as an intervener before appellate courts. The MHLC has been granted intervener status by the Supreme Court of Canada on eleven previous occasions (either alone or in coalition), as follows:

- *Odhavji Estate v Woodhouse*, 2003 SCC 69, in which the Court found that the family of a man who was fatally shot by police could advance a tort claim of misfeasance in public office against individual police officers, and further found that the plaintiffs were liable for costs because they were not public interest litigants;
- *Starson v Swayze*, 2003 SCC 32, in which the Court affirmed that patients with mental disorders are presumptively entitled to make their own decisions respecting psychiatric treatment, and pronounced upon the test for capacity to consent to treatment as it applies to mental health disabilities;
- *Pinet v St. Thomas Psychiatric Hospital*, 2004 SCC 21 and *Penetanguishene Mental Health Centre v Ontario (Attorney General)*, 2004 SCC 20, decisions relating to the liberty restrictions on NCR accused. The Court ruled that all terms of dispositions under Part XX.1 of the *Criminal Code* must be the least onerous and least restrictive of the accused's liberty, consistent with public safety, the mental condition of the accused, their other needs, and the objective of community reintegration;
- *R v Conway*, 2010 SCC 22, where the Court found that the ORB is a court of competent jurisdiction to grant *Charter* remedies to NCR accused, representing a major advancement of access to justice for these individuals living with mental disorders;
- *Cuthbertson v Rasouli*, 2013 SCC 53, which affirmed the jurisdiction of the CCB (as opposed to the courts) to review the refusal by a substitute decision-maker to consent to the withdrawal of life supporting treatments, also significantly facilitating access to justice in the expert, expeditious and cost-effective resolution of end-of-life treatment disputes relating to mentally incapable patients;
- *Ontario v Criminal Lawyers' Association of Ontario*, 2013 SCC 43, a decision relating to the role of *amicus curiae* in assisting the court in cases involving self-

represented accused, and the court's jurisdiction to fix the rates of compensation for *amicus*;

- *R v Conception*, 2014 SCC 60, in which the Court considered the grounds on which a hospital may justifiably refuse to receive an unfit accused for treatment once a treatment order has been made under Part XX.1 of the *Criminal Code*, an issue invoking the timely access to treatment for mentally disordered individuals awaiting treatment within the criminal justice system;
- *Ewert v Canada*, 2018 SCC 30, which considered whether the Correctional Service of Canada's use of psychological and actuarial risk assessment tools to assess psychopathy and recidivism of Indigenous prisoners violated sections 7 and 15 of the *Charter*;
- *Sherman Estate v Donovan*, 2021 SCC 25, which found that privacy and dignity concerns may justify a sealing or confidentiality order in litigation matters. The Court recognized that privacy over highly sensitive personal information, such as information related to stigmatized mental conditions, is closely linked to dignity of the affected individual.
- *British Columbia (Attorney General) v Council of Canadians with Disabilities*, 2022 SCC 27, in which the Court upheld the Court of Appeal's decision that granted public interest standing to the Council of Canadians with Disabilities to pursue the constitutional litigation challenging the constitutionality of the impugned *Mental Health Act* provisions in British Columbia.

18. The MHLC has also been granted intervener status before other courts and tribunals including:

- *Braithwaite v Ontario (Attorney General)*, 2006 HRTO 15, in which the Honourable Mr. Justice Cory (then sitting as a member of the Human Rights Tribunal of Ontario) found that the Ontario *Coroners Act* was discriminatory in that it provided for mandatory Coroner's inquests for prisoners who die in police detention or penal institutions, but only for discretionary inquests for involuntary patients detained in psychiatric facilities;

- *Ontario (Attorney General) v Ontario Human Rights Commission* (2007), 88 OR (3d) 455 (Div Ct), an appeal to Ontario's Divisional Court from the *Braithwaite* decision above;
- *PS v Ontario*, 2014 ONCA 900, a successful constitutional challenge before this Court respecting the detention and review powers of the CCB. This decision led to legislative amendments allowing long-term involuntary psychiatric patients to seek certain remedies respecting the conditions of their detention, and was hailed by academics as opening the door to a more meaningful recognition of the profound deprivations of liberty experienced by patients in civil psychiatric detention;¹
- *Ontario (Community Safety and Correctional Services) v De Lottinville*, 2015 ONSC 3085, a test case in the Ontario Superior Court that affirmed the ability of disadvantaged persons to pursue remedies at the Human Rights Tribunal of Ontario after having made complaints before disciplinary tribunals; and
- *Thurston (Re)*, 2015 ONCA 351, a decision of this Court respecting procedural fairness for NCR accused in their hearings before the ORB, specifically with respect to the ORB's duty to disclose internal policies that may affect a panel's determination of an appropriate disposition for an NCR accused.

