

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

**FACTUM OF THE PROPOSED INTERVENER
ONTARIO HUMAN RIGHTS COMMISSION
ON MOTION FOR LEAVE TO INTERVENE**

**ONTARIO HUMAN RIGHTS
COMMISSION**

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PART I - OVERVIEW

1. This appeal is being heard at a time when municipalities are grappling with how to address the growing reality of encampments and unsheltered homelessness in a constitutionally compliant manner. It will address, for the first time at the appellate level in Ontario, matters of significant public importance and novel equality rights issues that have, to date, been evasive of proper review. The outcome will impact the rights of many homeless and highly marginalized Ontarians and define the *Charter*¹ obligations of municipalities across the province.
2. Within this context, the Ontario Human Rights Commission (OHRC) seeks leave to intervene in this appeal, including leave to file a factum and to make oral submissions.
3. Leave to intervene should be granted because the OHRC is an expert human rights body with a significant interest in the outcome of this appeal. The OHRC has a statutory mandate to promote the rights of all Ontarians, advance the interpretation of equality under the law and respond to emerging human rights issues in the province. The OHRC will be able to provide unique contributions to the issues in the appeal. Its perspective and arguments will assist this Honourable Court address a complex substantive equality claim which is recognized as a notoriously difficult area of the law.
4. The OHRC's intervention will not unduly delay or prejudice the main parties to the appeal. The OHRC will avoid duplicating the submissions of any parties or interveners.

PART II – FACTS

5. The OHRC is a statutory human rights body established under the Ontario *Human Rights Code* (*Code*) with a broad mandate to promote and advance human rights and prevent discrimination in Ontario.²

¹ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].

² *Human Rights Code*, RSO 1990, c H19, s [29](#) [*Code*].

6. The OHRC discharges its statutory obligations by developing policies, initiating reviews and public inquiries, and engaging in strategic litigation.³

7. The Superior Court of Justice, this Honourable Court and the Supreme Court of Canada have repeatedly granted the OHRC leave to intervene in matters involving *Code* and *Charter* rights.⁴ This includes discrimination claims related to poverty and homelessness and the rights of women, Indigenous and racialized persons and persons with disabilities. The OHRC has also been granted leave to intervene to make arguments about the relationship between equality and rights and freedoms under sections 2 and 7 of the *Charter*.⁵

8. This appeal is about the rights of the poorest and most marginalized Ontarians who are members of groups protected under the *Code*. It engages the values of human dignity and equality, matters squarely within the expertise of the OHRC. The appeal raises important legal issues including the proper approach to applying the section 15 test and substantive equality principles in a complex *Charter* claim where homelessness intersects with gender, disability and race/Indigeneity.

9. For decades, the OHRC has identified poverty, housing, mental health and addictions and Indigenous reconciliation as pressing human rights issues in Ontario. Health and well-being, including access to housing, is a priority area in the OHRC's current 2023-2025 Strategic Plan *Human Rights First: A plan for belonging in Ontario*.⁶

10. In managing municipal parks and enforcing by-laws, municipalities are providing a service to the public. This public includes persons who live in encampments.⁷ The *Code* prohibits discrimination in services. Therefore, the issue of homeless encampments falls squarely within

³ *Ibid*, ss [29–31](#), [37](#); Motion Record of the Ontario Human Rights Commission, Affidavit of Patricia DeGuire, affirmed November 4, 2025 at para 4 [**DeGuire Affidavit**].

⁴ DeGuire Affidavit, *ibid* at paras 7-16.

⁵ *Ibid*.

⁶ *Ibid* at para 23.

⁷ *The Corporation of the City of Kingston v Doe*, [2023 ONSC 6662](#) at para [139](#) [**Kingston**].

the OHRC's public interest mandate. Due to the overlap between discrimination under the *Code* and *Charter*, the OHRC has an interest in the equality analysis under section 15.

