

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

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

Appellants
(Applicants)

- and -

THE CITY OF HAMILTON

Respondent
(Respondent)

- and -

WOMEN'S LEGAL EDUCATION AND ACTION FUND

Proposed Intervener

**MOTION RECORD OF THE PROPOSED INTERVENER,
WOMEN'S LEGAL EDUCATION AND ACTION FUND**

November 12, 2025

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TABLE OF CONTENTS

Tab	Description	Page No.
1	Notice of Motion dated November 12, 2025	1 – 7
2	Affidavit of Kaitlin (Kat) Owens affirmed November 11, 2025	8 – 20
3	Draft Factum of Women's Legal Education and Action Fund	21 – 39

COURT OF APPEAL FOR ONTARIO

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- and -

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**NOTICE OF MOTION OF THE PROPOSED INTERVENOR
 WOMEN'S LEGAL EDUCATION AND ACTION FUND
 (Motion for Leave to Intervene Pursuant to Rule 13.02
 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194)**

The **PROPOSED INTERVENOR**, Women's Legal Education and Action Fund, will make a motion to the Court by video conference on December 12, 2025, pursuant to the Endorsement of the Case Management Judge, Favreau J.A., dated August 5, 2025.

THE MOTION IS FOR

- (a) An order granting Women's Legal Education and Action Fund ("**LEAF**") leave to intervene as a friend of the court;
- (b) An order granting LEAF leave to file a factum of up to 10 pages, and to make oral submissions of up to 15 minutes in the appeal;
- (c) An order that no costs be awarded against LEAF, who seeks no costs of this motion or on the proposed intervention; and

- (d) Such further and other relief as the circumstances of the case may require and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE

- (a) The Appellants seek, *inter alia*, a declaration that between August 2021 and August 2023, the City of Hamilton's sheltering restrictions and evictions undertaken pursuant to By-law 01-219 were unconstitutional in that they violated ss. 7 and 15 of the *Canadian Charter of Rights and Freedoms* (the "**Charter**");
- (b) The appeal raises the issue of the disproportionate, discriminatory impact of the City of Hamilton's encampment evictions and displacement actions on some of the most vulnerable segments of Hamilton's population, including women and gender-diverse persons, in breach of s. 15 of the *Charter*;
- (c) LEAF is a national charitable organization founded in 1985 to advance the equality rights of women, girls, trans and non-binary people in Canada as guaranteed by the *Charter*;
- (d) LEAF has amassed 40 years of experience protecting and promoting the equality rights of women, trans and non-binary people, including through litigation, law reform, and public education;
- (e) LEAF has acted as an intervener in over 140 cases, including some of the most significant cases through which equality rights doctrine in Canada has been developed;

- (f) LEAF's expertise, as evidenced by its numerous interventions in cases dealing with equality rights under s. 15 of the *Charter* and the principle of substantive gender equality, is of particular relevance to this appeal;
- (g) LEAF proposes to advance additional and unique submissions at the hearing of this appeal that will be relevant to the appeal, useful to the Court, and different from those of the parties and other potential interveners;
- (h) LEAF's perspective is that of an intervener with expertise relating to the impact of laws, policies, and government action on women, girls, and trans and non-binary persons;
- (i) LEAF will assist the Court with arguments that extend beyond the immediate interests of the parties, and will seek to coordinate its efforts with the parties and other potential intervenors to avoid repetition and duplication of arguments;
- (j) LEAF will take the record as it finds it and will not seek to supplement the record;
- (k) LEAF will not seek any costs in the proposed intervention and requests that no costs be ordered against it;
- (l) Rules 13.02, 13.03(2) and 37 of the *Rules of Civil Procedure*; and
- (m) Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- (a) The affidavit of Kaitlin (Kat) Owens, affirmed November 11, 2025; and
- (b) Such further and other material as counsel may advise and this Honourable Court may permit.

November 12, 2025

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KRISTEN HEEGSMA et al.

-and-

THE CITY OF HAMILTON

Appellants (Applicants)

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AFFIDAVIT OF KAITLIN (KAT) OWENS
AFFIRMED NOVEMBER 11, 2025

I, KAITLIN (KAT) OWENS, of the City of Toronto, in the Province of Ontario,
 AFFIRM AND SAY AS FOLLOWS:

1. I am the Interim Legal Director of the Women's Legal Education and Action Fund ("LEAF") and as such have knowledge of the matters described herein, or where I have received the information from others, I believe it to be true.
2. I make this Affidavit in support of LEAF's motion for leave to intervene in *Heegsma v. Hamilton (City)* (Court File No. COA-24-CV-0058). I have reviewed the Appellants' Factum and Notice of Appeal, and the reasons for judgment of the Ontario Superior Court of Justice in *Heegsma v. Hamilton (City)*, 2024 ONSC 7154. I understand that the primary legal issues on appeal include whether the

application judge applied the correct legal tests under sections 7 and 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 (the “**Charter**”), to the City of Hamilton’s (the “**City**”) encampment restrictions and enforcement actions between approximately August 2021 and August 2023.

3. Central to the issues on appeal is the correct application of section 15 of the *Charter* in the context of whether the City’s encampment bans and enforcement actions, which targeted individuals living in encampments and tents in the City of Hamilton, disproportionately impacted the women, trans and non-binary people living in such encampments – especially those who are racialized and Indigenous – all of whom are disproportionately represented in the encampment and homeless population in Canada, and in the City of Hamilton in particular. LEAF seeks leave to intervene to offer the Court a unique and helpful perspective grounded in a substantive equality approach to section 15, by (i) explaining the importance of applying the correct legal framework for adjudicating section 15 *Charter* claims, and (ii) highlighting how existing systems of discrimination based on gender, colonialism, race, and socio-economic status intersect to shape and disproportionately impact the experiences of women, trans, and non-binary people living in encampments and experiencing homelessness.

A. Overview

4. LEAF has 40 years of experience protecting and promoting women’s equality rights, including intervening in the most significant appellate cases through which equality rights doctrine in Canada has been developed and refined. If granted leave to intervene, LEAF will draw upon this expertise to offer this Court a unique,

intersectional equality perspective, informed by feminist and rights-based approaches.

