

Court File No.: COA-25-CV-0166
Superior Court File No. CV-21-00077187-0000

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

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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

Applicants
(Appellants)

and

CITY OF HAMILTON

Respondent
(Respondent on Appeal)

**FACTUM OF THE RESPONDENT,
CITY OF HAMILTON**

Date: October 31, 2025

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PART I—OVERVIEW

1. Canadian courts have repeatedly recognized the challenges posed by homelessness, a complex and nationwide social issue of diverse origin without a simple solution. Many municipalities in Canada, including the Respondent, City of Hamilton (the “**City**”), are bearing the immediate impact of these challenges on the ground. Canadian courts have balanced the rights of the homeless and the broader public interest by recognizing that a homeless individual’s ability to shelter temporarily overnight in a public park is protected by s.7¹ of the *Charter* on nights when there are insufficient indoor emergency shelter spaces available in the relevant jurisdiction. The City has complied with this jurisprudence; it did not at any time prevent homeless individuals from sheltering temporarily overnight in its public parks.

2. This case concerns broad matters of public policy. Yet the Appellants seek to usurp the role of policymakers by arguing for a retroactive expansion of the s.7 protection to include daytime hours. They also make retroactive claims for *Charter* damages and declaratory relief premised on such an expansion, suggesting that the City’s enforcement of its Parks By-Law (the “**By-Law**”)² during a two-year period (August 2021 to August 2023) violated their s.7 and s.15³ *Charter* rights.

3. Even if policymaking were not *ultra vires* the courts, the sweeping expansion the Appellants seek would create a new constitutionally-protected right, one permitting homeless individuals to encamp in public parks indefinitely, day and night, unless they are offered shelter that satisfies their individual preferences. It would inject s.7 with

¹ [Canadian Charter of Rights and Freedoms, s. 7.](#)

² [A By-Law to Manage and Regulate Municipal Parks](#), City By-Law No. 01-219

³ [Canadian Charter of Rights and Freedoms, s. 15.](#)

unwarranted subjectivity, and extend the *Charter* to the economic realm. It would also dramatically curtail the ability of municipalities to ensure public parks remain safe and available to all. It should not be entertained.

4. After considering the extensive record and thorough submissions of counsel, the application judge, Justice Ramsay, held that the Appellants had not proven any breach of s.7, as the evidence demonstrated that the City had not prevented anyone from encamping in a public park overnight, and that the scope of the s.7 protections in existing encampment case law ought not to be expanded. Ramsay J. also held that s.15 did not apply, as there was no disproportionate impact. The application was dismissed.

5. Despite raising multiple grounds of appeal, the Appellants fail to identify any reviewable error in Ramsay J.'s decision. Much of the Appellants' factum is focused on re-arguing the facts. Further, their argument for *Charter* damages both below and on appeal is contrary to the accepted standard for municipal *Charter* damages immunity.

6. 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. Indeed, the expert evidence before Ramsay J. was that being homeless itself causes harm to homeless individuals, and that encampments do not prevent that harm. The Appellants disregard those basic facts, and instead argue that it is the regulation of public parks that is to blame for the harms they have suffered while experiencing homelessness, and that they ought to receive monetary compensation from the public purse as a result.

7. There is no reason to interfere with Ramsay J.'s decision. His evidentiary rulings and findings of fact were clearly open to him on the record before him and are owed deference. His legal conclusions remain well supported in the jurisprudence.

8. As such, the City asks this Honourable Court to dismiss this appeal.

PART II—FACTS

9. Given the large number of factual mischaracterizations and misstatements made by the Appellants, the City does not accept any of the facts as stated in their Factum.

10. The key relevant facts are addressed below. The City responds to the Appendix to the Appellants' Factum in the Appendix, Chart 10.

a. Narrow relevant timeframe

11. The application below was initially framed as a constitutional challenge to several of the City's By-Laws. However, at the hearing, the Appellants narrowed their claim to a past two-year period in which the City had adopted a six-step process regarding homeless encampment enforcement (the "**Process**").

12. The Process was initiated by receiving a complaint from the public (Step 1). Municipal Law Enforcement ("**MLE**") did not seek out encampments. Upon receiving a complaint, an MLE officer would attend to determine if there was a By-Law violation, and, if so, provide education and seek voluntary compliance (Step 2). If there was a violation and no voluntary compliance, the City's Housing Focused Street Outreach Team would attend and provide various types of support (Step 3). If the violation continued, MLE would re-attend, issue a trespass notice and notify Hamilton Police Services ("**HPS**") (Step 4). Then, HPS would respond under the *Trespass to Property Act* (Step 5). MLE did not enforce trespass notices. The final step was site clean up after an encampment removal (Step 6).⁴ City workers do not dismantle or remove tents or temporary shelters that are occupied.⁵

⁴ Monica Ciriello, Affidavit, October 5, 2021 [**Ciriello 2021 Affidavit (1)**], paras. 7-9, Exhibit "A"; RCOM Tab-61, p.354-355, 357-364.

⁵ Kara Bunn, Affidavit, October 8, 2021, paras. 6, 16; RCOM Tab-59, p.345-346; Kara Bunn, Affidavit, July 31, 2024, paras. 5, 7-8; RCOM Tab-60, p.349-350; Monica Ciriello, Affidavit, July 29, 2024 [**Ciriello 2024 Affidavit**], para. 10; RCOM Tab-63, p.371-372.

13. Three elements of the Process are key for purposes of this appeal:

- (a) No enforcement took place overnight or as night was approaching. MLE officers do not work overnight, making overnight enforcement functionally impossible;⁶
- (b) If enforcement took place, it was not completed in less than one day—in practice, it took at least a few days.⁷ Encamped individuals were given prior notice to move, and thus the Process would not progress without them having the opportunity to at least stay the night; and
- (c) The Process was not contingent on shelter bed availability.⁸ There was no overnight enforcement regardless of whether shelter beds were available.

14. The Appellants' criticisms of the City's current policy are irrelevant; even so, current policies still provide that no enforcement takes place overnight.⁹

b. No encampment removals occurred overnight

15. The City's By-Law enforcement was at all times consistent with current jurisprudence, allowing temporary overnight sheltering, regardless of indoor emergency shelter availability.

16. Only five of the Appellants initially gave any evidence suggesting overnight enforcement (see summary of the Appellants' evidence regarding camping and

⁶ Ciriello 2024 Affidavit, para. 10; RCOM Tab-63, p.371-372; Monica Ciriello, Cross-Examination, August 21, 2024 [**Ciriello XE**], Q.78; RCOM Tab-31, p.225; Monica Ciriello, Affidavit, October 9, 2021 [**Ciriello 2021 Affidavit (2)**], para. 6; RCOM Tab-62, p.367; Lee Rynar, Affidavit, October 10, 2021 [**Rynar Affidavit**], para 5; RCOM Tab-76, p.443.

⁷ Rynar Affidavit, para. 4; RCOM Tab-76, p.443.

⁸ Ciriello 2021 Affidavit (1) paras. 7-9; RCOM Tab-61 p.354-355.

⁹ City Report for Consideration [PED 25083 Coordinated Encampment Response Post-protocol](#) dated February 26, 2025, p. 6-7/10; passed at meeting of City Council on March 5, 2025 ([Minutes and Confirming By-Law](#)).

enforcement activity at Chart 1 of the Appendix) but none of those claims withstood cross-examination:

- (a) Ashley MacDonald claimed that she had once been ticketed by police at 6:00pm. On cross-examination, she clarified that this was in the summer, and as such it was not dark or as dusk was approaching. Later in her testimony, she indicated she was actually not certain of the time she was ticketed, and it could even have occurred in the morning;¹⁰
- (b) Cory Monahan claimed he was repeatedly awoken “first thing in the morning” by City MLE officers. This not overnight. On re-examination, he was not actually sure of the time when this occurred;¹¹
- (c) Linsley Greaves stated that “an officer” required him to move from an encampment during the evening, although he did not think it was an MLE officer. Upon cross-examination, Mr. Greaves acknowledged that he was not actually sure that this had occurred at night—he just felt as if it was because he had been asleep.¹² Mr. Greaves’ affidavit states “I fall asleep often during the day”;¹³
- (d) Misty Marshall claimed that “[a] couple of weeks” prior to her May 12, 2022 affidavit, she and some friends were told by a police officer that they would have to leave a park at 11:00pm, the posted closing time, while they were

¹⁰ Ashley MacDonald, Cross-Examination, October 10, 2024 [**MacDonald XE**], Q.325-328, Q.343-347; RCOM Tab-7, p.72-73.

¹¹ Cory Monahan, Cross-Examination, August 15, 2024, [**Monahan XE**] Q.411; RCOM Tab-11, p.101; Cory Monahan, Cross-Examination cont’d, August 30, 2024, [**Monahan XE cont’d**] Q.466-468; RCOM Tab-12, p.104-105.

¹² Linsley Greaves, Cross-Examination, August 14, 2024, [**Greaves XE**] Q.101-109; RCOM Tab-2, p.23-24.

¹³ Linsley Greaves, Affidavit, June 2, 2022 [**Greaves Affidavit**], para. 30; RCOM Tab-37, p.248.

sitting on a park bench with blankets and a tarp. Upon cross-examination, Ms. Marshall admitted she was uncertain about the date of this incident, and further questioning demonstrated she was confused between this alleged incident and another occasion on which she was told to move because of an adjacent crime scene.¹⁴ It was also unclear whether she was told to leave while sitting on a park bench because she appeared to be a visitor and not intending to encamp; and

- (e) Sherri Ogden initially claimed to have been woken up by an MLE officer at 5:30am – which is not overnight – but eventually admitted that this person was not in uniform and that she believed they were acting on their own volition.¹⁵ Ms. Ogden also could not remember when this occurred—not even the year.

17. The Appellants' speculation that HPS officers might have enforced the By-Law overnight is unsupported. The Process provides that HPS is only involved at Step 5. The City's then-Director of Licensing and By-Law Services, Monica Ciriello, confirmed that no encampments ever completed Step 5 under the Process.¹⁶ HPS evidence also confirmed that HPS officers only attended to support MLE officers, who do not work overnight, during the relevant period.¹⁷

¹⁴ Misty Marshall, Affidavit, May 12, 2022, [**Marshall Affidavit**] para. 28; RCOM Tab-42, p.267; Misty Marshall, Cross-Examination, August 15, 2024 [**Marshall XE**] Q.187-195 (incident with which Ms. Marshall is confusing is Q.157-160); RCOM, Tab-10, p. 87-88, 89-90.

¹⁵ Sherri Ogden, Cross-Examination, August 14, 2024 [**Ogden XE**], Q.133-148, Q.165-167; RCOM Tab-15 p.115-116;

¹⁶ Ciriello 2021 Affidavit (2), para. 5; RCOM Tab-62, p.367; Ciriello 2024 Affidavit, para. 4; RCOM Tab-63, p.370. The Appellants erroneously claim Ms. Ciriello's affidavit did not address enforcement.

¹⁷ Ciriello 2024 Affidavit, para. 10; RCOM Tab-63 p.371-372; Ciriello XE Q.78; RCOM Tab-31, p.225; Rynar Affidavit, para. 5, RCOM Tab-76, p.443; Frank Miscione Affidavit, July 24, 2024, Exhibit "A"; RCOM Tab-73, p. 427.

PART III—RESPONDENT’S POSITION WITH RESPECT TO THE ISSUES

18. The City first addresses issues that apply generally to the Appellants’ claims, and then addresses the remaining issues raised by the Appellants.

ISSUE 1—Burden of Proof and Standard of Review

a. The Appellants have failed to meet their burden of proof

19. The Appellants continue to have the burden of proof on appeal.¹⁸

20. The Appellants suggest that Ramsay J. was required to accept their evidence unless the City led contradictory evidence.¹⁹ That is categorically incorrect. It not only reverses the burden of proof, but negates the entire fact-finding process. A hearing judge may accept some, none, or all of a witness's evidence, including an expert witness's evidence.²⁰ “[E]vidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test.”²¹ Without more, there is no error in concluding that a party has not met their burden of proof.

21. Further, an appeal is “not a retrial. Nor is it licence for an appellate court to review the evidence afresh.”²² The Appellants must identify specific errors in the decision of Ramsay J. and prove they were errors on the applicable standard of review.²³

b. Standard of Review

i. Questions of Fact and Mixed Fact and Law

22. “There is one, and only one, standard of review applicable to all factual conclusions

¹⁸ [R. v. Collins](#), [1987] 1 S.C.R. 265 at [para. 21](#).

¹⁹ Factum of the Appellants [FAP], paras. 47, 66, 83.

²⁰ [Mangal v. William Osler Health Centre](#), 2014 ONCA 639 at [para. 61](#).

²¹ [F.H. v. McDougall](#), 2008 SCC 53 at [paras. 45-46](#).

²² [Barendregt v. Grebliunas](#), 2022 SCC 22 [[Barendregt](#)] at [para. 1](#). See also [Grillone \(Re\)](#), 2023 ONCA 844 at [para 24](#).

²³ [Barendregt](#) at [para. 77](#).

made by the trial judge—that of palpable and overriding error.”²⁴ This standard applies to **all** findings of fact, whether they relate to credibility,²⁵ weight, “primary” facts, inferences of fact, or global assessments of the evidence.²⁶ “It is not the role of appellate courts to second-guess the weight to be assigned to the various items of evidence.”²⁷

23. Questions of mixed fact and law are also subject to the palpable and overriding standard, absent an extricable question of law.²⁸

24. The “palpable and overriding error” standard is a high bar: it is “in the nature not of a needle in a haystack, but of a beam in the eye.”²⁹

25. Deference on questions of fact is justified by the fact that appeals are “unsuited to reviewing voluminous amounts of evidence” and “telescopic in nature, focussing narrowly on particular issues as opposed to viewing the case as a whole.”³⁰ Even on an entirely written record, the palpable and overriding error standard applies to fact finding.³¹

ii. Questions of Law

26. The standard of review for pure or extricable questions of law is correctness. An appellate court may replace the trial judge’s findings on the question of law with its own.³²

27. Not every question that involves the *Charter* is reviewable on a correctness standard: only questions of law are. In *Bedford*, the Supreme Court of Canada (“**SCC**”)

²⁴ [Housen v. Nikolaisen](#), 2002 SCC 33 [**Housen**] at [para. 25](#).

²⁵ [R. v. Kruk](#), 2024 SCC 7 [**Kruk**] at [para. 82](#).

²⁶ [Housen](#) at [paras. 24-25](#).

²⁷ [Housen](#) at [para. 23](#); [Nelson \(City\) v. Mowatt](#), 2017 SCC 8 at [para. 38](#).

²⁸ [Housen](#) at [paras. 36-37](#).

²⁹ [Hydro-Québec v. Matta](#), 2020 SCC 37 at [para. 33](#).

³⁰ [Housen](#) at [paras. 12, 13, 14, 24-25](#).

³¹ [Gottardo Properties \(Dome\) Inc v Toronto \(City\)](#), 1998 CanLII 6184 (ON CA) at [para 48](#).

³² [Housen](#) at [para. 8](#).

held that, absent reviewable error in the trial judge's appreciation of the evidence, an appellate court should not interfere with a trial judge's conclusions on social, legislative or adjudicative facts.³³ *Bedford* maintained the deference given to findings of fact or of mixed fact and law.

ISSUE 2—Ramsay J.'s Reasons are Adequate

28. Reasons must (i) explain what the trial judge has decided, (ii) be reasonably understood, and (iii) be such that an appellate court can meaningfully review the matter.³⁴ The appellant must show that the reasons frustrate appellate review.³⁵

29. Appellate courts are to review reasons functionally and contextually.³⁶ Trial judges are not required to refer to “every piece of evidence” in their reasons,³⁷ or to provide precise reasons for accepting or rejecting certain evidence,³⁸ including assessing credibility.³⁹ There is no need for reasons to “answer each and every argument of counsel.”⁴⁰

30. What is required is that the reasons, read in the context of the record and the submissions, show that the judge has seized the substance of the matter.⁴¹

31. As demonstrated herein, Ramsay J.'s reasons are adequate and permit appellate review.

³³ [Bedford v. Canada \(Attorney General\)](#), 2013 SCC 72 [**Bedford**] at paras. [49](#), [56](#).

³⁴ [R. v. Sheppard](#), 2002 SCC 26 [**Sheppard, 2002**] at [paras. 24–26](#)

³⁵ [R. v. Sheppard](#), 2025 SCC 29 [**Sheppard, 2025**] at [para. 54](#).

³⁶ [Sheppard 2025](#) at paras. [44 – 50](#); [Sheppard 2002](#), at paras. [15](#), [25-26](#), [28](#), [42](#), and [55](#); [R. v. R.E.M.](#), 2008 SCC 51 [**R.E.M.**] at paras. [15](#), [17](#).

³⁷ [Chippewas of Saugeen First Nation v. South Bruce Peninsula \(Town\)](#), 2024 ONCA 884 at [para. 119](#).

³⁸ [R.E.M.](#) at [para. 42](#), see also [R. v. S.M.](#), 2025 ONCA 373 at [para. 25](#).

³⁹ [R.E.M.](#) at [para. 49](#).

⁴⁰ [R.E.M.](#) at [para. 32](#).

⁴¹ [R.E.M.](#) at [para. 43](#)

ISSUE 3—The Interlocutory Evidentiary Rulings Should not be Overturned

32. Ramsay J. was the case management judge and also heard the application. Ramsay J. ruled on several interlocutory evidentiary matters, and made no reviewable error in excluding the struck materials.

33. Even if the excluded materials are admitted, the standard of review does not change: “appellate courts must defer to the trial judge’s factual findings that are unaffected by the additional evidence” and may not reweigh the underlying factual findings absent a palpable and overriding error.⁴² Further, this Court must consider the additional material’s probative value alongside the rest of the extensive record. The added evidence does not assist the Appellants; Ramsay J.’s factual findings should not be disturbed.⁴³

a. No Error in Striking Requests to Admit

34. Ramsay J. did not err in striking Volumes 18-20 of the Application Record, which contained certain of the Appellants’ Requests to Admit and City Responses. Ramsay J.’s ruling on the admissibility of these records is entitled to deference.⁴⁴

35. The Appellants’ assertion that “Hamilton admitted the authenticity of the City documents between June 20, 2023, and September 10, 2024”⁴⁵ is incorrect. The Appellants’ numerous Requests to Admit were largely, though not entirely, denied by the City.⁴⁶

36. Excepting one document not relied upon in this appeal, the Appellants did not

⁴² [Barendregt](#) at para. [81](#)

⁴³ [R. v. Lévesque](#), 2000 SCC 47 at para. [24](#)

⁴⁴ [Roher v. Canada](#), 2019 FCA 313 [**Roher**] at [para. 30](#)

⁴⁵ FAP para. 38.

⁴⁶ Summary of RTAs and responses in **Chart 2, Appendix “A”**; Lise Kipfer, Affidavit, September 5, 2025 [**Kipfer Affidavit**] para. 12; RCOM Tab-78, p.478-479.

include the contents of the Requests to Admit in their affidavit evidence, did not make them proper exhibits to any cross-examination, and did not seek an Agreed Statement of Facts.⁴⁷ The City prepared its evidence and conducted cross-examinations accordingly.

37. On the eve of the hearing,⁴⁸ the Appellants tried to augment their Application Record by including certain Requests to Admit—the forms themselves—and some of the City’s responses. Given the threatened prejudice, the City sought leave to bring a motion to strike. Ramsay J. granted leave and struck the three volumes in his December 4, 2024 endorsement.