11. The OHRC has developed a Human Rights-Based Approach framework to help municipal governments apply a human rights approach to support municipal by-laws, policy, program and service system planning and implementation in a way that mitigates discrimination and disproportionate adverse impacts on marginalized Ontarians. The OHRC has also approved various policies and guides on human rights and housing which address municipalities' responsibility to ensure that their actions do not create or exacerbate disadvantage based on one or more prohibited grounds.⁸

12. The OHRC has engaged in advocacy concerning the clearing of encampments. As Ontario's statutory body responsible for examining laws and making recommendations on any laws that are inconsistent with the intent of the *Code*,⁹ the OHRC has been monitoring Ontario municipalities' response to the crisis of unsheltered homelessness. The OHRC has publicly called on municipalities to adopt a human rights-based approach to encampments.¹⁰

13. The interpretation of equality rights generally and in relation to encampments is a matter of significant concern for the OHRC. This Honourable Court's decision will have broad implications for the OHRC's work, including its current efforts to engage with municipalities to promote a human rights-based approach to addressing homelessness and encampments.

PART III – ARGUMENT

14. Rule 13.02 of the *Rules of Civil Procedure* permits an organization to seek leave to intervene as a friend of the court “for the purpose of rendering assistance to the court by way of argument.”¹¹

⁸ DeGuire Affidavit, *supra* note 3 at paras 18, 24.

⁹ *Code*, *supra* note 2, s [29\(d\)](#).

¹⁰ DeGuire Affidavit, *supra* note 3 at para 24.

¹¹ *Rules of Civil Procedure*, RRO 1990, Reg 194, r [13.02](#).

15. In determining such motions, the court will generally consider “the nature of the case, the issues which arise and the likelihood of the applicant being able to make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties.”¹²

16. As *Charter* cases may have a wide impact on the rights of non-parties, courts have recognized the importance of hearing from a broader number of groups. The test for granting leave to intervene is more relaxed and flexible¹³ and there is greater scope for intervention.¹⁴

17. Courts will grant leave to intervene where the moving party meets *at least one* of the following criteria:

- i. The intervener has a real, substantial and identifiable interest in the subject matter of the proceedings;
- ii. The intervener is a well-recognized group with a special expertise and with a broad identifiable membership base; or
- iii. The intervener has an important perspective distinct from the immediate parties.¹⁵

18. The OHRC’s intervention in this proceeding meets *all three* criteria.

i. The OHRC has a real, substantial and identifiable interest in the subject matter of this proceeding

19. As set out above, the OHRC has a history of advocating for the protection of the equality rights of people who experience poverty, homelessness and discrimination based on sex, race/Indigeneity and disability.¹⁶

20. This appeal raises issues of considerable public importance and directly engages the OHRC’s public interest human rights mandate. This Honourable Court’s decision will have a

¹² *Peel (Regional Municipality) v Great Atlantic & Pacific Co. of Canada Ltd* (1990), [1990 CanLII 6886 \(ON CA\)](#), 74 O.R. (2d) 164, at p [167](#) [*Peel*]; *Reference re Greenhouse Gas Pollution Pricing Act*, [2019 ONCA 29](#) at para [8](#); and *Caruso v Law Society of Ontario*, [2025 ONCA 270](#) at para [6](#).

¹³ *Peel* *ibid*; *Animal Justice v Ontario (Attorney General)*, [2024 ONCA 941](#) at para [12](#); *Christian Heritage Party of Canada v Hamilton (City)*, [2025 ONCA 700](#) at para [8](#).

¹⁴ *R v Robert*, [2016 ONCJ 697](#) at para [55](#).

¹⁵ *Ontario (AG) v Dieleman* (1993), [16 OR \(3d\) 32](#) (Gen Div); followed in *Bedford v Canada (AG)*, [2009 ONCA 669](#). See also *Halpern v Toronto (City of)* (2000), [2000 CanLII 29029 \(ON SCDC\)](#), 51 OR (3d) 742.

¹⁶ DeGuire Affidavit, *supra* note 3 at para 22.

significant impact on the OHRC's work advancing the rights of marginalized people. It could affect future adjudication of discrimination claims in Ontario and the OHRC's efforts to promote a human-rights based approach to the issue of encampments.¹⁷

ii. The OHRC is a well-recognized body with special expertise

21. The OHRC has been given a statutory mandate under the quasi-constitutional *Code* to protect and promote human rights in the province. One of the ways the OHRC does this is through strategic litigation and intervention in cases that have the potential to shape discrimination law, will have broad systemic impact, relate to emerging discrimination issues or raise matters of significant public importance.

