

COURT OF APPEAL FOR ONTARIO

BETWEEN:

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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)

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

November 14, 2025

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PART I – OVERVIEW

1. The coalition of the Income Security Advocacy Centre (“ISAC”) and the Mental Health Legal Committee (“MHLC”) seeks leave to intervene in this Appeal as a friend of the Court.

2. ISAC is the only legal aid clinic in Ontario that focuses exclusively on income security issues.¹ ISAC serves some of the poorest and most vulnerable people in the province and has over two decades of experience on the administration of federal and provincial government income security programs, including social assistance.² As part of its mandate, ISAC has intervened before this Court and others to assist on issues of income security for people with disabilities who live in poverty, and provided distinct and useful perspectives to the courts.³

3. The MHLC has 28 years of experience in advocating for the rights of persons 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.⁴ The membership of the MHLC is comprised of legal practitioners who have special familiarity and firsthand day-to-day experience with representing clients with mental health and/or addiction issues across a wide variety of proceedings in both the civil and criminal justice systems, including in constitutional

¹ Affidavit of Melinda Ferlisi [“ISAC Affidavit”], Motion Record of the Proposed Intervener Coalition, the Income Security Advocacy Centre and the Mental Health Legal Committee [“MR”], Tab 2, at para. 3.

² ISAC Affidavit, MR, Tab 2, at para. 4.

³ ISAC Affidavit, MR, Tab 2, at paras. 11-12.

⁴ Affidavit of Marshall Swadron [“MHLC Affidavit”], MR, Tab 3, at paras. 4, 5, 8-31.

litigation.⁵ 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.⁶

4. 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 unique and helpful perspective in this Appeal because it serves economically disadvantaged people, like the Appellants, who rely on social assistance supports to survive.⁷ As a public interest committee of legal advocates in the field of mental health law, the MHLC has a unique perspective and expertise on the barriers to accessing justice faced by persons who, like many of the Appellants, struggle with mental health symptoms and/or addiction.⁸ ISAC and MHLC are uniquely positioned to provide a nuanced, distinct, and in-depth understanding of the needs of social assistance recipients who live with complex and varied mental health and/or addiction disabilities.⁹

5. If granted leave to intervene, the coalition proposes to make two 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; and
- (b) When available evidence can refute an alleged fact, courts cannot take judicial notice of that alleged fact, especially based on stereotypical assumptions.¹⁰

6. The coalition is in communication with counsel for the Appellants and other

⁵ MHLC Affidavit, MR, Tab 3, at paras. 4, 10-19.

⁶ MHLC Affidavit, MR, Tab 3, at paras. 13-14, 17-18.

⁷ ISAC Affidavit, MR, Tab 2, at para. 19.

⁸ MHLC Affidavit, MR, Tab 3, at para. 32.

⁹ ISAC Affidavit, MR, Tab 2, at para. 22; MHLC Affidavit, MR, Tab 3, at paras. 32-37.

¹⁰ ISAC Affidavit, MR, Tab 2, at para. 25; MHLC Affidavit, MR, Tab 3, at para. 40.

proposed interveners to ensure that the coalition's proposed submissions are not duplicative of other party or intervener submissions.¹¹ If granted leave to intervene, the coalition will continue to work with the parties and other interveners to ensure that its submissions remain useful and distinct.¹²

PART II – FACTS

A. The Decision Below

7. The application below was based on some 10,000 pages of evidence and a three-day hearing. Ramsay J. dismissed the application five days after the hearing. Based on his credibility assessment of the Appellants, Ramsay J. found that the Respondent did not prevent anyone from staying overnight, and he declined to extend s. 7 protections to daytime encampments.¹³ Ramsay J. also found that the life, liberty, and security of the Appellants was put at risk by homelessness, rather than clearing of encampments, and expressed concern over the Respondent's property right in its public parks.¹⁴

8. In six sentences, Ramsay J. dismissed the s. 15 claim, finding the Appellants were unable to prove causation.¹⁵

9. Had he found a *Charter* breach, Ramsay J. would have declined to award damages, as he decided a municipality is not liable for damages for enacting an unconstitutional bylaw.¹⁶

¹¹ ISAC Affidavit, MR, Tab 2, at para. 27; MHLC Affidavit, MR, Tab 3, at para. 43.