38. The Appellants’ position on this issue fails for four reasons:

- (a) It fundamentally misunderstands Rule 51.⁴⁹ Requests that have not been admitted are not relevant.⁵⁰ Admissions as to authenticity are neither admissions as to truth of contents nor admissibility.⁵¹ The Appellants’ claim that “authenticated documents become part of the record without further steps” is plainly erroneous, and the authority the Appellants cite for the proposition does not support it;⁵²
- (b) It ignores Ramsay J.’s ruling that the **timing** of seeking to rely on these documents—on the eve of the hearing, after evidence had been adduced and cross-examinations completed—was prejudicial;

⁴⁷ Kipfer Affidavit paras. 10-11; RCOM Tab-78, p.478.

⁴⁸ The Appellants neither sought nor obtained leave under [Rule 39.02\(2\)](#) of the [Rules of Civil Procedure](#), R.R.O. 1990, Reg. 194 [**Rules of Civil Procedure**].

⁴⁹ [Rules of Civil Procedure](#), [r. 51.01-51.02](#).

⁵⁰ [Goodwin v. Goodwin](#), 2020 ONSC 6686 at [para. 5](#); see also [1679753 Ontario Ltd. v .Muskoka Lakes \(Township\)](#) 2011 ONSC 1997 (Div. Ct.) [**Muskoka Lakes**] at [para. 35](#).

⁵¹ [Pershad v Lachan](#), 2015 ONSC 5290 at [para. 68](#). See also [Wunsche v. Wunsche](#), 1994 CanLII 548 (ON CA) at [para 19](#).

⁵² FAP para. 41, citing [Muskoka Lakes](#) at [para. 35](#).

- (c) The public records exception does not assist the Appellants. It does not overcome the prejudice caused by the timing. The Appellants have not demonstrated that any of the documents are “public records” within either the statutory or common law definition.⁵³ Further, documents that do fall within the public records exception must still be weighed by the judge: the exception “speaks only to admissibility, and not to what weight a judge must ultimately assign...”;⁵⁴ and
- (d) The Appellants have not shown that any of the materials in the struck volumes would have affected the result.⁵⁵ Out of the three **volumes** of struck materials, the Appellants refer to only seven **documents**.⁵⁶ None of them assist the Appellants.

b. No Error in Rule 53 rulings

39. The Appellants allege that Ramsay J. erred in admitting the evidence of Dr. Koivu and incorrectly assert that Ramsay J. excluded the evidence of Dr. Sereda. In fact, Ramsay J. admitted Dr. Sereda’s evidence but gave it no weight.⁵⁷

40. In any event, “[d]eference is owed to a trial judge’s decision on admitting expert

⁵³ [Evidence Act](#), R.S.O. 1990, c. E.23, [s. 25](#); [R. v. P. \(A.\)](#) 1996 CanLII 871 (ON CA) at [para. 15](#); [R. v. Caesar](#), 2016 ONCA 599 at [para. 34](#).

⁵⁴ [J.N. v. C.G.](#), 2023 ONCA 77 at [para. 26](#).

⁵⁵ Many of the documents are from and pertain to dates outside the pertinent timeframe of August 2021 through August 2023.

⁵⁶ Housing and Homelessness Dashboard (May 16, 2022), RCOM Tab-87, p.613-615; Data Notes (August 2, 2024), RCOM Tab-87 p.617; Dashboard Data (January 2020-January 2024) RCOM Tab-87 p.619-620; Reducing Homeless [sic] and Managing Encampments (June 19, 2024) RCOM Tab-86, p.590-606; Encampment Report (May 15, 2024), RCOM Tab-83, p.558-572; PiT Count Indigenous Responses, RCOM Tab-16, p.496-519; PiT Indigenous Infographic, RCOM Tab-79, p.521.

⁵⁷ [Heegsma v. Hamilton \(City\)](#), 2024 ONSC 7154 at [paras. 21, 54](#).

evidence, unless the trial judge commits an error of principle, materially misapprehends the evidence, or reaches an unreasonable conclusion.”⁵⁸

41. Ramsay J. did not err in admitting Dr. Koivu’s evidence or relying upon it. He properly applied the *Mohan* test:⁵⁹ he identified a clear connection to the issues, observing that Dr. Koivu had experience treating homeless patients (relevance); he noted that she had “expertise outside the knowledge of a trier of fact” on whether encampments present health advantages over shelters (necessity); and he accepted her qualifications as a physician experienced in addiction and homelessness (qualified).⁶⁰ Ramsay J. also acknowledged that Dr. Koivu has policy views, but is not an advocate with respect to encampments.

42. The Appellants’ argument that Dr. Koivu does not treat her homeless patients on an outpatient basis does not assist them. Dr. Koivu has extensive experience treating homeless individuals, and has made personal observations of encampments.⁶¹

43. Ramsay J. also did not rely on Dr. Koivu’s “camping experience”, as the Appellants purport. Her **medical** experience was “the patients that I have had with severe complications of frostbite were in tents.”⁶² In any event, Ramsay J. ultimately agreed with the Appellants that “staying outdoors without shelter is harmful, compared to staying under a tent or tarp...”.⁶³

44. Ramsay J. made no palpable and overriding error in giving Dr. Sereda’s evidence

⁵⁸ [R. v. Whatcott](#), 2023 ONCA 536 at [para 34](#).

⁵⁹ [Heegsma](#) at [para. 15](#).

⁶⁰ [Heegsma](#), at [para. 15](#); Dr. Sharon Koivu Affidavit, July 26, 2024 [**Koivu Affidavit**] paras. 5-8; CV, Exhibit “A” to Koivu Affidavit; RCOM Tab-77, p.446-447; p.464-475.

⁶¹ Dr. Sharon Koivu Cross-Examination, September 6, 2024 [**Koivu XE**], Q.194; Q.205-219; RCOM Tab-35, p.238-239; Koivu Affidavit, paras. 9-11; RCOM Tab-77, p.447-448.

⁶² Koivu Affidavit, para. 66; RCOM Tab-77, p.459.

⁶³ [Heegsma](#) at [para 62](#); Koivu XE, Q 277-289; RCOM Tab-35, p.240.

no weight.⁶⁴ The *Black* and *Kingston* decisions are not on point: they deal with fact-specific admissibility and did not bind Ramsay J.⁶⁵ Dr. Sereda was revealed to be a “partisan advocate”:⁶⁶ she admitted to omitting from her CV her work with an advocacy group whose top demand was “[i]mmediate cessation of any removal of encampments...”; she also admitted that her evidence in this case “would look to improve the lives of people who are living unhoused”.⁶⁷ This is a partisan motive, inconsistent with an expert’s duties.⁶⁸

c. No error in excluding opinion and hearsay

45. Ramsay J. did not err in framing the purported treating physician evidence as “participant expert” evidence. This is a conclusion of mixed fact and law, and attracts deference, absent palpable and overriding error or an extricable error of law.⁶⁹

46. The physicians in question were not Rule 53 expert witnesses. The Appellants’ assertion that they are “fact witnesses” does not assist them, either, as the evidence that Ramsay J. struck would not have been admissible from fact witnesses.⁷⁰

47. Participant expert witnesses may testify as to their observations and opinions without complying with Rule 53.03, but, *inter alia*, their evidence must be based on, and formed in the ordinary course of, their skilled observation of or participation in the events

⁶⁴ [Heegsma](#) at [para 21](#); [Housen](#) at para. [22-23](#).

⁶⁵ [Black et al. v. City of Toronto](#), 2020 ONSC 6398 at [para 34](#); [The Corporation of the City of Kingston v. Doe](#), 2023 ONSC 6662 at para 104.

⁶⁶ [Heegsma](#) at [para 54](#).

⁶⁷ Dr. Andrea Sereda, Cross-Examination, August 23, 2024 [**Sereda XE**], Q.19-61; Q89-91 RCOM Tab-26, p.198-201, p.202-203.

⁶⁸ [White Burgess Langille Inman v Abbott and Haliburton Co](#), 2015 SCC 23 [**White Burgess**] at [para 32](#), [46](#); [Rules of Civil Procedure](#), [r. 4.1.01](#).

⁶⁹ [Housen](#) at paras. [36-37](#).

⁷⁰ [White Burgess](#) at paras. [14](#), [17](#); [R. v. Abbey](#), [1982] 2 SCR 24 [**Abbey**] at p. [45-46](#).

at issue.⁷¹

48. Ramsay J. did not err in striking hearsay from the participant expert affidavits. It was impermissible because (a) it was being offered for its truth;⁷² and (b) it did not relate to the witness's own observations or participation in the events at issue.⁷³

49. Ramsay J. also did not err in striking opinion that went well beyond the physicians' experience treating the Appellants. It was self-evident that the evidence was outside the witnesses' participation.⁷⁴

50. Further, the evidence could not have affected the outcome, as it was so unreliable as to merit little, if any, weight.

ISSUE 4—Ramsay J.'s Factual Findings are Supported in the Record

51. The Appellants contest certain factual findings which they erroneously claim Ramsay J. made, alleging they were made without evidentiary support. The findings that Ramsay J. did make were all supported in the record, and are entitled to deference.

52. The Appellants erroneously claim that Ramsay J. found that "unhoused persons in Hamilton had sheltering options beyond the shelter spaces established in the record."⁷⁵ The cited paragraph of Ramsay J.'s Reasons refers to the availability of indoor shelter spaces from providers beyond the City-funded shelter system, about which there **was**

⁷¹ [*St. Marthe v. O'Connor*](#), 2021 ONCA 790 [**St. Marthe**] at [para. 28](#); [*Westerhof v. Gee Estate*](#), 2015 ONCA 206 [**Westerhof**] at [para. 60](#); [63-64](#). [*Imeson v. Maryvale \(Maryvale Adolescent and Family Services\)*](#), 2018 ONCA 888 at para. [83](#).

⁷² [*Abbey*](#), p. [40-46](#), particularly p. [44](#).

⁷³ [*Westerhof*](#) at [para. 63](#).

⁷⁴ [*Westerhof*](#) at [para. 63](#); [*St. Marthe*](#) at [para. 28](#).

⁷⁵ FAP para. 54(a).

evidence in the record.⁷⁶ There was no palpable nor overriding error.

53. The Appellants also claim, incorrectly, that Ramsay J. found that “it would be ‘impossible’ for Hamilton to provide accessible shelters.”⁷⁷ What Ramsay J. actually found to be “impossible” was meeting the conditions described in the *Waterloo* case for the creation of sufficiently accessible shelters. However, this entire line of argument is irrelevant: as Ramsay J. acknowledged, it was not necessary for him to decline to follow *Waterloo*.⁷⁸

54. The Appellants devote much space to criticisms of the shelter system in the City and shelters in general, under the guise of challenging Ramsay J.’s factual findings. The question of shelter availability is also irrelevant, as enforcement was never contingent on shelter availability.

55. While the City acknowledged in its factum below that “the City-funded indoor emergency shelter system is often times at capacity,” the Appellants misinterpret and significantly overstate the difference between the number of shelter beds available in the City-funded shelter system and the number of homeless individuals in the City.

56. The Appellants’ position is based on an incorrect interpretation of evidence that was struck prior to the hearing of the application.⁷⁹ The document they rely on, capturing data from the City’s ‘homelessness dashboard’, is notably incomplete.⁸⁰ What has been

⁷⁶ [Heegsma, para. 42](#); Roberto Mastroianni Affidavit, July 31, 2024 [**Mastroianni 2024 Affidavit**], para. 16-17, 19; RCOM Tab-69, p.403-404.

⁷⁷ FAP para. 54(b).

⁷⁸ [Heegsma, para. 14](#).

⁷⁹ See Issue 3(a), paras. 34-38, above.

⁸⁰ FAP para. 57, footnote 35: Data Notes (August 25, 2024) RCOM Tab-87, p.617; Roberto Mastroianni Affidavit, August 29, 2025 [**Mastroianni 2025 Affidavit**], paras. 7-8, Exhibit “A”; RCOM Tab-70, p.407-408; 414-415.

cut off is the explanation that the number of people the City counts as “actively homeless” represents the number of people who, at the end of a month, have accessed the City-funded homelessness-serving system (whether a shelter, or a non-shelter service such as a food or day program) at least once within the preceding three months. It does **not** represent the total number of people who are without shelter in the City on a particular date.⁸¹ While Requests to Admit are not evidence, the Appellants were informed of this contextual point in a Response to Request to Admit.⁸²

57. It is accordingly erroneous for the Appellants to purport to describe the demand for shelter beds in the City by subtracting the number of beds within the City-funded shelter system from the dashboard’s “actively homeless” number. Not all who count as “actively homeless” are unsheltered,⁸³ they are not all unsheltered at the same time, and the City-funded shelter system is not the only provider.

58. In arguing shelters are inaccessible, the Appellants rely on perceived “barriers” such as shelter policies prohibiting violent behaviour, theft, on-premises drug use, and pets; or bed check policies, which they call curfews; or the fact that many (but not all) beds are gender-separated. These are simply preferences. As witness Danielle Blake explained, “[p]eople that have pets, that are part of couples, that are drug users have the option to go to shelters. It just would not be their preference to go to a shelter that restricts pets or drug use or them being with their partner.”⁸⁴

⁸¹ Mastroianni 2025 Affidavit, paras. 11-17, 28; RCOM Tab-70, p.408-411.

⁸² Response to Request to Admit dated August 23, 2023, RCOM Tab-82, p.544-547.

⁸³ Mastroianni 2025 Affidavit, paras. 11-12, 17; RCOM Tab-70, p.408-411; Affidavit of Roberto Mastroianni, October 6, 2021 [**Mastroianni 2021 Affidavit**], para. 3; RCOM Tab-68, p.392.

⁸⁴ Danielle Blake Cross-Examination, August 19, 2024 [**Blake XE**], Q.51; RCOM Tab-29, p.217.

59. The May 15, 2024 report that the Appellants reference was struck, and does not assist the Appellants.⁸⁵ Its context is discussion of service enhancements that the City hopes to provide, to address the perceived barriers and personal preferences.

60. The Appellants erroneously assert that “the uncontradicted evidence of the Appellants’ expert witnesses shows that these barriers are a function of how homeless shelters operate” and that “the fact witnesses confirmed these facts all hold true for Hamilton”. The citations offered by the Appellants do not support these assertions.⁸⁶ The significant contrary evidence is summarized in Chart 3 in the Appendix. Further, many of the criticisms levelled at shelters are also applicable to encampments, but encampments lack any trained staff.

61. To the extent shelter capacity and accessibility is a proper consideration under s.7 of the *Charter*, the sole logical interpretation is that a shelter is only “inaccessible” if accessing it would deprive a person of their life, liberty, or security of the person. That would make sheltering outdoors the only viable choice.⁸⁷ Subjective, personal preferences such as those asserted by the Appellants do not and cannot form the basis for *Charter* rights.

62. Despite perceived barriers, some Appellants admitted to declining to enter shelters when available,⁸⁸ or declining to seek shelter (for reasons other than shelter capacity).⁸⁹

⁸⁵ FAP 63-64; the version the Appellants reference was marked for identification only.

⁸⁶ FAP para. 64.

⁸⁷ See, e.g., [*Abbotsford \(City\) v. Shantz*](#), 2015 BCSC 1909 [*Shantz*] at [para. 222](#).

⁸⁸ Gord Smyth Cross-Examination, August 28, 2024 [*Smyth 2024 XE*], Q.146, Q.167, Q.247; RCOM Tab-18, p.132-133, p.136-137; Gord Smyth Cross-Examination, October 13, 2021 [*Smyth 2021 XE*], Q.36; RCOM Tab-17, p.128; Shawn Arnold Cross-Examination, August 14, 2024 [*Arnold XE*], Q.69 Q.71, Q.128; Note Mr. Arnold states at Q.131 he did ultimately accept offer of shelter; RCOM Tab-1, p.14-15, 17-18; *Greaves XE*, Q.120, Q.124-126, Q.216; RCOM Tab-2 p.25, 27; Monahan XE Q.273-276; RCOM Tab-11, p. 98.

⁸⁹ MacDonald XE, Q.242; RCOM Tab-7, p.70; Ogden XE, Q.269, Q.296-297; RCOM Tab-15, p.119; Kristen Heegsma, Cross-Examination August 23, 2024, Q.286; RCOM Tab-3,

ISSUE 5—Ramsay J. Did Not Rely on “Discriminatory Stereotypes”

63. The Appellants claim Ramsay J. relied on “discriminatory stereotypes about persons with mental health and addiction disabilities”⁹⁰, which they seek to characterize as an error in law. This argument fails for two reasons:

- (a) Ramsay J. did not rely on any stereotypes, discriminatory or otherwise—he relied on the evidence; and
- (b) The stereotypes alleged by the Appellants are at most “generalizations”, which the SCC in *R. v. Kruk* specifically stated does not on its own amount to an error of law.⁹¹ *Kruk* dealt specifically with discriminatory stereotypes about the conduct of sexual assault complainants; none of the recognized errors of law in *Kruk* are relevant to this case. *Kuk* **confirmed** that common sense, generalized expectations about human behaviour are a necessary and permissible component of the judicial fact-finding process.⁹²

64. While *Kruk* did suggest that generalizations sufficiently analogous to stereotypes about sexual assault complainants might be recognized as an error of law in future, there is no basis in this case for the law to be changed in that way. Ramsay J.’s findings of fact were clearly based on his assessment of the evidence, including the credibility and reliability of the witnesses, and they are entitled to deference.

65. *Kruk* sets out a three-step framework for appellate courts to follow when a judge’s credibility or reliability assessments are impugned on the basis that the judge made an

p.35; Darrin Marchand, Cross-Examination, August 29, 2024 [Marchand 2024 XE] Q.212; RCOM Tab-9, p.84.

⁹⁰ FAP paras. 66–72.

⁹¹ [Kruk](#), para. 48.

⁹² [Kruk](#) at paras. [30](#), [45](#), [57](#), [72](#), [79](#), [92](#)

unwarranted assumption or generalization.⁹³ The Appellants entirely ignore this aspect of *Kruk*. The three steps are:

- (a) The court must first consider the reasons as a whole in the context of the record to assess whether what is being impugned is, in fact, an assumption: “what might appear to be an assumption on its face may actually be a judge’s particular finding about the witness based on the evidence”;
- (b) Once satisfied that the trial judge did rely on an assumption beyond the bounds of common sense, the reviewing court should identify the appropriate standard of review. The standard of review will be correctness only if the alleged error is a recognized error of law or sufficiently analogous to a recognized error of law; and
- (c) The reviewing court applies the appropriate standard of review to the alleged error.

66. Everything that the Appellants suggest is an assumption was in fact a finding about the witnesses based on the evidence. The Appellants also mischaracterize Ramsay J.’s actual reasons and fail to consider the whole of Ramsay J.’s findings in the context of the evidence, which is required at the first step of the *Kruk* framework.

67. For example, though the Appellants assert it, Ramsay J. did **not** find that:

- (a) “persons with mental health and addiction disabilities have reduced ability to perceive and remember their own experiences”⁹⁴;
- (b) “persons with mental health disabilities are incapable of rational thought”⁹⁵;
or
- (c) “persons with substance use do not prioritize shelter”.⁹⁶

⁹³ *Kruk* at paras. [93-99](#).

⁹⁴ FAP para. 68.

