

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

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

Appellants

-and-

CITY OF HAMILTON

Respondent

-and-

ATTORNEY GENERAL OF ONTARIO

Intervener

-and-

ONTARIO HUMAN RIGHTS COMMISSION

Proposed Intervener

**MOTION RECORD
MOTION FOR LEAVE TO INTERVENE**

November 14, 2025

**ONTARIO HUMAN RIGHTS
COMMISSION**

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Proposed Intervener

NOTICE OF MOTION FOR LEAVE TO INTERVENE(Ontario Human Rights Commission, Proposed Intervener)

The Proposed Intervener, the Ontario Human Rights Commission (OHRC) will make a motion to a single judge of the Court of Appeal for Ontario on Friday, December 12, 2025 at 10:00 a.m., or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: In accordance with Justice Favreau's Endorsement of August 7, 2025, the motion is to be heard via Zoom.

THE MOTION IS FOR:

1. An order permitting the OHRC 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 on the following terms:
 - a. The OHRC may file a factum of not more than 14 pages.
 - b. The OHRC may present oral argument of not more than 15 minutes at the hearing of the appeal.
 - c. The OHRC will not seek costs on the appeal nor shall costs be awarded against it; and
 - d. There will be no costs awarded to any party on this motion.
2. Such further and other orders as this Court may deem appropriate.

THE GROUNDS FOR THE MOTION ARE:

3. This appeal is the first time this Honourable Court will address the impact of a municipality's sheltering restrictions and evictions on the rights of unhoused persons living in encampments.
4. It will deal with matters of significant public importance and novel legal issues including the proper approach when applying the section 15 test and substantive equality principles to a complex claim under the Canadian *Charter of Rights and Freedoms* (*Charter*) where homelessness intersects with gender, disability and race/Indigeneity.
5. The Court's decision will affect the rights of many vulnerable and marginalized persons who are not immediate parties. The OHRC is Ontario's statutory human rights agency responsible for promoting and advancing the rights of all Ontarians and is well placed to represent these interests.

6. In constitutional cases, the threshold for intervention is more relaxed and the intervention criteria applied more flexibly. The OHRC's intervention meets all three of the intervention criteria.

7. The OHRC is a well-recognized statutory human rights body responsible for advancing, promoting and protecting human rights and the public interest in Ontario.

8. The OHRC's specialized expertise in rights under the *Charter* and Ontario *Human Rights Code* has been recognized by tribunals and all levels of courts. This expertise includes issues central to this appeal including discrimination based on sex, race/Indigeneity, and/or disability.

9. The OHRC has a real, substantial and identifiable interest in the subject matter of this proceeding. This Honourable Court's decision will affect the OHRC's efforts to promote and protect equality rights and advocate for municipalities to adopt a human-rights based approach to encampments.

10. The OHRC will provide a useful and distinct perspective and make a unique contribution. The OHRC's participation will assist the Court decide the legal issues raised in the appeal.

11. If permitted to intervene, the focus of the OHRC's arguments will be related to its expertise in substantive equality and the role of equality principles in interpreting other *Charter* rights, including under s. 7. In accordance with Justice Favreau's August 7, 2025 Endorsement, the OHRC files a draft merits factum with this Notice of Motion setting out the OHRC's proposed arguments in detail.

12. The OHRC's participation will not cause prejudice to the parties and will not delay the proceeding. The OHRC will not expand the record, will not seek costs, and asks that it not be made subject to a costs order. The OHRC will avoid duplicating the submissions of any parties or interveners.

13. Rule 13.02 of the *Rules of Civil Procedure*.
14. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

15. The Affidavit of Patricia DeGuire, affirmed November 4, 2025 and the exhibits thereto;
16. The OHRC's proposed draft factum on the merits of the appeal if permitted to intervene;
17. Such further and other material as counsel may advise and this Court may permit.

November 14, 2025

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Court File No. COA-25-CV-0166

KRISTEN HEEGSMA et al - and -

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Appellants

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AFFIDAVIT OF PATRICIA DEGUIRE

Filed in support of the Ontario Human Rights Commission's
Motion for Leave to Intervene
(Affirmed November 4, 2025)

I, **Patricia DeGuire**, of the Regional Municipality of York, in the Province of Ontario,
MAKE OATH AND SAY:

1. I am the Chief Commissioner of the Ontario Human Rights Commission (OHRC) and as such have knowledge of the matters to which I hereinafter depose.

2. The OHRC is constituted under the Ontario *Human Rights Code*, RSO 1990, c H.19 (*Code*), as the statutory human rights agency responsible for promoting and advancing respect for human rights and preventing discriminatory practices in Ontario. The OHRC was created in 1961 and was the first human rights commission established in Canada.

3. The OHRC has broad powers under section 29 of the *Code* including protecting human rights and the public interest in Ontario; promoting understanding, acceptance of and compliance with the *Code*; undertaking research into and making recommendations to eliminate discriminatory practices; and examining statutes, regulations, policies and programs for compliance with the *Code*.

4. The OHRC currently discharges its statutory obligations by developing policies and advancing law reform, initiating reviews and public inquiries, and engaging in strategic litigation.

5. As a result of nearly 65 years of experience addressing equality rights in Ontario, the OHRC has substantial insight and expertise in responding to violations of the *Code* and the Canadian *Charter of Rights and Freedoms* (*Charter*).

A. OHRC expertise in equality rights

i. OHRC expertise in *Code* and *Charter* litigation

6. The OHRC is a leading statutory human rights body in Canada and has been at the forefront of developing rights jurisprudence in Canada.

7. The Superior Court of Ontario, this Honourable Court, and the Supreme Court of Canada (SCC) have recognized the OHRC's expertise in *Code* and *Charter* rights by granting it leave to intervene in numerous matters. This includes claims related to poverty and homelessness and the rights of women, Indigenous persons, racialized persons and persons with disabilities. The OHRC

has also been given leave to intervene to make arguments about the relationship between equality and rights and freedoms under sections 2 and 7 of the *Charter*.

8. For example, the Superior Court of Justice granted the OHRC leave to intervene in:

- *Fair Change v His Majesty the King in Right of Ontario*, 2024 ONSC 1895;
- *R v S(N)* (2009), 95 OR (3d) 735;
- *Farris v Staubach Ontario Inc* (2004), 129 ACWS (3d) 969; and
- *Ontario Jockey Club v SEIU, Local 528* (2001), 109 ACWS (3d) 785.

9. The Superior Court of Justice (Divisional Court) granted the OHRC leave to intervene in:

- *London District Catholic School Board v Weilgosh*, 2023 ONSC 3857;
- *Ontario (Community Safety and Correctional Services) v De Lottinville*, 2015 ONSC 3085;
- *Taylor-Baptiste v OPSEU*, 2014 ONSC 2169; and
- *City of Toronto v The Dream Team*, 2012 ONSC 3904.

10. The OHRC has also been a party to matters before the Divisional Court in cases such as *Aiken v Ottawa Police Services Board*, 2015 ONSC 3793 and *Her Majesty the Queen v WB and S*, 2011 ONSC 288, among others.

11. This Honourable Court granted the OHRC leave to intervene in:

- *Ontario Teacher Candidates' Council v. Ontario (Education)*, 2023 ONCA 788;
- *Ontario (Health) v Association of Ontario Midwives*, 2022 ONCA 458;
- *Francis v Ontario*, 2021 ONCA 197;
- *Canadian Civil Liberties Association v Canada*, 2019 ONCA 243;
- *Hamilton-Wentworth District School Board v Fair*, 2016 ONCA 421;
- *Taylor-Baptiste v Ontario Public Service Employees Union*, 2015 ONCA 495;
- *Sarnia (City) v River City Vineyard Christian Fellowship of Sarnia*, 2015 ONCA 494;
- *Tanudjaja v Canada (AG)*, 2014 ONCA 852 [*Tanudjaja*];
- *Peel Law Association v Pieters*, 2013 ONCA 396;
- *Shaw v Phipps*, 2012 ONCA 155; and
- *Ontario (Disability Support Program) v Tranchemontagne*, 2010 ONCA 593.

12. The OHRC has also been a party or intervener in numerous equality rights cases at the SCC, starting with the foundational human rights decisions of *Ont Human Rights Comm v Simpsons-Sears*, [1985] 2 SCR 536 and *Ontario (Human Rights Commission) v Etobicoke (Borough of)*, [1982] 1 SCR 202.