¹² *Ibid.*

¹³ *Heegsma v. Hamilton (City)*, [2024 ONSC 7154](#), at paras. [38](#), [69-70](#) ["Decision"].

¹⁴ Decision, at paras. [76](#), [78](#).

¹⁵ Decision, at paras. [80-82](#).

¹⁶ Decision, at paras. [65-66](#).

B. The Coalition's Mandate

i. *The Income Security Advocacy Centre*

10. ISAC is a specialty legal clinic that conducts systemic litigation to improve income security for low-income Ontarians, with an emphasis on income security programs, poverty, and low-wage and precarious work.¹⁷ ISAC works directly with low-income people and in partnership with a provincial network of over 70 Ontario community legal clinics.¹⁸

11. ISAC engages in test case litigation, community organizing, policy advocacy, and public education relating to various federal and provincial income security programs and poverty reduction initiatives, with significant expertise on Ontario's social assistance programs, Ontario Works and the Ontario Disability Support Program.¹⁹

12. ISAC has litigated significant *Charter* and human rights test cases involving low-income people with disabilities at administrative tribunals and all levels of court including at this Court and at the Supreme Court of Canada.²⁰ Through its litigation, ISAC emphasizes the need for access to justice, effective supports, and remedies for low-income people to ensure that government programs are both adequate and equitable.²¹ ISAC's work is guided by an equity lens that considers the disproportionate impacts of poverty on historically disadvantaged groups, including persons living with disabilities, migrants, racialized and Indigenous communities, women and other marginalized

¹⁷ ISAC Affidavit, MR, Tab 2, at paras. 3, 5.

¹⁸ ISAC Affidavit, MR, Tab 2, at para. 6.

¹⁹ ISAC Affidavit, MR, Tab 2, at paras. 5-6, 8-9, and 11-18.

²⁰ ISAC Affidavit, MR, Tab 2, at paras. 11-13.

²¹ *Ibid.*

genders, and seniors.²²

ii. The Mental Health Legal Committee

13. The MHLC is a coalition of lawyers and community legal workers practicing in mental health law.²³ Since its creation in 1997 the MHLC's advocacy has taken many forms across many different forums, and has always been grounded in the advancement of substantive equality, autonomy, dignity, liberty, and access to justice for persons impacted by mental health and/or addiction related legislation, other laws and legal processes, and by government or societal practices and policy.²⁴ The MHLC has an established, significant, and recognized expertise in practice issues related to the legal representation of vulnerable and marginalized individuals struggling with mental health symptoms and/or addiction.²⁵

14. MHLC's lawyer and community legal worker members have daily contact in the community with persons with mental health and/or addiction issues, providing legal support and representation, education, and assistance.²⁶ The MHLC is uniquely situated in understanding and challenging the barriers this vulnerable client group faces when attempting to access justice, including barriers created by pervasive stereotypes about mental health and/or addiction.²⁷

²² ISAC Affidavit, MR, Tab 2, at para. 10.

²³ MHLC Affidavit, MR, Tab 3, at para. 5.

²⁴ MHLC Affidavit, MR, Tab 3, at paras. 7-19, 21-31.

²⁵ MHLC Affidavit, MR, Tab 3, at para. 23.

²⁶ MHLC Affidavit, MR, Tab 3, at paras. 9-16.

²⁷ MHLC Affidavit, MR, Tab 3, at paras. 32, 35-39.

PART III – ISSUES AND ANALYSIS

15. The issue in this motion is whether the coalition should be granted leave to intervene in this Appeal. As set out below, the coalition satisfies each element of the test for granting leave to intervene.