⁹⁵ FAP para. 70.

⁹⁶ FAP para. 82.

68. What Ramsay J. actually found was that:

- (a) some of the Appellants' "recollections of being evicted were hazy";
- (b) "[t]he applicants, apart from Mr. Smyth, have mental issues or drug problems which can affect perception and memory"; and
- (c) "[p]ersons who use substances are a difficult demographic to help. They often do not prioritize shelter."

69. These findings were all clearly open to Ramsay J. on the evidence before him.

70. The Appellants' recollections of being evicted **were** hazy. The few Appellants who initially asserted that they may have been evicted overnight changed their evidence upon cross-examination, ultimately acknowledging that their recollection was mistaken or that they were not certain when the alleged events had actually happened. Ramsay J. did not "discount...the memories of overnight evictions". He explained why he found the evidence non-credible/unreliable.

71. Mental issues or drug problems **can** affect perception and memory. There was expert evidence on this point,⁹⁷ and it was never disputed that the Appellants have mental issues and/or used or use drugs. Moreover, appellate courts routinely accept that indications of lapses in memory or drug impairment create reliability concerns.⁹⁸

72. There was evidence before Ramsay J. that homeless individuals generally, and many of the Appellants specifically, often **do** prioritize other matters over shelter.⁹⁹ Dr. Koivu testified that she had patients who left homes and apartments to encamp, telling her that they did so "because diverted prescribed opioids were cheaper and more

⁹⁷ See **Chart 4, Appendix "A"** summarizing expert and Applicant evidence regarding memory.

⁹⁸ *R. v. Corbett*, 2025 ONCA 681 at [para. 7](#); *R v Letourneau*, 2025 ABCA 230, at [para. 28](#)

⁹⁹ See **Chart 5, Appendix "A"** summarizing evidence supporting this conclusion.

plentiful” at the encampment.¹⁰⁰ The Appellant, Ashley MacDonald, testified to this herself: she had obtained housing, but still preferred to encamp in public parks and part of the reason for doing so was procuring drugs.¹⁰¹

73. Alternatively, if this Court finds that Ramsay J. did rely on any assumptions in addition to the evidence before him, the second step of the *Kruk* framework is to ask whether they amount to a recognized or recognizable error of law, to determine the standard of review.

74. Any assumptions drawn by Ramsay J. can only have been common-sense assumptions of the kind that *Kruk* found a judge was entitled to make. None constituted a discriminatory stereotype analogous to the stereotypes of sexual assault complaints recognized in the jurisprudence.¹⁰² Therefore, even if Ramsay J. had relied on any assumptions, the standard of review would be palpable and overriding error.

75. Regarding the third step of the *Kruk* framework, applying the standard, “[i]f it cannot be shown that the error was palpable *and* overriding, a trial judge’s assessment of credibility or reliability will be entitled to deference and there will be no basis for appellate intervention.”¹⁰³

76. Ramsay J. made no palpable *and* overriding error. It was open to Ramsay J. to conclude the Appellants’ evidence was not credible or reliable.

77. It was also open to Ramsay J. to regard the provenance of the Appellants’ affidavits in weighing their evidence. There were multiple instances in which the Appellants were

¹⁰⁰ Koivu Affidavit, para. 54; RCOM Tab-77, p.456-457.

¹⁰¹ MacDonald XE, Q.103-106, Q.180-188; RCOM Tab-7 p.67-69.

¹⁰² *Kruk* at paras. [45-46](#), [57](#).

¹⁰³ *Kruk* at para. [98](#)

revealed to be unfamiliar with the content of ‘their’ affidavits.¹⁰⁴ Clearly, it was not the mere fact of the Appellants having had the assistance of counsel that Ramsay J. criticized.

78. The Appellants have not shown any reviewable errors in Justice Ramsay’s findings of fact and weighing of evidence. Indeed, Ramsay J. made the only findings that were reasonably possible on the evidence before him.

ISSUE 6—Section 7 of the *Charter*

a. *Ramsay J. applied the leading jurisprudence*

79. Ramsay J.’s interpretation of the *Charter* applies the existing s.7 case law to the facts and is entitled to deference.¹⁰⁵ Ramsay J. made no palpable and overriding errors in his findings.

80. A two-stage analysis applies when government action is challenged under s.7. First, the court must determine whether the interest asserted falls within the ambit of s.7, and “if no interest in the respondent’s life, liberty or security of the person is implicated, the s.7 analysis stops there”. Second, the court must determine whether an individual’s s.7 right is infringed in a manner contrary to the principles of fundamental justice.¹⁰⁶

81. Ramsay J. conducted the required analysis. He found at the first stage that the interest being asserted by the Appellants did not fall within the ambit of s.7 as it is currently delimited by the *Adams*¹⁰⁷ cases, because “the City did not prevent anyone from staying overnight.”¹⁰⁸ He then considered the argument that the ambit of s.7 should be expanded,

¹⁰⁴ See **Chart 6, Appendix “A”** (Affiants Unfamiliar with Contents of Affidavits)

¹⁰⁵ [Housen](#) at [paras. 36-37](#).

¹⁰⁶ [Blencoe v. British Columbia \(Human Rights Commission\)](#), 2000 SCC 44 [**Blencoe**] at [para 47](#).

¹⁰⁷ [Victoria \(City\) v. Adams](#), 2009 BCCA 563 at [para 160](#), and [Shantz](#), at [paras 222-224](#); as summarized by [Bamberger v. Vancouver \(Board of Parks and Recreation\)](#), 2022 BCSC 49 at paras [4](#), [12-15](#).

¹⁰⁸ [Heegsma](#) at [para. 69](#).

and found that it should not. As such, there were no s.7 rights infringed, even potentially. An assessment of whether the principles of fundamental justice were breached was thus not necessary.

82. Ramsay J. properly interpreted and applied the existing law. Ramsay J. did not err in declining to extend the s.7 protection to daytime encampments. Importantly, no court in Canada has ever held that a person encamping in a public park has had their s.7 rights “violated by inaccessible shelter beds and daytime sheltering restrictions and eviction” as the Appellants erroneously claim.¹⁰⁹

83. Ramsay J.’s reasons for declining to expand s.7 were threefold:

- (a) the expansion was proposed to be conditional on a lack of accessible emergency shelter spaces, but the Appellants’ conditions for considering an emergency shelter space “accessible” were contradictory and impossible to meet—in any event, the evidence showed that some homeless individuals would not stay in a shelter whether all accessibility conditions were satisfied or not;¹¹⁰
- (b) the life, liberty and security of the Appellants is not put at risk by By-Law enforcement, but rather by homelessness itself, and encampments do not resolve those harms;¹¹¹ and
- (c) extending the s.7 protection to daytime hours, allowing indefinite encampments, would not only ignore the important public interest in

¹⁰⁹ FAP para. 26. [Waterloo](#) was limited to its facts, specifically an un-used vacant lot: [The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained](#), 2023 ONSC 670 [[Waterloo](#)] at [para. 105](#); [The Corporation of the City of Kingston v. Doe](#), 2023 ONSC 6662 [[Kingston](#)] at [para. 95](#).

¹¹⁰ [Heegsma](#) at [paras. 70-72](#).

¹¹¹ [Heegsma](#) at [para. 76](#).

maintaining public parks for the use of all people in daytime, but it would amount to expropriation of municipal property, or at least severely limit the City's property rights.¹¹²

84. Ramsay J. made no reviewable error in reaching these conclusions.

b. There is no subjective s.7 test

85. The Appellants' arguments for expanding s.7 would incorporate a purely subjective test into the s.7 protection: personal preferences about shelter policies. Ramsay J. properly found that this would be unworkable. It would also trivialize s.7.¹¹³ A s.7 interest requires more than a speculative risk to one's life, liberty, or security of the person.¹¹⁴ The *Charter* does not protect unconstrained personal choice: "[t]he state undoubtedly has the right to impose many types of restraints on individual behaviour, and not all limitations will attract *Charter* scrutiny".¹¹⁵

86. The Appellants argue that daytime encampments would benefit them, but not extending a benefit is not the same as a deprivation.¹¹⁶ Further, contrary to what the Appellants claim, the purported benefits of daytime encampments are contradicted by the Appellants' own witnesses, as well as the City's witnesses.¹¹⁷ As Ramsay J. accurately noted, the Appellants' expert, Dr. Orkin "agrees that nothing in the literature suggests that

¹¹² [Heegsma](#) at [paras. 70-72](#).

¹¹³ [New Brunswick \(Minister of Health and Community Services\) v. G. \(J.\)](#), [1999] 3 SCR 46 [[G. \(J.\)](#)] at [para. 59](#).

¹¹⁴ [R v Donnelly](#), 2017 ONCA 988 at [para. 108](#), citing [G. \(J.\)](#), [1999] at [para. 59](#); [Blencoe](#) at paras. [56-57](#).

¹¹⁵ [B. \(R.\) v. Children's Aid Society of Metropolitan Toronto](#), [1995] 1 S.C.R. 315 at p. 317 (no pinpoint link available); see also [R. v. Malmö-Levine](#); [R. v. Caine](#), 2003 SCC 74 [[Malmö-Levine](#)] at [para. 86](#).

¹¹⁶ [Gosselin v. Québec \(Attorney General\)](#), 2002 SCC 84 at [para. 81](#).

¹¹⁷ See **Chart 7, Appendix "A"**; Evidence Contrary to Claimed Benefits of Encampments

encampments are better than shelters from a health point of view.”¹¹⁸

c. *The City does not cause the risks faced by the Appellants*

87. Conclusions on causation are findings of fact and should not be interfered with absent palpable and overriding error.¹¹⁹

88. In the context of *Charter* claims, the standard for establishing causation between the impugned government action and the alleged interference or deprivation of a right is the “sufficient causal connection” standard.¹²⁰ While this standard “does not require that the impugned government action or law be the only or the dominant cause of the prejudice suffered by the claimant, and is satisfied by a reasonable inference, drawn on a balance of probabilities”, it still “insists on a real, as opposed to a speculative, link.”¹²¹

89. Ramsay J. found as facts that:¹²²

- (a) the life, liberty and security of the applicants are not put at risk by enforcement of the By-Law. They are put at risk by homelessness; and
- (b) They are disadvantaged by homelessness, not by encampment enforcement.

90. These findings were supported by the evidence. The risks the Appellants face are those associated with the experience of homelessness,¹²³ which the City does not cause.

¹¹⁸ [Heegsma](#), [para. 63](#); Dr. Aaron Orkin Affidavit, September 14, 2022, paras. 22, 24; RCOM Tab-54, p.323-324. See also Dr. Kate Hayman Cross-Examination, August 16, 2024, Q.97; RCOM Tab-22, p.157.

¹¹⁹ [Housen](#) at [para. 70](#); [Canadian Council for Refugees v. Canada \(Citizenship and Immigration\)](#), 2023 SCC 17 at [para. 85](#).

¹²⁰ [Bedford](#) at [para. 75](#).

¹²¹ [Bedford](#) at [para. 76](#).

¹²² [Heegsma](#), paras. [76](#), [80](#).

¹²³ See **Chart 8, Appendix “A”** (Harms of Homelessness) and **Chart 9, Appendix “A”** (Evidence Regarding Tents and Belongings).

d. *Encroachment on Public Spaces*

91. Courts have held that unilateral monopolization of public spaces is not justifiable under the *Charter*, recognizing the importance of preserving public spaces for communal use.¹²⁴

92. The Appellants' claim that encampments "did not necessarily conflict with public use of parks"¹²⁵ strains credulity: a part of a park that is occupied by an encampment as a living space cannot be used by the public. City witnesses reported increasing "territorial" behaviour among people occupying encampments.¹²⁶

93. "In assessing whether a procedure accords with the principles of fundamental justice, it may be necessary to balance the competing interests of the state and individual."¹²⁷ There are clear competing interests here, not only in terms of the City's property rights, but also the public at large. Public parks are for the use of all, and when they become off-limits or unsafe, the public is harmed.

e. *Expansion is not warranted in retroactive claim*

94. The expansion of the s.7 protection sought by the Appellants is also not appropriate in a purely retroactive claim: "[w]here a judicial ruling changes the existing law or creates new law, it may, under certain conditions, be inappropriate to hold the government retroactively liable."¹²⁸ Those conditions include reasonable or good faith reliance by governments or undue interference with the constitutional role of legislatures

¹²⁴ *Batty v City of Toronto*, 2011 ONSC 6862 at [paras 105-108](#); *Matsqui-Abbotsford Impact Society v. Abbotsford (City)*, 2024 BCSC 1902 at [para 99](#).

¹²⁵ FAP para 6.

¹²⁶ Steve Hasselman Affidavit, July 31, 2024, para. 13; RCOM Tab-65, p.379; Steve Hasselman Affidavit, October 11, 2021 para. 10; RCOM Tab-64, p.376.

¹²⁷ *Ruby v Canada (Solicitor General)*, 2002 SCC 75 at [para 39](#).

¹²⁸ *Canada (Attorney General) v. Hislop*, 2007 SCC 10 [*Hislop*] at para. [103](#)

and democratic governments in the allocation of public resources.¹²⁹ These principles squarely apply in this case.

f. Horizontal Stare Decisis Does not Assist the Appellants

95. Ramsay J. did not err with respect to horizontal *stare decisis* or interpreting the *Waterloo* and *Kingston* decisions.

96. Horizontal *stare decisis* presumptively binds Courts of coordinate jurisdiction to follow one another on questions of law and constitutional interpretation, but not on questions of fact, including situations where prior decisions are distinguishable on their facts.¹³⁰

97. The findings in the *Waterloo* decision relied on by the Appellants were fact-specific. No new legal rule was created; thus *Waterloo* neither bound Ramsay J., nor any coordinate Court faced with an entirely different evidentiary record.¹³¹

98. Conversely, the Appellants' argument that the *Kingston* case forecloses an "expropriation" objection to daytime sheltering restrictions also has no merit: the statement was clearly *obiter* and thus non-binding.¹³²

99. In any event, Ramsay J.'s finding of fact that no Appellants were prevented from sheltering overnight in public parks distinguishes this case from *Waterloo* and *Kingston*. *Waterloo* dealt with a disused vacant lot, not a park, which removed the public interest in using the lands from the balance;¹³³ and, in *Kingston*, the municipality could not

¹²⁹ [Hislop](#) at para. [100](#).

¹³⁰ [R. v. Sullivan](#), 2022 SCC 19 [**Sullivan**] at paras [24](#), [65](#), [86](#); [R. v. Gerrond](#), 2021 ONSC 4475 [**Gerrond**] at [para. 27](#).

¹³¹ [Waterloo](#) at [para. 105](#); [Sullivan](#), 2022 SCC 19 at para 86; [Kingston](#), 2023 ONSC 6662 at [paras 88-95](#).

¹³² [Kingston](#) at [para 113](#); [Gerrond](#) at [para. 27](#)

¹³³ [Waterloo](#) at [para. 105](#).

demonstrate that people were never prevented from camping overnight—whereas the City can and did in this case.

100. Ramsay J. applied the law in a manner entirely consistent with the s.7 jurisprudence that has been established for nearly a decade and a half since *Adams*. There is no reviewable error, and no basis on which the s.7 protection should be expanded.

ISSUE 7—The City did not Breach Section 15

101. To establish a breach of s.15(1), the Appellants must satisfy a two-part legal test: (i) does the law create a distinction based on an enumerated or analogous ground?; and (ii) does the distinction create a disadvantage by perpetuating prejudice or stereotyping?¹³⁴

102. At the first step, the question is whether the law or state action creates or contributes to a disproportionate impact on the claimant group based on a protected ground in comparison to other groups.¹³⁵

103. If the second step is reached, there would then be an assessment of the impact of the harm caused to the affected group and “whether the distinction imposes a burden or denies a benefit in a discriminatory manner.” The second step will be met if a law creates a distinction that “reinforces, perpetuates, or exacerbates disadvantage.”¹³⁶ The Court may consider arbitrariness, prejudice, and stereotyping and should consider the “broader legislative context, including the objects of the scheme, relevant policy goals, and whether

¹³⁴ *R v. Kapp*, 2008 SCC 41 at [para. 17](#); *R. v. Sharma*, 2022 SCC 39 [**Sharma**] at [paras 37-38](#).

¹³⁵ *Sharma* at [paras 49-50](#).

¹³⁶ *Fraser v. Canada (Attorney General)*, 2020 SCC 28 [**Fraser**] at [para 76](#); *Sharma*, at [paras. 51, 55](#).

the lines are drawn mindful as to those factors”.¹³⁷ If a claimant establishes a breach of s.15(1), the burden shifts to the government to demonstrate that a breach is demonstrably justified under s.1, as discussed below.

104. It is important to distinguish between adverse impacts “caused” or “contributed to” by the impugned law and those which “exist independently of” the impugned provision or the state action. Section 15(1) claimants must demonstrate that the impugned law or state action created or contributed to the disproportionate impact on the claimant group at step one of the *Sharma* test.¹³⁸

105. Ramsay J. provided more than sufficient reasons with respect to his findings that there was no breach of s.15 in this case. His finding that the Appellants did not prove disproportionate impact is a finding of mixed fact and law that is owed deference. He committed no palpable and overriding error.

106. The evidence relied on by the Appellants, taken at its highest, can only speak to over-representation of certain groups among those who experience homelessness. Ramsay J. correctly identified that this is insufficient to establish the application or breach of s.15.

107. As this Honourable Court recently stated: “if mere statistical disparity in the application of a law were sufficient at the first stage of the analysis – the scope of adverse impact discrimination would be so broad as to trivialize the concept. Given that all laws of general application apply imperfectly, findings of adverse impact discrimination would

¹³⁷ [Sharma](#), at para. [para. 59](#); [Withler v. Canada \(Attorney General\)](#), 2011 SCC 12 at para. [para. 67](#)

¹³⁸ [Sharma](#) at [paras 44-45](#).

become routine. Discrimination would be all but impossible for legislators to avoid.”¹³⁹

108. The Appellants conflate the potential that there may be a disproportionate **number** of women, disabled and/or Indigenous people amongst the homeless population with an argument that there is a disproportionate **impact** on those groups. The latter does not follow. There may be many reasons why certain groups are over-represented in the homeless population, but that does not mean that this is an impact of the By-Law or the Process, let alone a disproportionate impact.

109. The Appellants’ arguments of discrimination based on sex, the intersection of race and sex, and disability all fail on this basis. There is no evidence whatsoever that the By-Law or the Process have impacted differentially or been enforced differentially against, women, Indigenous individuals, the disabled, or other groups. The Appellants’ s.15 arguments do not meet either part of the applicable test.

110. The Appellants rely on documents that were struck and thus were not before Ramsay J.¹⁴⁰ Even if they had been admitted, they do not show disproportionate impact. At most, they could only show that certain groups are over-represented among the population of people experiencing homelessness and “[e]vidence of statistical disparity, on its own, may have significant shortcomings that leave open the possibility of unreliable results.”¹⁴¹

111. Largely, the Appellants’ arguments regarding discrimination are criticisms of the

¹³⁹ [Fair Voting BC v. Canada \(Attorney General\)](#), 2025 ONCA 581 at [para. 71](#)

¹⁴⁰ FAP 101, footnote 86: 2021 PiT [sic] in May 31, 2023 Request to Admit, RCOM Tab-79, p.489; FAP 108-109, footnote 94, 95: PiT Count Indigenous Responses in May 31, 2023 Request to Admit, RCOM Tab-79, p.491; PiT Indigenous Infographic in May 31, 2023 Request to Admit, RCOM Tab-79, p.491.