22. The OHRC has been at the forefront of the development of rights jurisprudence in Canada. Tribunals and all levels of court, including this Honourable Court and the Supreme Court of Canada, have recognized the OHRC's special role and expertise by granting it leave to intervene in *Code* and *Charter* cases.¹⁸

23. Recognizing that the OHRC is an authoritative voice on human rights, tribunals and courts, including the Supreme Court of Canada, have also cited the OHRC's research, policy work and reports in their decisions.

iii. The OHRC has an important perspective, distinct from the immediate parties

24. Courts have acknowledged that a well-recognized body with special expertise and a broadly identifiable membership base may be better able to provide a useful and distinct contribution.¹⁹ A history of involvement in the specific issue also makes it easier to satisfy this

¹⁷ *Ibid* at para 25.

¹⁸ *Ibid* at paras 6-16, 19-21.

¹⁹ *Elementary Teachers' Federation et al v Her Majesty*, [2018 ONSC 6318](#) at para 11.

criterion.²⁰ Intervention is especially helpful when the interests of some of the most vulnerable Ontarians are at stake.

25. Potential overlap in the positions of the proposed intervenor and a party is not a ground to deny leave to intervene. It is still open to a proposed intervenor, whose position “generally aligns” with that of a party, to show that it will make a useful contribution.²¹

26. Courts have recognized that some overlap is to be expected in constitutional cases where the focus tends to be on legal argument rather than the resolution of factual issues.²²

The fact that the CCLA and the parties **will predictably cover some of the same topics or rely on the same authorities relevant to those topics, does not alone determine whether the proposed intervenor can offer a fresh perspective.** As was recently held in *Dorsey, Newton, and Salah v. Attorney General of Canada*, [2021 ONSC 2464](#), at para. [25](#), “Notwithstanding their reliance on the same evidence to support the same result, I accept the submission of the [proposed intervenor] that **the correct resolution of this set of test cases will be assisted by submissions that provide a broader understanding of the historical, legal, policy and practical contexts that surround [the challenged government action].**”²³ [Emphasis added.]

27. In addition to being able to provide a broader contextual framework, assisting the court in navigating the law in the specific area of its expertise falls within the proper role of an intervenor. This is even more so in areas where that law is undeveloped, in flux or where novel issues are raised.²⁴

28. Regarding *Charter* section 15 specifically, this Honourable Court recently found that an intervenor who can assist it with a proper substantive equality analysis, including taking existing law and building on it and demonstrating how the equality analysis applies to a particular context, can offer something useful and distinct:

²⁰ *Reference re Workers' Compensation Act 1983* (Nfld), [\[1989\] 2 S.C.R. 335](#), 1989 CanLII 23 (SCC) at pp [340-341](#).

²¹ *Choc v Hudbay Minerals Inc.*, [2013 ONSC 998](#) at para [11](#); *Oakwell Engineering Ltd v. Enernorth Industries Inc.*, [2006 CanLII 60327 \(ONCA\)](#) at para [9](#); *Childs et al v. Desormeaux et al* (2003), [2003 CanLII 47870 \(ON CA\)](#), 67 OR (3d) 385 at para [16](#); *Peel*, *supra* note 12; *PS v. Ontario*, [2014 ONCA 160](#) at paras [11-13](#).

²² *Working Families Ontario v. Ontario*, [2021 ONSC 3652](#) at para [7](#).

²³ *Ibid* at para [8](#).

²⁴ *Jacob v Canada (Attorney General)*, [2024 ONCA 195](#) at para [11](#) [*Jacob*].

This appeal is likely to call upon the court to grapple with how to approach adverse-impact discrimination and substantive equality in the context of lower income individuals living with disabilities. I see the unique expertise of the ISAC, a well-recognized organization with specialized knowledge in this area of the law, being of assistance to this court in considering how the legal principles, as established by the Supreme Court of Canada in cases such as *R. v. Sharma* and *Fraser v. Canada (Attorney General)* should apply against this contextual backdrop.

This appeal will have potentially far-reaching implications, with the potential to impact people living with disabilities and income insecurity. I do not see the ISAC as simply asking this court to reaffirm or overturn existing law. Rather, their focus will be on how to approach adverse-impact discrimination and substantive equality. **This is a notoriously difficult area of law and one that has seen some recent fluctuation. Assisting the court in navigating that law in the specific area of their expertise falls within the proper role of an intervener.**²⁵ [Emphasis added, citations omitted.]