A. The Law on Intervention

16. Rule 13.02 of the *Rules of Civil Procedure* provides that any person may apply to intervene in a proceeding as a friend of the court for the purpose of rendering assistance to the court by way of argument.²⁸

17. As set out by this Court in the leading decision of *Peel (Regional Municipality) v. Great Atlantic and Pacific Co. of Canada*, the Court's decision on a proposed intervention should be guided by three criteria, namely:

- (a) the nature of the case;
- (b) the issues that arise in the case; and
- (c) the likelihood that the proposed intervener will be able to make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties (collectively, the "*Peel* Test").²⁹

18. When seeking intervener status as a friend of the court in a constitutional case of broad public importance, an intervener must also demonstrate that it meets at least *one* of the following three criteria:

- (a) that it has a real, substantial, and identifiable interest in the subject matter of the

²⁸ [Rules of Civil Procedure](#), R.R.O. 1990, Reg. 194, r. [13.02](#).

²⁹ *Peel (Regional Municipality) v. Great Atlantic and Pacific Co. of Canada*, [1990 CanLII 6886](#) (Ont. C.A.), at para. [10](#).

proceedings;

(b) that it has an important perspective distinct from the immediate parties; or

(c) that it is a well-recognized group with a special expertise and a broadly identifiable membership base (collectively, the “*Bedford Factors*”).³⁰

19. The Court of Appeal for Ontario has held that leave to intervene should be more readily granted when constitutional issues are involved.³¹ This approach ensures that a court will have the benefit of various perspectives of the historical and sociological context, as well as policy and other considerations that bear on the validity of legislation.³² Courts recognize the importance of receiving submissions from a diversity of perspectives, particularly in *Charter* claims that may have a wide-ranging impact on others who are not immediate parties to the proceeding.³³

20. In determining what constitutes an appropriate intervention, the Court of Appeal has recognized that it “should have all of the relevant possibilities brought to its attention, including submissions on the impact of its judgment, not only on the parties, but on those not before the court”.³⁴ This is so even where only certain aspects of the ultimate decision may bear on the rights of others not party to the litigation.³⁵

21. A friend of the court is not required to be “impartial”, “objective”, or “disinterested”

³⁰ *Bedford v. Canada (Attorney General)*, [2009 ONCA 669](#), at para. 2.

³¹ *Reference re Greenhouse Gas Pollution Pricing Act*, [2019 ONCA 29](#), at para. 8, citing *Peel*, at para. 6.

³² *Authorson (Guardian of) v. Canada (Attorney General)*, [2001 CanLII 4382](#) (Ont. C.A.), at para. 7.

³³ *Trinity Western University v. Law Society of Upper Canada*, [2014 ONSC 5541](#) (Div. Ct.), at para. 9, citing *Ontario (Attorney General) v. Dieleman*, [1993 CanLII 5478](#) (Ont. Ct., Gen. Div.), at para. 7.

³⁴ *Louie v. Lastman*, [2001 CanLII 2843](#) (Ont. C.A.), at para. 12.

³⁵ *Ibid.*

in the outcome of the case.³⁶ Courts have recognized a valid contribution may be made in appropriate cases by interveners who advocate a particular interpretation of the law, or who bring a certain perspective.³⁷ Such contributions may assist a court in its analysis of the issues for determination by placing them under scrutiny through a different lens or from a different perspective.³⁸

22. As set out below, the coalition satisfies the *Peel* Test and meets all three of the *Bedford* Factors. Accordingly, the coalition should be granted leave to intervene.

B. The Coalition has a Real, Substantial, and Identifiable Interest in the Appeal

23. The coalition's interest in this matter is real, substantial, and identifiable because the clients and communities that ISAC and MHLC serve are acutely impacted by the issues raised in the Appeal.