¹⁴¹ [Fraser](#) at [para. 60](#).

shelter system in the City, which are not relevant to the s.15 analysis: again, enforcement was never dependent on shelter availability. Criticism of the shelter system is a policy issue and *ultra vires* the courts. In giving the Appellants' criticisms little weight and focusing instead on the lack of evidence led by the Appellants that was relevant to the actual s.15 test, Ramsay J. did not err. Ramsay J. properly concluded that the Appellants had not met their burden of proof.

112. The Appellants' argument regarding the number of shelter beds in the women's sector also misunderstands the s.15 test. The Appellants offer no evidence for their assertion that "women had a lower share of shelter beds relative to their proportion of the unhoused"¹⁴², nor did the Appellants show that women were disproportionately impacted by enforcement.

113. It is also not correct, as the Appellants purport, that "Hamilton's data undercounts the demand for women's shelters, because it only includes data from City-funded shelters." The City's data does not count demand. It counts capacity within the City-funded shelter system.

114. The Appellants also do not demonstrate any causal link between alleged "sex specific" harms and enforcement of the By-Law, as opposed to other causes such as the risks of living with homelessness, or specific circumstances such as interpersonal conflict.

115. The Appellants' criticism of the shelter system for Indigenous individuals is misguided for the same reasons. Again, the evidence taken at its highest could only hope to show statistical disparity, which cannot establish a s.15 breach. Regardless, the evidence demonstrated that shelters are available to all people. For Indigenous persons,

¹⁴² FAP para 105.

they offer culturally appropriate supports.¹⁴³ The Appellants erroneously purport that “shelters are often unsafe for Indigenous people for a variety of reasons”. The evidence does **not** show that shelters are unsafe. One affiant stated she felt the culturally appropriate supports available in shelters were not sufficient, and asserted, based on this personal opinion, that Indigenous persons may feel unsafe.¹⁴⁴ Ramsay J. did not err in ignoring this bald assertion.

116. Further, the Appellants’ argument regarding persons with disabilities does not satisfy the first part of the first step of *Sharma*, namely that there be a protected group. The Appellants merely recite survey results regarding ‘acuity level’.¹⁴⁵ “Acuity” is not synonymous with “disability” at all, including in a *Charter* context, and there are no restrictions on shelter access based on acuity.¹⁴⁶

117. The Appellants’ criticisms of the shelter system for people with disabilities are also misguided. Shelters are designed to be low-barrier. The Appellants’ argument implies that acts that will result in a service restriction from a shelter,¹⁴⁷ i.e. aggressive, violent or disruptive behaviours, verbal abuse of staff, or actions that compromise the health and safety of others, are always caused by a disability. There is no support for this. Not all mental illness or substance use constitutes a disability; and even so, persons with

¹⁴³ McFadzean 2024 Affidavit, para. 18, ABCO Vol-10, p.173; Shawn MacKeigan Affidavit, July 29, 2024 [**MacKeigan 2024 Affidavit**] paras. 4-5; RCOM Tab-67, p.388.

¹⁴⁴ Audrey Davis Affidavit, July 19, 2023, paras. 30, 32-37; RCOM Tab-50, p.292-293; Audrey Davis Cross-Examination, August 29, 2024, Q.98-105 RCOM Tab-20, p.144-145.

¹⁴⁵ Mastroianni 2021 Affidavit, para. 21; RCOM Tab-68, p.394; Mastroianni 2024 Affidavit, paras 4, 12; RCOM Tab-69, p.400-402.

¹⁴⁶ Mastroianni 2021 Affidavit, para. 28; RCOM Tab-68, p.395; Mastroianni 2024 Affidavit, paras 4, 12; RCOM Tab-69, p.400-402.

¹⁴⁷ James Moulton Affidavit, July 31, 2024 [**Moulton 2024 Affidavit**] at para 16-21; RCOM Tab-75, p. 437-439; James Moulton Affidavit, October 6, 2021 [**Moulton 2021 Affidavit**] at para 16-21; RCOM Tab-74, p. 431-432; MacKeigan 2024 Affidavit, para. 7; RCOM Tab-67, p.388-389; Shawn MacKeigan, Affidavit, October 6, 2021 [**MacKeigan 2021 Affidavit**], paras. 2, 9, 16, 19, 20; RCOM Tab-66, p.382-385.

disabilities are capable of volitional acts. Witness Shawn McKeigan acknowledged that violent, aggressive, and verbally abusive behaviours stemming from drug use can sometimes lead to service restrictions, but this comes nowhere close to establishing discrimination.¹⁴⁸ Such conduct would also not be permissible in an encampment, or otherwise in public: it would fall under the jurisdiction of law enforcement.

118. People who use drugs, whether due to a disability or not, can access shelters; it is only drug use or drug dealing on site that is prohibited, for safety reasons and to aid clients who are or wish to be sober; and harm reduction supplies are available in shelters.¹⁴⁹

119. Difficulty moving belongings is a condition of experiencing homelessness, an inherently transient experience.¹⁵⁰ This was acknowledged by Ramsay J. who observed “shelters also require occupants to move every day”.¹⁵¹

120. In sum, there has been no disproportionate impact upon them such that there can have been any breach of s.15 at any relevant time.

ISSUE 8—Any Breach is Justified under Section 1

121. There has been no breach of s.7 or s.15, and therefore the question of justification under s.1 was not applicable before Ramsay J. Alternatively, any breach of s.7 or s.15 is justified under s.1. Applying s.1¹⁵² involves applying the *Oakes* test.¹⁵³

¹⁴⁸ Shawn MacKeigan, Cross-Examination, August 21, 2024 [**Mackeigan XE**]; Q.163; RCOM Tab-32, p.229.

¹⁴⁹ Moulton 2024 Affidavit at paras. 24-25; RCOM Tab-75, p.439; Tessa McFadzean Affidavit, July 26, 2024 [**McFadzean 2024 Affidavit**] para 10; RCOM Tab-72, p.421-422; MacKeigan 2021 Affidavit, para 18, p.384.

¹⁵⁰ Dr. Stephen Hwang Affidavit, February 27, 2023, Exhibit B, s.3.1; RCOM Tab-53, p.319; Dr. Stephen Gaetz Affidavit, June 14, 2022, para. 8; RCOM Tab-51, p.296; Dr. Kaitlin Schwan Affidavit, June 13, 2022, Exhibit B; RCOM Tab-55, p.329.

¹⁵¹ [*Heegsma*, para. 75.](#)

¹⁵² [*Canadian Charter of Rights and Freedoms*, s. 1.](#)

¹⁵³ [*R v Oakes*](#), [1986] 1 S.C.R. 103 [**Oakes**] at [paras. 69-71](#).

122. There was no dispute before Ramsay J. that the By-Law and the Process were prescribed by law. The first branch of *Oakes* was satisfied.

123. The Courts have accepted that the preservation of public parks is a sufficiently important objective to satisfy the second branch of *Oakes*.¹⁵⁴

124. The measures adopted must be rationally connected to the objective. The Courts have accepted that whether and what sort of shelter homeless individuals will be permitted to erect, and where, is encompassed in the issue of regulating urban encampments and usage of parks, and that enactments such as the Process and Parks By-Law have a rational connection to this important objective.¹⁵⁵ This branch is therefore satisfied.

125. The impugned provision must also “impair ‘as little as possible’ the right or freedom in question”.¹⁵⁶ In this case, given the public interest in the use of parks in daytime and the risks of harm that encampments pose to encamped individuals, the By-Law and the Process minimally impaired the rights of the Appellants. Further, allowance for sheltering temporarily overnight in public parks was found to be minimally impairing in *Adams*, and the City has not interfered with temporary overnight encampments.¹⁵⁷

126. In terms of the balancing stage, weighing the purpose of the limitation against its deleterious effects in light of the values underlying the *Charter*,¹⁵⁸ the By-Law and the Process were proportional to any deleterious effects. In particular, Ramsay J. made no reviewable errors in finding that encampments do not mitigate the harms caused by

¹⁵⁴ *Victoria (City) v Adams*, 2008 BCSC 1363 [*Adams BCSC*] at [para 200](#), aff’d *Adams* at [para 128](#); *Shantz* at [para 240](#).

¹⁵⁵ *Oakes* at [para. 70](#); *Adams BCSC* at [para 203](#); *Shantz* at [para 241](#).

¹⁵⁶ *Oakes* at [para. 70](#).

¹⁵⁷ *Adams* at [para. 166](#).

¹⁵⁸ *Oakes* at [para. 71](#).

homelessness.

127. It has been held that infringements of s.7 that have been found to be contrary to the principles of fundamental justice will only be justified under s.1 in rare circumstances. If there is a breach of s.7, this is just the type of case with sufficiently exigent and complex circumstances that the SCC foresaw when it specifically made room for s.1 to justify a s.7 breach.¹⁵⁹

a. *International Law*

128. The Appellants claim¹⁶⁰ that “s. 1 must be interpreted in accordance with Article 11(1) of the International Covenant on Economic, Social and Cultural Rights...” however this mis-states the law. While there is a role for international and comparative law in interpreting *Charter* rights, it is only to “support or confirm an interpretation arrived at” by applying the usual, purposive approach to *Charter* interpretation.¹⁶¹

129. The Appellants suggest no purposive interpretation of s.7, s.15 or s.1 of the *Charter* that differs from that set out in the existing case law, including *Adams*—the City submits that this is because there is none.

ISSUE 9—The Remedies Sought Should not be Granted

a. *If an Error is Found, the Matter should be Remitted*

130. Ramsay J. made no reviewable errors. This appeal should be dismissed.

131. However, should any error be found, this matter should be remitted to Ramsay J.

132. While appellate courts “may—and occasionally are required to—assume the role of finder of fact where doing so is ‘in the interests of justice and feasible on a practical

¹⁵⁹ [Re BC Motor Vehicle Act](#), [1985] 2 SCR 486 at [para. 85](#); see also [Charkaoui v Canada \(Citizenship and Immigration\)](#), 2007 SCC 9 [para 66](#).

¹⁶⁰ FAP, para 119

¹⁶¹ [Quebec \(Attorney General\) v. 9147-0732 Québec inc.](#), 2020 SCC 32 at [paras 27-47](#).

level’ ... they are ‘generally, and justifiably, wary’ of doing so, given the many advantages first instance courts have in drawing factual inferences”.¹⁶² The absence of oral evidence does not negate the desirability of a deferential standard of review.¹⁶³

133. Particularly in *Charter* cases, if an error is found, it is appropriate to remit the matter to the court of first instance, which has “a significant ‘institutional advantage in making the determinations necessary to a fair treatment’ of ss. 7 and 15 claims”.¹⁶⁴ This is particularly so where the “seriousness of the matter, the size and complexity of the record and the conflicting affidavit evidence” make it clear that “it would be neither ‘in the interests of justice’ nor ‘feasible on a practical level’ for this Court to take up the task of finder of fact”.¹⁶⁵

134. In this case, the record is voluminous and complex, and evidence was in dispute. This is simply not one of the “occasional” circumstances in which it is appropriate or practical for this Court to assume the role of finder of fact.¹⁶⁶

a. The Declaration Sought is Overbroad

135. Further, the declaration sought: “that the sheltering restrictions and evictions were unconstitutional” is plainly overbroad and not capable of being implemented.

136. The application below was a challenge to the City’s By-Law, but neither the By-Law nor the Process provide for “sheltering restrictions” or “evictions.”

137. Broad declarations of this sort are not consistent with how declaratory relief is to

¹⁶² [Canadian Council for Refugees v. Canada \(Citizenship and Immigration\)](#), 2023 SCC 17 [CCR] at [para. 177](#).

¹⁶³ [Gottardo Properties \(Dome\) Inc v Toronto \(City\)](#), 1998 CanLII 6184 (ON CA) at [para 48](#), decided after the *Hollis* decision cited by the Appellants (FAP para. 121).

¹⁶⁴ [Mathur v. Ontario](#), 2024 ONCA 762 at [para. 7](#), citing [CCR](#) at para. [176](#).

¹⁶⁵ [CCR](#) at para. [178](#).

¹⁶⁶ See [Bedford](#) at [para. 51](#). While the Court was discussing review of social and legislative facts, the comments apply generally.

be granted under the *Charter*. If a court finds a law to be “of no force or effect” courts ought to craft a remedy that addresses the “extent of the inconsistency”.¹⁶⁷ “[C]ourts must be sensitive to their role as judicial arbiters and not fashion remedies which usurp the role of the other branches of governance”.¹⁶⁸ This reasoning applies here. There is no need to usurp the legislative function of the City and make a declaration that is broader than the provisions of the By-Law.

138. Further, the declaration sought would be moot, because the Appellants’ claim is solely retroactive.¹⁶⁹ The dispute is focused on whether the Appellants should receive any monetary *Charter* damages for purported past harms. A s.52 declaration of invalidity/inapplicability would have no practical effect on the right of the Appellants or anyone else.

139. Additionally, to the extent any declaratory relief would be based on an expansion of the law, it would be inappropriate to hold the City retroactively liable. The City conducted itself in good faith based on the *Charter* law that exists to date and that existed at the time. A retroactive remedy in this context would be highly disruptive and constitute an undue interference; it would leave governments without any assurance of the legality of their actions.¹⁷⁰

b. No Error in Finding the Appellants had not Proven damages

140. Ramsay J.’s ruling on *Charter* damages was not *obiter* as suggested by Appellants.¹⁷¹ He made specific findings, including that there was no *Charter* breach to

¹⁶⁷ [Constitution Act, 1982](#), s. 52(1); [Schachter v. Canada](#), [1992] 2 S.C.R. 679 at [para. 31](#).

¹⁶⁸ [Doucet-Boudreau v. v. Nova Scotia \(Minister of Education\)](#), 2003 SCC 62, [para. 34](#).

¹⁶⁹ [Borowski v Canada \(Attorney General\)](#), [1989] 1 SCR 342 at p. 353.

¹⁷⁰ [Hislop](#) at [paras. 100-101](#).

¹⁷¹ FAP para. 30.

justify an award of damages.¹⁷² Awards of damages are issues of fact, reviewable for palpable and overriding error.¹⁷³ Ramsay J. did not err in concluding the Appellants had not proven damages.

141. An award of *Charter* damages requires satisfying the four-step *Ward* test.¹⁷⁴ The first step is establishing a Charter violation not justified by s.1. As set out above, Ramsay J. did not err in concluding there was no *Charter* breach: this ends the inquiry.

142. Regarding the second step, the Appellants have not demonstrated that an award of damages is “appropriate and just”, or functionally required to fulfill any of the objects of compensation, vindication, or deterrence.¹⁷⁵ The court is to import the tort concept of causation,¹⁷⁶ which is the “but for” test.¹⁷⁷ The “material contribution test” only applies to a limited set of circumstances, involving joint tortfeasors.¹⁷⁸ It is not applicable here. “Material contribution” is **not** a standalone tort as the Appellants appear to argue: creation of a risk is not actionable if no harm was suffered.¹⁷⁹ Ramsay J. did not err in his factual finding that the Appellants’ life, liberty and security was put at risk by homelessness, not by enforcement of the By-Law. The Appellants have shown no harms caused by enforcement of the By-Law on the “but for” test: causation is not established, and there is no compensatory function for damages. Further, there is no purpose of vindication or

¹⁷² [Heegsma](#), para. 66.

¹⁷³ [M.\(B\). v. British Columbia](#), 2003 SCC 53 at para. 54.

¹⁷⁴ [Vancouver \(City\) v Ward](#), 2010 SCC 27 [**Ward**]; paras. 23-57.

¹⁷⁵ [Ward](#) at para 32.

¹⁷⁶ [Boily v. Canada](#), 2022 FC 1243 at paras 195-196.

¹⁷⁷ [Henry v. British Columbia \(Attorney General\)](#), 2015 SCC 24 at para. 95, 98; [Clements v. Clements](#), 2012 SCC 32 [**Clements**] at paras. 37, 46.

¹⁷⁸ [Clements](#), supra at paras. 33, 46.

¹⁷⁹ [Atlantic Lottery Corp. Inc. v. Babstock](#), 2020 SCC 19 at para. 33.

deterrence to be served when the City was acting in accordance with the law and jurisprudence.

143. Regarding the third step, countervailing factors do exist in this case:¹⁸⁰

- (a) First, while declaratory relief is not warranted, *if* a *Charter* breach were to be found, a narrow declaration would serve the aims of *Ward* without the additional need for damages;¹⁸¹
- (b) Second, good governance immunity applies.¹⁸² Ramsay J. found that the City did not act wrongly, in bad faith or in abuse of power. This factual finding is entitled to deference. Ramsay J. also did not err in finding that good governance immunity applies to municipalities. It is well-established that the separation of powers applies to municipal governments, no less than a provincial legislature or the federal Parliament.¹⁸³ The immunity established by the SCC in *Ward* and *Mackin*, and affirmed in *Power*, applies to municipalities acting in their legislative capacity in enacting a by-law.¹⁸⁴ Whether or not municipalities hold parliamentary sovereignty or privilege is irrelevant. This immunity applies equally to City actions taken in good faith, including under the Process and By-Law.¹⁸⁵

¹⁸⁰ [Ward](#) at [para 33](#).

¹⁸¹ [Ward](#) at [para 35](#); [Canada \(Attorney General\) v. Power](#), 2024 SCC 26 [**Power**] at [para 45](#).

¹⁸² [Mackin v. New Brunswick \(Minister of Finance\); Rice v. New Brunswick](#), 2002 SCC 13 [**Mackin**] at paras. [78-79](#).

¹⁸³ [Welbridge Holdings Ltd v Greater Winnipeg](#), 1970 CanLII 1 (SCC) at [p.968-969](#)

¹⁸⁴ [Nelson \(City\) v. Marchi](#), 2021 SCC 41 at [para. 43](#).

¹⁸⁵ [Power](#) at [paras. 70-71](#)

144. The fourth step in *Ward* addresses quantum of damages.¹⁸⁶ The Appellants have also identified no error in this regard. Should this Court find an error, the appropriate remedy would be to remit the matter to Ramsay J. In any event, the Appellants have offered no authority to suggest that the sums they seek are appropriate, and have failed to provide evidence of any loss suffered¹⁸⁷ beyond harms caused by homelessness itself or other causes for which the City is not responsible.

145. The quantum sought is also excessive. Generally, if awarded at all, damage awards under the *Charter* are quite modest. Only rarely have substantial damages awards been made, and only where there is evidence of serious state misconduct that needs to be deterred—such as conduct that was intentional, malicious, high handed, or oppressive.¹⁸⁸ Most of the case law with respect to *Charter* damages reflect awards much lower than sought by the Appellants, including in the *Ward* decision itself, where the *Charter* damages award was set at \$5,000.00.¹⁸⁹

PART IV—ADDITIONAL ISSUES

146. The Respondent raises no additional issues.

¹⁸⁶ [Ward](#) at [para. 57](#).

¹⁸⁷ [Ward](#) at [para. 48](#).

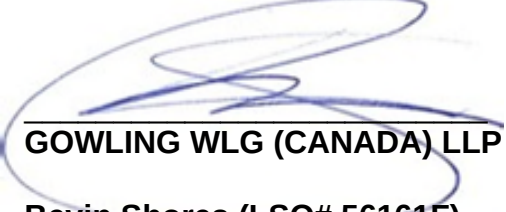
¹⁸⁸ [Brazeau v. Canada \(Attorney General\)](#), 2020 ONCA 184 at [para. 72](#); [Elmardy v Toronto Police Services Board](#), 2017 ONSC 2074 at [para. 35](#).