19. A guiding principle for the MHLC's participation in interventions has been the advancement of substantive equality, autonomy, dignity, liberty, and access to justice for persons impacted by mental health legislation, other laws and legal processes, and by government or societal practices and policy. By providing its expertise as a legal advocacy organization informed by client-instructed advocacy, the MHLC has played a staunch

¹ See for instance: Isabel Grant & Peter Carver, "*PS v Ontario*: Rethinking the Role of the *Charter* in Civil Commitment" (2016) 53:3 Osgoode Hall LJ 999.

leadership role in challenging legal structures that result in inequality or injustice for individuals with mental health and/or addiction-related disabilities.

C. The MHLC's Law Reform, Education and Outreach Work

20. Aside from interventions and litigation, the MHLC has been active in a wide variety of law reform and advocacy work.

21. The MHLC has made submissions on a number of Bills before the Legislature of Ontario including: Bill 122, *An Act to amend the Mental Health Act and the Health Care Consent Act*;² Bill 116, *Creating the Foundation for Jobs and Growth Act 2010*;³ Bill 159, *An Act Respecting Personal Health Information and Related Matters*;⁴ Bill 53, *An Act to Amend the Law Society Act*,⁵ which sought to make treatment orders an aspect of the disciplinary process with respect to members of the Law Society of Ontario; Bill 68, *An Act, in memory of Brian Smith, to amend the Mental Health Act and the Health Care Consent Act, 1996*;⁶ Bill 135, *An Act to Amend the Public Hospitals Act* to regulate the use of restraints that are not part of medical treatment;⁷ Bill 140, *An Act Respecting Long-Term Care Homes*,⁸ and Bill 115, *an Act to Amend the Coroners Act*.⁹

22. Also, the MHLC has prepared written submissions to the Canadian Senate respecting Bill C-54, *An Act to Amend the Criminal Code and the National Defence Act*,¹⁰ which introduced sweeping changes to Part XX.1 of the *Criminal Code*, including the new designation of “high risk” mentally disordered accused. In 2021 the MHLC made submissions regarding the consultation on proposed exemptions under the *Police Record*

² 1st Sess, 41st Leg, Ontario, 2015.

³ 2nd Sess, 39th Leg, Ontario, 2010.

⁴ 1st Sess, 37th Leg, Ontario, 2000.

⁵ 2nd Sess, 36th Leg, Ontario, 1998.

⁶ 1st Sess, 37th Leg, Ontario, 2000.

⁷ 1st Sess, 37th Leg, Ontario, 2000.

⁸ 2nd Sess, 38th Leg, Ontario, 2007.

⁹ 1st Sess, 39th Leg, Ontario, 2009.

¹⁰ 1st Sess, 41st Parl, 2013.

Checks Reform Act, 2015 in respect of mental health contacts with the police and its impact on clients with mental health issues.

23. Further, the MHLC is considered to have amassed significant expertise in the practice issues related to mental health law. Government, community agencies, the judiciary, and administrative tribunals, among others, regularly consult with the MHLC. The MHLC provides advice on issues arising within and outside of the litigation context to ensure our clients' access to justice within the courtroom and to facilitate the necessary administrative and funding framework for accessible and competent legal supports.

24. The MHLC has made submissions and provided consultation to Legal Aid Ontario respecting its Mental Health Strategy (2014); the Law Commission of Ontario on its project respecting Legal Capacity, Decision-making and Guardianship (2015); and the statutorily-mandated government panel reviewing the effectiveness of community treatment orders in Ontario (2005 and 2012). More recently the MHLC made submissions on Legal Aid Ontario's rules and policies respecting eligibility and lawyer roster standards introduced in 2022. The MHLC has also filed submissions, on more than one occasion, respecting the Rules of Practice of both the CCB (most recently in 2025) and the ORB.