24. ISAC is a community-based organization that represents the unique perspective and experience of persons with mental health and/or addiction disabilities who rely on social assistance programs for subsistence.³⁹ These are the groups who are impacted directly in the present Appeal.⁴⁰ All the Appellants are or were on social assistance for at least some of the two years at issue in this proceeding.⁴¹ ISAC has a significant interest in ensuring that the rights of these low-income persons with disabilities are protected and that people with mental health and addiction disabilities have a fair shot at being believed

³⁶ *Choc v. Hudbay Minerals Inc. et al.*, [2013 ONSC 998](#), at para. [11](#); *Oakwell Engineering Limited v. Enernorth Industries Inc.*, [2006 CanLII 60327](#) (Ont. C.A.), at para. [9](#).

³⁷ *Ibid.* See also *Childs v. Desormeaux*, (2003) [67 O.R. \(3d\) 385](#) (C.A.), at paras. [15-16](#).

³⁸ *Oakwell Engineering*, at para. [9](#).

³⁹ ISAC Affidavit, MR, Tab 2, at para. 21.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

when they provide evidence in legal proceedings.⁴²

25. MHLC members represent clients, like many of the Appellants, who struggle with mental health and/or addiction issues across a broad array of administrative, civil, criminal, and other legal proceedings.⁴³ As such, MHLC members must routinely advise, and obtain instructions, on the potential risks of choosing to give evidence and must prepare clients for giving testimony in chief (orally or by way of affidavit) and for cross-examination.⁴⁴ 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.⁴⁵ The MHLC's client group already faces ongoing and often seemingly insurmountable stigma, myths, and stereotypes related to their mental health and/or addictions.⁴⁶ As recognized by the Supreme Court of Canada, this population is enormously vulnerable to stereotypical labelling.⁴⁷

26. 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.⁴⁸ 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.⁴⁹ Poor people with mental health diagnoses and/or addictions

⁴² *Ibid.*

⁴³ MHLC Affidavit, MR, Tab 3, at paras. 4, 10-19.

⁴⁴ MHLC Affidavit, MR, Tab 3, at para. 34.

⁴⁵ MHLC Affidavit, MR, Tab 3, at paras. 35-39.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ ISAC Affidavit, MR, Tab 2, at para. 20.

⁴⁹ *Ibid.*

disproportionately engage with legal systems due to systemic disadvantage, complex administrative rules, and the criminalization of poverty.⁵⁰ 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 liberty, autonomy, and other fundamental human rights, to challenge findings of incapacity and psychiatric detention, obtain *Charter* and civil remedies, and to inflict more harm on their already tenuous ability to access justice.⁵¹

27. If stereotypes are permitted to determine the outcome of assessments of testimonial credibility and/or reliability, or to lay 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 where the evidentiary onus does not rest with them.⁵² This also creates unfair structural advantages for adverse parties, and interferes with the truth-seeking function of courts and tribunals, in turn undermining the rule of law and public confidence in the justice system.⁵³

C. The Coalition has Special Expertise in the Subject Matter of the Appeal

28. Both ISAC and MHLC have substantial expertise in the issues raised in this Appeal. Since 2001, ISAC has successfully litigated numerous cases on behalf of marginalized and low-income individuals before all levels of Court.⁵⁴ ISAC has expertise in advocacy before various courts and administrative tribunals dealing with poverty law,

⁵⁰ ISAC Affidavit, MR, Tab 2, at para. 20; MHLC Affidavit, MR, Tab 3, at paras. 36-37.

⁵¹ *Ibid.*

⁵² MHLC Affidavit, MR, Tab 3, at para. 37.

⁵³ *Ibid.*

⁵⁴ ISAC Affidavit, MR, Tab 2, at paras. 4, 11-13.