B. Background of the Women's Legal Education and Action Fund (LEAF)

5. LEAF is a national, non-profit organization founded in April 1985 to advance the equality rights of women and girls in Canada as guaranteed by the *Charter*. To this end, LEAF intervenes in litigation, including constitutional cases, and engages in law reform and public education. LEAF is the only national organization that exists to use litigation to advance the equality rights of women, girls, trans, and non-binary people.
6. LEAF's work is made possible by individual private donors, unions, corporations, government grants, and foundations. In addition, practitioners, academics, representatives of community organizations, and researchers contribute their significant expertise and time on a volunteer basis for many of LEAF's interventions. LEAF's outside litigation counsel provide their services *pro bono* or, where funding allows, at a reduced rate. With branches across the country, LEAF's membership is broad and includes women, trans, and non-binary people of all ages and backgrounds located across Canada.
7. LEAF litigates and educates to strengthen the substantive equality rights of women, girls, trans, and non-binary people, as guaranteed by the *Charter*. Substantive equality recognizes historically and socially-based differences, and challenges systemic and structural discrimination. Since 1985, LEAF has made significant gains for women in numerous important cases, advancing substantive gender equality in areas such as employment, housing, immigration, family law, pay equity, and sexual assault law.

8. LEAF has also engaged in extensive law reform initiatives to advocate for legal and policy changes to advance substantive equality. LEAF has significant expertise in identifying and addressing the legal and constitutional considerations involved in advancing such initiatives. LEAF regularly makes invited submissions to Parliamentary committees to improve legislation implicating the equality of women, girls, trans, and non-binary people.
9. Through this work, LEAF has gained national and international recognition for its expertise in advancing substantive gender equality.
10. As a result of its breadth of experience with litigation, law reform, and public education, LEAF has considerable expertise in analysing and articulating the impact of laws and policies on substantive equality for women, girls, trans, and non-binary people, including and often especially those who confront discrimination on multiple and intersecting grounds like sex, gender, Indigenous ancestry, marital or family status, race, sexual orientation, disability, and socio-economic status.

C. LEAF's Contributions as an Intervener

11. Since its inception, LEAF has made significant contributions to the development of substantive equality under the *Charter*. LEAF has intervened in over 140 cases relevant to substantive gender equality. LEAF has appeared before the Supreme Court of Canada in more than 70 different appeals, including:
 - *Canadian Newspapers Co v. Canada (Attorney General)*, [1988] 2 S.C.R. 122;
 - *Andrews v. The Law Society of British Columbia*, [1989] 1 S.C.R. 143;
 - *Tremblay v. Daigle*, [1989] 2 S.C.R. 530;
 - *R. v. Keegstra*, [1990] 3 S.C.R. 697;

- *Canada (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892;
- *Moge v. Moge*, [1992] 3 S.C.R. 813;
- *Schachter v. The Queen*, [1992] 2 S.C.R. 679;
- *R. v. Butler*, [1992] 1 S.C.R. 452;
- *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624;
- *Winnipeg Child and Family Services v. G. (D.F.)*, [1997] 3 S.C.R. 925;
- *R. v. R.D.S.*, [1997] 3 S.C.R. 484;
- *Vriend v. Alberta*, [1998] 1 S.C.R. 493;
- *Little Sisters Book & Art Emporium v. Minister of Justice*, 2000 SCC 69;
- *Blackwater v. Plint*, 2005 SCC 58;
- *Withler v. Canada (Attorney General)*, 2011 SCC 12;
- *Alberta (Aboriginal Affairs and Northern Development) v. Cunningham*, 2011 SCC 37;
- *R. v. N.S.*, 2012 SCC 72;
- *Quebec (Attorney General) v. A.*, 2013 SCC 5;
- *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11;
- *R. v. Kokopenace*, 2015 SCC 28;
- *R. v. Borowiec*, 2016 SCC 11;
- *Quebec (Attorney General) v. Alliance du personnel professionnel et technique de la santé et des services sociaux*, 2018 SCC 17;
- *Centrale des syndicats du Québec v. Québec (Attorney General)*, 2018 SCC 18;
- *Canadian Human Rights Commission v. Attorney General of Canada*, 2018 SCC 31;
- *R. v. Gagnon*, 2018 SCC 41;
- *R. v. Jarvis*, 2019 SCC 10;
- *R. v. Barton*, 2019 SCC 33;
- *Fraser v. Canada (Attorney General)*, 2020 SCC 28;

- *R. v. Slatter*, 2020 SCC 36;
 - *Colucci v. Colucci*, 2021 SCC 24;
 - *R. v. Brown*, 2022 SCC 18;
 - *R. v. Sullivan*, 2022 SCC 19;
 - *A.S. v. Her Majesty the Queen, et al*, 2022 SCC 28;
 - *R. v. Kirkpatrick*, 2022 SCC 33;
 - *R. v. Sharma*, 2022 SCC 39;
 - *Canadian Council for Refugees v. Canadian Council for Refugees v. Canada (Citizenship and Immigration)*, 2023 SCC 17;
 - *R. v. Kruk*, 2024 SCC 7;
 - *R. v. Kloubakov*, 2025 SCC 25;
 - *Ahluwalia v. Ahluwalia* (SCC Docket 41061); and
 - *Procureur général du Québec v. Kanyinda* (SCC Docket 41210).
12. Further, LEAF has appeared before appellate courts across Canada, including in numerous interventions before the Court of Appeal for Ontario in cases such as *Ferrel v. Ontario (Attorney General)* (1998), 168 D.L.R. (4th) 1 (C.A.); *R. v. N.S.*, 2010 ONCA 670; *R. v. L.B.*, 2011 ONCA 153; *Tanudjaja v. Canada (Attorney General)*, 2014 ONCA 852; *Gehl v. Canada (Attorney General)*, 2017 ONCA 319; *Christian Medical and Dental Society et al v. College of Physicians and Surgeons of Ontario*, 2019 ONCA 393; *R. v. Sullivan*, 2020 ONCA 333; *R. v. Sharma*, 2020 ONCA 478; *Ontario English Catholic Teachers Association v. Ontario (Attorney General)*, 2024 ONCA 101; and *Fair Voting B.C. v. Canada (Attorney General)*, 2025 ONCA 581.
13. Finally, LEAF recently appeared before the Ontario Superior Court of Justice, intervening in *Canadian Alliance for Sex Work Law Reform et al. v. Attorney General of Canada*, 2023 ONSC 5197, where it argued, *inter alia*, that a robust

application of substantive equality requires an intersectional analysis that focuses on how existing systems and institutions reinforce, exacerbate or perpetuate disadvantages that uniquely affect groups who face multiple intersecting barriers.