25. The MHLC has participated in Legal Aid Ontario's Mental Health Law and Policy Advisory Committee to the Legal Aid Services Board since 2011. In addition, the MHLC has assisted with judicial initiatives geared towards self-represented litigants with mental health issues because of the enormous access to justice obstacles that are often encountered by our client group. This includes the Ontario Estates Bench-Bar Liaison Committee, the CCB Bench and Bar Committee, the ORB Bench and Bar Committee, and the Alliance for Sustainable Legal Aid.

26. Members of the MHLC have sat on the Boards of Directors of community mental health agencies and Legal Aid clinics whose clients include persons with mental health and/or addiction issues. Our members also sit on various other committees that advise public and private bodies in relation to mental health law.

27. The MHLC has also undertaken a range of advocacy initiatives aimed at promoting access to justice for our clients. Prior to 1998, our clients faced a \$200.00 filing fee to initiate appeals from decisions of the CCB in the Superior Court of Justice. The MHLC successfully argued for an exemption from this fee. This change was made through an amendment to the regulation respecting fees under Ontario's *Administration of Justice Act*. In addition, in 2003 and 2020-2021, the MHLC worked closely with the CCB in ensuring that its practices and procedures promote our clients' access to justice, particularly under special emergency circumstances such as Ontario's SARS alert and the COVID-19 pandemic.

28. As well, the MHLC was invited by the late-Honourable Justice Marc Rosenberg of this Court to participate in a task force addressing the issue of unrepresented NCR and unfit accused appearing before it. Other members of the task force included representatives of this Court, the Attorney General of Ontario, the Psychiatric Patient Advocate Office and the Criminal Lawyers' Association. The result of the task force was the creation of an *Amicus Curiae* Program for representation of Mentally Disordered Accused, which commenced in 2001. Many of the original panel of *amicus curiae* are now members of the judiciary.

29. Recognizing that it is preferable for appellants from ORB dispositions to be represented by counsel rather than by *amicus curiae*, the MHLC has continued to work with the above organizations and with Legal Aid Ontario to expand coverage of counsel in such appeals. MHLC members (along with other lawyers) now act as counsel and, when necessary, as *amicus curiae* in appeals by mentally disordered accused from disposition orders of the ORB in this Court.

30. Counsel and *amicus curiae* appointed in the Court of Appeal on appeals from decisions of the CCB (via the Superior Court of Justice) are drawn from the MHLC's membership (along with other lawyers). In tandem with the MHLC's efforts to ensure representation by counsel in ORB appeals, several MHLC members have been involved since approximately 2007, both with a formal Working Group chaired by the then Chair of the CCB and with the Estates List lead administrative judge in Toronto in an effort to find

practical and reasonable solutions to the problem of unrepresented litigants on appeals to the Superior Court of Justice from the CCB.

31. From the time of its inception, MHLC members have led or presented papers at continuing legal education programs offered by the Law Society of Ontario, the Ontario Bar Association, the Canadian Bar Association, the Canadian Institute, Osgoode Professional Development, and other legal education forums respecting issues relating to mental health, psychiatric detention, and capacity laws.

D. The MHLC's Interest and Expertise in this Appeal

32. As a public interest committee of advocates in the field of mental health law, the MHLC has a unique perspective and expertise that can assist this Honourable Court in the proceedings by bringing that perspective and expertise to bear on the issues raised in this appeal. The MHLC, along with its proposed intervener coalition partner ISAC, is uniquely situated to speak to the concerns of impoverished and marginalized individuals who also struggle with mental health and/or addiction issues.

33. The MHLC has a direct and genuine interest in the issues raised in this appeal, specifically issues that concern assessments of testimonial credibility and/or reliability of its core client group. The outcome of this appeal may impact access to justice of persons with mental health and/or addiction-related disabilities who already face pervasive stigma, stereotypical assumptions about their behaviour and utterances, discrimination both within and outside the justice system, and who are disproportionately under-employed, under-housed, over-policed, marginalized, and relegated to a low socioeconomic status.

34. MHLC lawyer members have served and advocated for this client group in a variety of legal fora and regularly advise clients in relation to their legal rights in circumstances where liberty, autonomy, and equality rights are engaged. MHLC lawyer members must also advise clients, and obtain instructions, on the potential risks of choosing to give evidence (including in circumstances where they are not compellable witnesses) and must prepare clients for giving testimony in chief (whether orally or by way of affidavit) and for cross-examination.