¹⁸⁹ [Ward](#) at [para. 48](#); [Carr v Ottawa Police Services Board](#), 2017 ONSC 4331 at [para. 248](#) (\$7,500 in deterrence-based *Charter* damages for being left naked in a holding cell for several hours); [Russell v BC](#), 2018 BCSC 1757 at [para. 75](#) (\$1,000.00 for breach of an accused's right to counsel); [McGowan v Montréal](#), 2018 QCCS 1740 at [para. 168](#) (\$3,000.00 for arbitrary detention); [Stewart v Toronto Police Services Board](#), 2020 ONCA 255 at [para. 149](#) (\$500.00 for arbitrary detention and unreasonable search during the G20 summit); [Thibodeau v Greater Toronto Airports Authority](#), 2024 FC 274 at [para. 94](#) (total award of \$3,500.00 for three violations of language rights).

PART V—RELIEF SOUGHT

147. For the reasons set out herein, the City respectfully requests that this appeal be dismissed, and reserves its right to seek costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 31st day of October 2025.


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SHERRI OGDEN, JAHMAL PIERRE and LINSLEY GREAVES

Applicants
(Appellants)

and

CITY OF HAMILTON

Respondent
(Respondent on Appeal)

CERTIFICATE

I certify:

I am satisfied as to the authenticity of every authority cited in this Factum.

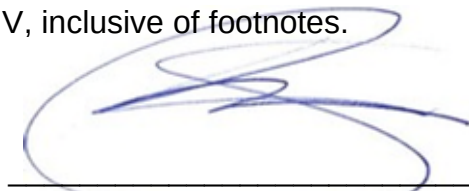
An order under subrule 61.09(2) is not required.

We estimate that **five (5) hours** will be needed for the Respondent's oral argument.

This factum complies with an order referred to in subrule 61.12(5.1) regarding word count and page limits (Endorsement of Justice Favreau, August 7, 2025).

This factum contains **11993** words in Parts I to V, inclusive of footnotes.

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APPENDIX

Chart 1: Witness Evidence of Overnight Camping and Timing of Enforcement

Witness	Evidence	Citation
<i>Witness Evidence of Camping Overnight or Longer</i>		
Kristen Heegsma	Stayed in a tent in Wolverton park for “a few months” in fall 2021 until May or June 2022; Has put up a tent and encamped; stayed three weeks in Beasley Park;	Kristen Heegsma, Affidavit, June 7, 2022 [<i>Heegsma Affidavit</i>], para. 8; RCOM Tab 39, p.253; Kristen Heegsma, Cross-Examination, August 23, 2024 [<i>Heegsma XE</i>], Q.174-175, 270, 302, 312-313; RCOM Tab 3, p.33-34, 36-37;
Darrin Marchand	Would have tent in one location for a few weeks then asked to move; From April 23, 2023, stayed outside without a tent because he felt trapped inside the tent, the tent provides no particular protection and he did not have one; left to use the washroom and came back and tent was gone;	Darrin Marchand, Cross-Examination, October 13, 2021 [<i>Marchand 2021 XE</i>], Q.27-33; RCOM Tab 8, p.77-78; Darrin Marchand, Cross-Examination, August 29, 2024 [<i>Marchand 2024 XE</i>], Q.204-211; RCOM Tab 9, p.83-84;
Gord Smyth	Camped at Central Park when there were eight-nine tents with about 15 people staying in them, was given 14 days’ notice to move;	Gord Smyth, Affidavit, September 29, 2021 [<i>Smyth Affidavit</i>], para. 11-15; RCOM Tab 49, p.288-289; Gord Smyth, Cross-Examination, October 13, 2021 [<i>Smyth 2021 XE</i>], Q.61-62; RCOM Tab 17, p.129; Gord Smyth, Cross-Examination, August 28, 2024 [<i>Smyth 2024 XE</i>], Q.203-208; RCOM Tab 18, p.134-135;
Mario Muscato	Stayed in various locations throughout 2021 and 2022 for between 3-4 days to 2 weeks (2021) and a couple of days (2022) at a time;	Mario Muscato, Affidavit, May 11, 2022 [<i>Muscato Affidavit</i>] para. 24; RCOM Tab 46, p.278;

Witness	Evidence	Citation
		Mario Muscato, Cross-Examination, August 14, 2024 [Muscato 2024 XE], Q.183; RCOM Tab 14, p.112;
Shawn Arnold	Camped at JC Beemer Park since Fall of 2020 until obtained housing in 2021, remained housed to at least May 2022	Shawn Arnold, Cross-Examination, August 14, 2024 [Arnold XE], Q.75-77, 111, 121-122; RCOM Tab 1, p.15-17;
Cassandra Jordan	Camped at JC Beemer Park over a year Camped on random sidewalks and on the rail trail; In 2021, camped at Ferguson	Cassandra Jordan, Cross-Examination, August 15, 2024 [Jordan XE], Q.24, 32, 94; RCOM Tab 4, p.40-41, 44;
Julia Lauzon	Camped in encampment at Beemer Park for a couple weeks, right before being incarcerated; Camped a couple nights every week with other people	Julia Lauzon, Cross-Examination, October 15, 2024 [Lauzon XE], Q.45, 55, 59, 119-123; RCOM Tab 5, p.49, 51;
Ammy Lewis	Camped at “the underground”; Camped at Barnesdale and Barton park for months; Camped behind the cathedral until she accessed a shelter and her dog went to a foster;	Ammy Lewis, Cross-Examination, August 14, 2024 [Lewis XE], Q.56, 122, 185-187; RCOM Tab 6, p.55, 58-59;
Ashley MacDonald	Stayed in tents in parks since 2020 as of June 2022 Affidavit; First camped at Ferguson during its entire duration; Camped at Wesley for months In October 2024, “transitioning into” her apartment; stayed sporadically in her tent; Camped at Sir John. A MacDonald, Ferguson, Victoria Park, First Place, Wellington and King, Corktown Park Wesley, Whitehern (given “couple weeks” notice), Gore Park and Urban Core; Camped at Gore Park for a week in 2022 (two years before cross-examination);	Ashley MacDonald, Affidavit, June 13, 2022 [MacDonald Affidavit], para. 6-7; RCOM Tab 41, p.260; Ashley MacDonald, Cross-Examination, October 10, 2024 [MacDonald XE], Q.43-46, 60-61, 101-108, 121-122, 193-195, 281-282; RCOM Tab 7, p.65-69, 71;

Witness	Evidence	Citation
Cory Monahan	Homeless on and off for most of adult life; When evicted in 2021, sat in the back alley of his former house; Camped at Carter Park for three days; Camped in Gage Park for two spans of three months in 2021 and 2022; camped at Ferguson for days and weeks at a time from 2021 to 2022 Camped in various parks from 2022 to date of May 2022 Affidavit for days to weeks at a time Camped in Wesley/Wesley Parking lot, Vine/Bay parking lot, John A MacNab, Central Park, and Beasley Park between June 2022 and April 2023 Affidavit Camped at Victoria Park from mid-April 2023 to date of April 25 2023 Affidavit Typically moved to and from parks; In 2024, camped on a sidewalk behind City Hall; Camped in various parks in the four days preceding August 15, 2024; Camped in Beasley Park overnight;	Cory Monahan, Affidavit, May 12, 2022 [Monahan 2022 Affidavit], paras. 7-8; RCOM Tab 44, p.273; Cory Monahan, Affidavit, April 25, 2023 [Monahan 2023 Affidavit], paras. 1-2; RCOM Tab 45, p.275; Cory Monahan, Cross-Examination, August 15, 2024 [Monahan XE], Q.47-51, 376-377; RCOM Tab 11, p.94, 100;
Misty Marshall	Camped in John and Rebecca Park for one week in the summer of 2021 and one week in the fall of 2021, required to leave in the fall due to the park becoming a crime scene; Camped in Beasley Park right after the first stint in John and Rebecca Park for about a week; Camped at City Hall in October 2021 for a couple months overnight until roughly January 2022; Camped outside City Hall, at Carole Anne's Place, at Philpott Church and off Wellington.	Misty Marshall, Affidavit, May 12, 2022 [Marshall 2022 Affidavit], para. 15; RCOM Tab 42, p.264-265; Misty Marshall, Cross-Examination, August 15, 2024 [Marshall XE], Q.143-162, 199-201; RCOM Tab 10, p.87-88, 90;

Witness	Evidence	Citation
Sherri Ogden	Camped in Durand Park in early 2021 for about seven months; Camped in Beasley Park in mid 2021 for a few nights; A month and a half later returned to Beasley Park to camp for one night; Camped in Durand Park in the winter of 2021 for three nights; Camped in Beasley Park in early 2022 for approximately two months	Sherri Ogden, Affidavit, June 2, 2022 [Ogden Affidavit], para. 7; RCOM Tab 47, p. 281-382; Sherri Ogden, Cross-Examination, August 14, 2024 [Ogden XE], Q.250-251; RCOM Tab 15, p.116;
Jahmal (Jammy) Pierre	Camped at Urban Core sometime in 2019 for an unknown amount of time; Camped at Beasley Park after becoming unhoused a few times (about 4) during homelessness for an unknown period of time (sometimes less than a day); Police came in daytime saying to leave the Park; left Beasley Park and took belongings; Camped outside new Hamilton Urban Core a few times (about 4) during homelessness for an unknown period of time;	Jahmal (Jammy) Pierre, Affidavit, June 7, 2022 [Pierre Affidavit], para. 19; RCOM Tab 48, p.285; Jahmal (Jammy) Pierre, Cross-Examination, August 16, 2024 [Pierre XE], Q.167-171; RCOM Tab 16, p.124;
Linsley Greaves	Camped in a tent at Woodlands Park (Sanford and Barton) for almost two years after being evicted from housing; Stayed in Beasley Park in 2022 From December 2022 and as of July 2023, camped at Woodlands Park;	Linsley Greaves, Affidavit, June 2, 2022 [Greaves 2022 Affidavit], para. 13; RCOM Tab 37, p.247; Linsley Greaves, Affidavit, July 5, 2023 [Greaves 2023 Affidavit], para. 1; RCOM Tab 38, p.250; Linsley Greaves, Cross-Examination, August 14, 2024 [Greaves XE], Q.183-184; RCOM Tab 2, p.26;
Witness Evidence of Enforcement Only During Daytime		

Witness	Evidence	Citation
Jahmal (Jammy) Pierre	Enforcement came during the day, advising to leave the premises;	<i>Pierre XE</i> , Q.177; RCOM Tab 16, p.125;
Gord Smyth	By-law arrived at about 7:00am on unknown date;	<i>Smyth 2024 XE</i> , Q.192-194; RCOM Tab 18, p.134;
Cassandra Jordan	Police and by-law attended at JC Beemer Park in early morning, roughly four or five in the morning; police asked individuals to leave due to safety concerns following a fire;	<i>Jordan XE</i> , Q.97-100, 163; RCOM Tab 4, p.44,46;
Cory Monahan	Claimed that he was repeatedly awoken “first thing in the morning” by City MLE officers. On re-examination, he was not sure of the time when this occurred and “sometimes” it wasn’t light out yet.	<i>Monahan XE</i> , Q.411, 418, RCOM Tab 11, p.101; <i>Monahan XE Cont’d</i> , Q.466-468; RCOM Tab 12, p.104-105;
Ashley MacDonald	Ticket issued when it was not dusk; on cross-examination clarified she was unsure of the time, but it was during daytime	<i>MacDonald Affidavit</i> , para. 24; RCOM Tab 41, p.261; <i>MacDonald XE</i> , Q.325-328, 343-347; RCOM Tab 7, p.72-73;
Shawn Arnold	Ferguson encampment was dismantled during daytime;	<i>Arnold XE</i> , Q.117; RCOM Tab 1, p.17;
Kristen Heegsma	Given notice to leave Woolverton Park during daytime;	<i>Heegsma XE</i> , Q.192; RCOM Tab 3, p.33;
Sherri Ogden	Clarified that a person who told her to move was not in uniform and she believes was acting on his own volition; incident “wasn’t overnight” but around 5:30 in the morning.	<i>Ogden XE</i> , Q.133-148, 165-167; RCOM Tab 15, p.116;
<i>Witnesses Qualifying or Abandoning Claims of Overnight Enforcement</i>		
Ashley MacDonald	Claimed that she had once been ticketed by police at 6:00pm. On cross-examination, she clarified that this was in the summer, and as such it was not dark or as dusk was approaching. Later in her testimony, Ms. MacDonald indicated that she was actually not certain of	<i>MacDonald XE</i> , Q.325-328, 343-347; RCOM Tab 7, p.72-73;

Witness	Evidence	Citation
	the time she was ticketed, and that it could even have occurred in the morning.	
Cory Monahan	Claimed that he was repeatedly awoken “first thing in the morning” by City MLE officers. On re-examination, he was not sure of the time when this occurred and “sometimes” it wasn’t light out yet.	<i>Monahan XE</i> , Q.411; RCOM Tab 11, p.101; Cory Monahan, Continued Cross-Examination, August 30, 2024 [<i>Monahan XE Cont’d</i>], Q.466-468; RCOM Tab 12, p.104-105;
Linsley Greaves	“An officer” required him to move from an encampment during the evening, although he did not think it was a City MLE officer. Upon cross-examination, Mr. Greaves could not remember when the incident occurred and acknowledged that he was not actually sure that this had occurred at night—he just felt as if it was because he had been asleep.	<i>Greaves XE</i> , Q.101-109; RCOM Tab 2, p.23-24;
Misty Marshall	Claimed she and some friends were told by a police officer that they would have to leave a City park (John Rebecca Park) at 11:00pm. That was the posted closing time for that park, while they were sitting on a park bench with blankets and a tarp. Upon cross-examination, Ms. Marshall admitted she was actually uncertain about the date of this incident, and further questioning showed she was confused between this alleged incident and an occasion on which she was told to move because of a crime scene.	<i>Marshall 2022 Affidavit</i> , para. 28; RCOM Tab 42, p.267; <i>Marshall XE</i> , Q.187-195, 199-201; RCOM Tab 10, p.89-90; (incident with which Ms. Marshall is confusing is Q.157-160, RCOM Tab 10 p.87-88);
Sherri Ogden	Clarified that a person who told her to move was not in uniform and she believes was acting on his own volition; incident “wasn’t overnight” but around 5:30 in the morning.	<i>Ogden XE</i> , Q.133-148, 165-167; RCOM Tab 15, p.116;

Chart 2: Requests to Admit (“RTAs”)

RTA Date, Citation	Response Date, Citation	Facts Admitted	Facts Not Admitted	Authenticity of Documents Admitted	Authenticity of Documents Not Admitted
May 31, 2023 ABCO Tab 144 RCOM Tab 79	June 20, 2023 ABCO Tab 145 RCOM Tab 80	N/A (none requested)	N/A (none requested)	1, 2a, 2b (with qualifications), 2c, 2d, parts of 3 (with qualifications), parts of 5, parts of 6, 7, 8, 8a, 9, parts of 10, 11, parts of 12 (with qualifications), 13, 14 (with qualifications), 15, 16, 17	Parts of 3, parts of 5, 9 (video recording), parts of 10,
August 1, 2023 ABCO Tab 146 RCOM Tab 81	August 23, 2023 ABCO Tab 147 RCOM Tab 82	Under Heading “Point In Time Connection Survey Data,” 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46	Under heading “Point In Time Connection Survey Data,” 5, 33 Under heading “Homelessness Dashboard: Data on Homeless Population, Including Shelter Use, Availability and Capacity (Tabs 1a and b)” 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12,	N/A (none requested)	N/A (none requested)

RTA Date, Citation	Response Date, Citation	Facts Admitted	Facts Not Admitted	Authenticity of Documents Admitted	Authenticity of Documents Not Admitted
			13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42		
June 7, 2024 ABCO Tab 148 RCOM Tab 83	June 26, 2024 ABCO Tab 151 RCOM Tab 84	None	2	1	None
June 25, 2024 ABCO Tab 150 RCOM Tab 85	July 15, 2024 ABCO Tab 152 RCOM Tab 86	None	3*	None	1, 2
August 26, 2024 ABCO Tab 153 RCOM Tab 87	September 10, 2024 ABCO Tab 154 RCOM Tab 88	None	1, 2, 3	1, 2, 3 (with qualifications), 4 (with qualifications), 5 (with qualifications), 6 (with qualifications), 9, 10, 11, 12, 13, 14 (with qualifications), 15 (with qualifications), 16 (with qualifications)	7, 8

*There were no facts 1 and 2 in the June 25, 2024 Request to Admit

Chart 3: Contrary Evidence to Claimed Barriers to Entering Shelters

Alleged Barrier	Contrary Evidence	Citation
Shelters operate overnight and discharge people in the morning	City-funded shelters accept admissions 24 hours a day, 7 days a week	Roberto Mastroianni, Affidavit, October 6 2021, [Mastroianni 2021 Affidavit] para. 29; RCOM Tab 68, p.395;
Shelters may limit the number of nights an individual can stay	There is no evidence that Hamilton shelters limit the number of nights an individual can stay.	
Shelters have a curfew	Bed checks are conducted during the night, but there is no formal curfew. Clients may leave during the night and have their bed held if they advise they will be returning. Shelters do intakes any time of night.	James Moulton, Affidavit October 6, 2021, [Moulton 2021 Affidavit] paras. 28, 30; RCOM Tab 74, p.433-434; Tessa McFadzean, Cross-Examination, August 22, 2024 [McFadzean XE], Q.66-67; RCOM Tab 33, p.232; Tessa McFadzean, Affidavit, October 12, 2021 [McFadzean 2021 Affidavit] paras. 7-8; RCOM Tab 71, p.418; Shawn MacKeigan, Affidavit, October 6, 2021 [MacKeigan 2021 Affidavit] para. 17; RCOM Tab 66, p.384; Shawn MacKeigan, Cross-Examination, August 21,

Alleged Barrier	Contrary Evidence	Citation
		2024 [MacKeigan XE] Q.110; RCOM Tab 32, p.228; James Moulton. Cross-Examination, August 26, 2024 [Moulton XE], Q.101-102; RCOM Tab 34, p.235; James Moulton, Affidavit, July 31, 2024 [Moulton 2024 Affidavit] paras. 28, 31; RCOM Tab 75, p.440;
Shelters generally do not have staff trained to deal with mental illness	There are no restrictions on indoor shelter access in the City based on an individual's acuity, and the City offers intensive case management programs for individuals of high acuity. Individuals with high acuity can access shelters. Breaches of expectations are dealt with by a progressive engagement strategy. Case workers and other staff always seek to work out an issue before any warnings are given or sanctions are imposed. A full or permanent 'ban' from our services would only occur in exceptional circumstances.	<i>Mastroianni 2021 Affidavit</i> paras. 21, 28, 35; RCOM Tab 68, p.394-397; Roberto Mastroianni, Affidavit, July 31, 2024 [Mastroianni 2024 Affidavit] paras. 4, 12; RCOM Tab 69, p.400, 402; <i>MacKeigan 2021 Affidavit</i> paras. 2, 9, 16, 19, 20; RCOM Tab 66, p.382-385; Shawn MacKeigan, Affidavit July 29, 2024 [MacKeigan 2024 Affidavit] para. 7; RCOM Tab 67, p.388-390; <i>Moulton 2021 Affidavit</i>, paras. 19, 21; RCOM Tab 74, p.431-432;