Charter, and human rights matters where the testimony of people with mental health disabilities and/or addictions is central to resolving the issues.⁵⁵ ISAC also has specialized knowledge of the ways in which the social assistance system creates barriers to finding housing for those living in encampments.⁵⁶

29. ISAC has also been granted leave to intervene before this Court, the Supreme Court of Canada, and all levels of Canadian courts in over 20 reported cases concerning the rights of low-income and marginalized communities.⁵⁷ Associate Chief Justice Fairburn recently recognized the “unique expertise of ISAC” in granting leave to intervene in a *Charter* case involving low-income individuals living with disabilities.⁵⁸ Courts have also held that ISAC was a well-recognized group with “extensive expertise in social assistance issues”, possessing “a deep and nuanced understanding of the social assistance regime and the lived experiences of recipients.”⁵⁹

30. Members of the MHLC have firsthand, day-to-day experience representing vulnerable individuals with mental health and/or addiction challenges before a range of administrative tribunals and in civil and criminal matters.⁶⁰ Over the course of almost three decades, MHLC lawyer members have acted as counsel, *amicus curiae*, or counsel to interveners in many leading and precedent-setting cases, including three recent homeless encampment *Charter* and injunction cases, eleven Supreme Court of Canada

⁵⁵ ISAC Affidavit, MR, Tab 2, at para. 23.

⁵⁶ *Ibid.*

⁵⁷ ISAC Affidavit, MR, Tab 2, at para. 12.

⁵⁸ *Jacob v. Canada (Attorney General)*, [2024 ONCA 195](#), at para. 10.

⁵⁹ *Fair Change v. Her Majesty the Queen*, [2021 ONSC 2108](#), at paras. 44-46; *Ministry of Community and Social Services v. Robinson-Cooke*, [2024 ONSC 2425](#) (Div. Ct.), at paras. 11-12.

⁶⁰ MHLC Affidavit, MR, Tab 3, at paras. 4, 10-18.

appeals, and numerous appeals in this Court.⁶¹ Through its work, the MHLC has amassed significant, recognized expertise and played a staunch leadership role in challenging legal structures that result in inequality or injustice for individuals with mental health and/or addiction related disabilities.⁶²

D. The Coalition Brings an Important Perspective

31. 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.⁶³ 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.⁶⁴ Through the day-to-day grassroots work of its legal members, as well as the combined expertise amassed through direct and systemic advocacy work, the MHLC is uniquely positioned to analyze the implications of ongoing discriminatory beliefs about vulnerable persons with mental health and/or addiction issues.⁶⁵ This population is constantly at risk of negative testimonial credibility and/or reliability findings simply on the basis of their psychiatric diagnoses and/or addiction challenges – their individual capacity to recall and narrate their experiences is always vulnerable to being questioned and discounted through generalized stereotypes about their capacity to tell their own stories, even in the context of corroborating evidence.⁶⁶ The coalition's combined perspective can assist the

⁶¹ MHLC Affidavit, MR, Tab 3, at paras. 13, 14, 17, 18.

⁶² MHLC Affidavit, MR, Tab 2, at para. 19.

⁶³ ISAC Affidavit, MR, Tab 2, at para. 22; MHLC Affidavit, MR, Tab 3, para. 38.

⁶⁴ ISAC Affidavit, MR, Tab 2, at para. 22.

⁶⁵ MHLC Affidavit, MR, Tab 3, at para. 32.

⁶⁶ MHLC Affidavit, MR, Tab 3, at paras. 35-36.

Court in better understanding the impact of its decision.⁶⁷

32. If granted leave to intervene, the coalition proposes to make two submissions that are relevant to the Appeal, useful to this Court, and different from those of the other parties:

- 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.

33. The coalition's draft factum containing these two submissions is attached hereto as **Schedule C**.

E. The Coalition's Proposed Submissions are Distinct and Useful

34. The coalition recognizes that an intervener's role is to provide submissions that are useful and not duplicative of those of the other parties.⁶⁸ To further this aim, ISAC and MHLC are intervening in coalition.⁶⁹ The coalition has conferred with the Appellants'

⁶⁷ ISAC Affidavit, MR, Tab 2, at para. 22; MHLC Affidavit, MR, Tab 3, at para. 32.

⁶⁸ ISAC Affidavit, MR, Tab 2, at para. 27; MHLC Affidavit, MR, Tab 3, at para. 43.