13. Since then, the OHRC has been a party or an intervener in the following SCC cases involving the *Code* or *Charter*:

- *British Columbia Human Rights Tribunal v Schrenk*, 2017 SCC 62;
- *McCormick v Fasken Martineau DuMoulin LLP*, 2014 SCC 39;
- *Saskatchewan (Human Rights Commission) v Whatcott*, 2013 SCC 11;
- *R v NS*, 2012 SCC 72;
- *Moore v British Columbia (Education)*, 2012 SCC 61;
- *Alberta v Hutterian Brethren of Wilson Colony*, 2009 SCC 37;
- *Honda Canada Inc v Keays*, 2008 SCC 39;
- *Council of Canadians with Disabilities v Via Rail Canada Inc*, 2007 SCC 15;
- *Tranchemontagne v Ontario (Director, Disability Support Program)*, 2006 SCC 14;
- *Multani v Commission Scolaire Marguerite-Bourgeoys*, 2006 SCC 6;
- *Reference re Same-Sex Marriage*, 2004 SCC 79;
- *Syndicat Northcrest v Amselem*, 2004 SCC 47;
- *Québec (Commission des droits de la personne et des droits de la jeunesse) v le Procureur général du Québec*, 2004 SCC 39;
- *District of Parry Sound Social Services Administration Board v Ontario Public Service Employees Union, Local 324*, 2003 SCC 42;
- *B v Ontario (Human Rights Commission)*, 2002 SCC 66;
- *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44;
- *M v H*, [1999] 2 SCR 3;
- *Gibbs v Battlefords and District Cooperative Ltd*, [1996] 3 SCR 566; and
- *Renaud v Central Okanagan School District*, [1992] 2 SCR 970.

14. The OHRC has recently been granted leave to intervene by the SCC in two *Charter* cases: *Attorney General of Québec v Joseph-Christopher Luamba, et al.* (Case #41605) and *English Montreal School Board, et al v Attorney General of Québec, et al.* (Case #41231).

15. This Honourable Court and the SCC have recognized the significant overlap between the discrimination analysis under the *Code* and the *Charter*: *Fraser v Canada (AG)*, 2020 SCC 28 [*Fraser*] at paras 37-40, *Tranchemontagne v Ontario (Director, Disability Support Program)*, 2006 SCC 14 at para 83 and *British Columbia (Public Service Employee Relations Commission v BCGSEU*, [1999] 3 SCR 3 at para 48.

16. The OHRC's interventions before courts and tribunals have dealt with the discrimination analysis under both the *Code* and *Charter*. As such the OHRC's expertise is relevant to the equality issues in this appeal.

ii. OHRC expertise in human rights policy

17. Section 30 of the *Code* authorizes the OHRC to approve and publish human rights policies to provide guidance on interpreting the *Code*. Section 45.5 of the *Code* states that the HRTO may consider OHRC policies in a proceeding before it and, where a party or an intervener requests it, the HRTO shall do so. Under section 31 of the *Code*, the OHRC can conduct inquiries in the public interest. OHRC policies, inquiry and consultation reports have been considered by all levels of Canadian courts.

18. The OHRC has published more than 25 policies and guidelines and has conducted numerous public inquiries and consultations dealing with a variety of human rights issues, including issues engaged by this *Charter* challenge. This includes its *Policy on human rights and rental housing* and *In the zone: Housing, human rights and municipal planning*.

19. The Superior Court of Justice considered OHRC policies and reports in:

- *R v Theriault*, 2020 ONSC 6768;
- *R v Morris*, 2018 ONSC 5186;
- *Bellehumeur v Windsor Factory Supply Ltd*, 2013 ONSC 4373;
- *Jaffer v York University* (2009), 182 ACWS (3d) 90 (ONSC);
- *Association of Justices of the Peace of Ontario v Ontario (AG)* (2008), 92 OR (3d) 16;
- *Wynberg v Ontario* (2005), 252 DLR (4th) 10; and
- *Kulyk v Toronto Board of Education* (1996), 139 DLR (4th) 114.

20. This Honourable Court considered OHRC policies and reports in:

- *R v Sharma*, 2020 ONCA 478;
- *Entrop v Imperial Oil* (2000), 50 OR (3d) 18;
- *Bannister v General Motors of Canada Ltd* (1998), 40 OR (3d) 577;
- *Ontario (Human Rights Commission) v Ontario* (1994), 19 OR (3d) 387; and
- *McKinney v University of Guelph*, (1987), 63 OR (2d) 1.

21. The Supreme Court of Canada considered OHRC policies and reports in:

- *R v Sharma*, 2022 SCC 39;
- *Fraser*;
- *R v Le*, 2019 SCC 34;
- *R v Grant*, 2009 SCC 32; and
- *Québec (Commission des droits de la personne et des droits de la jeunesse) v Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39.

iii. OHRC expertise and interest in the issues in this appeal

22. The OHRC has unique and well-established expertise in each of the prohibited grounds of discrimination identified in this appeal. Since its inception, the OHRC has engaged in public consultation, policy development, public interest inquiries, strategic litigation and other forms of advocacy about the rights of women, racialized persons, Indigenous persons, persons with physical, mental health and substance use disabilities. This includes work that addresses the intersection between discrimination against these individuals and poverty, homelessness and encampments.

23. Health and well-being, including access to housing, is a priority area in the OHRC's current Strategic Plan *Human Rights First: A plan for belonging in Ontario*. This includes addressing systemic concerns that contribute to and exacerbate physical and mental health issues for persons with disabilities, Indigenous, and racialized populations, women and people with addictions.

22. Through litigation and public inquiries, the OHRC has advocated to increase access to housing for people with low-income including: inquiries into potentially discriminatory effects of municipal regulations that restrict the size and location of rental housing; submissions in *Kitchener (City) Official Plan Amendment No 58*, [2010] OMBD No 666 which called on the Ontario Municipal Board to analyze municipal regulations on “single person, low income households” and “residential care facilities and social/supportive housing” for discrimination;

intervention in *Tanudjaja* which challenged Canada and Ontario's policies and programs on affordable housing; and ongoing participation in *Fulton v Guan*, a section 7 and 15 *Charter* challenge to a defence in section 21(1) of the *Code* which allows discrimination where a tenant shares a kitchen or bathroom with the landlord.

23. The OHRC regularly makes submissions to all levels of government to bring a human rights approach to issues of poverty and homelessness. For example, the OHRC made recommendations to the federal government on its National Housing Strategy calling on the government to progressively realize the right to housing with a special focus on the rights of Indigenous peoples. The OHRC also provided a submission to the UN Special Rapporteur on Adequate Housing, on the responsibilities of sub-national governments with respect to the right to adequate housing.

24. Since the issue of encampments has come to the forefront of the homelessness crisis, the OHRC has taken a direct and substantial interest in encouraging municipalities to adopt a human rights-based rather than enforcement approach to encampments and shelters. This includes:

- Issuing a public *Statement on human rights and encampments and shelter closings*. The OHRC supported the Office of the Federal Housing Advocate's five urgent recommendations for all levels of government when addressing encampments.
- Writing to the City of Kingston in May 2024 about its plans to begin enforcing a daytime ban on camping in parks. A copy of the letter is attached hereto as Exhibit "A".
- Writing to the Mayor of the Town of Aurora in March 2025 about his decision to veto a motion to reconsider a proposal from the Regional Municipality of York to build an emergency and transitional housing facility within the Town's limits. A copy of the letter is attached hereto as Exhibit "B".
- Releasing 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 vulnerable persons protected under the *Code*.
- Seeking leave to intervene in the Superior Court proceedings in respect of this *Charter* Application (in an Endorsement dated September 13, 2024, the Application judge denied the OHRC and all other proposed interveners leave to intervene).

25. The outcome of this appeal will have a direct impact on the OHRC's future work on homelessness, encampments and human rights. This Honourable Court's decision on equality rights could affect the adjudication of all discrimination claims in Ontario related to encampments and the OHRC's efforts to promote a human-rights based approach to municipal responses to homelessness and encampments.

B. The OHRC's proposed position in this appeal

26. If permitted to intervene, the OHRC will make arguments relating to its expertise in equality law. The OHRC will make submissions on the proper approach to the protection of equality under section 15 of the *Charter*. The OHRC will also argue that equality and its animating principle, human dignity, inform the s. 7 analysis.