29. This is precisely what the OHRC's intervention proposes to do.

iv. The nature of the case and the issues in this appeal favour the OHRC's intervention

30. This appeal is the first time this Honourable Court will consider the constitutionality of sheltering restrictions and evictions. The decision under appeal is the first in Ontario to address the merits of a *Charter* claim about encampments, based on an evidentiary record that includes the actual experience and impact of encampment evictions on unhoused women, Indigenous persons and persons with disabilities. Prior decisions in Ontario have only considered the putative impacts in the context of injunction applications.²⁶

31. Section 15 has not been given any or due consideration in prior encampment decisions in Canada.²⁷ In *Poff v City of Hamilton* and *Church of Saint Stephen et al v Toronto*, section 15 of the *Charter* was not argued. In *Black et al v City of Toronto*, section 15 of the *Charter* was only addressed in the context of whether there was a serious issue to be tried. The merits of the section 15 *Charter* claim were not considered. In *The Corporation of the City of Kingston v Doe*, the

²⁵ *Ibid* at paras 10 and 11.

²⁶ See *The Regional Municipality of Waterloo v Persons Unknown and to be Ascertained*, 2025 ONSC 4774 [*Waterloo* #2]; *Kingston*, *supra* note 7; *Church of Saint Stephen et al v Toronto*, 2023 ONSC 6566 [*Church of Saint Stephen*]; *The Regional Municipality of Waterloo v Persons Unknown and to be Ascertained*, 2023 ONSC 670 [*Waterloo* #1]; *Poff v City of Hamilton*, 2021 ONSC 7224 [*Poff*]; *Black et al v City of Toronto*, 2020 ONSC 6398.

²⁷ *Matsqui-Abbotsford Impact Society v Abbotsford (City)*, 2024 BCSC 1902 at para 85 [*Abbotsford*].

Court declined to decide the section 15 claim because of its finding on section 7 and the “lack of evidence with respect to the need of and options for daytime shelter.”²⁸

32. When section 15 has been considered, courts have treated the claim as one of discrimination based on homelessness, which has not been recognized as an analogous ground.²⁹ This appeal presents an opportunity for this Honourable Court to properly analyze a section 15 encampment claim based on recognized grounds of discrimination (gender, disability, and/or race/Indigeneity).

33. In addition, although courts have found that depriving persons of the ability to shelter themselves at night violates their section 7 rights when there are insufficient accessible low barrier shelter beds and housing, the case law is unsettled about whether this includes a right to shelter oneself during the day.³⁰ This was a pivotal issue in Justice Ramsay’s decision.

34. The impact of daytime sheltering restrictions is an important consideration under both section 7 and 15 of the *Charter*. It has recently been recognized as “add[ing] a new dimension that has not been thoroughly addressed in previous judicial decisions” and one which may engage the *Charter* rights of persons with disabilities “in a way that warrants closer examination.”³¹ The OHRC’s submissions will assist this Honourable Court conduct a “closer examination” of the impact of daytime sheltering restrictions and evictions on *Charter* rights.

35. As in *Jacob v Canada (Attorney General)*, this is a case with potentially far-reaching implications, in a notoriously difficult area of law that has seen some recent fluctuation, in the context of a challenging and rapidly evolving social issue. The OHRC is uniquely placed to assist this Honourable Court navigate the equality issues which fall within its area of expertise.

²⁸ *Kingston*, *supra* note 7 at para [118](#).

²⁹ *Waterloo #1*, *supra* note 26 at para [126](#) and the decision under appeal; *Heegsma v Hamilton (City)*, [2024 ONSC 7154](#) at para [80](#).

³⁰ See *Waterloo #1*, *supra* note 26 at para [81](#), quoting *Bamberger v Vancouver (Board of Parks and Recreation)*, [2022 BCSC 49](#) and *Kingston*, *supra* note 7 at para [113](#).

³¹ *Abbotsford*, *supra* note 27 at para [90](#).

v. The OHRC's arguments if permitted to intervene

36. If permitted to intervene, the OHRC's proposed submissions will not simply restate, or ask the Court to reaffirm, the law.