⁶⁹ *Ibid.*

counsel and other proposed interveners' counsel to ensure that the coalition's proposed submissions are not duplicative of their submissions..⁷⁰

35. While the Appellants touch on Ramsay J.'s reliance on stereotypes of people with mental health and addiction disabilities, the coalition intends to assist this Court by: (1) explaining the broader impacts of this error, including the effect on people with mental health disabilities in other legal forums, on confidence in the justice system, and on the practical implications for the litigation process; and, (2) exploring why this Court ought to recognize stereotypes of people with mental health and addiction disabilities as analogous to the stereotypes recognized by the Supreme Court in *Kruk*, which can constitute errors of law. Finally, the coalition's second proposed submission on the proper use of judicial notice is not covered by any party or other proposed intervener. Where an intervener will be "refining and supplementing arguments raised by the parties", granting leave is appropriate..⁷¹

36. If granted leave to intervene, the coalition will continue to work with the parties and other proposed interveners to ensure that its submissions are useful and distinct..⁷²

F. No Prejudice to the Parties

37. There will be no prejudice or delay to the parties if the coalition is granted leave to intervene. The coalition is prepared to abide by the terms of any timetable of this Appeal and is prepared to file its finalized factum on any schedule that the Court and the parties

⁷⁰ *Ibid.*

⁷¹ *Fair Voting BC v. Canada (Attorney General)*, [2024 ONCA 619](#), at para. 20.

⁷² ISAC Affidavit, MR, Tab 2, at para. 27; MHLC Affidavit, MR, Tab 3, at para. 43.

consider fair..⁷³

38. The coalition does not seek to introduce evidence or expand the record and will take no position on the outcome of this Appeal..⁷⁴

39. The coalition will not seek costs and respectfully requests that no costs be ordered against it..⁷⁵

PART IV – ORDER SOUGHT

40. The coalition respectfully requests an order that:

- (a) ISAC & MHLC may file a factum of no more than 15 pages;
- (b) ISAC & MHLC may present oral argument at the hearing of the Appeal, for no more than 15 minutes;
- (c) ISAC & 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.

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



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

⁷³ ISAC Affidavit, MR, Tab 2, at para. 28; MHLC Affidavit, MR, Tab 3, at para. 42.

⁷⁴ ISAC Affidavit, MR, Tab 2, at para. 28; MHLC Affidavit, MR, Tab 3, at para. 44.

⁷⁵ MHLC Affidavit, MR, Tab 3, at para. 45.

CERTIFICATE OF AUTHENTICITY

I, Adrian Merdzan, counsel for the proposed intervener coalition, the Income Security Advocacy Centre and the Mental Health Legal Committee, certify that I am satisfied as to the authenticity of every authority cited in this factum, pursuant to Rule 4.06(2.1) of the *Rules of Civil Procedure*.

November 14, 2025



Adrian Merdzan

Counsel for the Proposed Intervener Coalition,
the Income Security Advocacy Centre and
the Mental Health Legal Committee

SCHEDULE A: LIST OF AUTHORITIES

1. *Authorson (Guardian of) v. Canada (Attorney General)*, [2001 CanLII 4382](#) (Ont. C.A.)
2. *Bedford v. Canada (Attorney General)*, [2009 ONCA 669](#)
3. *Childs v. Desormeaux*, (2003) [67 O.R. \(3d\) 385](#) (C.A.)
4. *Choc v. Hudbay Minerals Inc. et al.*, [2013 ONSC 998](#)
5. *Fair Change v. Her Majesty the Queen*, [2021 ONSC 2108](#)
6. *Fair Voting BC v. Canada (Attorney General)*, [2024 ONCA 619](#)
7. *Jacob v. Canada (Attorney General)*, [2024 ONCA 195](#)
8. *Louie v. Lastman*, [2001 CanLII 2843](#) (Ont. C.A.)
9. *Ministry of Community and Social Services v. Robinson-Cooke*, [2024 ONSC 2425](#) (Div. Ct.)
10. *Oakwell Engineering Limited v. Enernorth Industries Inc.*, [2006 CanLII 60327](#) (Ont. C.A.)
11. *Ontario (Attorney General) v. Dieleman*, [1993 CanLII 5478](#) (Ont. Ct., Gen. Div.)
12. *Peel (Regional Municipality) v. Great Atlantic and Pacific Co. of Canada*, [1990 CanLII 6886](#) (Ont. C.A.)
13. *Reference re Greenhouse Gas Pollution Pricing Act*, [2019 ONCA 29](#)
14. *Surdivall v. Ontario (Director, Disability Support Program)*, [2014 ONCA 240](#)
15. *Trinity Western University v. Law Society of Upper Canada*, [2014 ONSC 5541](#) (Div. Ct.)