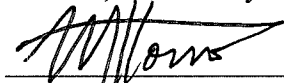
C. Proposed terms for intervention

27. The OHRC is requesting that it be granted leave to intervene in this appeal to assist the Court by way of written and oral argument. It seeks leave to file a factum of not more than 14 pages and to make 15 minutes of oral argument.

28. 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. The OHRC will take no position on the disposition of the appeal and will avoid duplicating the submissions of any parties or interveners.

29. This Affidavit is made in support of this motion for leave to intervene and for no improper purpose.

Sworn before me in person)
at the City of Toronto, in the)
Ontario, this 4th day of November, 2025)



MATTHEW HORNER, LSO #47163B
A Commissioner for Taking Oaths, etc.



PATRICIA DEGUIRE

Exhibit “A”

OHRC letter to the City of Kingston
May 1, 2024

This is Exhibit “A” to the Affidavit of Patricia DeGuire,
sworn before me in person at the City of Toronto, in
the Province of Ontario, on this 4th day of November, 2025

A handwritten signature in black ink, appearing to read 'M Horner', written over a horizontal line.

MATTHEW HORNER, LSO #47163B
A Commissioner for Taking Oaths, etc.

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May 1, 2024

Mayor Bryan Paterson
City Councillors
City of Kingston
216 Ontario Street
Kingston, Ontario K7L 2Z3

Dear Mayor Paterson and Councillors:

The Ontario Human Rights Commission (OHRC) understands that the City of Kingston has announced plans to require unsheltered homeless persons at Belle Park to dismantle their shelters and pack up their belongings during the day. I am writing to urge Kingston instead to adopt a human rights-based approach to respond to the issue of encampments.

The growing reality of encampments and unsheltered homelessness raises issues of public importance squarely within the OHRC's expertise. The OHRC has been [monitoring](#) Ontario municipalities' response to the crisis of unsheltered homelessness. The OHRC recognizes the challenges municipalities face in addressing intersecting needs related to housing and homelessness, mental health and substance use issues, and poverty. All levels of government share responsibility, but municipalities are often on the front lines of addressing these systemic social problems.

There are almost 1400 encampments across the province and that municipalities are not adopting a consistent response to this growing concern. Some municipalities are seeking to implement a respectful and compassionate human rights-based approach. Others have emphasized enforcement which can involve municipal officials or police removing people, seizing, or disposing of possessions.

Some municipalities, including Kingston have applied to the courts for orders allowing them to enforce by-laws prohibiting encamping. Notably when municipalities have done so, courts have found that if there are not enough accessible shelter beds, the state cannot prevent homeless people from building their own shelter on public land without violating their Canadian Charter of Rights and Freedoms (*Charter*) right to life, liberty and security of the person. Courts have said that shelters are not truly accessible if they cannot accommodate couples, provide necessary services, accommodate mental and physical disability, or if they impose rules that cannot be followed due to addiction disabilities.

The OHRC is concerned that enforcing the daytime ban on camping could lead to breaches of the Ontario Human Rights Code and the *Charter*. Substantive equality means that municipalities must ensure their actions do not create or exacerbate disadvantage based on one or more prohibited grounds.

Demonstrating insufficient daytime shelter spaces is not the only way to establish discrimination. Adverse effects based on disability and sex, among other grounds, can result from having to take down shelters, pack up and store belongings or carry them around and then re-establish adequate shelter from the elements every night. Encampment residents, most of whom have physical, mental health and substance use disabilities, may suffer extreme hardship and increased risk of physical and psychological harm. If they cannot comply, they may be subjected to *Trespass to Property Act* notices, fines, and arrests.

Notably, enforcing the daytime ban may also make it very difficult for people to live in the encampment at all, effectively, resulting in forced evictions. Displacing persons to living conditions where they are more exposed to the elements or at increased risk because they cannot access healthcare, social and harm reduction services raises human rights concerns. Women and gender diverse persons experience challenges finding accessible and safe spaces and face heightened risks of gender-based harassment and violence if displaced from chosen communities where they feel safest.

Municipalities need to take extra measures to ensure that their response to homelessness reflects their duty to respect, protect and fulfill Indigenous peoples' distinct rights and a commitment to reconciliation. Indigenous peoples have rights under treaties, the Constitution and the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*. All encampments in Ontario are located on Indigenous peoples' traditional territories, engaging their distinct rights concerning land and self-determination. Also, Indigenous peoples are overrepresented among homeless people and more likely to be part of "outdoor" or "unsheltered" populations. Indigenous encampment residents and local Indigenous organizations, including those serving encampment residents or other unhoused residents in Kingston, must be meaningfully engaged in any measures regarding encampments. Actions that result in the forcible displacement of Indigenous persons in the absence of their free, prior, and informed consent violate *UNDRIP*.

In managing municipal parks and enforcing by-laws, municipalities are providing a service to the public. This public includes the unsheltered homeless population, as recognized in the [Kingston decision](#). Any health and safety issues with encampments should be based on objective evidence, and not stereotypes. Steps to address legitimate health and safety concerns should be humane and tailored so that any adverse impact affects the rights of encampment residents as minimal as possible.

The OHRC encourages all levels of government to work cooperatively with each other and affected stakeholders, including encampment residents, community agencies and Indigenous organizations, to determine how best to fulfil the urgent need for housing

and shelter services while addressing legitimate health and safety concerns. This approach will help governments meet their legal obligations.

The OHRC's [Human Rights Based Approach Framework](#) (HRBA Framework) helps those designing policies and programs meet these standards. Further guidance on how a human rights-based approach applies in the context of encampments has been provided by the [Federal Housing Advocate](#) and the [UN Special Rapporteur on the Right to Adequate Housing](#). The federal government has recently released [Canada's Housing Plan](#) and announced funds to support human rights-based community action plans that commit to a housing-first approach to ending encampments, and include supportive and transitional housing, housing-focused services, and rent supplements specifically dedicated to individuals living in encampments or experiencing homelessness.

The OHRC understands that Kingston and municipalities across the province want all their residents to have affordable, accessible, and dignified housing. However, requiring encampment residents to remove their shelter and belongings during the day exacerbates their marginalization and makes it more difficult to achieve this essential goal. Thus, the OHRC joins many other concerned citizens and organizations in calling on Kingston to adopt a human rights-based approach which focuses on the needs of the encampment residents and supports them to permanently transition out of homelessness.

The OHRC hopes that this letter is useful as the City of Kingston takes a decision in this complex, difficult societal challenge. The OHRC welcomes the opportunity to discuss and provide more information about the HRBA Framework and how it can be applied to the needs of Kingston's unsheltered homeless population.

Sincerely,



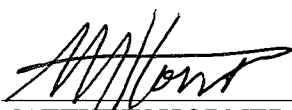
Patricia DeGuire
Chief Commissioner
Ontario Human Rights Commission

cc: President, Association of Municipalities of Ontario

Exhibit “B”

OHRC letter to the Town of Aurora,
March 14, 2025

This is Exhibit “B” to the Affidavit of Patricia DeGuire,
sworn before me in person at the City of Toronto, in
the Province of Ontario, on this 4th day of November, 2025

A handwritten signature in black ink, appearing to read 'M. Horner', written over a horizontal line.

MATTHEW HORNER, LSO #47163B
A Commissioner for Taking Oaths, etc.

**Ontario
Human Rights
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Office of the Chief Commissioner

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March 14, 2025

Mayor Tom Mrakas
Town of Aurora
Council of the Town of Aurora
100 John West Way, Box 1000
Aurora, Ontario L4G 6J1

Dear Mayor Mrakas and Members of Council,

Re: Follow up to proposed emergency and transitional housing project at 14452 Yonge St.

I am writing for the Ontario Human Rights Commission (Commission or OHRC) about the Town of Aurora's recent [Mayoral Decision #2025-006](#). That decision rejected a motion to reconsider the Regional Municipality of York's 2021 emergency and transitional housing proposal at 14452 Yonge Street.

The Commission first [wrote](#) to the Aurora Town Council on February 22, 2023, raising concerns that delaying or denying approval of this project may create barriers to establishing desperately needed emergency and transitional housing and may also be discriminatory under the Ontario *Human Rights Code* (*Code*).

Certain groups protected under the *Code* are disproportionately represented in the unhoused population. They are also more likely to require emergency and transitional housing and experience disproportionate harm when they do not have access to low-barrier, accessible housing options. This is particularly true for people receiving public assistance, Indigenous people, racialized people, and people living with disabilities including mental health disabilities, addictions, and complex trauma. A new [report](#) commissioned by the Association of Municipalities of Ontario provides more details on Ontario's homelessness crisis' human and financial costs.