D. LEAF's Expertise in Equality Law

14. LEAF has played a key role assisting courts with interpreting and applying section 15 of the *Charter* and has contributed to the evolution of the meaning of substantive equality under section 15. LEAF intervened in the landmark case of *Andrews v. Law Society of British Columbia*, [1989] 1 SCR 143, where it successfully argued for an interpretation of section 15 that reflected principles of substantive equality rather than formal equality, thereby setting the groundwork for the subsequent interpretation of section 15(1) of the *Charter*.
15. Since *Andrews*, LEAF has remained at the forefront of equality law, providing critical assistance to courts charged with developing the law under section 15 of the *Charter*. For example, LEAF has provided the following input into the doctrine of section 15:
 - a. In *Eldridge v. Attorney General of British Columbia*, [1997] 3 SCR 624, LEAF intervened, in partnership with the DisAbled Women's Network Canada, to argue that the focus of any section 15 analysis must be on the effect the law has on the group impacted by the law, from the perspective of members of the disadvantaged group.
 - b. In *Withler v. Canada (Attorney General)*, [2011] 1 SCR 396, LEAF intervened to highlight the shortcomings of the earlier "mirror comparator" analysis. LEAF argued that a substantive equality rights analysis must go beyond the formalism of the comparator approach, and take into account

the larger context of social, economic, and political inequalities that shape the claimant's social inclusion or exclusion.

- c. In *Quebec v. A*, 2013 SCC 5, LEAF intervened to argue that a consideration of the equality rights of unmarried spouses must take into account systemic inequalities that restrict women's ability to choose the structure and tenor of their intimate relationships.
- d. In 2018, LEAF joined a coalition of women's groups to intervene in two pay equity cases, *Quebec (Attorney General) v. Alliance du personnel professionnel et technique de la santé et des services sociaux*, 2018 SCC 17, and *Centrale des syndicats du Québec v. Québec (Attorney General)*, 2018 SCC 18. The coalition successfully argued that a proper analysis of equality rights under section 15 must engage a contextual analysis that recognizes systemic barriers to equality.
- e. In *Fraser v. Canada (Attorney General)*, 2020 SCC 28, LEAF intervened to argue that section 15's purpose of promoting substantive equality can only be realized if courts ground their analysis in the claimant's perspective, including the social, political, and legal context structuring their claims.
- f. In *R v. Sharma*, 2022 SCC 39, LEAF intervened to argue that that the Court needed to take a substantive equality approach when considering whether *Criminal Code* provisions barring Indigenous people from accessing conditional sentences violated section 15. LEAF also argued that the Court should affirm the imperative of reconciliation between Indigenous and non-Indigenous Canadians in all areas.

- g. In *Procureur général du Québec v. Kanyinda*, LEAF intervened in a s. 15 adverse effects discrimination case to highlight how consideration of the circumstances and characteristics of the claimant group is necessary at both stages of the section 15(1) analysis, to fully account for the experiences of claimants with intersecting group membership.
16. Through this work, LEAF has developed a refined analysis of intersectional equality issues. It has argued approaches to equality law in contexts where sex discrimination is complicated by its intersection with other prohibited grounds of discrimination including age, race, class, Indigeneity, sexual orientation, poverty and/or disability in such cases as: *Norberg v. Wynrib*, [1992] 2 SCR 226; *Winnipeg Child and Family Services v. G(DF)*, [1997] 3 S.C.R. 925; *R v. O'Connor*, [1995] 4 SCR 411; *New Brunswick (Minister of Health and Community Services) v. G(J)*, [1999] 3 SCR 46; *Falkiner v. Ontario (Minister of Community and Social Services)*, 59 OR (3d) 481 (ONCA); *Blackwater v. Plint*, 2005 SCC 58; *Auton v. British Columbia (Attorney General)*, [2004] 3 SCR 657; *Jean v. Canada (Indian Affairs and Northern Development)*, 2009 FCA 377; *BCGSEU v. British Columbia (Public Service Employee Relations Commission)*, [1999] 3 SCR 3; *R v. DAI*, [2012] 1 SCR 149; *R v. NS*, 2012 SCC 72; *R v. Jarvis*, 2019 SCC 10; *R v. Barton*, 2019 SCC 33; and *Procureur général du Québec v. Kanyinda*.

E. LEAF's Interest in this Appeal

17. This appeal concerns the proper application of section 15 of the *Charter* in the context of municipal by-law enforcement actions that disproportionately impact some of the most vulnerable people in Canada, including women, trans and non-binary people. The decision under appeal, while briefly addressing section 15, does not undertake a proper substantive equality analysis. Moreover, it improperly

considers the section 15 claim exclusively through the lens of “homelessness” and concludes that any disadvantage experienced by the Appellants necessarily flows from homelessness rather than from the City’s encampment restrictions and/or enforcement actions.

18. While Canadian courts have previously considered the constitutionality of laws, policies, and enforcement actions affecting the homeless population, those cases were missing an in-depth section 15 analysis of the historical systems of discrimination that make homelessness and housing insecurity intersectional feminist issues. For example, in *Waterloo*, the court miscast the question as one of whether “homelessness” is an analogous ground under section 15(1) of the *Charter*.¹ In *Shantz*, the court concluded that there could be no discrimination because the impugned bylaws were facially neutral.² In *Kingston*, the court failed to address the section 15 claim entirely, reasoning that this was unnecessary in light of its findings in relation to the section 7 claim.³
19. This appeal provides an opportunity for the Court to clarify that the section 15 framework – grounded in substantive equality and attentive to intersectionality – must be fully applied in the homelessness and encampment context. Moreover, this appeal provides an opportunity to reiterate that equality claims are not secondary to other *Charter* claims, as recently confirmed by the Supreme Court of Canada in *Canadian Council for Refugees, et al v. Minister of Citizenship and Immigration, et al*, 2023 SCC 17.

¹ *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2023 ONSC 670, at paras. 125-127. See also *Abbotsford (City) v. Shantz*, 2015 BCSC 1909, at para. 231.

² *Abbotsford (City) v. Shantz*, 2015 BCSC 1909, at paras. 235-236.

³ *The Corporation of the City of Kingston v. Doe*, 2023 ONSC 6662, at para. 118.

20. LEAF is well-suited to help the Court (i) understand the importance of a full and properly structured adverse effects analysis under section 15 in a multi-*Charter* rights appeal such as this one, and (ii) navigate the complex, intersectional issues that arise in this appeal. The record shows that many of the Appellants are women, trans or non-binary; many are Indigenous or racialized; many live with disabilities and/or substance-use or mental health disorders; and several experience multiple intersecting characteristics. A section 15 analysis of the City's encampment restrictions and enforcement actions must be situated in this context – including the physical, social, cultural, and economic barriers to accessing safe and appropriate shelter and housing – and must be informed by a nuanced understanding of how and why people like the Appellants are disproportionately harmed by encampment evictions.
21. As an intervener before this Court, LEAF would provide a unique perspective and particular expertise on the public interest issues raised in this appeal because:
 - a. It has expertise in the role and application of section 15 of the *Charter*;
 - b. It has expertise in substantive equality jurisprudence and theory; and
 - c. It has expertise in assisting Canadian courts in developing an understanding of the gendered, intersectional barriers faced by women, trans and non-binary people and carrying out substantive equality analyses.
22. LEAF's expertise will assist the Court in applying section 15 of the *Charter* in a manner consistent with principles of substantive equality.

