Heegsma v Hamilton **(ONCA) December 12, 2025**

CCPI/NRHN Leave to intervene – oral argument

INTRODUCTION

M Jackman – represent CCPI & NRHN

This is only the second case in which this Court has considered

the *Charter* rights of those experiencing homelessness –

what most would agree is among the most serious human-rights crises

in our province and facing our country today

The first case: *Tanudjaja v Canada* **(TAB 1)** was decided

over a decade ago.

As we outline at **paras 12-15** of our draft factum, *Tanudjaja* has frequently been misrepresented

as having upheld the motion judge's findings:

- that section 7 imposes no positive obligations on governments to address homelessness; and,
- that homelessness is not an analogous ground under s. 15

In fact, this Court in *Tanudjaja* expressly chose to leave these unsettled issues of *Charter* interpretation

open for consideration in future cases such as this one

The Respondent's Chart 8 **(DF Para 10; TAB 4)** summarizes the uncontested evidence in the record of the severe, and preventable, harms that occur when people are deprived of access to shelter, housing and supports including:

- premature death and dramatically shortened life expectancy,
- risk of death from overdose;
- sleep deprivation;
- hypothermia and frostbite;
- exposure to physical assault,
- and sexual violence and exploitation.

Our proposed intervention falls squarely within Issues 3, 4 and 6 identified by the Appellants **(TAB 2 – List of Issues)**

And focuses on the critical questions of *Charter* interpretation that are before this Court in this appeal:

Was Justice Ramsay correct in finding:

- that the right to life and security of the person imposes no positive obligations on governments to address these harms;

- that section 15 provides no protection for a group so clearly subject to negative stereotype, hostility and marginalization,

and;

- that no *Charter* remedy was available that would not represent an inappropriate intrusion in or micromanaging of the Respondent's policy choices

As set out in our factum in support of our motion for leave,

we submit that we fulfill all of the conditions

for intervener status in this case

And that each of the Respondent's objections to our intervention

are entirely without merit

First:

The Respondent argues that we are introducing "wholly new issues"

not raised by the parties.

This is incorrect.

While we are proposing a different analytic framework or perspective

the issues we address have been raised by the Appellant and/or the Respondent in this case

With respect to s. 7, the constitutional question

in the application before Justice Ramsay **(TAB 5)**

includes the claim that the respondent's by-laws

and proposed enforcement measures:

"infringe the applicants' and other homeless individuals s. 7 rights

- by giving them no provision of adequate housing with necessary supports, and

- no alternative but to move into either unsafe congregate living situations or other places (like hotels) where they stand little chance of success."

At paragraph 90 of their factum (**TAB 6)**, the Appellants state that:

"The harms at issue are caused by **both** homelessness

and sheltering restrictions and evictions…"

While the Appellants do not focus their appeal on the Respondent's

failure to provide "adequate housing with necessary supports",

they have consented to our intervention to address this

additional dimension of the s. 7 violation in this case

With respect to s. 15, the appellants state in their Notice of Application **(TAB 7)**

that the Respondent's by-laws

- are based on the premise that the needs of homeless people are

"not worthy of respect, concern and consideration," and

- they perpetuate the view that homeless people are "less worthy of recognition or value."

While the appellants frame their s.15 equality analysis on

enumerated grounds, discriminatory treatment based on homelessness itself

is clearly engaged and evident from the record in this claim.

The issues we propose to address have also been directly raised

by the Respondent

At paragraph 90 of its factum, the Respondent asserts that:

> "The Appellants seek to hold the City liable for the harms of homelessness,
>
> which the City does not cause, and which it struggles mightily to mitigate at great annual cost."

While this may not be an accurate characterization of the Appellants' claim,

it puts the question that our proposed intervention would address squarely before this Court:

whether the *Charter* may impose obligations on the Respondent to address harms arising from homelessness.

In its recent decision in *Christian Heritage Party of Canada v. Hamilton (City)* (**TAB 12**)

As Mr Choudhry pointed out in his letter supporting

our leave application, this Court granted intervener status to 2 interveners (EGALE and the Association for Reformed Political Action)

permitting them to address the implications of

sections s 7 & 2(b) of the *Charter* although neither of those sections were raised by the appellant.

In our case, we are proposing only a different analysis

of the sections of the *Charter* on which the appellants rely.

In some cases, the role of appellate courts in ensuring

the coherent development of *Charter* jurisprudence,

has entailed the reframing of the *Charter* analysis

advance by the parties.