A four-year delay in finding a suitable location while excluding viable options may result in a failure to meet the needs of vulnerable individuals protected under the *Code* and may be discriminatory. Under the Canadian *Charter of Rights and Freedoms*, a municipality's lack of sufficient low-barrier and accessible housing options for people

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experiencing homelessness can also limit its ability to prevent unhoused persons from sheltering in encampments on municipal property. This can be deemed as an administrative convenience which violates the *Charter* that can not be justified under it.

The Commission urges the Town of Aurora to consider all viable options, including the original proposed site at 14452 Yonge Street, and to expeditiously fulfil its obligation to provide transitional housing to meet the known needs of people experiencing homelessness in Aurora in accordance with sections 2.2.1, 6.1.3 and 8 of the Provincial Planning Statement 2024, issued under Ontario's *Planning Act*.

The Commission encourages the Town of Aurora to use a human rights-based approach to take advantage of funding available from the provincial and federal governments and find a solution to meet the emergency and transitional housing needs as soon as possible.

The OHRC welcomes the opportunity to discuss this matter further and provide more information about its Human Rights Based Approach (HRBA) Framework. In the meantime, the OHRC will continue to monitor the Town of Aurora's response and actions to address the urgent need for emergency and transitional housing in the community.

In keeping with the OHRC's commitment to public accountability and its duties in serving the people of Ontario, this letter and the responses received may be made public.

Sincerely,

Patricia DeGuire
Chief Commissioner

cc: York Region Chair and CEO

Housing York Inc.

Court of Appeal File No. COA-25-CV-0166

KRISTEN HEEGSMA, et al. -and- **CITY OF HAMILTON**

Appellants Respondent

COURT OF APPEAL FOR ONTARIO

AFFIDAVIT OF PATRICIA DEGUIRE
(Affirmed on November 4, 2025)

ONTARIO HUMAN RIGHTS COMMISSION
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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

**DRAFT FACTUM OF THE PROPOSED INTERVENER
ONTARIO HUMAN RIGHTS COMMISSION**

**ONTARIO HUMAN RIGHTS
COMMISSION**

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TO THIS HONOURABLE COURT

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PART I – OVERVIEW

1. This appeal has significant implications for the rights of unhoused persons in Ontario. It will establish the legal framework that will guide municipalities' response to encampments across the province. The Ontario Human Rights Commission (OHRC), Ontario's statutory human rights agency, intervenes to make submissions on the proper approach to assessing discrimination under s. 15 of the *Canadian Charter of Rights and Freedoms* (*Charter*).¹ The OHRC sets out the key substantive equality principles under s. 15 and argues 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 s. 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.

2. Further, the OHRC argues that equality and its animating principle, human dignity, inform the analysis under s. 7 of the *Charter*. This requires considering the broader social context, evidence of the Appellants' circumstances and marginalization, and the actual effects of 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.

3. The OHRC takes no position on the outcome of the appeal.

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

PART II – FACTS

4. The OHRC relies on the facts as set out in the Appellants’ factum.

PART III – ARGUMENT

A. The s. 15 test and substantive equality principles

5. The s. 15 test asks (i) is there is a distinction based on an enumerated or analogous ground? and (ii) does the distinction fail to respond to the claimants’ actual needs and instead impose a burden that reinforces, perpetuates, or exacerbates their disadvantage?²

6. The purpose of the s. 15 guarantee is to ensure substantive equality. The Supreme Court of Canada (SCC) has identified several key principles when applying the s. 15 test:

- Evidence about the full context of the claimant group’s situation and/or evidence about the outcomes of the impugned law or action help prove a disproportionate impact.³
- No specific form of evidence is required. In some cases, a disproportionate impact based on an enumerated or analogous ground will be “apparent and immediate”.⁴
- The law or action can either create or contribute to a disproportionate impact⁵ and, in some cases, this connection “may be satisfied by a reasonable inference” and require no evidence.⁶
- The law or action need not be the only or dominant factor in the disproportionate impact.⁷
- Once a claimant demonstrates that the impugned law or action creates or contributes to a disproportionate impact on a group, they need not go further and show why.⁸
- The evidence does not need to establish that the impugned provisions affect only people identified by a prohibited ground of discrimination or even that they affect all people who are identified by a prohibited ground in the same way.⁹
- Although comparison plays a role, a “mirror comparator group” is not required.¹⁰

² *Fraser v Canada (AG)*, [2020 SCC 28](#) at para [50](#) [*Fraser*]; *R v Sharma*, [2022 SCC 39](#) at para [28](#) [*Sharma*].

³ *Fraser*, *ibid* at paras [57-58](#).

⁴ *Ibid* at para 61; *Sharma*, *supra* note 2 at para [49](#); *Kahkewistahaw First Nation v. Taypotat*, [2015 SCC 30](#) at para [33](#).

⁵ *Sharma*, *ibid* at para [45](#).

⁶ *Ibid* at para [49](#).

⁷ *Ibid* at para [45](#).

⁸ *Ibid* at para [46](#); *Fraser*, *supra* note 2 at paras [63](#), [70](#).

⁹ *Fraser*, *ibid* at paras [72-75](#).

¹⁰ *Sharma*, *supra* note 2 at para [41](#).

- Choices made by the affected individual or group are not an appropriate consideration as this allows governments to circumvent their *Charter* obligations.¹¹
- The focus is on the effects on the claimants. Weighing competing social interests or state objectives occurs at the justification stage under section 1 of the *Charter*.¹²

7. The Court's reasons in the decision under appeal fail to apply the s. 15 test and its brief conclusions undermine these substantive equality principles in several important respects.

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 ground

8. In their Notice of Application, the Appellants did not plead homelessness as an analogous ground of discrimination. Rather, they alleged discrimination based on the enumerated grounds of race, sex, race intersecting with sex, and disability. However, Justice Ramsay concluded that the only characteristic they all shared was homelessness which has not been recognized as an analogous ground.¹³

9. The SCC has found that s. 15 does not require perfect correspondence between an entire claimant group and a single ground. The persons affected by the impugned law or action do not have to form a homogeneous group that shares identical characteristics. They do not need to establish that only persons who identify by the prohibited ground are adversely impacted or that all who do are impacted in the same way or for the same reasons.¹⁴

10. For example, the claimants in *Fraser v Canada (AG)* did not need to establish that job-sharing is an analogous ground or that everyone adversely impacted by the pension consequences of job-sharing was a woman or had child-care responsibilities.¹⁵

11. Similarly, in *Jacob v Canada (AG)*, the claimant group was defined as workers with disabilities who were active in the labour market.¹⁶ This Honourable Court did not require the

¹¹ *Fraser*, *supra* note 2 at paras [86-92](#).

¹² *Ibid* at para [79](#).

¹³ *Heegsma v Hamilton*, [2024 ONSC 7154](#) at para [82](#).

¹⁴ *Fraser*, *supra* note 2 at paras [72-74](#).

¹⁵ *Fraser*, *ibid* at paras [97-98](#); *Sharma*, *supra* note 2 at para [47](#).

¹⁶ *Jacob v Canada (AG)*, [2024 ONCA 648](#) at para [13](#) [*Jacob*].

claimant to establish that being active in the labour market was an analogous ground or that all workers with disabilities were affected the same way. She simply had to show discrimination based on her own factual circumstances and those of the group to which she belongs, “whose parameters are defined by” the ground alleged (disability).¹⁷

12. The Appellants need only establish they experienced a distinction as unhoused women, racialized/Indigenous persons, persons with disabilities,¹⁸ or a combination of these identities. Put another way, they must show a sufficient nexus or link between one or more protected grounds and an adverse impact caused or contributed to by the By-laws and evictions.¹⁹ There is no need to establish a common characteristic or that “homelessness” is an analogous ground.

ii. The evidentiary burden is flexible and contextual and many forms of evidence can establish a distinction connected to prohibited grounds at step one of the s. 15 test

13. The SCC has recognized that the evidentiary burden to establish a distinction based on one or more protected grounds is flexible, contextual and not “unduly difficult to meet.”²⁰ This is so the s. 15 test can respond to different types of discrimination claims and experiences of inequality that may emerge over time.²¹ In an adverse effects case, claimants can establish a qualitatively different or quantitatively disproportionate adverse impact in one or more ways:²²

- they experience a negative impact that others don’t experience at all;²³
- they experience qualitatively different or more serious consequences than others who are also affected;²⁴
- they experience a negative impact at a greater rate than others subject to the same

¹⁷ *Ibid* at para 65.