37. As recognized by Justice Favreau, there is an extensive evidentiary record in this proceeding and multiple issues and grounds for appeal for the Appellants to address.³² The OHRC's arguments will add "a focus" to the equality rights issues engaged by two of the grounds; namely, whether Justice Ramsay erred with respect to his findings under sections 7 and 15. The OHRC will "refine and supplement" arguments raised by the Appellants, without merely repeating them. These types of contributions were recognized as meriting the intervention of Fair Vote Canada and The Women's Legal Education and Action Fund in *Fair Voting BC v Canada (Attorney General)*³³ and the Income Security Advocacy Clinic in *Jacob v Canada (Attorney General)*.³⁴

38. If permitted to intervene, the OHRC will set out key substantive equality principles under section 15 and argue that:

- i. this is not a claim of discrimination based on homelessness and the Appellants do not need to be a homogenous group identified by a single prohibited ground;
- ii. the evidentiary burden under section 15 is flexible and contextual and many forms of evidence, beyond statistical overrepresentation in the homeless population, can demonstrate an adverse impact connected to sex, disability, and Indigeneity/race alone or in combination;
- iii. the Appellants must only show that the Respondent contributed to or worsened their pre-existing disadvantage not that it caused it.

39. The OHRC will also argue that equality and its animating principle, human dignity, inform the analysis under section 7 of the *Charter*. This requires considering the broader social context, evidence of the Appellants' circumstances and marginalization, and the actual effects of

³² *Heegsma v Hamilton (City)*, [2025 ONCA 588](#) at para [5](#) [*Heegsma Endorsement*].

³³ *Fair Voting BC v. Canada (Attorney General)*, [2024 ONCA 619](#) at paras [19](#) and [20](#).

³⁴ *Jacob*, *supra* note 24 at para [11](#).

the Respondent's sheltering restrictions and evictions on their life, liberty and security of the person having regard to these realities. In the case of unhoused women, Indigenous/racialized persons and persons with disabilities this includes determining whether:

- i. they have meaningful access to low-barrier shelter beds in the region;
- ii. supposed alternatives to encamping, such as couch-surfing and sleeping rough, result in sex and disability-specific harms; and
- iii. the impact and burden of daytime evictions, particularly on women and persons with disabilities, including whether they effectively deprive unhoused people of shelter at night.

40. The OHRC will take no position on the outcome of the appeal.

41. In accordance with Justice Favreau's August 8, 2025 Endorsement,³⁵ the OHRC's intervention motion includes a 14-page draft factum with its proposed arguments if permitted to intervene (subject to further refinement by counsel and coordination with other interveners to avoid duplicating submissions).

PART IV - ORDER SOUGHT

42. The OHRC seeks an order granting it leave to intervene in this appeal as a friend of the court, for the purpose of assisting the Court by way of written and oral argument. It seeks leave to file a 14-page factum and to make 15 minutes of oral argument at the hearing of this appeal. The OHRC does not seek to add to the record, will not seek costs, and asks that it not be exposed to a costs order.

**ALL WHICH IS RESPECTFULLY SUBMITTED THIS
10th DAY OF NOVEMBER, 2025.**



Reema Khawja/Alisha Krishna
Counsel, Ontario Human Rights Commission

³⁵ *Heegsma Endorsement*, *supra* note 32 at para [14](#).

CERTIFICATE OF AUTHENTICITY

I, Reema Khawja, counsel for the proposed intervener, the Ontario Human Rights Commission, certify that I am satisfied as to the authenticity of every authority cited in this factum, pursuant to Rule 4.06.1(2.1) of the *Rules of Civil Procedure*.