F. LEAF's Proposed Submissions

23. If granted leave to intervene, LEAF will not introduce new facts or evidence or expand the issues beyond those identified by the parties. LEAF will take no position on the outcome of this appeal.
24. If granted leave to intervene, LEAF will advance the arguments set out in the draft factum at Tab 3 of its motion record and summarized at paragraphs 17-22 of its factum on this motion.
25. In prior interventions, LEAF has consulted with parties and interveners to avoid duplication of submissions. It undertakes to make the same effort in this appeal.
26. If granted leave to intervene, LEAF is prepared to file its factum in accordance with any timetable set by this Court. LEAF will not seek costs and asks that no costs be ordered against it.
27. I make this affidavit in support of LEAF's application for leave to intervene in this appeal, for leave to file a factum not exceeding ten (10) pages in length, for leave to make oral submissions not exceeding 15 minutes at the hearing of this appeal, and for no other or improper purpose.

AFFIRMED by Kaitlin (Kat) Owens)
 at the City of Toronto, in the Province of)
 Ontario, before me in the City of Montreal in)
 the Province of Quebec, on this 11th day of)
 November, 2025 in accordance with O. Reg)
 431.20, Administering Oath or Declaration)
 Remotely)

Cee Strauss

Kaitlin Owens

Cee Strauss, LSO #72411V
 Commissioner for taking affidavits

Kaitlin (Kat) Owens

Court File No. COA-25-CV-0166

KRISTEN HEEGSMA et al.
Appellants

-and-

THE CITY OF HAMILTON
Respondent

COURT OF APPEAL FOR ONTARIO

**AFFIDAVIT OF KAITLIN (KAT) OWENS
AFFIRMED NOVEMBER 11, 2025**

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 AMMY LEWIS, ASHLEY MACDONALD, COREY MONAHAN, MISTY MARSHALL,
 SHERRI OGDEN, JAHMAL PIERRE, and LINSLEY GREAVES

Appellants
 (Applicants)

- and -

THE CITY OF HAMILTON

Respondent
 (Respondents)

- and -

WOMEN'S LEGAL EDUCATION AND ACTION FUND

Proposed Intervener

**DRAFT FACTUM OF THE PROPOSED INTERVENER,
 WOMEN'S LEGAL EDUCATION AND ACTION FUND
 (Motion for Leave to Intervene Pursuant to Rule 13.02
 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194)**

, 2025

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TABLE OF CONTENTS

	Page No.
PART I – OVERVIEW	1
PART II – SUMMARY OF FACTS	1
PART III – STATEMENT OF ISSUES, LAW & AUTHORITIES	1
A. Courts must properly adjudicate section 15 <i>Charter</i> claims	1
i. Equality claims are not secondary issues	1
ii. The causation requirement must not place an undue burden on claimants.....	3
B. Adverse impact discrimination in the encampment context.....	5
i. Substantive equality analysis requires an intersectional approach.....	5
ii. Women and gender-diverse persons are disproportionately impacted.....	7
iii. Encampment bans and evictions exacerbate disadvantage.....	9
PART IV – ORDER REQUESTED	10

PART I – OVERVIEW

1. The Women’s Legal Education and Action Fund (“**LEAF**”) intervenes in this appeal to provide the Court with assistance on the correct approach to interpreting and applying s. 15 of the *Canadian Charter of Rights and Freedoms* (the “**Charter**”) in a constitutional challenge to municipal encampment bans and enforcement actions.

2. LEAF submits that courts should fully and properly evaluate all *Charter* claims that are duly brought before them to avoid creating a hierarchy of rights and to ensure that redress for the particular and full harms associated with equality rights are not systematically dismissed, overlooked or inadequately considered.

3. A proper evaluation of s. 15 equality claims is one that imposes a fair causal connection burden on claimants and avoids turning step 1 of the s. 15(1) analysis into a preliminary merits screen. It must also give effect to principles of substantive equality by conducting an intersectional analysis of the disproportionate impact and discriminatory effect of the impugned laws and state actions. Here, an intersectional analysis reveals that encampment bans and evictions reinforce, perpetuate and exacerbate structural inequality faced by women and gender-diverse persons, resulting in discrimination on the intersecting grounds of gender, Indigeneity, race, gender identity, and disability.

PART II – SUMMARY OF FACTS

4. LEAF takes no position on the facts of this appeal.

PART III – STATEMENT OF ISSUES, LAW & AUTHORITIES

A. Courts must properly adjudicate section 15 *Charter* claims

i. Equality claims are not secondary issues

5. This Court must be forceful in showing that the *Charter* does not establish a hierarchy of rights.¹ Canadian courts, particularly first instance courts, should evaluate all *Charter* claims that are presented to them with sufficient supporting evidence.² Claims

¹ *Canadian Council for Refugees v Canada (Citizenship and Immigration)*, 2023 SCC 17 at para [180](#) [**Canadian Council**].

² See, e.g. *Canadian Council* at paras [176](#), [181](#); *Mathur v Ontario*, 2024 ONCA 762 at para [7](#) [**Mathur**].

based on s. 15 of the *Charter* are not secondary issues and should not be treated as such. Nevertheless, Canadian courts have mistakenly dismissed s. 15 claims at a higher rate when they decline to rule on all of the *Charter* rights violations alleged in one matter.³

6. Encampment jurisprudence perpetuates this error.⁴ Certain decisions have not dealt with the s. 15 claim at all.⁵ Even when courts do consider the s. 15 claim, they justify failing to fully engage with s. 15 arguments on flawed grounds by incorrectly applying s. 15 doctrine. Courts have either misconstrued the focus of the discriminatory ground at issue – asking whether “homelessness” is an analogous ground under section 15(1)⁶ – or concluded that because the impugned bylaws were facially neutral, there could be no discrimination against particular groups.⁷ In both cases, the result is significant: s. 15 equality rights are left without adequate and necessary judicial consideration.