¹⁸ For a definition of disability in the context of equality rights, see s. 10(1) of the Ontario *Human Rights Code*, RSO 1990, c H19.

¹⁹ *Jacob*, *supra* note 16 at para 77.

²⁰ *Sharma*, *supra* note 2 at para 49; *Fraser*, *supra* note 2 at paras 66-67.

²¹ *Fraser*, *ibid* at paras 59, 66; *Québec (AG) v Alliance du personnel professionnel et technique de la santé et des services sociaux*, 2018 SCC 17 at para 26 [*Alliance*]; *Ontario (AG) v G*, 2020 SCC 38 at para 47 [*Ontario v G*].

²² *Fraser*, *supra* note 2 at para 55.

²³ *Fraser*, *ibid* at paras 47, 54; *Eldridge v British Columbia (AG)*, [1997] 3 SCR 624 at para 66 [*Eldridge*]; *Eaton v Brant County Board of Education*, [1997] 1 SCR 241, at para 67 [*Eaton*]; *Ontario v G*, *supra* note 21 at para 70; *Jacob*, *supra* note 16 at paras 103, 108.

²⁴ *Vriend v Alberta*, [1998] 1 SCR 493 at para 82 [*Vriend*]; *Eldridge*, *supra* note 23 as cited in *Fraser*, *supra* note 2 at paras 54-55.

requirement²⁵ or are overrepresented in the group that experiences the negative impact;²⁶ and/or

- they are more likely to find themselves in the circumstances that trigger the negative impact or face broader disadvantage in a way that corresponds to the negative impact.²⁷

14. Any one of these adverse effects can establish a distinction at step one of the test, particularly in claims that the state failed to consider or accommodate the circumstances of the claimant group.²⁸ In other cases, several can combine to produce the disproportionate or adverse impact.

15. This was the case in *Fraser* where the evidence established that women with young children were overrepresented in the pool of people adversely impacted by the pension rules; were more likely to job-share or work part-time job (more likely to find themselves in circumstances that trigger the negative impact); and historically women have largely been responsible for domestic work resulting in impacts on their employment and employment benefits (face broader disadvantage in a way that corresponds to the negative impact).²⁹

16. As in *Fraser*, the Appellants led several forms of evidence about the “outcomes” the sheltering restrictions and evictions “produced in practice”³⁰ and about the “physical, social, cultural or other barriers which provide the “full context of the claimant group’s situation.”³¹ This evidence reflected the Appellants’ lived experience as women, Indigenous/racialized persons and persons with disabilities. It corresponded with recognized disadvantage and marginalization associated with these characteristics, discussed further below.

²⁵ *Fraser*, *ibid* at para [55](#) citing *Griggs v Duke Power Co.*, 401 U.S. 424 (1971) and *British Columbia (Public Service Employee Relations Commission) v BCGSEU*, [1999] 3 SCR 3.

²⁶ *Fraser*, *ibid* at paras [58](#), [60](#); *Doe v Metropolitan Toronto (Municipality) Commissioners of Police (Div Ct)*, 1990 CanLII 6611 (ON SC), 74 OR (2d) 225; *Little Sisters Book and Art Emporium v Canada (Minister of Justice)*, 2000 SCC 69 at paras [112-113](#).

²⁷ *Fraser*, *ibid* at para [57](#); *Vriend*, *supra* note 24 at para [82](#).

²⁸ For example, the impact of a lack of sign language interpretation on persons with hearing disabilities; *Eldridge*, *supra* note 23, cited in *Sharma*, *supra* note 2 at para [191](#). *Fraser*, *ibid* at para [63](#).

²⁹ *Fraser*, *ibid* at paras [85](#), [98-106](#).

³⁰ *Ibid* at paras [58](#), [60](#).

³¹ *Ibid* at para [57](#).

17. Justice Ramsay only considered whether there was overrepresentation of women, Indigenous persons and persons with disabilities in the homeless population. However, there was additional evidence that the effect of the sheltering restrictions and evictions was qualitatively different or disproportionate for reasons connected to gender, race/Indigeneity and/or disabilities. This included evidence that:

- women experience sex-specific barriers when seeking shelter due to a lack of capacity in women's shelters that is disproportionate to the population of homeless women;³²
- women experience sex-specific harms from sheltering restrictions and after evictions³³
- racialized and Indigenous people often experience racism in the shelter system and lack access to culturally competent resources;³⁴
- some encampment residents with mental health and addiction disabilities cannot access shelters because they cannot meet conditions due to their disabilities, shelters are not equipped to support people with complex mental health needs or because they are "service banned"³⁵
- for individuals with physical disabilities, constantly moving their belongings is not possible, immensely painful or uniquely taxing;³⁶ and
- sleeping outside after an encampment eviction risks worsening physical, mental health

³² Medora Uppal Affidavit, [**Uppal Affidavit**] p 13-14, para 44 [ABC, Vol-7, Tab-87], Kristen Heegsma Affidavit [**Heegsma Affidavit**], p 55, para 17, p 57, para 28 [ABC Vol-3, Tab-35]; Cassandra Jordan Affidavit, [**Jordan Affidavit**] p 116-118, paras 10, 15, 19, 25, 27 [ABC Vol-3, Tab-38]; Cassandra Jordan XE, [**Jordan XE**] p 125, Q81, p 128-129, Q124-134 [ABC Vol-3, Tab-39]; Misty Marshall XE, [**Marshall XE**] p 117, Q105 [ABC Vol-4, Tab-55], **Sherri Ogden Affidavit**, p 47, para 11 [ABC Vol-5, Tab-64]; **Shawn MacKeigan XE**, p 223, Q203 [ABC Vol-10, Tab-139]; **Tess Mcfadzean XE**, p 185, Q129 [ABC Vol-10, Tab-137].

³³ **Julia Lauzon Affidavit**, p 138, para 13 [ABC Vol-3, Tab-41]; **Julia Lauzon XE**, p 147, Q138 [ABC Vol-3, Tab-42]; **Heegsma Affidavit**, *supra* note 32, p 54-55, paras 11, 23; Supplementary Affidavit of Kristen Heegsma, [**Supplementary Heegsma Affidavit**], p 61, para 2 [ABC Vol-3, Tab-36]; **Jordan XE**, *supra* note 32, p 131, Q156; Misty Marshall Affidavit (May 12, 2022), [**Marshall Affidavit 2022**] p 106, para 26 [ABC Vol-4, Tab-53]; Misty Marshall Affidavit (May 8, 2023), [**Marshall Affidavit 2023**] p 110, para 4 [ABC Vol-4, Tab-54]; Marshall XE, *supra* note 32, p 124, Q-220-224; **Uppal Affidavit**, *supra* note 32, p 16, para 58.

³⁴ Linsley Greaves Affidavit, [**Greaves Affidavit**] p 29, para 8 [ABC Vol-3, Tab-32]; Linsley Greaves XE, [**Greaves XE**], p 39-40, Q48-49 [ABC Vol-3, Tab-34]; **Audrey Davis Affidavit**, p 11, paras 32-33 [ABC Vol-6, Tab-76]; **Audrey Davis XE**, p 31-32, Q104 [ABC Vol-6, Tab-77]; **Reducing Homelessness and Managing Encampments** (June 19, 2024), p 1092, 1099 [ABC, Vol-9, Tab-125a].

³⁵ **David Buckle XE**, p 1081, Q82-85 [ABC Vol-9, Tab-125]; **Robert Mastroianni XE**, p 106-108, Q11-14 [ABC Vol-10, Tab-133]; **Uppal Affidavit**, *supra* note 32 p 13, para 40; Mario Muscato Affidavit, [**Muscato Affidavit**], p 26, paras 10, 13 [ABC Vol-5, Tab-62]; Mario Muscato XE, [**Muscato XE**], p 36, Q130 [ABC Vol-5, Tab-63]; **Gord Smyth Affidavit (September 29, 2021)**, p 94, para 6 [ABC Vol-5, Tab-70]; **Greaves Affidavit**, *supra* note 34, p 29, para 11; Cory Monahan Affidavit, [**Monahan Affidavit**], p 128-129, paras 10-16 [ABC Vol-4, Tab-56].