Alleged Barrier	Contrary Evidence	Citation
		<i>Moulton 2024 Affidavit</i> , paras. 19, 21; RCOM Tab 75, p.438;
Shelters generally do not allow drinking and drug use	“there is no expectation that our clients cannot be drug users, or that they will not be using drugs while accessing our services; however, we do expect that drugs will not be used or sold on site.” There is a safe injection site a 5 minute walk away. In emergency indoor shelters, individuals have access to harm reduction supplies.	<i>Moulton 2021 Affidavit</i>, para. 25; RCOM Tab 74, p.433; <i>Moulton 2024 Affidavit</i>, para. 24; RCOM Tab 75, p.439; Tessa McFadzean, Affidavit, July 26, 2024 [McFadzean 2024 Affidavit], paras. 8, 10; RCOM Tab 72, p.421;

Chart 4: Memory Difficulties¹⁹⁰

Witness	Excerpt	Citation
Dr. Wiwcharuk	"When you are dealing with people who have a lot of competing priorities and who are homeless and are often in a state of crisis, it is not an appropriate time to -- there are some times when you cannot get an extremely comprehensive health history."	Dr. Jill Wiwcharuk, Cross-Examination, August 16, 2024 [Wiwcharuk XE], Q.82; RCOM Tab 28, p.209;
Dr. Gaetz	Cognitive impairment due to acquired brain injuries is an extremely common condition among the homeless population	Dr. Stephen Gaetz, Affidavit, June 14, 2022 [Gaetz Affidavit], paras. 31, 38; RCOM Tab 51, p.302-303;
Dr. Hwang	Homeless people often suffer from sleep deprivation; effects include impaired alertness, attention, and concentration.	Dr. Stephen Hwang, Affidavit, February 27, 2023 [Hwang Affidavit], para. 6; RCOM Tab 53, p.312;
Dr. Hayman	Agreed that mental illness and substance use can also complicate data collection when doing research with people experiencing unsheltered houselessness and also stay in encampments because the responses of affected individuals to questions may be unreliable	Dr. Kate Hayman, Cross-Examination, August 16, 2024 [Hayman XE], Q.88-89; RCOM Tab 22, p.156;
Dr. Schwan	Of participants in the Pan-Canadian Women's Housing & Homelessness Survey "22.4% reported "cognitive, intellectual, or memory-related disability	Dr. Kaitlin Schwan, Affidavit, June 13, 2022 [Schwan Affidavit], Exhibit B, p.50; RCOM Tab 55, p.330;
Mario Muscato	"I am usually groggy and have difficulty concentrating."	<i>Muscato Affidavit</i> , para. 29; RCOM Tab 46, p.279
Linsley Greaves	"It is hard to concentrate."	<i>Greaves 2022 Affidavit</i> , para. 30; RCOM Tab 37, p.248;

¹⁹⁰ Note, this chart only includes references to memory and cognitive issues generally and does not include instances of individual Appellants indicating when they were unable to remember something.

Witness	Excerpt	Citation
Misty Marshall	"I am usually groggy and have difficulty concentrating."	<i>Marshall 2022 Affidavit</i> , para. 24; RCOM Tab 42, p.266;
Ammy Lewis	"I got a bad memory and I forgot." ... "I told -- I got a -- I got a bad memory because I died six times. I don't got a good memory." "I died -- I died in the hospital six times, endocarditis and stuff, so I was in a coma, so now my memory's all gone. I don't have a good memory a little bit, and I can't remember stuff sometimes."	<i>Lewis XE</i> , Q.22, 39-40; RCOM Tab 6, p.54; ABCO, Vol 4, Tab 45, p.13;
Ashley MacDonald	"A. I don't know. It's really hard to put a timeline. I'm an addict; days go into night, night goes into days so I can't -- I'm struggling with the timeline."	<i>MacDonald XE</i> , Q.59; RCOM Tab 7, p.66;

Chart 5: Prioritizing Substances over Shelter

Evidence	Citation
Q. Is that part of the reason you're still out on the street, procuring substances? A. Yes. Q. Are you in treatment for your substance use? A. No. Q. And do you intend to get treat – A. I'm in harm reduction, but I'm not in treatment. Q. What do you mean by harm reduction? A. I just safe use. Q. But that doesn't involve actually using less? A. Yeah, correct. Depends on the day. It goes up and it goes down.	<i>MacDonald XE</i>, Q.176, 180-184; RCOM Tab 7, p.69;
"I had patients who had been housed who left their homes and apartments to live in the encampment. They advised me that they had moved to the encampment because diverted prescribed opioids were cheaper and more plentiful at this location than farther from this source of diversion";	Dr. Sharon Koivu, Affidavit, July 26, 2024 [<i>Koivu Affidavit</i>], para. 54; RCOM Tab 77, p.456-457;
"[women] may leave [shelter] to use drugs and not return by curfew or for several days..."	Medora Uppal, Affidavit, July 17, 2023 [<i>Uppal Affidavit</i>], para. 41; RCOM Tab 56, p.333;
The people experiencing homelessness who I have interacted with have cited differing reasons, assumed or real, for not sheltering indoors. These include: ... The shelters do not allow substance use within the shelter;"	David Buckle, July 31, 2024 [<i>Buckle 2024 Affidavit</i>], para 16(e); RCOM Tab 58, p.340-341;

Chart 6: Affiants Unfamiliar with Contents of Affidavits

Witness	Evidence	Citation
Ammy Lewis	Did not give a sworn affidavit, stated that she had only “got [her affidavit] today [the day of her cross-examination]. Nobody’s showed me it,” and stated that she has a poor memory. It was only when Ms. Lewis was improperly led by her counsel on re-examination that she claimed to remember her lawyer reading the affidavit to her.	<i>Lewis XE</i> , Q.8-11, 265-271; RCOM Tab 6, p.54,62;
Cory Monahan	Stated that he never saw his affidavit before his cross-examination, but then changed his evidence to say he saw it the day before. When asked if there were any errors in the affidavit, he told examining counsel “Well, you would know better than I would.”	<i>Monahan XE</i> , Q.84-95; RCOM Tab 11, p.95;
Sherri Ogden	Her affidavit included information she did not have any knowledge of (i.e. that by-law had come to warn about garbage in the park)	<i>Ogden XE</i> , Q.242-245; RCOM Tab 15, p.118;.
Julia Lauzon	Stated that she did not know why her affidavit included information about hotel referrals	<i>Lauzon XE</i> , Q. 101-106; RCOM Tab 5, p.50;

Chart 7: Evidence Contrary to Claimed Benefits of Encampments

Claimed benefit	Evidence Contrary	Citation
Mitigating risks of hypothermia, heatstroke, and dehydration	Threats of encampments include unsafe use of generators, fires	Dr. Aaron Orkin, Affidavit, September 14, 2022 [Orkin Affidavit], para. 22; RCOM Tab 54, p.323;
	Agrees “possible” temperature extremes would also pose a risk of frostbite to a person, notwithstanding that they’re in a tent	<i>Hayman XE</i> , Q.64-65; RCOM Tab 22, p.153;
	Overdose deaths in porta-potties at encampments; they get hotter than the outside air by several degrees making the risk higher if people take a sedating drug in a porta-potty during extreme heat	<i>Koivu Affidavit</i> , para. 44; RCOM Tab 77, p.453;
	Hypothermia is a problem in encampments and can lead to cardiac arrest and death; risk increased in people who have a prolonged decrease level of consciousness, such as using sedating drugs	<i>Koivu Affidavit</i> , paras. 21-22; RCOM Tab 77, p.449;
	Patients with severe complications of frostbite were in tents	<i>Koivu Affidavit</i> , para. 66; RCOM Tab 77, p.459;
	Trying to stay warm while in an encampment can lead to dangerous practices: severe burns or death from tent fires; risks from propane tanks used to heat tents, including explosions causing injury and death and carbon monoxide poisoning.	<i>Koivu Affidavit</i> , paras. 23-25; RCOM Tab 77, p.449;
	Heat exposure poses risks for people in encampments; heat stroke, dehydration, rhabdomyolysis	<i>Koivu Affidavit</i> , para. 29; RCOM Tab 77, p.450;
	Agrees “theoretically possible” people can suffer hypothermia in encampments	Rachel Lamont, Cross-Examination, October 7,

Claimed benefit	Evidence Contrary	Citation
		2024 [<i>Lamont XE</i>], Q.85-86; ABCO, Vol 6, Tab 80, p.109-110;
Emotional and physical support from community of encampment dwellers	Agrees that encampment residents can't entirely control their community members, depending on circumstances	<i>Hayman XE</i> , Q.58-59; RCOM Tab 22, p.152;
	Threats of encampments include conflicts and assaults	<i>Orkin Affidavit</i> , para. 22; RCOM Tab 54, p.323;
	"It's so easy to make the wrong decision when you're trying to organize a group of people"	<i>Monahan XE</i> , Q.295-297; RCOM Tab 11, p.99,;
	patients with disabilities reported fear of being discharged back into the encampment because the physical disability changed their position in the (hierarchy of the) community and made them vulnerable to violence	<i>Koivu Affidavit</i> , para. 47; RCOM Tab 77, p.454-455;
	Describes people using racial slurs against him both on the street and in encampments	<i>Greaves XE</i> , Q.51-52; ABCO, Vol 3, Tab 34, p.40;
	Describes, regarding encampments "depending who's there, there can be some negative interactions; a lot of things go missing"	<i>Lauzon XE</i> , Q.53; RCOM Tab 5, p.49;
	Describes other homeless people coming to encamp in the area where she was camping, "tried to take over"; and "ripping off" her food and belongings	<i>Lewis XE</i> , Q.180; RCOM Tab 6, p.59;
Decreasing risk of overdose	Most patients reported an increase in drug use in encampments; less likely to practice safe techniques when using paraphernalia or attend the supervised injection site; patients reported progressing from prescription opioids to illicit fentanyl; high use of stimulants to stay awake to protect themselves from assault or theft.	<i>Koivu Affidavit</i> , paras. 44, 54-56, 58-59; RCOM Tab 77, p.453, 456-458;

Claimed benefit	Evidence Contrary	Citation
	Patients advised addiction recovery was essentially impossible within an encampment. Drugs are accessible, available and cheap. There are numerous reports of people dying from overdose deaths in porta- potties at encampments patients expressed being attracted to the encampments because of the lack of restrictions on drug use and absence of rules	
	“Q. ...Do you know that risks such as physical violence, self-harm, overdoses, needlestick injuries, altercations, serious threats, and harassment, do you know that those risks never happen in encampments? A. No, no. I wouldn't say that.”	Medora Uppal, Cross-Examination, October 13, 2021 [Uppal XE], Q.20; RCOM Tab 27, p.206;
	Agrees people can bring drugs into and consume drugs in encampments	<i>Hayman XE</i>, Q.71-72; RCOM Tab 22, p.153;
	Agrees there is potential for drug use to occur in encampments	Dr. Stephen Gaetz, Cross-Examination, August 30, 2024 [Gaetz XE], Q.238; ABCO, Vol 8, Tab 99, p.174;
	There is drug use in encampments; drug dealers target people in encampments	<i>Arnold XE</i>, Q.134-135; RCOM Tab 1, p.18;
	Describes not needing to spend much time obtaining and using crystal meth because people would come by his tent to use	<i>Greaves XE</i>, Q.60-61; ABCO, Vol 3, Tab 34, p.40;
Enhancing access to medical care	Unlike an encampment, a shelter is an address to receive services; community services including Home Care Nursing PSW, Physio or OT are regularly provided to people in homeless shelters	<i>Koivu Affidavit</i>, para. 68; RCOM Tab 77, p.459-460;

Claimed benefit	Evidence Contrary	Citation
	Not all encampments are close to the services required by people experiencing homelessness. Not all of the encampments have access to water or washrooms immediately nearby or at all times, which poses sanitation concerns	David Buckle, Affidavit, October 6, 2021 [Buckle 2021 Affidavit] para. 29(g); RCOM Tab 57, p.337;
	People moving encampments it provided challenges, but outreach staff still continued to make contact with most of the folks living outside at that time. people who live encamped move regardless of the enforcement of the bylaws; “[i]t is sort of the nature of people who live in encampments”	Danielle Blake, Cross-Examination, August 19, 2024 [Blake XE], Q46-48; RCOM Tab 29, p.216-217;
Increased safety	Threats of encampments include conflicts and assaults	<i>Orkin Affidavit</i> , para. 22; RCOM Tab 54, p.323;
	“While violence can happen in shelters, in my experience people living in encampments have a higher risk of violence, and the violence is more severe” including stabbings and beatings threats of violence to women and those with physical disabilities if they do not relinquish much of their prescribed opioids; patients with disabilities feared being discharged back into the encampment because the physical disability changed their position in the (hierarchy of the) community and made them vulnerable to violence	<i>Koivu Affidavit</i> , para. 47; RCOM Tab 77, p.454-455;
	Agrees there are also safety risks when sleeping in a tent; patients have described that they feel safer sleeping in a tent than they do sleeping, for example, in an alleyway in the dark	<i>Hayman XE</i> , Q.62; RCOM Tab 22, p.153;
	“Feeling safer and being safer are very different. There are very high risks for women and gender diverse persons in encampments which include sexual exploitation.”	<i>Koivu Affidavit</i> , para. 67; RCOM Tab 77, p.459;

Claimed benefit	Evidence Contrary	Citation
	Not within expertise to comment on whether people can bring weapons into encampments, or people exhibiting violent behaviour can go to encampments	<i>Hayman XE</i> , Q.68-70; RCOM Tab 22, p.153;
	Observes that thefts and assaults are commonplace in encampments; in some circumstances, even more serious violent crime has been associated with encampments, including one incident in which a person who was not an encampment resident was killed at an encampment, and a shooting at an encampment which escalated into the suspect hijacking a truck	<i>Buckle 2021 Affidavit</i> , para. 29(c)-(d); RCOM Tab 57, p.336;
	observed an increase in vigilantism from members of the public directed at encampments, including people destroying tents, throwing things at encampments, or harassing people living in encampments	<i>Buckle 2024 Affidavit</i> , para 18; RCOM Tab 58, p.341-340;
	witnessed an encampment occupant carrying an axe and observed other potential weapons in the possession of encampment occupants, including but not limited to baseball bats, knives and needles.	Steve Hasselman, Affidavit, October 11, 2021 [<i>Hasselman 2021 Affidavit</i>], para. 4; RCOM Tab 64, p.375;
	Admits study relied on was not relied on to say sexual or physical assault risk for women changes based on whether or not they're in an encampment	<i>Hayman XE</i> , Q.80; RCOM Tab 22, p.154-155;
	Sexual violence, sexual exploitation and sexual traffic are real concerns in encampments; patients reported they were sexually trafficked	<i>Koivu Affidavit</i> , para. 49; RCOM Tab 77, p.455;
	People in encampments are attracted to areas that are not safe to be, both for people living in the encampments and the surrounding community, because of the presence of diverted drugs; had housed patients leave their homes to live in an encampment in unsafe location for access to drugs	<i>Koivu Affidavit</i> , para. 54; RCOM Tab 77, p.456-457;

Claimed benefit	Evidence Contrary	Citation
	Reports people “bothering me” while in tent; “they tend to hang outside your tent, they piss on your tent, they steal things outside your tent. I've come back to my tent and the pegs that were holding the tent up were collapsed and a little note saying you got to move from here”	<i>Marchand</i> 2024 XE, Q.121-124; RCOM Tab 9, p.82;
	Describes attempted assault and theft while in encampment	Cassandra Jordan, Affidavit, June 3, 2022 [<i>Jordan Affidavit</i>], para. 23; RCOM Tab 40, p.257;
	Agrees there’s a risk of being assaulted in an encampment	<i>Pierre</i> XE, Q.182; RCOM Tab 16, p.125;
	Describes being harassed, stolen from, and having tent ‘broken’ by members of the public, “I couldn't leave because people would come there and rob my shit.” “Anything that was worth money, they'd steal, and they would rip their tent down. If you got to fight with somebody or you mouth somebody off, they'd come there and rip your tent down, burn your tent down, take your stuff...”	<i>Lewis</i> XE, Q.117, 180; RCOM Tab 6, p.57-59;
	Describes other homeless people coming to encamp in the area where she was camping, “tried to take over”; and “ripping off” her food and belongings	
	Describes, regarding encampments “depending who's there, there can be some negative interactions; a lot of things go missing”	<i>Jordan</i> XE, Q.53; ABCO, Vol 3, Tab 39, p.123;
	Had roughly 80 to 100 cellphones stolen in the past six months, all stolen from tent	<i>MacDonald</i> XE, Q.355; ABCO, Vol 4, Tab 47, p.52;
	Agrees that thefts can “hypothetically” happen in encampments	<i>Hayman</i> XE, Q.66; RCOM Tab 22, p.153;

Claimed benefit	Evidence Contrary	Citation
	Has had things stolen from his tent	<i>Greaves XE</i> , Q.93; RCOM Tab 2, p.23;
Pets	Agrees possible aggressive pets in encampments are a possibility; agrees if a person or their pet or their service animal was attacked by an aggressive animal, that would be traumatizing to that person	<i>Hayman XE</i> , Q.102-106; RCOM Tab 22, p.158;
	Has seen patients who have had serious dog bites; dogs posing a danger to people working in areas where there are encampments; children could be at risk if encampments are in parks or near playgrounds	<i>Koivu Affidavit</i> , para. 36; RCOM Tab 77, p.451-452;
Couples or “survival partners” remain together	Describes being “beaten up by almost every single boyfriend I’ve ever had”; yet admits to choosing not to enter shelter to stay with relationship partner	<i>Heegsma XE</i> , Q.77, 225-226 RCOM Tab 3, p.30; ABCO, Vol 3, Tab 37, p.74;
	“...You don't want to go to the bay front because the bay front is a shitshow. Plus, I have a boyfriend that is there that was abusive towards me, so I don't want to be anywhere near him. ... “	<i>Jordan XE</i> , Q.156; RCOM Tab 4, p.45;
	When asked about whether separation would help in situations where there is abuse between a couple, stated “what I'm describing are the best available options that people are making when in crisis. So when I'm referring to couples or survival partners remaining together, I'm referring to couples who are choosing to remain together”	<i>Hayman XE</i> , Q.98; RCOM Tab 22, p.157;
	Agrees presence of someone with harm reduction training can fill “survival partner” role of prevention for someone overdosing	<i>Hayman XE</i> , Q.100; RCOM Tab 22, p.157;
	I am routinely being jumped and assaulted by men while I am living on the street. Sometimes they are deterred by the male friends with me, other times not because they are bigger.	<i>MacDonald Affidavit</i> , para. 27; RCOM Tab 41, p.261;