35. The MHLC's specific interest in this appeal is focused on the very real risk of stereotypical assumptions undercutting the testimonial credibility and/or reliability of persons experiencing mental health and/or addiction challenges. The MHLC's client group already faces ongoing and often seemingly insurmountable stigma, myths, and stereotypes related to their mental health and/or addictions. This population is enormously vulnerable to stereotypical labelling. As noted by the Supreme Court of Canada (*per* Lamer C.J.) in *R v Swain*:

The mentally ill have historically been the subjects of abuse, neglect and discrimination in our society. The stigma of mental illness can be very damaging. The intervener, C.D.R.C., describes the historical treatment of the mentally ill as follows:

For centuries, persons with a mental disability have been systematically isolated, segregated from the mainstream of society, devalued, ridiculed, and excluded from participation in ordinary social and political processes.

The above description is, in my view, unfortunately accurate and appears to stem from an irrational fear of the mentally ill in our society. While I have a very high regard for the intelligence and good faith of Canadian juries, it is nonetheless apparent that an accused's credibility could be irreversibly damaged by the Crown's raising evidence of insanity.¹¹ [emphasis added]

36. Discriminatory stereotypes that continue to plague the MHLC's core client group undermine both access to justice and the truth-seeking function of courts and administrative tribunals. This client group is routinely at risk of negative testimonial credibility and/or reliability findings simply on the basis that they struggle with mental health and/or addiction-related challenges. Their individual capacity to recall and narrate their experiences is always vulnerable to being discounted through generalized stereotypes about their capacity to tell their own stories, even in the context of corroborating evidence. This problem is especially acute in legal proceedings where the adverse party is both a fact and expert witness, for example in CCB and ORB matters, and where double or even triple hearsay is easily admissible. This problem is also acute in guardianship, civil, and criminal matters where medical evidence can reveal the nature and extent of symptomatology and diagnoses. Credibility and reliability can be

¹¹ [1991] 1 SCR 933 at 973-974.

undermined if stereotypical assumptions remain unchecked, even in the absence of medical evidence that a person's symptoms or specific diagnosis may impair their memory or ability to narrate their lived experiences.

37. Safeguarding access to justice requires ensuring that stereotypical assessments of testimonial credibility and/or reliability are avoided such that the testimonial playing field remains level.¹² If such stereotypes are permitted to infect legal proceedings, including by laying the foundation for judicial notice, individuals struggling with mental health and/or addiction issues will, in effect, face the imposition of harsh, irrelevant and undue evidentiary burdens, even in circumstances, such as the CCB and ORB context, where the evidentiary onus does not rest with them. It also creates unfair structural advantages for respondents/ defendants with more extensive resources in cases where fundamental liberty, autonomy and equality rights are at stake (for example, the respondent State in criminal, psychiatric detention/ treatment incapacity findings, and *Charter* litigation).

38. If stereotype can inform testimonial assessments of credibility and/or reliability, individuals experiencing mental health and/or addiction issues will be forced to make tactical decisions not required of other litigants. For example, will they need to always call evidence to corroborate their testimony? Will they need to secure funding to retain expert witnesses to provide opinion evidence on the impacts (if any) of mental health related symptoms on memory and perception? If generally considered not credible and reliable, what additional steps will they have to take, aside from their own direct testimony, to contradict admissible hearsay evidence in administrative hearings (such as those before the CCB and ORB)? How will stereotypical assumptions about their testimonial veracity and accuracy affect their decision to testify, especially in circumstances where they carry no evidentiary onus and where they are not compellable witnesses but where it might otherwise strategically be helpful for them to testify?

39. Overall, the MHLC's core client demographic, which in addition to disability often struggles with difficult life circumstances marked by poverty and social marginalization,

¹² *R v Kruk*, 2024 SCC 7 (CanLII), [para 44](#) (per Martin J.)

would face steep uphill barriers to access, finance and present medical or other evidence to counter stereotypes, severely increasing the risk of adverse credibility and/or reliability findings, undermining their access to justice, corrupting the truth-seeking function of courts and tribunals and in turn undermining the rule of law and public confidence in the justice system. This scenario perpetuates discrimination and inequality of treatment.