³⁶ **Muscato Affidavit**, *supra* note 35, p 26, para 12; **Muscato XE**, *supra* note 35, p 35, Q119, p 43, Q262-266 [ABC Vol-5, Tab-63]; **Gord Smyth Affidavit (March 9, 2023)**, p 124-125, paras 21-22 [ABC Vol-5, Tab-72]; **Monahan Affidavit**, *supra* note 35, p 130, para 22; **Jordan XE**, *supra* note 32, p 129, Q139.

and substance use disabilities and increases the likelihood of death from overdose.³⁷

18. This case is distinguishable from cases such as *R v Sharma* where the link between the law and its impact based on protected grounds of discrimination was remote. In *Sharma*, the SCC was concerned that there was no evidence that the impugned law had a disproportionate impact on Indigenous women, other than very general evidence that Indigenous women are overrepresented in the justice system.³⁸ In other words, the disproportionality (overrepresentation) was one step removed from the impugned law without any additional evidence to connect any adverse impact from the law to the prohibited ground. The Court was being asked to draw an inference to fill in the gap. That is not the case here.

iii. The Appellants must only show that the Respondent contributed to or worsened their pre-existing disadvantage not that it caused it

19. The s. 15 analysis considers the full context of the claimant group's situation and the actual impact of the law on it. It does not matter to either step whether the law *created* the social, political or legal disadvantage of protected groups.³⁹ It also does not matter whether the state targeted the claimant group or enforced the law selectively. The focus of substantive equality is not on intention but on effects and outcomes.⁴⁰

20. Substantive equality does not require demonstrating that the Respondent caused the entirety of the Appellants' disadvantage. Equality claims invariably involve groups with significant pre-existing economic and social disadvantage often from a combination of factors, not all of which are protected grounds. The harms associated with homelessness do not absolve

³⁷ *Heegsma Affidavit*, *supra* note 32, p 56, para 24; *Jordan Affidavit*, *supra* note 32, p 117-118, paras 22, 28, *Marshall Affidavit 2022*, *supra* note 33, p 106, para 24; *Jahmal Pierre Affidavit*, p 69, para 25 [ABC, Vol-5, Tab-67]; *Darrin Marchand Affidavit*, p 79, para 35 [ABC Vol-4, Tab-50]; *Muscato Affidavit*, *supra* note 35, p 28, para 28-29; *Greaves XE*, *supra* note 34, p 46, Q145. See also *The Regional Municipality of Waterloo v Persons Unknown and to be Ascertained*, [2025 ONSC 4774](#), at para 89 [*Waterloo* #2].

³⁸ *Sharma*, *supra* note 2 at para 76.

³⁹ *Alliance*, *supra* note 21 at para 42; *Fraser*, *supra* note 2 at para 71; *Centrale des syndicats du Québec v Québec (AG)*, [2018 SCC 18](#) at para 32 [*Centrale*]; *Vriend*, *supra* note 24 at para 84.

⁴⁰ *Centrale*, *ibid* at para 35.

the state of responsibility for actions that make homeless women, Indigenous persons and persons with disabilities more vulnerable to those harms.⁴¹

21. At step one of the s. 15 test the Appellants need only establish that Hamilton’s conduct contributed to or was a factor in a disproportionate impact connected to a prohibited ground. It does not have to be the only or even predominant factor. Step two of the s. 15 inquiry will be satisfied if the state conduct reinforces, perpetuates or exacerbates a disadvantage that “exists independently” of the distinction established in step one.⁴²

22. At both steps, the interaction between societal conditions, including the historical or systemic disadvantage of the claimant group, and the impugned government action must be considered. If the state’s conduct contributes to or fails to account for conditions of disadvantage that exist independently of the state, discrimination will be found.⁴³

23. In addition to the evidence described above, contextual evidence about the Appellants’ historical or systemic disadvantage as women, Indigenous/racialized persons, and/or persons with disabilities shows how the sheltering restrictions and evictions both disproportionately impacted them at step one and exacerbated their disadvantage at step two.⁴⁴ Courts have previously recognized many of these:

- the “feminization of poverty”⁴⁵ which is mirrored by and intersects with poverty related to race, disability, gender identity and sexual orientation⁴⁶
- the highly gendered nature of sexual violence and its impact on women’s equality⁴⁷
- that women are more likely to be victims of intimate partner violence than men and are therefore “more likely to leave their home and belongings — and their financial security — behind and to seek shelter or become homeless.”⁴⁸

⁴¹ *Alliance*, *supra* note 21 at para [41](#). See also *Canada (AG) v. Bedford*, [2013 SCC 72](#) at para [89](#) [*Bedford*].

⁴² *Ontario Teacher Candidates’ Council v Ontario (Education)*, [2023 ONCA 788](#) at para [69](#).

⁴³ *Sharma*, *supra* note 2 at para [45](#); *Centrale*, *supra* note 39 at para [32](#); *Alliance*, *supra* note 21 at para [41](#); *Vriend*, *supra* note 24 at para [66](#).

⁴⁴ *Fraser*, *supra* note 2 at para [42](#); *Jacob*, *supra* note 16 at paras [90-91](#).

⁴⁵ *Fraser*, *ibid* at para [112](#), citing *Moge v Moge*, [\[1992\] 3 SCR 813](#), at p [853](#).

⁴⁶ *Moge*, *ibid* at p [867](#); *Michel v Graydon*, [2020 SCC 24](#) at para [101](#) [*Michel*].

⁴⁷ *R v Kirkpatrick*, [2022 SCC 33](#), at para [62](#); *R v Goldfinch*, [2019 SCC 38](#), at paras [37-38](#); *R v Barton*, [2019 SCC 33](#), at paras [1, 198](#) [*Barton*]; *R v Osolin*, [\[1993\] 4 SCR 595](#) at p [669](#).

⁴⁸ *Michel*, *supra* note 46 at para [95](#).

- that gender diverse people are at increased risk of violence and abuse, report higher rates of poor mental health and substance use as a coping mechanism and face undeniable disadvantage and marginalization, particularly in housing, employment and healthcare.⁴⁹
- that the social, historical and political context of persons with disabilities has been one of marginalization and exclusion.⁵⁰ They have lower incomes,⁵¹ are more likely to live in poverty and are more often impacted by economic crises.⁵²
- and that persons with mental illness experience widespread stigma and stereotyping⁵³ compounded when they are also part of another stigmatized group such as being a social assistance recipient.⁵⁴

24. The legacy of systematic mistreatment of Indigenous persons is another important contextual factor. Courts have taken judicial notice of the ongoing impact of colonialism, displacement and residential schools⁵⁵ on Indigenous peoples including: high rates of unemployment and poverty and serious disadvantage in education, health and housing;⁵⁶ displacement from traditional lands;⁵⁷ pervasive racism⁵⁸ and discrimination when living away from their communities;⁵⁹ higher rates of substance abuse;⁶⁰ disproportionate interaction with law enforcement and higher levels of incarceration;⁶¹ and higher rates of intimate partner and sexual violence against Indigenous women.⁶² They have recognized the effect of trauma from residential schools on the Indigenous homeless population and occupants of encampments.⁶³

25. These same contextual factors are relevant to the s. 7 analysis.

⁴⁹ *Hansman v Neufeld*, [2023 SCC 14](#) at paras [84-88](#).

⁵⁰ *Eaton*, *supra* note 23 at para [34](#); *Ontario v G*, *supra* note 21 at paras [61-63](#).

⁵¹ *Jacob*, *supra* note 16 at para [83](#).

⁵² *Jacob*, *ibid* at para [17](#); *Waterloo #2*, *supra* note 37 at para 101.

⁵³ *Ontario v G*, *supra* note 21 at paras [1](#), [51](#), [61-63](#).

⁵⁴ *Ontario (Disability Support Program) v Tranchemontagne*, [2010 ONCA 593](#), at paras [106](#), [125-126](#).

⁵⁵ *R v Ipeelee*, [2012 SCC 13](#) at para [60](#) [*Ipeelee*].

⁵⁶ *Lovelace v Ontario*, [2000 SCC 37](#) at para [69](#).

⁵⁷ *Dickson v Vuntut Gwitchin First Nation*, [2024 SCC 10](#) at paras [196-198](#); *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [\[1999\] 2 SCR 203](#) at para [83](#) [*Corbiere*].

⁵⁸ *R v King*, [2022 ONCA 665](#) at para [194](#).

⁵⁹ *Corbiere*, *ibid* at para [62](#).

⁶⁰ *Ipeelee*, *supra* note 55 at para [60](#).