In *Falkiner v Ontario,* for example **(TAB 13)** Justice Laskin revised
the section 15 analysis adopted by the court below
and supported by interveners
to instead recognize receipt of social assistance as an
independent analogous ground of discrimination,
taking judicial notice of the existence of stigma and stereotypes
about this group and referencing its recognition in some provincial human rights codes.

As we outline at **paras 23-33** of our draft factum,
recognition of homelessness as a prohibited ground of discrimination
is similarly open to this Court on the evidence in the present appeal

Second, the Respondent argues that our submissions rely
on extraneous evidence that is not in the record

This is also incorrect.

In fact, our submissions do not rely on **any** new evidence.
The record already contains extensive evidence of the
harms of homelessness and of the stigma and disadvantages faced by people
experiencing homelessness on which Justice Ramsay relied for his s. 7 and s. 15 findings.
Our submissions concern the legal analysis
of uncontested facts on the record.

In accusing us of "slipping fresh evidence into the record",

the Respondent refers to a footnote (**63**)

which they describe as referencing "five social science reports."

In fact, the footnote refers to no social science evidence at all, but to:

Hansard and human rights commission statements

regarding the protection in human rights legislation

from discrimination on the ground of homelessness

These are public documents referenced only as legislative facts

relevant to the s.15 analogous-grounds analysis

of whether homeless has been recognized in human rights legislation.

This Court confirmed in R. v. *Powley* (**TAB 9**)

that appellate courts have "considerable latitude"

to consider such materials in constitutional cases.

The remaining references identified by the Respondent

- an application record from the Waterloo encampment proceeding and
- a publicly disseminated Plan to Eliminate Chronic Homelessness Adopted by the City of Hamilton

are likewise used only to situate the legal issues in this appeal

in their broader context and **not** for any adjudicative facts.

If we are wrong about any of this, we will remove any reference

the Court considers inappropriate.

Third, the Respondent argues that our intervention should be denied

because it is "self-referential" and "lacks altruism"

This objection is based on the inclusion in our factum of references

to one of my own articles, one I co-authored with,

and two articles by Bruce Porter, the Co-ordinator of CCPI

We do not rely on these as 'authority' as suggested by the Respondent

but rather as scholarship intended to be of assistance to the Court

It is true that Mr. Porter and I have long worked

to advance the promise of the *Charter* for people

living in poverty and homelessness, and their rights

to the equal protection and benefit of the *Charter*'s guarantees.

In that time, we have never faced such an objection

Nor am I aware of the motivations of any other of my law colleagues

being impugned in this way, much less based on case law that is hardly applicable

to two non-profit organizations representing some of the most disadvantaged members of Canadian society, with no funding and relying on *pro bono* counsel.

Conclusion

In *Housen v. Nikolaisen* **(TAB 10)** the Supreme Court stated that:

"The role of correcting errors of law is a primary function
of the appellate court; therefore, that court can and should
review the legal determinations of the lower courts for correctness."

At **TAB 14** of our compendium we have included a Federal Court ruling from last week
in which the Court found that s. 7 imposes positive obligations to address the dire need for housing
and water on reserves.

As we describe in **paras 16-18** of our draft factum
both this Court and the SCC have left the door open
to a similar finding in the present case

On the issue of relief,
In *Doucet-Boudreau* **(TAB 11)** the Supreme Court underscored
the over-riding duty of courts to vindicate *Charter* rights
while respecting the separation of powers by means of creative and flexible remedies

As we argue at **paras 35-38** of our draft factum,
legislative and jurisprudential developments since *Tanudjaja*, including:

- the adoption of federal and municipal rights-based strategies

to address homelessness, and

- this Court's approach and decision in *Mathur*

also provide a response to the legitimate separation of powers concerns raised by Justice Ramsay and by this Court in *Tanudjaja*

In our submission, leaving Justice Ramsay's decision regarding the application of the *Charter* to the harms caused by homelessness unexamined would result in a significant injustice and would fall seriously short of vindicating the rights of homeless persons at issue in this case.

What is more,to deny CCPI and NRHN the opportunity to advance an argument that will otherwise be unheard regarding not only the scope, but the very existence of governments' *Charter* obligations address homelessness would, in our view undermine the critical access to justice purpose of granting leave to intervene in constitutional cases

That is,

As described by this Court in the *Christian Heritage* decision:

"to provide affected individuals and groups with an opportunity to be heard"

Unless your honour has any questions,

These are our submissions, thank you.