II. The Proposed Intervener Coalition's Position if Granted Leave to Intervene

40. If granted leave to intervene, the MHLC and ISAC (the "Proposed Intervener Coalition") will take the positions outlined in the draft factum attached as Exhibit "A" to the Affidavit of Melinda Ferlisi. In summary, this appeal provides an opportunity to overturn the impermissible and discriminatory reliance on stereotypes or judicial notice that taint the credibility and reliability findings of Justice Ramsay. To this end, the Proposed Intervener Coalition will take the following positions:

- (a) relying on stereotypical reasoning to make credibility and reliability findings is an error of law that harms people with mental health and addiction disabilities; and
- (b) when available evidence can refute an alleged fact, courts cannot take judicial notice of that alleged fact, especially based on stereotypical assumptions.

III. Request and Terms for Proposed Intervention

41. The MHLC seeks leave to intervene as a member of the Proposed Intervener Coalition with ISAC.

42. The Proposed Intervener Coalition seeks permission to file a factum of up to 15 pages in length and to make oral submissions of 15 minutes or such other duration as this Honourable Court may deem appropriate.

43. The Proposed Intervener Coalition recognizes that an intervener's role is to provide submissions that are useful and not duplicative of those of the other parties. To further this aim, ISAC and the MHLC are intervening in coalition, have conferred with Appellants' counsel and will not duplicate the arguments already advanced by the parties. The

Proposed Intervener Coalition is also in communication with counsel for the other proposed interveners to ensure that its proposed submissions are not duplicative of other interveners' submissions. If granted leave to intervene, the Proposed Intervener Coalition will continue to work with the parties and other interveners to ensure that its submissions remain useful and distinct.

44. The Proposed Intervener Coalition does not seek to introduce evidence or expand the record.

45. The Proposed Intervener Coalition will not seek costs against any party and ask that they not be liable to any party for costs.

46. I make this affidavit in support of the Proposed Intervener Coalition's motion for leave to intervene in this appeal and for no other or improper purpose.

AFFIRMED remotely by)
Marshall Swadron at the City of Toronto)
 in the Province of Ontario before me in the)
 Town of Aurora this 14th day of November,)
 2025 in accordance with O. Reg. 431/20,)
 administering the oath remotely.)



 Commissioner for Taking Affidavits etc.)

Mercedes Perez

LSO#: 48381L



MARSHALL SWADRON

**KRISTEN HEEGSMa, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO, SHAWN ARNOLD, -and-
CASSANDRA JORDAN, JULIA LAUZON, AMMY LEWIS, ASHLEY MACDONALD, COREY
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Appellants

**CITY OF
HAMILTON**

Respondent

Court File No. COA-25-CV-0166	
	COURT OF APPEAL FOR ONTARIO
	PROCEEDING COMMENCED AT HAMILTON
	AFFIDAVIT OF MARSHALL SWADRON
	PEREZ PROCOPE LEINVEER LLP 1100-55 University Avenue Toronto, Ontario M5J 2H7 Mercedes Perez (48381L) 416-320-1914, ext. 101 mperez@pbplawyers.com Lisa Leinveer (70361C) 647-490-4197 lleinveer@pbplawyers.com Lawyers for the Moving Party, the Mental Health Legal Committee

KRISTEN HEEGSMa, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO, SHAWN ARNOLD, -and- CITY OF
CASSANDRA JORDAN, JULIA LAUZON, AMMY LEWIS, ASHLEY MACDONALD, COREY HAMILTON
MONAHAN, MISTY MARSHALL, SHERRI OGDEN, JAHMAL PIERRE, and LINSLEY GREAVES

Appellants Respondent

Court File No. COA-25-CV-0166

	COURT OF APPEAL FOR ONTARIO PROCEEDING COMMENCED AT HAMILTON
	MOTION RECORD OF THE PROPOSED INTERVENER COALITION, the INCOME SECURITY ADVOCACY CENTRE and the MENTAL HEALTH LEGAL COMMITTEE
	PEREZ PROCOPE LEINVEER LLP 1100-55 University Avenue Toronto, Ontario M5J 2H7 Mercedes Perez (48381L) Lisa Leinveer (70361C) 416-320-1914 647-490-4197 mperez@pbplawyers.com lleinveer@pbplawyers.com INCOME SECURITY ADVOCACY CENTRE 1500-55 University Avenue Toronto, Ontario M5J 2H7 Robin Nobleman (71014P) Adrian Merdzan (82809I) 416-597-5820, ext. 5142 416-597-5820, ext. 5152 robin.nobleman@isac.clcj.ca adrian.merdzan@isac.clcj.ca
	Lawyers for the Proposed Intervener