7. The decision under appeal is no exception. The Superior Court failed to properly engage with the s. 15 claim by undertaking the analysis in a mere three paragraphs that are without reference to case law. It also made several doctrinal errors. Notably, the Court (i) incorrectly concluded that the claim is based on the Appellants’ homelessness alone, (ii) implied that the impugned bylaws could not be discriminatory because they are facially neutral, and (iii) demonstrated a complete lack of understanding of the purpose of s. 15 by using the term “illegitimate discrimination”, thereby implying that Canadian law recognizes a “legitimate” or “legal” type of discrimination that does not infringe s. 15.⁸

³ Cheryl Milne and Caitlin Salvino, *Analyzing the Treatment of Multiple Charter Claims: Judicial Restraint and the Case for Section 15*, (2023), 114 S.C.L.R. (2d) at [173 – 232](#).

⁴ See *Matsqui-Abbotsford Impact Society v Abbotsford (City)*, 2024 BCSC 1902 at para [85](#) [*Matsqui-Abbotsford*].

⁵ *The Corporation of the City of Kingston v Doe*, 2023 ONSC 6662 at para [118](#) [*Kingston*].

⁶ *The Regional Municipality of Waterloo v Persons Unknown and to be Ascertained*, 2023 ONSC 670, at paras [125 – 127](#) [*Waterloo*]; *Tanudjaja v Canada (Attorney General)*, 2013 ONSC 5410 at paras [122 – 137](#).

⁷ *Abbotsford (City) v Shantz*, 2015 BCSC 1909 at paras [235 – 236](#).

⁸ *Heegsma v Hamilton (City)*, 2024 ONSC 7154 at paras [80 – 82](#) [*Heegsma*].

8. Specifically, the Superior Court’s conclusion that the Appellants are only “disadvantaged by homelessness”⁹ assumes that it is impossible to discriminate against a homeless person in the encampment context because any harm that befalls them can only ever be caused by their housing status. A person’s *Charter* rights do not vanish because they are unhoused. By swiftly dismissing the s. 15 claim, the Court not only impermissibly relegated s. 15 claims to a lower tier of *Charter* rights but also relegated homeless persons to a lower tier of *Charter* rights holders. Plainly, this is unacceptable.

9. The ground at issue in this case is not homelessness, but rather several other enumerated grounds, including “sex”. Inequality harms based on gender raise distinct harms and must be directly addressed and appropriately classified under an equality analysis. Collapsing these concerns into the category of homelessness renders invisible the specific harms experienced by women and gender-diverse persons in the homelessness and encampment context. This is because when they are unhoused, these groups – whose situational reality is shaped by their sex – often rely on informal networks or engage in dangerous survival strategies to access shelter. This not only places them at risk of exploitation and abuse, but renders their needs invisible to mainstream supports and systems.¹⁰ In other words, to ignore their s. 15 claims would serve to further perpetuate the often invisible harm experienced by these individuals.

ii. The causation requirement must not place an undue burden on claimants

10. Courts risk perpetuating the harm experienced by equality claimants if they impose an unduly onerous evidentiary burden. In *Sharma*, the majority of the Supreme Court of Canada made causation a concept central to step 1 of the s. 15(1) analysis. It held that the claimant must prove that the impugned law (and/or state action) “creates or contributes

⁹ *Heegsma* at para [80](#).

¹⁰ *The Pan-Canadian Women’s Housing & Homelessness Survey*, at pp 5, 8, 10 [**Pan-Canadian Survey**], Ex B to Affidavit of Kaitlin Schwan dated June 13, 2022 [**Schawn**] Appeal Book and Compendium [**ABC**] Vol 9, Tab 115, pp 61, 64, 66; Schwan at paras 6 – 7, 10, ABC Vol 9, Tab 115, pp 9 – 10.

to a disproportionate impact on the basis of a protected ground”.¹¹ This approach must be reconciled with the Court’s recent jurisprudence regarding adverse impact discrimination, which recognizes that claimants need not prove that the law (or state action) itself was “responsible for creating the background social or physical barriers which made a particular rule, requirement or criterion disadvantageous for the claimant group”.¹²

11. In adverse impact discrimination claims, step 1 of the s. 15(1) test is not meant to be “a preliminary merits screen”. Rather, it is meant to simply and only exclude claims that have “nothing to do with substantive equality”.¹³ Any causal connection requirement under s. 15(1) should be interpreted as no more onerous than the “sufficient causal connection” test required under s. 7. This test is a flexible, context-sensitive standard. It insists on a real link, but it does not require that the impugned law or state action be the only or dominant cause of the harm nor does it require that it be an “active and foreseeable” or “direct” cause.¹⁴ This test aligns with recent Supreme Court of Canada s. 15 jurisprudence,¹⁵ and the majority’s recognition in *Sharma* that (i) step 1 of the s. 15(1) test was not meant to impose “scientific rigour”, and (ii) claimants need only demonstrate that the law (or state action) was a cause of the disproportionate impact.¹⁶

12. The imposition of a more rigorous causal connection test risks upending the purpose of step 1 of the s. 15(1) test by placing a nearly impossible burden on claimants, many of whom cannot support their claim with quantitative evidence precisely because

¹¹ *R v Sharma*, 2022 SCC 39 at para 42 [**Sharma**].

¹² *Fraser v Canada* (Attorney General), 2020 SCC 28 at para 71; *Sharma*, at paras 205 – 206 (Karakatsanis J.); Jonnette Watson Hamilton and Jennifer Koshan, *Sharma: The Erasure of Both Group-Based Disadvantage and Individual Impact*, 2024 CanLII Docs 3274, at p 120 [**Erasure**].

¹³ *Mathur* at para 61, citing *Quebec (Attorney General) v Alliance du personnel professionnel et technique de la santé et des services sociaux*, 2018 SCC 17 at para 26 [**Alliance**]; *Ontario (Attorney General) v G*, 2020 SCC 38 at para 41 [**Ontario AG**].

¹⁴ *Canada (Attorney General) v Bedford*, 2013 SCC 72 at paras 75 – 76.

¹⁵ See footnote 12. See also recent Ontario case law: *Mathur* at paras 59, 64 – 65; *Fair Voting BC v Canada (Attorney General)*, 2025 ONCA 581 at para 70.