November 10, 2025



Reema Khawja
Counsel, Ontario Human Rights Commission

SCHEDULE “A” – CASES

- Animal Justice v Ontario (Attorney General)*, [2024 ONCA 941](#)
- Bamberger v. Vancouver (Board of Parks and Recreation)*, [2022 BCSC 49](#)
- Bedford v Canada (AG)*, [2009 ONCA 669](#)
- Black et al v City of Toronto*, [2020 ONSC 6398](#)
- Caruso v Law Society of Ontario*, [2025 ONCA 270](#)
- Childs v Desormeaux* (2003), 67 OR (3d) 385, [2003 CanLII 47870](#) (ON CA)
- Choc v Hudbay Minerals Inc.*, [2013 ONSC 998](#)
- Christian Heritage Party of Canada v Hamilton (City)*, [2025 ONCA 700](#)
- Church of Saint Stephen et al v Toronto*, [2023 ONSC 6566](#)
- Elementary Teachers’ Federation et al v Her Majesty*, [2018 ONSC 6318](#)
- Fair Voting BC v. Canada (Attorney General)*, [2024 ONCA 619](#)
- Halpern v Toronto (City of)* (2000), [2000 CanLII 29029 \(ON SCDC\)](#), 51 OR (3d) 742
- Heegsma v Hamilton (City)*, [2024 ONSC 7154](#)
- Heegsma v. Hamilton (City)*, [2025 ONCA 588](#)
- Jacob v Canada (Attorney General)*, [2024 ONCA 195](#)
- Matsqui-Abbotsford Impact Society v Abbotsford (City)*, [2024 BCSC 1902](#)
- Oakwell Engineering Ltd v Enernorth Industries Inc.*, [2006 CanLII 60327](#) (ONCA)
- Ontario (AG) v Dieleman* (1993), [16 OR \(3d\) 32](#) (Gen Div)
- Peel (Regional Municipality) v Great Atlantic & Pacific Co of Canada Ltd* (1990), [1990 CanLII 6886 \(ON CA\)](#), 74 O.R. (2d) 164
- Poff v City of Hamilton*, [2021 ONSC 7224](#)
- PS v Ontario*, [2014 ONCA 160](#)
- R v Robert*, [2016 ONCJ 697](#)

Reference re Greenhouse Gas Pollution Pricing Act, [2019 ONCA 29](#)

Reference re Workers' Compensation Act 1983 (Nfld), [1989] 2 S.C.R. 335, [1989 CanLII 23 \(SCC\)](#)

The Corporation of the City of Kingston v Doe, [2023 ONSC 6662](#)

The Regional Municipality of Waterloo v Persons Unknown and to be Ascertained, [2023 ONSC 670](#)

The Regional Municipality of Waterloo v Persons Unknown and to be Ascertained, [2025 ONSC 4774](#)

Working Families Ontario v. Ontario, [2021 ONSC 3652](#)

SCHEDULE “B” – LEGISLATION

Human Rights Code, RSO 1990, c H.19, s 29

PART III THE ONTARIO HUMAN RIGHTS COMMISSION

Functions of Commission

29 The functions of the Commission are to promote and advance respect for human rights in Ontario, to protect human rights in Ontario and, recognizing that it is in the public interest to do so and that it is the Commission’s duty to protect the public interest, to identify and promote the elimination of discriminatory practices and, more specifically,

- (a) to forward the policy that the dignity and worth of every person be recognized and that equal rights and opportunities be provided without discrimination that is contrary to law;
- (b) to develop and conduct programs of public information and education to,
 - (i) promote awareness and understanding of, respect for and compliance with this Act, and
 - (ii) prevent and eliminate discriminatory practices that infringe rights under Part I;
- (c) to undertake, direct and encourage research into discriminatory practices and to make recommendations designed to prevent and eliminate such discriminatory practices;
- (d) to examine and review any statute or regulation, and any program or policy made by or under a statute, and make recommendations on any provision, program or policy that in its opinion is inconsistent with the intent of this Act;
- (e) to initiate reviews and inquiries into incidents of tension or conflict, or conditions that lead or may lead to incidents of tension or conflict, in a community, institution, industry or sector of the economy, and to make recommendations, and encourage and co-ordinate plans, programs and activities, to reduce or prevent such incidents or sources of tension or conflict;
- (f) to promote, assist and encourage public, municipal or private agencies, organizations, groups or persons to engage in programs to alleviate tensions and conflicts based upon identification by a prohibited ground of discrimination;
- (g) to designate programs as special programs in accordance with section 14;
- (h) to approve policies under section 30;
- (i) to make applications to the Tribunal under section 35;

- (j) to report to the people of Ontario on the state of human rights in Ontario and on its affairs;
- (k) to perform the functions assigned to the Commission under this or any other Act. 2006, c. 30, s. 4.

Commission policies

30 The Commission may approve policies prepared and published by the Commission to provide guidance in the application of Parts I and II. 2006, c. 30, s. 4.