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

STATUTES

A. [Rules of Civil Procedure](#), R.R.O. 1990, Reg. 194

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 associate judge, 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.

SCHEDULE C: THE COALITION'S DRAFT FACTUM

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

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**

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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.¹ Although they are protected from discrimination in the *Charter* and in human rights statutes under the ground of disability, stigmatization and social exclusion continue.²

5. Stereotypes capture “widely held ideas and beliefs that are not empirically true”.³ 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.”⁴

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

¹ *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.

² *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>>.

³ *R. v. Kruk*, 2024 SCC 7, at para. 37.

⁴ *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.**”⁵ 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.⁶

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.⁷ 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.⁸

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.**⁹

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

⁵ *Kruk*, at para. 49 [Emphasis added.].

⁶ *Kruk*, at para. 44. See also, Jennifer Koshan, “Myths, Stereotypes, and Substantive Equality” (29 November 2024), online: <<https://canliiconnects.org/en/commentaries/95632>>.

⁷ 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.

⁸ *Ibid.* See also: *Kruk*, at paras. 40-43; *Barton*, at para. 201.

⁹ *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.¹⁰ 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.¹¹

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*.¹² 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.**¹³

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.”¹⁴

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

¹⁰ 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](#).

¹¹ See *K.M.N. v. S.Z.M.*, [2024 BCCA 70](#).

¹² *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.

¹³ *Swain*, at , [973-974](#), [994](#) [emphasis added].

¹⁴ *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.”¹⁵ Pursuant to the guidance in *Kruk*, reliance on these stereotypes is an error of law attracting a standard of correctness.¹⁶

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”.¹⁷ Any suggestion of unreliability must be based on cogent evidence, rather than stereotype or myth.¹⁸ It is “impermissible to draw a direct line between mental illness and testimonial unreliability without evidence linking the two”.¹⁹

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”.²⁰ Ramsay J. went on, at para. 38, to state that where the Appellants gave

¹⁵ *R. v. Slatter*, [2020 SCC 36](#), at para. 2 [Emphasis added.].

¹⁶ *Kruk*, at para. 96.

¹⁷ *R. v. O'Connor*, [1995 CanLII 51](#) (S.C.C.), at para. 143.

¹⁸ *Ibid.*

¹⁹ *R. v. To*, [2019 ONCJ 849](#), at para. 24.

²⁰ *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.²¹

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.²² 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.²³ 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.²⁴ 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.²⁵

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

²¹ Factum of the Respondent, at para. 66.

²² 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](#).

²³ 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].

²⁴ Dr. O’Shea XE Transcript, p. 206, Q 40 [ABC, Vol. 6, Tab 86]. See also Factum of the Appellants, paras. 75-76.

²⁵ Decision, at paras. [24](#), [38](#).

encampments while it was still dark.²⁶ 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.²⁷

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.²⁸ Proceedings at the SBT often

²⁶ 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].

²⁷ *Canada (Attorney General) v. Bedford*, [2013 SCC 72](#), at para. [123](#).

²⁸ [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..²⁹ 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..³⁰

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..³¹ 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..³² 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

²⁹ 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](#).

³⁰ *Tranchemontagne*, at paras. [121](#), [125-126](#).

³¹ *Sparks v. Director of the Ontario Disability Support Program*, [2023 ONSC 5570](#) (Div. Ct.), at paras. [38-40](#).