⁶¹ *Ipeelee*, *ibid* at para [60](#); *R v Gladue*, [\[1999\] 1 SCR 688](#) at paras [58-64](#); *R v Doering*, [2020 ONSC 5618](#) at para [55](#).

⁶² *Barton*, *supra* note 47 at para [198](#); *R v TJF*, [2024 SCC 38](#) at para [60](#).

⁶³ *Prince George (City) v Stewart*, [2021 BCSC 2089](#) at para [71](#) [*Stewart*].

B. Substantive equality principles and a contextual approach inform the s. 7 analysis

26. Even without a *Charter* s. 15 claim, equality and its animating principle, human dignity, informs the analysis of other *Charter* rights breaches particularly under s. 7:⁶⁴

Thus, in considering the s. 7 rights at issue, and the principles of fundamental justice that apply in this situation, it is important to ensure that the analysis takes into account the principles and purposes of the equality guarantee in promoting the equal benefit of the law and ensuring that the law responds to the needs of those disadvantaged individuals and groups whose protection is at the heart of s. 15. The rights in s. 7 must be interpreted through the lens of ss. 15 and 28, to recognize the importance of ensuring that our interpretation of the Constitution responds to the realities and needs of all members of society.⁶⁵

27. Equality is baked into the s. 7 analysis in several ways. First, it requires considering the social and legislative context in which the impugned laws operate,⁶⁶ the evidence surrounding the circumstances of the affected group, including their marginalization, and the actual effects of the state conduct on life, liberty and security of the person as a result.⁶⁷

28. For example, the SCC considered the lived realities of injection drug users in *Canada (AG) v PHS Community Services Society*,⁶⁸ and street sex workers in *Canada (AG) v Bedford*,⁶⁹ including their vulnerability, marginalization and the risks of disability-related and sex-specific harms to find that the effect of the impugned laws breached their s. 7 rights. Homelessness has also been recognized as a life circumstance that can exacerbate a law's effect on the right to life, liberty and security of the person.⁷⁰ It is also relevant to determining whether a s. 7 breach is justified under *Charter* s. 1.⁷¹

⁶⁴ *New Brunswick (Minister of Health and Community Services) v G (J)*, [1999] 3 SCR 46 at paras 112-115 [*NB v G(J)*]; *Inglis v British Columbia (Minister of Public Safety)*, 2013 BCSC 2309 at paras 375-378; *Andrews v Law Society of British Columbia*, [1989] 1 SCR 143, at p 185; *R v Boudreault*, 2018 SCC 58 at paras 77, 83.

⁶⁵ *NB v G(J)*, *ibid* at para 115.

⁶⁶ *Winnipeg Child and Family Services v K LW*, 2000 SCC 48 at para 71.

⁶⁷ *Bedford*, *supra* note 41 at paras 70, 86; *Canada (AG) v PHS Community Services Society*, 2011 SCC 44 at paras 4, 10, 93 [*PHS*]; *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2023 ONSC 670 at para 117 [*Waterloo #1*].

⁶⁸ See for example, *PHS*, *ibid* at paras 4-10.

⁶⁹ See for example, *Bedford*, *supra* note 41 at paras 64, 70, 86.

⁷⁰ *R v Ndhlovu*, 2022 SCC 38 at paras 46, 56, 135.

⁷¹ *Ibid* at para 135.

29. Second, the SCC has rejected arguments that claimants' *Charter* s. 7 and s. 15 rights are not violated because they have theoretical alternatives to engaging in the activity prohibited by the state. It has recognized that "choices" are constrained by systemic inequality and marginalization, including due to poverty, mental illness and addictions and the risk of violence.⁷² The SCC has recognized that addiction is an illness "in which the central feature is impaired control over the use of the addictive substance."⁷³

i. Meaningful access to low-barrier shelter beds in the region must be considered

30. Other encampment decisions have considered the lived realities of people living in encampments and found that preventing them from sheltering themselves breaches their s. 7 rights where there are insufficient low-barrier shelter options for the unhoused population in the region.⁷⁴ Consistent with substantive equality, this recognizes that shelter which cannot be meaningfully accessed, particularly due to sex, disability and/or race/Indigeneity is, in effect, unavailable and does not present a viable alternative to living in an encampment.⁷⁵

31. In assessing the availability of low-barrier shelter options, the question is not whether creating truly accessible shelter space is possible but whether, in its absence, the state actively preventing people from erecting shelter to protect themselves violates their right to life, liberty and security of the person.⁷⁶

32. In *Chaoulli v Québec (AG)*, the SCC found that if public health care is inaccessible due to delays, the state cannot prohibit people from seeking private insurance and care without

⁷² *Bedford*, *supra* note 41 at para [86](#); *PHS*, *supra* note 67 at paras [100-101](#); *Waterloo #1*, *supra* note 67, at para [106](#).

⁷³ *PHS*, *ibid* at para [101](#).

⁷⁴ *Waterloo #1*, *supra* note 67 at paras [101](#), [104](#); *The Corporation of the City of Kingston v Doe*, [2023 ONSC 6662](#) at paras [78-79](#), citing *Victoria (City) v Adams*, [2008 BCSC 1363](#), *aff'd* [2009 BCCA 563](#); *Abbotsford v Shantz*, [2015 BCSC 1909](#) at para [224](#); *Stewart*, *supra* note 63 at paras [74](#), [96](#).

⁷⁵ *Prince George (City) v Johnny*, [2025 BCSC 1556](#) at paras [96](#), [104](#) [*Johnny*].

⁷⁶ *PHS*, *supra* note 67 at para [105](#); *Bedford*, *supra* note 41 at para [88](#).

breaching s. 7.⁷⁷ This finding was not contingent on whether eliminating waiting lists or creating adequate health care is possible.

33. In *Prince George (City) v Johnny*, the BC Supreme Court recognized that generally accessible low-barrier shelters are possible⁷⁸ even if they cannot “fully address the needs of every potential resident.”⁷⁹ Even then, the Court found that an individual who could not access shelter due to serious mental illness could apply to the Court for relief against the City’s prohibition on encamping (similar to the duty to accommodate under human rights law).⁸⁰

34. Reducing the reasons unhoused people cannot access shelter to personal preference or an unwillingness to comply with shelter policies (such as those prohibiting drug use or disruptive behaviours) is also inconsistent with the s. 7 and 15 jurisprudence.

35. First, addiction and mental health issues, poverty, systemic inequality and other forms of marginalization can directly impact an individual’s ability to freely “choose.”⁸¹

36. Second, s. 7 grants all persons, regardless of their circumstances, a degree of autonomy to make decisions of fundamental personal importance.⁸² Unhoused people should not be required to make “stark choices” such as between abstinence (which may not be possible if they have an addiction⁸³) and shelter.⁸⁴

37. Third, even where individuals retain the ability to make some choices, the SCC is clear that claimants’ choices do not defeat either a *Charter* s. 7 or 15 claim.⁸⁵

⁷⁷ *Chaoulli v Québec (AG)*, [2005 SCC 35](#) at para [59](#).

⁷⁸ *Johnny*, *supra* note 75, at paras [107](#), [127](#).

⁷⁹ *Ibid* at para [126](#).

⁸⁰ *Ibid* at paras [127](#), [128](#), [134](#).

⁸¹ *PHS*, *supra* note 67 at para [100-101](#); *Waterloo #1*, *supra* note 67 at para [106](#).

⁸² *Waterloo #1*, *ibid* at para [98](#), citing *R v Morgentaler*, [\[1988\] 1 S.C.R. 30](#), Wilson J, concurring; *Waterloo #2*, *supra* note 37 at para [87](#).

⁸³ Most Appellants identify as having substance use disorders.

⁸⁴ See *PHS*, *supra* note 67 at para [15](#) where the SCC recognizes the “stark choice” between abstinence and healthcare for injection drug users. See also *Waterloo #1*, *supra* note 67 at para [104](#).

⁸⁵ See *Québec (AG) v A*, [2013 SCC 5](#) at paras [139-140](#); *Bedford*, *supra* note 41 at paras [85-86](#); *PHS*, *ibid* at paras [100-101](#).

ii. Supposed alternatives to encampments can pose sex-specific or disability-related risks of harm

38. In the absence of adequate shelter space, alternatives to staying in encampments such as couch-surfing, staying with relatives or sleeping rough do not defeat a s. 7 claim. Even if there is evidence these options are all available, the s. 7 analysis requires considering whether they would be more dangerous than encamping or could result in sex-specific or disability-related harms, including increasing the risk of sexual violence or overdose.⁸⁶

iii. Daytime evictions can have sex-specific or disability-related impacts and burdens

39. The contextual effects-based analysis mandated by both s. 7 and 15 requires considering the impact of encampment evictions regardless of what time of day they occur.