¹⁶ *Sharma* at para 49.

of their marginalized status.¹⁷ In *Sharma*, the majority stated that it was “mindful of the evidentiary hurdles and the asymmetry of knowledge (relative to the state) that many claimants face”.¹⁸ This is not a theoretical problem. It is widely recognized that obtaining data about unhoused populations is notoriously difficult, especially with respect to women and gender-diverse persons.¹⁹ A proper interpretation of s. 15(1) mandates an approach akin to the sufficient causal connection test, which provides the flexibility required to take into account qualitative factors such as historical, structural and systemic inequalities when assessing causation.²⁰

B. Adverse impact discrimination in the encampment context

i. Substantive equality analysis requires an intersectional approach

13. Section 15(1) requires that claimants show that (i) a law, policy or state action creates a distinction based on a protected ground, and (ii) this perpetuates, reinforces or exacerbates disadvantage.²¹

14. In adverse impact discrimination cases, where the impugned law or state action does not explicitly target a protected group, the first stage of the s. 15 inquiry is centered on whether the law (or state action) has a disproportionate impact.²² Courts must look beyond the facially neutral aspects of government action to examine whether members of the claimant group are disproportionately disadvantaged or denied a benefit.²³

15. At the second stage of the inquiry – whether the impugned law and/or state action

¹⁷ See e.g., Margot Young, *Zombie Concepts* (2023) 114 SCLR (2d) 35 – 38 at para 25 [**Zombie Concepts**], LEAF Book of Authorities [**“LEAF BOA”**], Tab 1; Benjamin Perryman, *Proving Discrimination: Evidentiary Barriers and Section 15(1) of the Charter*, (2024) [114 SCLR \(2d\) 93-109](#), at paras 22 – 23, 29.

¹⁸ *Sharma* at para 49.

¹⁹ *The State of Women’s Housing Need & Homelessness in Canada: Key Findings* at pp 4, 7 – 11, 36, Ex C to Schawn, ABC Vol 9, Tab 115, pp 122, 125 – 129, 154 [**State of Women’s Housing**]; *Kingston* at para [127](#).

²⁰ See, e.g., *Erasure*, [p 121](#); *Zombie Concepts* at paras 23 – 27, LEAF BOA, Tab 1.

²¹ *Dickson v Vuntut Gwitchin First Nation*, 2024 SCC 10 at para [188](#) [**Dickson**]; *Sharma* at para [28](#); *Fraser* at para [50](#).

²² *Sharma* at para [29](#); *Fraser* at para [30](#).

²³ *Fraser* at paras [51 – 53](#).

reinforces, perpetuates or exacerbates disadvantage – courts must examine the impact of the harm caused in light of systemic or historical disadvantages.²⁴ Groups historically subject to unfair treatment “are already demeaned in dignity, and further differential treatment of them is more likely to have a discriminatory impact”.²⁵ It is important to recall that “a discriminatory purpose or intention is not a necessary condition of a s. 15(1) violation”: substantive equality demands attention to effect rather than merely intent.²⁶

16. The Supreme Court of Canada has been clear that a substantive equality analysis requires an intersectional approach.²⁷ Intersectionality recognizes that an individual can experience discrimination on multiple and overlapping grounds.²⁸ For example, women and gender-diverse persons who experience discrimination based on sex may also be discriminated against on the basis of their race, Indigeneity, sexual orientation, age, and/or disability. This “intersecting group membership tends to amplify discriminatory effects or can create unique discriminatory effects not visited upon any group viewed in isolation”.²⁹

17. Intersectionality also requires courts to examine how existing systems and laws have created conditions for, and have contributed to, marginalization and discrimination, by targeting certain identities and characteristics as the basis of exclusion, either directly or indirectly. In other words, courts must look at “the way things work rather than who people are”.³⁰ A critical analysis of the impact or “results” of societal systems and

²⁴ *Fraser* at para [76](#); *Sharma* at para [52](#).

²⁵ *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203 at para [70](#) [**Corbiere**]; *Gosselin v Québec (Attorney General)*, 2002 SCC 84 at paras [30](#), [32](#).

²⁶ *Ontario AG* at para [69](#); *Quebec (Attorney General) v A*, 2013 SCC 5 at paras [328-29](#) and [331 – 33](#).

²⁷ See, e.g., *Fraser* at para [116](#); *Ontario AG*, at para [47](#).

²⁸ See e.g., *Law v Canada (Minister of Employment and Immigration)*, [1999] 1 SCR 497 [**Law**] at para [94](#); *Corbiere* at paras [60 – 61](#), [72](#); *Withler v Canada (Attorney General)*, 2011 SCC 12 at para [58](#); *Bjorkquist et al. v Attorney General of Canada*, 2023 ONSC 7152, at paras [94](#), [114](#), [165](#). [**Bjorkquist**]; *Falkiner v Ontario (Minister of Community and Social Services)*, 2002 CanLII 44902 (ON CA) at paras [71-72](#), [81](#) [**Falkiner**]; Grace Ajele and Jena McGill, *Intersectionality in Law and Legal Contexts*, Women’s Legal Education and Action Fund (LEAF), Toronto, 2020 at p [4, 12, 21 – 22](#) [**LEAF Report**].

²⁹ *Ontario AG* at para [47](#). See also footnote 28.

³⁰ LEAF Report at p [23 – 24](#).

structures is particularly important, as “discrimination is frequently a product of continuing to do things the way they have always been done”.³¹

ii. Women and gender-diverse persons are disproportionately impacted

18. In this appeal, an intersectional analysis of the evidence reveals that persistent systemic inequality creates unique pathways to homelessness for women and gender-diverse persons and causes them to face unique hardships. Consequently, these groups are disproportionately impacted when municipalities actively impose encampment restrictions and evictions, thrusting them further into a cycle of violence and discrimination.

19. The Supreme Court of Canada has recognized that “women generally occupy a disadvantaged position in society in relation to men” and that there is a “historical trend of violence perpetrated by men against women”.³² Similarly, the Supreme Court has noted that the members of the transgender community “live their lives facing disadvantage, prejudice, stereotyping, and vulnerability” and are at an increased risk of violence.³³

20. As a result of these systemic inequalities, women and gender-diverse persons often occupy a lower socioeconomic position, a reality evidenced by the feminisation of poverty, a judicially-recognized “entrenched social phenomenon”,³⁴ and a disproportionate level of precarious housing.³⁵ Women and gender-diverse persons’ risk of becoming homeless is then compounded by the systemic discrimination they face in the housing market— especially that experienced by single mothers – as well as for those who have experienced physical, sexual or emotional abuse.³⁶

³¹ *Fraser* at paras [31](#), [39](#), [58](#).

³² *Weatherall v Canada (Attorney General)*, [1993] 2 SCR 872 at p [877](#). See also *R v Lavallee*, [1990] 1 SCR 852 at para [32](#).

³³ *Hansman v Neufeld*, 2023 SCC 14 at paras [86](#), [89](#) [*Hansman*].