³² 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.³³ 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.³⁴

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

³³ *Kruk*, at para. [44](#).

³⁴ *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”.³⁵ 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.³⁶

³⁵ *R. v. Spence*, [2005 SCC 71](#), at para. [51](#).

³⁶ *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.³⁷

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.³⁸ A high level of certainty is required when the subject of judicial notice is central to the court’s assessment of credibility.³⁹ In *Charter* cases such as this, courts should be “careful to keep judicial notice on a relatively short leash”.⁴⁰

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.⁴¹

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.⁴² The following are a few examples of his inappropriate use of judicial notice, which amount

³⁷ *R. v. J.M.*, [2021 ONCA 150](#), at para. [35](#); *D.B.*, at paras. [26](#), [35](#), [40](#).

³⁸ *Spence*, at para. [65](#); *J.M.*, at para. [33](#).

³⁹ *J.M.*, at paras. [54-55](#).

⁴⁰ *Spence*, at para. [64](#).

⁴¹ *D.B.*, at para. [24](#).

⁴² *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.⁴³

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.⁴⁴ 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.⁴⁵

⁴³ 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.

⁴⁴ *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.

⁴⁵ 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”.⁴⁶ This finding underpinned his rejection of the *Waterloo* decision, which found a s. 7 breach in the absence of sufficient accessible shelter spaces.⁴⁷ In fact, the evidence indicated that some shelters did provide storage space for belongings and offered private showers.⁴⁸ In addition, City-funded hotel rooms used as temporary shelters had private showers.⁴⁹

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.**⁵⁰

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

⁴⁶ Decision, at para. [72](#).

⁴⁷ Decision, at para. [73](#); *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2023 ONSC 670, at paras. [101](#), [104](#).

⁴⁸ 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].

⁴⁹ Affidavit of Shawn MacKeigan, Mission Services, dated October 6, 2021, at paras. 2-6 [Exhibit Book, Vol. 2, Tab 13].

⁵⁰ Decision, at para. [26](#) [Emphasis added.].

barrier, rather than the Appellants deprioritizing shelter.⁵¹ 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.⁵²

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.⁵³ Corey Monahan's mother visits him on most days and provides him with emotional support.⁵⁴ 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.⁵⁵ Sherri Ogden stays in a tent in her mother's backyard when she is able.⁵⁶ Mario Muscato sometimes stays with his cousin in his cousin's apartment.⁵⁷ Every month he sends money to his youngest daughter.⁵⁸

⁵¹ 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.

⁵² [O. Reg. 134/98](#), ss. [41-42](#), under the [Ontario Works Act, 1997](#), S.O. 1997, c. 25, Sch. A.

⁵³ Cross examination Transcript of Darrin Marchand, pp. 8-9, Q 24-31 [ABC, Vol. 4, Tab 48].

⁵⁴ Cross examination Transcript of Corey Monahan, p. 12, Q 53-55 [ABC, Vol. 4, Tab 58].

⁵⁵ 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].

⁵⁶ Cross examination Transcript of Sherri Ogden, pp. 43-44, Q 270-274 [ABC, Vol. 5, Tab 66].

⁵⁷ Cross examination Transcript of Mario Muscato, p. 9, Q35 [ABC, Vol. 5, Tab 63].

⁵⁸ 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.⁵⁹ A social assistance recipient only receives the amount for shelter if they can prove ongoing shelter costs.⁶⁰ As the Appellants argued at first instance, people who are unhoused cannot prove shelter costs and therefore receive no money to put towards rent.⁶¹ An unhoused single person on Ontario Works receives only \$343 per month, leaving little for adequate food and other necessities.⁶² 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.

⁵⁹ 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].

⁶⁰ [O. Reg. 134/98](#), s. [40](#).

⁶¹ Applicants' Hearing Factum, dated November 25, 2024, at Schedule B, pp. 712-718 [ABC, Vol. 1, Tab 20].

⁶² [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 "Kali Holm", written in a cursive style.

**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) 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.

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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

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

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