Inquiries

31 (1) The Commission may conduct an inquiry under this section for the purpose of carrying out its functions under this Act if the Commission believes it is in the public interest to do so. 2006, c. 30, s. 4.

Conduct of inquiry

(2) An inquiry may be conducted under this section by any person who is appointed by the Commission to carry out inquiries under this section. 2006, c. 30, s. 4.

Production of certificate

(3) A person conducting an inquiry under this section shall produce proof of their appointment upon request. 2006, c. 30, s. 4.

Entry

(4) A person conducting an inquiry under this section may, without warrant, enter any lands or any building, structure or premises where the person has reason to believe there may be documents, things or information relevant to the inquiry. 2006, c. 30, s. 4.

Time of entry

(5) The power to enter a place under subsection (4) may be exercised only during the place's regular business hours or, if it does not have regular business hours, during daylight hours. 2006, c. 30, s. 4.

Dwellings

(6) A person conducting an inquiry under this section shall not enter into a place or part of a place that is a dwelling without the consent of the occupant. 2006, c. 30, s. 4.

Powers on inquiry

(7) A person conducting an inquiry may,

- (a) request the production for inspection and examination of documents or things that are or may be relevant to the inquiry;
- (b) upon giving a receipt for it, remove from a place documents produced in response to a request under clause (a) for the purpose of making copies or extracts;
- (c) question a person on matters that are or may be relevant to the inquiry, subject to the person's right to have counsel or a personal representative present during such questioning and exclude from the questioning any person who may be adverse in interest to the inquiry;
- (d) use any data storage, processing or retrieval device or system used in carrying on business in the place in order to produce a document in readable form;
- (e) take measurements or record by any means the physical dimensions of a place;
- (f) take photographs, video recordings or other visual or audio recordings of the interior or exterior of a place; and
- (g) require that a place or part thereof not be disturbed for a reasonable period of time for the purposes of carrying out an examination, inquiry or test. 2006, c. 30, s. 4.

Written demand

- (8) A demand that a document or thing be produced must be in writing and must include a statement of the nature of the document or thing required. 2006, c. 30, s. 4.

Assistance

- (9) A person conducting an inquiry may be accompanied by any person who has special, expert or professional knowledge and who may be of assistance in carrying out the inquiry. 2006, c. 30, s. 4.

Use of force prohibited

- (10) A person conducting an inquiry shall not use force to enter and search premises under this section. 2006, c. 30, s. 4.

Obligation to produce and assist

- (11) A person who is requested to produce a document or thing under clause (7) (a) shall produce it and shall, on request by the person conducting the inquiry, provide any assistance that is reasonably necessary, including assistance in using any data storage, processing or retrieval device or system, to produce a document in readable form. 2006, c. 30, s. 4.

Return of removed things

(12) A person conducting an inquiry who removes any document or thing from a place under clause (7) (b) shall,

(a) make it available to the person from whom it was removed, on request, at a time and place convenient for both that person and the person conducting the inquiry; and

(b) return it to the person from whom it was removed within a reasonable time. 2006, c. 30, s. 4.

Admissibility of copies

(13) A copy of a document certified by a person conducting an inquiry to be a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value. 2006, c. 30, s. 4.

Obstruction

(14) No person shall obstruct or interfere with a person conducting an inquiry under this section. 2006, c. 30, s. 4.

Intervention by Commission

37 (1) The Commission may intervene in an application under section 34 on such terms as the Tribunal may determine having regard to the role and mandate of the Commission under this Act. 2006, c. 30, s. 5.

Intervention as a party

(2) The Commission may intervene as a party to an application under section 34 if the person or organization who made the application consents to the intervention as a party. 2006, c. 30, s. 5.

Rules of Civil Procedure, RRO 1990, Reg 194, r 13.02

LEAVE TO INTERVENE AS FRIEND OF THE COURT

13.02 Any person may, with leave of a judge or at the invitation of the presiding judge or master, and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument. R.R.O. 1990, Reg. 194, r. 13.02; O. Reg. 186/10, s. 1.

Court File No. COA-25-CV-0166

KRISTEN HEEGSMA et al - and -

CITY OF HAMILTON

Appellants

Respondent

COURT OF APPEAL FOR ONTARIO

**FACTUM
MOTION FOR LEAVE TO INTERVENE**

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