Claimed benefit	Evidence Contrary	Citation
Dignity	“From living in a community in which encampments formed while I was there that had not been there previously, and from seeing multiple media reports of concerns of people living near encampments, living in an encampment further alienates people, and adds to stigma”	<i>Koivu Affidavit</i> , para. 69; RCOM Tab 77, p.461;
	“There is no evidence that encampments have had a positive impact on ending stigmatization and marginalization, yet there is suggestive evidence, from community response, that they are having a negative effect.”	<i>Koivu Affidavit</i> , para. 74; RCOM Tab 77, p.462;
	I have also observed an increase in what I would describe as vigilantism from members of the public directed at encampments, including people destroying tents, throwing things at encampments, or harassing people living in encampments.	<i>Buckle 2024 Affidavit</i> , para 18; RCOM Tab 58, p.341-342;
	Reports people “bothering me” while in tent; “they tend to hang outside your tent, they piss on your tent, they steal things outside your tent. I've come back to my tent and the pegs that were holding the tent up were collapsed and a little note saying you got to move from here” When asked why he did not stay in a tent, described “I feel like I'm trapped in there” and “there's no protection”	<i>Marchand 2024 XE</i> , Q.121-124, 205-206; RCOM Tab 9, p.81-83;
	Describes being harassed, stolen from, and having tent ‘broken’ by members of the public; describes being embarrassed at “Corn Day” when children were “making fun of us” and “throwing apples and shit at our tent”	<i>Lewis XE</i> , Q.117; RCOM Tab 6, p.57-58;

Chart 8: Harms of Homelessness

Category	Evidence	Citation
Life expectancy, Overall Health	Population of people experiencing homelessness in Canada is characterized by markedly worse health outcomes than the general population, with lower life expectancy and significantly higher rates of chronic disease as well as mental health and substance abuse conditions. There is considerable evidence that homelessness is associated with poor health	<i>Gaetz Affidavit</i> , paras. 31-32; RCOM Tab 51, p.302;
	Homeless people have a greatly increased risk of death.	<i>Hwang Affidavit</i> , Exhibit B; RCOM Tab 53, p.315;
Chronic Disease	People experiencing homelessness have a higher incidence of many chronic diseases than the general population.	<i>Koivu Affidavit</i> , para. 46; RCOM Tab 77, p.454;
	Homelessness has major health implications; people often have physical and mental health problems which worsen Homeless people suffer from a wide range of medical problems; disease severity can be remarkably high Medical problems that are particularly prevalent among homeless adults include seizures, chronic obstructive pulmonary disease, arthritis and other musculoskeletal disorders. Conditions such as hypertension, diabetes and anemia are often inadequately controlled and may go undetected for long periods. Respiratory tract infections are common. Oral and dental health is often poor. Skin and foot problems are frequently seen among the homeless	<i>Hwang Affidavit</i> , para. 5, Exhibit B; RCOM Tab 53, p.315;
	Population of people experiencing homelessness in Canada is characterized by markedly worse health outcomes than the general population, with lower life expectancy and significantly higher rates	<i>Gaetz Affidavit</i> , paras. 31-32; RCOM Tab 51, p.302;

	of chronic disease as well as mental health and substance abuse conditions.	
Mental Health	People experiencing homelessness have a higher incidence of mental health issues than the general population	<i>Koivu Affidavit</i> , para. 51; RCOM Tab 77, p.456;
	People who become homeless often have physical and mental health problems which worsen over the period that they are homeless.	<i>Hwang Affidavit</i> , para. 5, Exhibit B; RCOM Tab 53, p.311-312;
	Population of people experiencing homelessness in Canada is characterized by markedly worse health outcomes than the general population, including mental health and substance abuse conditions. PTSD is very common among people experiencing homelessness Homelessness itself can be a traumatizing event. Mood disorders (depression and bipolar disease), schizophrenia and substance-induced psychosis are all much more prevalent in the homeless population when compared to the general population. Cognitive impairment due to acquired brain injuries is an extremely common condition among the homeless population	<i>Gaetz Affidavit</i> , paras. 31, 38; RCOM Tab 51, p.302-305;
	Observed deterioration in physical and mental health in people who moved into encampments; for many this led to bad health outcomes and even death	<i>Koivu Affidavit</i> , para. 57; RCOM Tab 77, p.457;
Substance abuse	People who are houseless (sheltered and unsheltered) are more likely to use substances than people who are housed and are more likely to experience substance-related harms, including fatal overdose; “approximately 1 in 4 people who are houseless will die by overdose”	Dr. Kate Hayman, Affidavit, February 28, 2023 [Hayman Affidavit], para. 11; RCOM Tab 52, p.308;
	people experiencing homelessness in Canada have significantly higher rates of substance abuse conditions.	<i>Gaetz Affidavit</i> , paras. 31-32, 38-39; RCOM Tab 51, p.302-305;

	Conditions including substance-induced psychosis are all much more prevalent in the homeless population when compared to the general population	
Inadequate sleep	Homeless people often suffer from sleep deprivation due to an inadequate number of hours of sleep, as well as disturbed or fragmented sleep. For homeless people sleeping outside, sleep fragmentation is often related to external stimuli, such as bright lights, loud noises, and intentional efforts by other people to awaken or disturb them. A large body of research evidence has shown that inadequate sleep has numerous adverse health effects, including an increased risk of diabetes, cardiovascular disease, obesity, depression, and injuries, as well as the more commonly recognized problems of impaired alertness, attention, and concentration.	<i>Hwang Affidavit</i> , Exhibit B, para. 6; RCOM Tab 53, p.312;
Exposure to the elements/hypothermia, frostbite	Homeless people are at risk for severe sunburn and heatstroke during the summer months. During cold weather, frostbite and hypothermia are major problems	<i>Hwang Affidavit</i> , para. 5, Exhibit B; RCOM Tab 53, p.311-312;
Physical violence/threats/assault	People experiencing homelessness are more likely to be victims of crime, including assault and sexual assault, than are people who are housed.	<i>Gaetz Affidavit</i> , para. 31(2); RCOM Tab 51, p.299;

		People who experience homelessness are often victims of physical violence, intimidation and threats of physical violence.	<i>Koivu Affidavit</i> , para. 47; RCOM Tab 77, p.454-455;
		The state of being homeless has direct adverse health effects including increased risk of violence and victimization while living in shelters and on the street. Violence is a constant threat to the health of homeless people; homeless men are about 9 times more likely to be murdered than their counterparts in the general population.	<i>Hwang Affidavit</i> , para. 5, Exhibit B; RCOM Tab 53, p. p.315-316;
Sexual assault		Women are at increased risk of "violence and assault, sexual exploitation and abuse" when homeless	<i>Gaetz Affidavit</i> , para. 18; RCOM Tab 51, p.297;
		80 Q. Okay. Well, to tie it back to the statement in paragraph 10 of your affidavit, you certainly weren't relying on this study to make a proposition that <u>sexual</u> or physical assault risk for women changes based on whether they're in an encampment or not? A. I was not relying on that paper to make a statement about whether they are in an encampment or not. That is correct.	<i>Hayman XE</i> , Q.80; RCOM Tab 22, pg.154-155;
		"Since June 2022 I have been sexually assaulted three times while couch surfing".	<i>Marshall 2023 Affidavit</i> , para. 4; RCOM Tab 43, p.270;
Loss of belongings/Theft		"Before becoming homeless, I was renting a hotel room and different Air B&Bs. I became homeless shortly after my wallet was stolen."	<i>Marshall 2022 Affidavit</i> , para. 6; RCOM Tab 42, p.263;
Infectious disease		The state of being homeless also has direct adverse effects on health through an increased exposure to infectious and communicable diseases (e.g., tuberculosis and insect infestations such as bed bugs and scabies)and an increased risk of violence and victimization while living in shelters and on the street.	<i>Hwang Affidavit</i> , para. 5, Exhibit B; RCOM Tab 53, p.311-312, 315;

Chart 9: Evidence Regarding Tents and Belongings

Witness	Evidence	Citation
Sherri Ogden	Claimed that her tent was “bulldozed”, but admitted on cross-examination that she had been given a “couple days” notice; the ‘bulldozing” was a day after she left chose not to take her tent with her, “[b]ecause I guess I gained too much stuff, and so I don’t feel like taking it all with me. Because I know I can get another tent somewhere.”	<i>Ogden XE</i> , Q.175-177, 186-190; RCOM Tab 15, p.117;
Mario Muscato	Admitted on cross-examination that when police or municipal law enforcement officers have told him to move, they did not take his tent, stating “We were always pretty civil about it.”	<i>Muscato 2024 XE</i> , Q.200; RCOM Tab 14, p.112;
Shawn Arnold	Explained that on an occasion when he believes the City came with a Bobcat and removed his belongings, he did not actually witness this occur; he had actually been away for “a couple of days” and one of his friends had said that he did not think Mr. Arnold was coming back.	<i>Arnold XE</i> , Q 182; RCOM Tab 1, p.19;
Cory Monahan	Claimed that he was “bulldozed” out of a parking lot at Gage Park after having stayed there to end of winter 2022, but admitted he was not present when this alleged “bulldozing” happened; that he was aware notice had been given; and that he had left his tent over the weekend and went to stay at the Budget Inn with his girlfriend. He also recounted another event where he claimed his encampment was cleared within twelve hours of setting it up, but admitted that he was not present when this occurred, either.	<i>Monahan XE</i> , Q. 217, 224, 229-236, 250; RCOM Tab 11, p.96-97;
Misty Marshall	Claimed in her Affidavit that the City showed up with Bobcats to remove belongings with only 20 minutes' notice, but admitted on cross-examination that people were required to depart because the park was a crime scene, and it had been caution-taped “for the whole night and early morning.”	<i>Marshall XE</i> , Q.157-159; RCOM Tab 10, p.87-88;
Cassandra Jordan	Stated that, when the Ferguson encampment was dismantled in 2020, she lost her tent; but she also admitted she was offered a hotel and was permitted the opportunity to make arrangements for her other possessions to be stored.	<i>Jordan XE</i> , Q.74-76; RCOM Tab 4, p.42-43;

Witness	Evidence	Citation
Ammy Lewis	Admitted on cross-examination that where her doctor Dr. O'Shea had reported "she has lost all of her belongings on multiple occasions" this was due to theft.	<i>Lewis XE</i> , Q.216-217; RCOM Tab 6, p.61;
Linsley Greaves	Admitted he was given three days' notice to move, and took no steps to move because he wanted to stay. He accepted the City's offer to store his belongings temporarily.	<i>Greaves XE</i> , Q.112-115, 119; RCOM Tab 2, p.24-25;
Jahmal (Jammy) Pierre	Claimed that her tent was "bulldozed," but admitted that she was not present when this allegedly occurred; and was evasive when asked whether she had been given notice in advance.	<i>Pierre XE</i> , Q.134-151; RCOM Tab 16, p.123;
Kristen Heegsma	Testified that she was given one month notice to leave encampment at JC Beemer Park and voluntarily left possessions behind.	<i>Heegsma XE</i> , Q.194; ABCO, Vol 3, Tab 37, p.73;
Darrin Marchand	Describes his tent being stolen while he was away from it.	<i>Marchand 2024 XE</i> , Q.208-211; ABCO, Vol 4, Tab 52, p.98-99;

Chart 10: Respondent Comment on Appendix To Appellants' Factum¹⁹¹

1. Kristen Heegsma		
Category	Statement and proffered citation	Comment
Shelter Access	Says women's shelters "are <u>almost always full</u>". Heegsma Affidavit, p.55, paras 17-21, p. 57, paras 28-29 [ABC, Vol 3, Tab 35]; O'Shea Affidavit, Ex A, p.192, para 2 para 5 [ABC, Vol 6, Tab 84]; Heegsma XE, p.74, Q219-221, [ABC, Vol 3, Tab 37].	The witness qualified this evidence on cross examination such that this statement is not accurate. Heegsma XE, p.74, Q219-221, [ABC, Vol 3, Tab 37]. <i>219 Q. You say in paragraph 17, regarding barriers, that women's shelters are almost always full; you would agree that they are sometimes not full, since <u>you've been able to access them many times?</u></i> <u>A. Yes.</u>
	She learns about shelter bed availability from other unhoused women and City staff. Heegsma Affidavit, p.55, paras 17-21, p. 57, paras 28-29 [ABC, Vol 3, Tab 35]; O'Shea Affidavit, Ex A, p.192, para 2 para 5 [ABC, Vol 6, Tab 84];	The reference cited and the evidence do not support this statement

¹⁹¹ This comment highlights specific examples, but is not exhaustive, of the inaccuracies and inconsistencies in the Appellants' Appendix. The Respondent maintains its position that the Appellants have not met their burden of proof either of the claims alleged, or of causation.

	Heegsma XE, p.74, Q219-221, [ABC, Vol 3, Tab 37]. Periodically able to access a shelter bed, but has been <u>repeatedly kicked out</u> – once, for a year from the hotel program – [...] Heegsma Affidavit, p.55, paras 17-21, p. 57, paras 28-29 [ABC, Vol 3, Tab 35]; O'Shea Affidavit, Ex A, p.192, para 2 para 5 [ABC, Vol 6, Tab 84]; Heegsma XE, p.74, Q219-221, [ABC, Vol 3, Tab 37];	The witness qualified this evidence on cross examination such that this statement is not accurate. Heegsma XE, p. 74, Q223-224, [ABC, Vol 3, Tab 37]. <i>Q. And in terms of the last time that you exited the Hotel Program, how did that come to pass?</i> <i>A. Like, how did I end up into it?</i> <i>Q. No, no, in terms of exiting, the last time that you left the Hotel Program, how did that come to pass? Was it by choice or was it again one of these incidents of being kicked out?</i> <u>A. No, that one was by choice.</u>
Precarious Housing/ Sleeping Rough	[...] She couch surfed with her father, who was also evicted. [...] Heegsma XE, p. 65-66, Q47-50 [ABC, Vol 3, Tab 37]; Heegsma Affidavit, p.55, paras 22-23 [ABC, Vol 3, Tab 35]; Heegsma XE, p. 66-67, Q56-59, 68-73, [ABC, Vol 3, Tab 37]; O'Shea Affidavit, Exhibit A, p.193, para 1 [ABC, Vol 6, Tab 84 a];	The witness qualified this evidence on cross examination such that this statement is not accurate. Heegsma XE, p. 66-67, Q56-59, 68-73, [ABC, Vol 3, Tab 37]; <i>Q. I understand that in roughly late 2023, you were staying at an address, 9 Faircourt Drive in Stoney Creek; is that right?</i> <i>A. Yes. [...]</i>

	Supplementary Affidavit of Kristen Heegsma (April 27, 2023), p. 61, para 2 [“Heegsma Supplementary Affidavit”] [ABC, Vol 3, Tab 36].	<u>Q. Okay. But that was housing that was available to you because your father was already staying there?</u> <u>A. Yes.</u>
Impact of Encampment Evictions	Evicted from an encampment in the fall of 2021 after Poff. ... In the following 3 weeks, she was assaulted 7 times by a male acquaintance, robbed 3 times, and raped while sleeping on a park bench outside City Hall. Heegsma XE, p. 72, Q188-190, [ABC, Vol 3, Tab 37]; Heegsma Affidavit, pp. 54-57, paras 11-15, 24-26 [ABC, Vol 3, Tab 35]; O’Shea Affidavit, Exhibit A, p.193, para 1 [ABC, Vol 6, Tab 84a]; Lamont Affidavit, p. 78, para 3-4 [ABC, Vol 6, Tab 79a]:	This statement mischaracterizes the evidence; causation is not established. The assaults were self-evidently due to interpersonal conflict. On cross-examination, Ms. Heegsma admitted she had been given notice and was able to pack up what she needed after leaving her encampment. Heegsma XE, p. 40, Q188-190, [ABC, Vol 3, Tab 37]; <i>194 Q. What steps were taken when they returned?</i> <i>A. I had already packed up everything that I needed -- needed, not that I wanted, needed, and then I was leaving.</i>
2. Cassandra Jordan		
Encampment Stays	... Bylaw threw away her tent.... Jordan Affidavit, pp. 116-117, paras 14-17, 19 [ABC, Vol 3, Tab 38]; Jordan XE, pp. 124-125, Q74-82 [ABC, Vol 3, Tab 39].	This statement mischaracterizes the evidence: this relates to the October 2020 dismantling of the Ferguson encampment, which is outside the relevant timeframe and was the subject of a negotiated agreement in prior litigation (a fact admitted by the Appellants in their Application factum below, para. 17). Jordan XE, p. 19-20, Q73 [ABC, Vol 3, Tab 39]

		73 Q. And you reference October 15, 2021. My understanding is that the Ferguson encampment was dismantled in or around October 15, 2020. I'm wondering if that's an error in the date. Do you know? A. It must be.
Impact of Encampment Evictions	• <u>Did not receive appropriate wound care</u> for her burn after the JC Beemer eviction. [...] Jordan Affidavit, pp. 116-117, paras 12-13, 21-23 [ABC, Vol 3, Tab 38]; Wiwcharuk Affidavit, p. 113-114, paras 3-6 [ABC, Vol 7 Tab 90 b]; Transcript of Cross Examination of Jill Wiwcharuk (August 16, 2024), p. 139, Q144 ["Wiwcharuk XE"] [ABC, Vol 7, Tab 91]; Jordan XE, p. 129, Q139, [ABC, Vol 3, Tab 37].	This statement mischaracterizes the evidence: Ms. Jordan received the burn while camping with a tent, where she had been for over a year. She also received care from a nurse practitioner and the burn healed. • Jordan XE, p.25-27, Q 87-94 [ABC, Vol 3, Tab 37] 91 Q. I believe I understand what you're referencing now. How did the burns to your legs occur? A. Well, it was December and it was cold outside, and <u>I was trying to heat my tent with a tabletop barbecue and I had it in my tent. The propane tank was outside my tent, but I ran the cord inside.</u> I had the barbecue going. While I was attempting to get changed into my pyjamas, I slipped and I put – landed on my bare ass on the barbecue. ... 93 Q. And I understand that it was in November or December of 2021 that the burns occurred. Is that right? A. That's right. 94 Q. <u>Were you there at J.C. Beemer Park for over a year?</u> Does that sound correct? A. <u>Pretty close, yeah.</u>

		Wiwcharuk Affidavit, p. 113-114, paras 3-6 [ABC, Vol 7 Tab 90 b]; <i>She did end up accessing the Barrett Centre (a crisis shelter that is only for short stays up to 5 days usually) and was seen the following day by a nurse practitioner from the SAN. Unfortunately, she left the Barrett Centre after a few days and did not receive any other care for her burn that I am aware of. I saw her two months later in January and <u>her burn had healed by that time.</u></i>
	[...] Despite the 2023 Protocol, Cassandra was asked to move her tent three times at Bayfront, <u>sometimes</u> just twenty feet. She had to move all of her belongings each time. [...] Jordan Affidavit, pp. 116-117, paras 12-13, 21-23 [ABC, Vol 3, Tab 38]; Wiwcharuk Affidavit, p. 113-114, paras 3-6 [ABC, Vol 7 Tab 90 b]; Transcript of Cross Examination of Jill Wiwcharuk (August 16, 2024), p. 139, Q144 ["Wiwcharuk XE"] [ABC, Vol 7, Tab 91]; Jordan XE, p. 129, Q154, [ABC, Vol 3, Tab 37]	This statement mischaracterizes the evidence: there was only one occasion referred to where Cassandra had to move her tent 20 feet. Jordan XE, p. 129, Q154, [ABC, Vol 3, Tab 37] <i>[...] And I had been told to move three times since I've been there, to different -- <u>once, I had to move my tent literally 20 feet.</u></i>