³⁴ *Fraser* at para [112](#). See *Alliance* at para [6](#): “systemic aspect of wage discrimination”; *Pan-Canadian Survey*, at p 11, Ex B to Schawn, ABC Vol 9, Tab 115, p 67.

³⁵ *Pan-Canadian Survey*, at pp 5, 25, Ex B to Schawn, ABC Vol 9, Tab 115, pp 61, 81; *Schwan* at paras 6, 10, ABC Vol 9, Tab 115, pp 9 – 10.

³⁶ *Pan-Canadian Survey*, at pp 6 – 7, 12, 26 – 27, 32 – 36, 48 – 49, Ex B to Schawn, ABC Vol 9, Tab 115, pp 62 – 63, 68, 82 – 83, 88 – 92, 104 – 105; See also *Hansman* at

21. These gendered disadvantages are further compounded to create uniquely harmful impacts when they are experienced by persons with other intersecting social characteristics, such as Indigeneity, race, and disability.³⁷ For example, Indigenous women in urban areas – who are overrepresented in the homeless population – navigate “racist barriers deeply embedded in urban services and experiences” and are subject to astonishing rates of physical and sexual violence compared to non-Indigenous women.³⁸ Two of the Appellants, both Indigenous women, had to leave their housing to escape a serious risk of physical and sexual violence at the hands of their landlords.³⁹

22. Because women and gender-diverse persons are more likely to experience homelessness and are at a greater risk of violence than men, they are disproportionately impacted by municipal encampment bans and evictions. First, the risk of physical and sexual violence is increased for women and gender-diverse persons when they are displaced or evicted from encampments, because they may resort to dangerous survival tactics, such as staying in an abusive relationship or couch surfing,⁴⁰ which are often used in order to avoid other gender-based harms, such as the increased exposure to violence

para [86](#); *State of Women's Housing* at pp 12 – 13, 22, 33, Ex C to Schawn ABC Vol 9, Tab 115, pp 130, 140; *City of Hamilton, Point in Time Connection Results 2021* [**“PIT Results 2021”**] at p 22, Ex D to Affidavit of Medora Uppal dated July 17, 2023 [**“Uppal”**] ABC Vol 7, Exhibit 87, p 63; “Invisible: Single Women’s Experiences of Chronic Homelessness in Hamilton”, Ex F Uppal, ABC Vol 7, Tab 87, p 79 [**“Invisible”**].

³⁷ *Pan-Canadian Survey* at p 12, Ex B to Schawn, ABC Vol 9, Tab 115, p 68; *State of Women's Housing* at p 13, Ex C to Schawn ABC Vol 9, Tab 115, p 131; Canada, [“Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls”](#) (2019) at p 77 – 78, 520 [**“MMIWG Report”**].

³⁸ *Heegsma* at para [40](#); *Bjorkquist* at paras [88 – 114](#); *State of Women's Housing* at p 29, 31, 33, Ex C to Schawn ABC Vol 9, Tab 115, p 147, 149, 151; MMIWG Report at p [54-57, 503, 508-509, 578, 580, 612](#); *Dickson* at para 201. See also *Sharma* at para [122](#) (Karakatsanis J.).

³⁹ Affidavit of Ammy Lewis, dated June 2022 at paras 6 – 8, ABC Vol 4, Tab 43, p 8; Affidavit of Ashley Macdonald dated June 13, 2022 at para 21, ABC Vol 4 Tab 46, p 32.

⁴⁰ *Heegsma* at para [34](#); Affidavit of Kate Hayman dated February 28, 2023 at para 10, ABC Vol 8, Tab 100, p 558 [**“Hayman”**]; *Invisible*, Ex F to Uppal, ABC Vol 7, Ex 87, p 80; Schwan Affidavit at paras 7, 10, Vol 9, Tab 115, p 9-11; Affidavit of Stephen Gaetz dated June 14, 2022 at para 18, ABC Vol 8, Ex 97, pp 15-16 [**“Gaetz”**]; *Pan-Canadian Survey* at p 12. Ex B to Schwan, ABC Vol 9, Tab 115, p 68; *State of Women's Housing* at p 7, Ex C to Schawn ABC Vol 9, Tab 115, p. 125.

on the streets, including the risk of becoming victims of sex trafficking.⁴¹

23. Second, women and gender-diverse persons have far fewer sheltering options available to them because of a system that has historically tended to and favoured men.⁴² This results in part from the fact that the homelessness of women and gender-diverse persons is often invisible – precisely because they may engage in gendered survival tactics instead of relying on mainstream services – a status which has been described as being “structurally created and maintained”.⁴³ The insufficient sheltering options available to women and gender-diverse persons are then further reduced for those who are racialized, Indigenous, or suffer from one or multiple disabilities.⁴⁴ This arbitrary lack of shelter spaces results in women and gender-diverse persons being disproportionately exposed to the serious health risks of having to sleep unsheltered, including death.⁴⁵

iii. Encampment bans and evictions perpetuate and exacerbate disadvantage

24. The Superior Court explicitly notes that there are fewer shelter spaces for women.⁴⁶ This dire lack of suitable space reinforces and perpetuates the disadvantaged position of women and gender-diverse persons and then perpetuates and exacerbates the gendered harm they suffer by increasing their risk of physical and sexual violence, as they

⁴¹ *Pan-Canadian Survey* at p 12, Ex B to Schawn, ABC Vol 9, Tab 115, p 68; *State of Women's Housing* at p 22, 25, 36, Ex C to Schawn ABC Vol 9, Tab 115, pp 142, 145, 156; Uppal at paras 24-29, ABC Vol 7, Ex 87, pp 10-12; Schwan at para 21, Vol 9, Tab 115, p 16; Gaetz at para 30(1), ABC Vol 8, Ex 97, p 24; Hayman at para 7(b), 10, ABC Vol 8, Ex 100, pp 555-556, 558. See also *Heegsma* at para [53](#)

⁴² See *Waterloo* at paras [68-71](#); *Pan-Canadian Survey* at p 14 – 15, 41 – 43, Ex B to Schawn, ABC Vol 9, Tab 115, pp 70 – 71, 97 – 99; *State of Women's Housing* at pp 4, 15, Ex B to Schawn, ABC Vol 9, Tab 115; Uppal at para 9, 44, ABC Vol 7, Ex 87, p 8, 13 – 14; Schwan at para 11, ABC Vol 9, Tab 115, p 1.

⁴³; See footnote 40.

⁴⁴ *Pan-Canadian Survey* at p 41 – 44, 50 – 53, Ex B to Schawn, ABC Vol 9, Tab 115, pp, 97 – 100, 106 – 109; *State of Women's Housing* at p 27, Ex B to Schawn, ABC Vol 9, Tab 115, p 147; Schwan at paras 19, 20, 25, ABC Vol 9, Tab 115, pp 14 – 15, 17.