40. Narrowly focusing on whether evictions took place overnight fails to consider whether the *effect* of daytime evictions interfered with, or deprived the Appellants, particularly those with disabilities, of overnight shelter. This requires considering whether taking down shelter, moving and safeguarding possessions all day and re-establishing shelter nightly, would disproportionately or uniquely impact the right to life, liberty and security of the person of women and persons with disabilities for example by examining:

- whether persons with physical, mental health or addiction disabilities could comply and the potential consequences of failing to do so (e.g., receiving *Trespass to Property Act* notices, the trauma of being subject to evictions);⁸⁷
- the burden of complying particularly for persons with disabilities such as: the effect of having to carry belongings during the day; the risk of loss of survival items; the inability to keep medication safe or administer it; an increased risk of overdose; increased barriers to accessing medical care; and increased risks associated with inclement weather;⁸⁸ and
- the risks to women of sexual assault or street level harassment.⁸⁹

⁸⁶ PHS, *ibid* at para 10; Bedford, *ibid* at para 88. See also Supplementary Heegsma Affidavit, *supra* note 33, p 61, para 2; Marshall Affidavit 2023, *supra* note 33, p 110, para 4.

⁸⁷ Matsqui-Abbotsford Impact Society v Abbotsford (City), 2024 BCSC 1902 at para 198 [Abbotsford]; Waterloo #2, *supra* note 37 at para 89. See also Jordan Affidavit, *supra* note 32 at p116, para 13 and Muscato Affidavit, *supra* note 35 at p 27, paras 24-26.

⁸⁸ See Waterloo #2, *supra* note 37 at paragraphs 89 and 91 for a discussion of these various impacts among others.

⁸⁹ Uppal Affidavit, *supra* note 32, pp 10-11, paras 22-29.

41. In *Matsqui-Abbotsford Impact Society v Abbotsford (City)*, the Supreme Court of British Columbia took this approach when examining a by-law permitting an unhoused person to erect and occupy a temporary nighttime shelter when there is no accessible shelter accommodation available in the City. The Court recognized that although being required to dismantle temporary shelters each morning by 9:00 a.m., and re-erect them after 7:00 p.m. “may be feasible for able-bodied unhoused individuals, it imposes a significant and distinct burden on those with disabilities, making compliance challenging or even impossible for them.”⁹⁰ Therefore, the by-law “effectively forces those who, due to disability, cannot continually set up and take down their shelter, to either break the law or forgo temporary shelter entirely, leaving them without any viable alternatives.”⁹¹

42. Lacking access to basic shelter during the day and the trauma associated with daytime evictions can also impact s. 7 rights.⁹² In a recent decision, the Superior Court of Ontario recognized the negative effects of not having shelter and of forced evictions, or even the prospect of forced evictions, on physical and mental health and the resulting impact on life, liberty and security of the person.⁹³ Most of these negative effects and the trauma associated with evictions arise whether sheltering restrictions and evictions occur during the day or night.

PART IV – ORDER SOUGHT

43. The OHRC does not seek costs, and costs should not be awarded against it.

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

Reema Khawja and Alisha Krishna
Counsel, Ontario Human Rights Commission

⁹⁰ *Abbotsford*, *supra* note 87 at para [87](#).

⁹¹ *Ibid* at para [198](#).

⁹² *Johnny*, *supra* note 75 at para [104](#); *Stewart*, *supra* note 63 at para [73](#); *Waterloo #2*, *supra* note 37 at paras [88-89](#).

⁹³ *Waterloo #2*, *ibid* at para [89](#).

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

Abbotsford (City) v. Shantz, [2015 BCSC 1909](#)

Andrews v. Law Society of British Columbia, [\[1989\] 1 SCR 143](#)

British Columbia (Public Service Employee Relations Commission) v. BCGSEU, [\[1999\] 3 SCR 3](#)

Canada (AG) v. Bedford, [2013 SCC 72](#)

Canada (AG) v. PHS Community Services Society, [2011 SCC 44](#)

Centrale des syndicats du Québec v. Québec (AG), [2018 SCC 18](#)

Chaoulli v. Québec (AG), [2005 SCC 35](#)

Corbiere v. Canada (Minister of Indian and Northern Affairs), [\[1999\] 2 SCR 203](#)

Dickson v. Vuntut Gwitchin First Nation, [2024 SCC 10](#)

Doe v. Metropolitan Toronto (Municipality) Commissioners of Police (Div. Ct.), [1990 CanLII 6611 \(ON SC\)](#), 74 OR (2d) 225

Eaton v. Brant County Board of Education, [\[1997\] 1 SCR 241](#)

Eldridge v. British Columbia (AG), [\[1997\] 3 SCR 624](#)

Fraser v. Canada (AG), [2020 SCC 28](#)

Griggs v. Duke Power Co., [401 U.S. 424 \(1971\)](#)

Hansman v. Neufeld, [2023 SCC 14](#)

Heegsma v. Hamilton, [2024 ONSC 7154](#)

Inglis v. British Columbia (Minister of Public Safety), [2013 BCSC 2309](#)

Jacob v. Canada (AG), [2024 ONCA 648](#)

Kahkewistahaw First Nation v. Taypotat, [2015 SCC 30](#)

Little Sisters Book and Art Emporium v. Canada (Minister of Justice), [2000 SCC 69](#)

Lovelace v. Ontario, [2000 SCC 37](#)

Matsqui-Abbotsford Impact Society v. Abbotsford (City), [2024 BCSC 1902](#)

Michel v. Graydon, [2020 SCC 24](#)

Moge v. Moge, [\[1992\] 3 SCR 813](#)

New Brunswick (Minister of Health and Community Services) v. G(J), [\[1999\] 3 SCR 46](#)

Ontario (AG) v. G, [2020 SCC 38](#)

Ontario (Disability Support Program) v. Tranchemontagne, [2010 ONCA 593](#)

Ontario Teacher Candidates' Council v. Ontario (Education), [2023 ONCA 788](#)

Prince George (City) v Johnny, [2025 BCSC 1556](#)

Prince George (City) v Stewart, [2021 BCSC 2089](#)

Québec (AG) v. A, [2013 SCC 5](#)

Québec (AG) v. Alliance du personnel professionnel et technique de la santé et des services sociaux, [2018 SCC 17](#)

R v Boudreault, [2018 SCC 58](#)

R v Sharma, [2022 SCC 39](#)

R v. Barton, [2019 SCC 33](#)

R v. Doering, [2020 ONSC 5618](#)

R v. Gladue, [\[1999\] 1 SCR 688](#)

R v. Goldfinch, [2019 SCC 38](#)

R v. Ipeelee, [2012 SCC 13](#)

R v. King, [2022 ONCA 665](#)

R v. Kirkpatrick, [2022 SCC 33](#)

R v. Morgentaler, [\[1988\] 1 SCR 30](#)

R v. Ndhlovu, [2022 SCC 38](#)

R v. Osolin, [\[1993\] 4 SCR 595](#)

R v. TJF, [2024 SCC 38](#)

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

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

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

Victoria (City) v. Adams, [2009 BCCA 563](#)

Victoria (City) v. Adams, [2008 BCSC 1363](#)

Vriend v. Alberta, [\[1998\] 1 SCR 493](#)

Winnipeg Child and Family Services v KLW, [2000 SCC 48](#)

SCHEDULE “B” – LEGISLATION

Canadian Charter of Rights and Freedoms, s 1 and s 15(1), Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11

Legal Rights**Life, liberty and security of person**

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

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

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

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

Definitions re: Parts I and II

10 (1) In Part I and in this Part,

...

“disability” means,

- (a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
- (b) a condition of mental impairment or a developmental disability,
- (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- (d) a mental disorder, or
- (e) an injury or disability for which benefits were claimed or received under the insurance plan established under the Workplace Safety and Insurance Act, 1997; (“handicap”)

Court File No. COA-25-CV-0166

KRISTEN HEEGSMA et al - and - CITY OF HAMILTON

Appellants

Respondent

COURT OF APPEAL FOR ONTARIO

**MOTION RECORD OF THE PROPOSED
INTERVENER, ONTARIO HUMAN RIGHTS
COMMISSION**

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