⁴⁵ *Kingston* at paras [73 - 78](#); Hayman at para 10, ABC Vol 8, Tab 100, p 558; Affidavit of Stephen Hwang dated February 27, 2023 at paras 5-8, ABC Vol 8, Tab 103, pp 681-683.

⁴⁶ *Heegsma* at paras [40-41](#). See also Uppal at paras 9, 15, ABC Vol 7, Ex 87, p 8; See also Affidavit of Jahmal Pierre, dated June 4, 2022, ABC Vol 5, Tab 67 at para 17, a Transgender woman who notes she will change her appearance to “pass” as a man to stay in a men’s shelter when women’s shelters are full.

are forced to sleep unsheltered or engage in gendered survival tactics.⁴⁷ There is ample evidence on the record of women and gender-diverse persons experiencing serious physical and sexual violence after being displaced or evicted from an encampment.⁴⁸ These gender-specific harms are further compounded for those persons with intersecting characteristics, such as many Appellants in this case. For example, courts have found that Indigenous persons and those living with disabilities are disproportionately affected by encampment evictions, which “exacerbate[] existing inequalities”.⁴⁹

25. The discriminatory treatment experienced by women and gender-diverse persons because of encampment bans and evictions is not simply quantitative, in that there are objectively far fewer shelter spaces available to them as compared to those offered to men. The gendered harm experienced by women and gender-diverse persons is *qualitatively* different, because homelessness “is uniquely dangerous” for them.⁵⁰ When these groups are displaced or evicted from encampments and have no place to go, they can become “trapped in traumatizing situations of homelessness and violence”.⁵¹ The severity of this discriminatory impact cannot be overstated.

PART IV – ORDER REQUESTED

26. LEAF takes no position on the outcome of this appeal. LEAF does not seek costs and asks that no costs be ordered against it.

⁴⁷ See footnote 41. See also *Heegsma* at para [34](#).

⁴⁸ See footnote 41. See also *Heegsma* at paras [11 – 12](#), [22 – 23](#), [32](#), [34](#), [36](#); Affidavit of Misty Marshall, dated May 12, 2022, ABC Vol 4, Tab 52 at paras 11, 26; Affidavit of Sherri Ogden, dated June 2, 2022, ABC Vol 5, Tab 64 at para 12; Affidavit of Cassandra Jordan, dated June 3, 2022, ABC Vol 3, Tab 38 at para 21; Affidavit of Julia Lauzon, dated June 2022, ABC Vol 4, Tab 40 at para 13; Affidavit of Ashley Macdonald, dated June 13, 2022, ABC Vol 4, Tab 46 at paras 11, 27.

⁴⁹ *Matsqui-Abbotsford* at paras [140](#), [198](#); *Waterloo* at paras [93](#), [94](#), [101](#), [110](#) and [126](#).

⁵⁰ *State of Women’s Housing* at p 22, Ex 3 to Schawn Affidavit ABC Vol 9, Tab 115.

⁵¹ *State of Women’s Housing* at p 5, Ex 3 to Schawn Affidavit ABC Vol 9, Tab 115.

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

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SCHEDULE “A”**Jurisprudence**

1. *Abbotsford (City) v Shantz*, [2015 BCSC 1909](#)
2. *Bjorkquist et al. v Attorney General of Canada*, [2023 ONSC 7152](#)
3. *Canada (Attorney General) v Bedford*, [2013 SCC 72](#)
4. *Canadian Council for Refugees v Canada (Citizenship and Immigration)*, [2023 SCC 17](#)
5. *Canadian National Railway Co. v Canada (Canadian Human Rights Commission)*, [\[1987\] 1 SCR 1114](#)
6. *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [\[1999\] 2 SCR 203](#)
7. *Dickson v Vuntut Gwitchin First Nation*, [2024 SCC 10](#)
8. *Fair Voting BC v Canada (Attorney General)*, [2025 ONCA 581](#)
9. *Falkiner v Ontario (Minister of Community and Social Services)*, [2002 CanLII 44902 \(ONCA\)](#)
10. *Fraser v Canada (Attorney General)*, [2020 SCC 28](#)
11. *Gosselin v Québec (Attorney General)*, [2002 SCC 84](#)
12. *Hansman v Neufeld*, [2023 SCC 14](#)
13. *Heegsma v Hamilton (City)*, [2024 ONSC 7154](#)
14. *Law v Canada (Minister of Employment and Immigration)*, [\[1999\] 1 SCR 497](#)
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16. *Matsqui-Abbotsford Impact Society v Abbotsford (City)*, [2024 BCSC 1902](#)
17. *Ontario (Attorney General) v G*, [2020 SCC 38](#)
18. *Quebec (Attorney General) v A*, [2013 SCC 5](#)
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20. *R v Lavallee*, [\[1990\] 1 SCR 852](#)
21. *R v Sharma*, [2022 SCC 39](#)
22. *Tanudjaja v Canada (Attorney General)*, [2013 ONSC 5410](#)

23. *The Corporation of the City of Kingston v Doe*, [2023 ONSC 6662](#)
24. *The Regional Municipality of Waterloo v Persons Unknown and to be Ascertained*, [2023 ONSC 670](#)
25. *Weatherall v Canada (Attorney General)*, [\[1993\] 2 SCR 872](#)

Secondary Sources

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2. Canada, “[Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls](#)” (2019)
3. Cheryl Milne and Caitlin Salvino, *Analyzing the Treatment of Multiple Charter Claims: Judicial Restraint and the Case for Section 15*, [\(2023\), 114 S.C.L.R. \(2d\)](#)
4. Jonnette Watson Hamilton and Jennifer Koshan, *Sharma: The Erasure of Both Group-Based Disadvantage and Individual Impact*, [2024 CanLII Docs 3274](#)
5. Margot Young, *Zombie Concepts* (2023) 114 SCLR (2d) 35 – 38
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SCHEDULE “B”**TEXT OF RELEVANT LEGISLATIVE PROVISIONS**

Canadian Charter of Rights and Freedoms, The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11

Life, liberty and security of person

7 Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Equality before and under law and equal protection and benefit of law

15 (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Affirmative action programs

15 (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Court File No. COA-25-CV-0166

KRISTEN HEEGSMA et al.
Appellants

-and- THE CITY OF HAMILTON
Respondent

COURT OF APPEAL FOR ONTARIO

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COURT OF APPEAL FOR ONTARIO

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