3. Misty Marshall		
Encampment Stays	... once, she was given 20 minutes notice to leave. <u>Evicted overnight</u> in early May 2022 while sleeping under a tarp with friends. Marshall Affidavit, p.104-106, paras 15-23 [ABC, Vol 4, Tab 53]; Marshall Affidavit, p.107, para 29, [ABC, Vol 4, Tab 53]; Marshall XE, p.120, Q174 [ABC, Vol 4, Tab 45]; Marshall Affidavit, p. 107, para 28, [ABC Vol 4, Tab 53]; Marshall XE, p. 121, Q187-191 [ABC Vol 4, Tab 54].	The witness qualified this evidence on cross examination such that this statement is not accurate. The witness said “I do not remember that, no” and was unable to distinguish this alleged event from another one referenced in her affidavit. The incident in which she claims 20 minutes notice was due to the site being a crime scene. - Marshall XE, p. 121, Q187-191 [ABC Vol 4, Tab 54]. <i>Q. 187: [...] Paragraph 28 of your affidavit, there is a reference to a time “a couple of weeks ago” -- and this is again at John and Rebecca Park. You indicated it was around 11:00 p.m. and the police came by and said the park was closing. I just wanted to ask you about that. A couple of weeks ago, that would have been a couple of weeks before May 12, 2022. Do you remember when that actually happened?</i> <i>MS. CROWE: Did you hear the question?</i> <i>THE DEPONENT: Yeah. <u>Do I remember when that actually happened, the park was closing. I do not remember that, no.</u> I can't recall exactly what was -- that was just a long time ago, like...</i> - Marshall XE p. 32, Q. 157-159 [ABC Vol 4, Tab 54]. <i>157 Q. I see that you say you stayed there for about a week, and then there was dismantlement of an encampment, that the City showed up with Bobcats to remove belongings, and there was 20 minutes' notice. Is that accurate?</i> <i>A. For me, yes, because we -- I had never -- like, we had never gotten an eviction notice. They didn't come around to tell us that we had any</i>

		<i>amount of time that we had to be leaving and -- oh, sorry. Yeah, so -- so I had -- the person that I was staying with, they had -- they had gotten hurt badly, where they had to go to the hospital. So the police had actually caution-taped the whole park for the whole night and early morning, so...</i> <i>158 Q. There was a crime scene at the park? Is that right?</i> <i>A. Yeah, kind of.</i> <i>159 Q. So there was a requirement to depart because of an active crime scene?</i> <i>A. Well, I was already out, so -- so I didn't know. So when I came back to come, like, in for the night, they had the park, like -- like, roped off. Right?</i> <i>160 Q. But that was as a result of what had happened in the park? Somebody getting injured?</i> <i>A. I guess so.</i>
Shelter Access	[...] Sometimes accesses overnight drop in at The Hub during cold alerts, but high demand <u>meant she could only stay for an hour.</u> Marshall Affidavit, pp. 103-104, paras 8-14, [ABC, Vol 4, Tab 53]; Supplementary Marshall Affidavit, p. 110, para 2 [ABC, Vol 4, Tab 54];	This statement mischaracterizes the evidence: Ms. Marshall was not limited to an hour at the Hub. Due to high demand, the Hub cycles people waiting to get outside, encouraging people to leave. Marshall Affidavit, pp. 103-104, paras 8-14, [ABC, Vol 4, Tab 53];

	Marshall XE, p. 116-117, Q98, 102-107 [ABC, Vol 4, Tab 55].	13. <i>The Hub is another drop in centre, which occasionally opens up overnight during cold alerts. I have been able to go to the Hub overnight a few times. However, they try cycle people in and out when there are people waiting outside to get in. In other words, they allow you to come in and warm up for an hour, <u>and then encourage you to leave.</u></i>
Precarious Housing/ Sleeping Rough	Couch surfed [...] <u>more regularly since 2022</u> after realizing that she would not be able to put up a tent. Marshall Affidavit, p.105, paras 17, 21-22, 29 [ABC, Vol 4, Tab 53]; Supplementary Marshall Affidavit, pp.109-10, paras 1, 4 [ABC, Vol 4, Tab 54].	The witness qualified evidence on cross examination such that this statement is not accurate. <u>Marshall XE, p. 119, Q167 [ABC, Vol 4, Tab 55]</u> <i>Q 167. This couch surfing, has that continued occasionally? Do you still do that?</i> <i>A. <u>No, not -- not really. Not anymore.</u></i>
Impact of Encampment Evictions	...Lost contact with her doctor immediately after the Ferguson eviction. ...	This relates to the October 2020 dismantling of the Ferguson encampment, which is outside the relevant timeframe and was the subject of a negotiated agreement in prior litigation (a fact admitted by the Appellants in their Application factum below, para. 17).
4. Sherri Ogden		
Encampment Stays	[...] However, Bylaw eventually caught on and showed up at her tent at 530 AM. [...]	The witness qualified this evidence on cross examination such that this statement is not accurate. The witness could not remember even what year this alleged incident took place, it was not overnight and she believed the person was acting on their own volition.

	Ogden Affidavit, p.26-47, paras 7, [ABC, Vol 5, Tab 64]; Transcript of Cross Examination of Sherri Ogden (August 14, 2024) ["Ogden XE"], p. 58-59, Q111, 120-166, p. 63, Q257-260 [ABC, Vol 5, Tab 6] Lamont Affidavit, p. 24, paras 2-3 [ABC, Vol 12, Tab 161 f].	• Transcript of Cross Examination of Sherri Ogden (August 14, 2024) ["Ogden XE"], p. 58-59, Q111, 120-166, p. 63, Q257-260 [ABC, Vol 5, Tab 6] <u>151 Q. Was the by-law officer wearing a uniform?</u> <u>A. No.</u> <u>152 Q. The by-law officer was not wearing a uniform. Did the by-law officer issue you a ticket?</u> <u>A. No. He wasn't in uniform, so I don't think he can do that, but the cop issued a ticket. [...]</u> 165 Q. Ms. Ogden, the City of Hamilton's by-law officers have given evidence that they don't, in fact, work overnight, and that they – A. It wasn't overnight. It was 5:30. <u>166 Q. 5:30 in the morning.</u> <u>A. Not in uniform.</u> <u>167 Q. Not in uniform. This person, you believe, was just acting on their own volition?</u> <u>A. Yeah.</u>
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	Eventually gave up her tent <u>because she thought it would prevent her from being targeted</u> by the HPS and Bylaw. Ogden Affidavit, p.26-47, paras 7, [ABC, Vol 5, Tab 64]; Transcript of Cross Examination of Sherri Ogden (August 14, 2024) ["Ogden XE"], p. 58-59, Q111, 120-166, p. 63, Q257-260 [ABC, Vol 5, Tab 6] Lamont Affidavit, p. 24, paras 2-3 [ABC, Vol 12, Tab 161 f].	The witness qualified this evidence on cross examination such that this statement is not accurate: she thought taking down her tent and keeping it was "too much hassle". Transcript of Cross Examination of Sherri Ogden (August 14, 2024) ["Ogden XE"], p. 58-59, Q111, 120-166, p. 63, Q257-260; p. 31 Q 189-190[ABC, Vol 5, Tab 6] <i>258 Q. And so what did you do in response to the police saying you can't be here?</i> <i>A. I took my tent down and gave it away to somebody.</i> <u>259 Q. Why did you give your tent away to someone?</u> <u>A. So then I wouldn't be bothered by the cops or by-law officers anymore.</u> <u>260 Q. Why not just take it down but keep it with you?</u> <u>A. No. It's too much hassle.</u> <u>189 Q. You don't remember. Why didn't you take your tent with you when you left?</u> <u>A. Because I guess I gained too much stuff, and so I don't feel like taking it all with me. Because I know I can get another tent somewhere.</u>
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		<u>190 Q. You knew you could get another tent somewhere else, so you prioritized the other things that you could take with you?</u> <u>A. Yeah.</u>
Shelter Access	Had not stayed in a shelter since 2022 <u>because they have been full.</u> [...] Affidavit of Sherri Ogden, pp. 47-48, paras 11-14, [ABC, Vol 5, Tab 64]; Wiwcharuk Affidavit, p. 115, para 3, [ABC, Vol 7, Tab 90 c]; Lamont Affidavit, p. 24, para 3 [ABC, Vol 12, Tab 161 f]. [STRUCK]	Relies on evidence from Dr. Lamont that was struck. The witness qualified this evidence on cross examination such that this statement is not accurate: Ms. Ogden did not attempt to get into shelter and did not say they are full. Ogden XE, p. 62, Q 293-297. <i>293 Q. Mr. Mastroianni, the gentleman with the City of Hamilton who took a look at the housing records, he's given evidence that you were offered shelter at least three times. He's named three times: on March 22, April 1, and April 7 of 2022. And he says that, according to those records, you declined shelter each of those times. Do you remember that?</i> <i>A. No, I don't remember.</i> <i>294 Q. Okay. Is it possible that's correct, that you were offered shelter but decided not to take it?</i> <i>A. Not that I'm aware of.</i> <i>295 Q. Not that you're aware of, okay. But you don't remember?</i> <i>A. Mm-hmm, yes.</i>

		<u>296 Q. When was the last time you tried to get into a shelter?</u> <u>A. Before 2022, early -- before 2022 ended.</u> <u>297 Q. Before 2022 ended, okay. And is there any reason that you haven't tried to get into shelter since then?</u> <u>A. No.</u>
Impact of Encampment Evictions	- Increased sense of hopelessness and depression with each eviction, sleep deprivation, increased substance use while trying to stay awake to protect herself and belongings. - Lost belongings including tent during an eviction Wiwcharuk Affidavit, pp. 115-116, paras 4-5. [ABC, Vol 7, Tab 90 c]; Ogden Affidavit, p.46-48, paras 7, 10, 16-17 [ABC, Vol 5, Tab 64]; Ogden XE, p. 60, Q180-189, [ABC, Vol 5, Tab 66]; Lamont Affidavit, pp. 24, paras 3-4 [ABC, Vol 12, Tab 161 f]. [STRUCK]	Relies on evidence from Dr. Lamont that was struck. The witness qualified this evidence on cross examination such that this statement is not accurate: she gave her tent away because she knew she could get another one. Transcript of Cross Examination of Sherri Ogden (August 14, 2024) ["Ogden XE"], p. 58-59, Q111, 120-166, p. 63, Q257-260; p. 31 Q 189-190[ABC, Vol 5, Tab 6] <u>258 Q. And so what did you do in response to the police saying you can't be here?</u> <u>A. I took my tent down and gave it away to somebody.</u> <u>259 Q. Why did you give your tent away to someone?</u> <u>A. So then I wouldn't be bothered by the cops or by-law officers anymore.</u>

		<u>260 Q. Why not just take it down but keep it with you?</u> <u>A. No. It's too much hassle.</u> <u>189 Q. You don't remember. Why didn't you take your tent with you when you left?</u> <u>A. Because I guess I gained too much stuff, and so I don't feel like taking it all with me. Because I know I can get another tent somewhere.</u> <u>190 Q. You knew you could get another tent somewhere else, so you prioritized the other things that you could take with you?</u> <u>A. Yeah.</u>
5. Jahmel Pierre ("Jammy")		
Shelter Access	A men's shelter turned her away because of her gender expression. Pierre Affidavit, pp. 68-69, paras 9, 11-19 [ABC, Vol 5, Tab 67]; Pierre XE, p. 76-78, Q32-40, 46-61, p. 78, Q71-75, p. 80. Q106-108, p. 81, Q109-118, [ABC, Vol 5, Tab 69]; Supplementary Affidavit of Jammy Pierre, (April 27, 2023) ["Pierre	This statement was qualified by the witness in cross examinations such that the statement is not accurate. The witness was not turned away, and confirmed in her affidavit and on cross-examination that she has been able to stay in Men's shelters. Pierre XE, p. 10-13, Q32-40, p. 14-17, Q 46-61, p. 20, Q71-75, p. 28, Q106-108, p. 29-30, Q109-118, [ABC, Vol 5, Tab 69];

	Supplementary Affidavit"], p. 71-72, para 1-2 [ABC, Vol 5, Tab 68].	51 Q. You mentioned something just now about being turned away due to your gender expression. Where were you turned away from due to your gender expression? A. The Salvation Army. [...] 53 Q. Okay. And what specifically happened? A. I went to stay and the worker had suggested that I go to a place more suited to my lifestyle and look and basically turned me away. [...] 58 Q. And this person at the Booth Centre who told you to go somewhere else, <u>did they actually say you couldn't stay at the Booth Centre?</u> A. <u>Those words weren't used exactly</u>, but the suggestion was heavily implied, and I could tell that he wasn't going to be of assistance. He made it seem like -- I don't want to say that he made it seem like my staying there would be an issue, but that's what I feel he was afraid of. ... 64 Q. <u>So you have accessed men's shelters?</u> A. <u>Yes.</u>
Precarious Housing/ Sleeping Rough	Jammy sometimes stayed outside without a tent. Pierre XE, p. 77, Q43-44, 48-50 [ABC, Vol 5, Tab 69].	This statement was qualified by the witness in cross examinations such that the statement is not accurate. In the same passage, the witness stated she "may have" stayed outside and it "would have been minimal." Pierre XE, p. 77, Q43-44, 48-50 [ABC, Vol 5, Tab 69].

		45 Q. Are you certain that you spent any nights outside between leaving the Four Points and going to the Admiral? A. I'm pretty sure -- <u>I'm sure I may have. It would have been minimal.</u>
6. Darrin Marchand		
Impact of Encampment Evictions	On December 2, 2021, he was living unsheltered outside a church and a man shot him in the shoulder. The hospital discharged him to Good Shepherd, which temporarily waived its service restriction due to his injury. He was kicked out 2 months later because a nurse alleged that he threatened her, which he denies. Marchand Affidavit, p. paras 20, 22-23, 29-30, p. 80, para 35 [ABC, Vol 4, Tab 50]; Supplementary Marchand Affidavit, p. 83, para 5 [ABC Vol 4, Tab 51]; Cross Examination of Darrin Marchand Transcript (August 29,	The witness qualified this evidence in cross examination such that this statement is not accurate. He was sheltered at the Y at the time, and the gunshot related to targeted interpersonal conflict. Cross Examination of Darrin Marchand Transcript (August 29, 2024), ["Marchand XE"], p. 95, Q. 144-159 [ABC, Vol 4, Tab 52]; 148 Q. Mr. Marchand, sorry, I just want to clarify. <u>So you were staying at the Y at the time and then you went across the street to the church to play your guitar?</u> <u>A. Well, yeah,</u> I -- playing guitar is an outlet for me. I learned how to play it and it keeps me -- it takes my mind off things. [...] 151 Q. Okay. Is there a reason you didn't go back to the Y – A. I was cold, I was tired, I was hungry and I was tired of walking back and forth. 152 Q. So you just wanted to go to sleep there? A. Pardon me?

	2024), ["Marchand XE"], p. 95, Q. 144-159 [ABC, Vol 4, Tab 52]; Lamont Affidavit, pp. 81-82, para 3-4, [ABC, Vol 6, Tab 79 b].	153 Q. So you just decided to sleep there? A. Yeah, I was sleeping there. A lot of people go there. They go there to sit down. They go there to talk. This guy who came up to me and just shot me, I was told his name was Ryan Alexander Phillips. That's what I was told. And if it was, if it ain't, well, shame on you, buddy. ... 157 Q. Okay. But in terms of -- so he wasn't trying to shoot you specifically. I think you said that to us before -- A. He shot me specifically. Yeah, he shot -- 158 Q. He targeted you. So he wanted to shoot you in particular? A. Oh, yeah. He wanted to shoot me. He said -- he thinks I stole his phone. I did not steal his phone. I told him that and I says I don't know if you're calling me a thief or a liar, whether you're testing my integrity. ...
7. Ashley MacDonald		
Impact of Encampment Evictions	... Lost many belongings including tents when the City dismantled encampments.. MacDonald XE, p. 41, Q97-98 [ABC, Vol 4, Tab 47]; MacDonald Affidavit, pp. 32-33 paras 19-20, 28 [ABC, Vol 4, Tab 46].	This statement mischaracterizes the evidence. Ms. MacDonald was given storage for her belongings for a month. MacDonald XE, p. 19, Q67-69 [ABC, Vol 4, Tab 47]; 67 Q. Okay. And what did you do with your things? Were you able to take them with you? A. No, we were only allowed to take very few things with us, and they threw the rest of it out.

		68 Q. Did you tell them that you wanted to keep anything or ask where you could store things that you couldn't take with you? A. Yes. 69 Q. And what – A. They said we could get our own storage units, but we needed ID and stuff and that a lot of people didn't have ID. So <u>they ended up offering a month's storage with the city for me and a few people</u>, but it was only for a month, and then they threw our stuff out anyway.
8. Shawn Arnold		
Shelter Access	He does not feel safe in shelters. Arnold Affidavit, p. 9, para 9, [ABC, Vol 3, Tab 30]; Lamont Affidavit, p.15 , para 2 [ABC, Vol 12, Tab 161 c]. [STRUCK]	Relies on evidence from Dr. Lamont that was struck; inadmissible hearsay. Lamont Affidavit, p.15 , para 2 [ABC, Vol 12, Tab 161 c]. <i>[...] He has <u>not been accessing the shelter system as he does not feel safe there.</u></i>
Impact of Encampment Evictions	...Lost belongings including his tent, through encampment evictions ...	This statement mischaracterizes the evidence. Mr. Arnold had been gone for “a couple of days” and a friend had said they did not think he was coming back. He distinguished the theft of his valuables by “somebody” from the City’s cleanup. Arnold XE, p. 43-44, Q. 182 [ABC, Vol 3, Tab 31]

	Arnold Affidavit, para 13 (a)(b)(c)(d)(e)(f) [ABC, Vol 3, Tab 30]; Lamont Affidavit, p.15 , paras 3-5 [ABC, Vol 12, Tab 161 c].	<i>THE DEPONENT: To my knowledge, I remember we were asked to leave, and I -- I was gone for a couple days. I came back. Somebody tore my tent all apart and all my stuff was -- like, what valuables were gone. A friend of mine that was in the area of the park said he didn't think I was coming back. It's because I was gone for a couple of days, but I -- I was a little bit upset with that. And at the same time, the City came to -- with a Bobcat and removed all the -- everything there. So I grabbed a couple of things quickly as they were coming with their -- the Bobcat and I took what I could and left. That's what I remember now on that day. And I believe it was raining out and that's it.</i>
9. Gord Smyth		
Encampment Stays	...Stayed in several encampments... Smyth Affidavit, p. 122-125, paras 3, 12-17, 23-24, 28 [ABC, Vol 5, Tab 72]	Mr. Smyth has been housed since November 27, 2021, approximately three months into the applicable time frame. Smyth XE,p 11, Q. 47-49 [ABC, Vol 5, Tab 73] <i>Q. ... And I understand that from your affidavit which I will scroll back up to, a period of time in which you were unsheltered was from June of 2021 –</i> <i>A. Mm-hmm.</i> <i>Q. -- until November of 2021; do I have that correct?</i> <i>A. It would have been. Yes, that's correct. It would have been the 30th of June.</i> <i>Q. Yeah, so June 30th to be more precise. June 30th of 2021 until I understand November 27th, 2021; is that correct?</i>

		<i>A. Correct. That is correct.</i>
10. Mario Muscato		
History of Homelessness	He also understood that lodging homes were more for people with “mental issues” and did not think he belonged. Affidavit of Mario Muscato, (May 11, 2022), p. 24, paras 2-4, 6-9, p. paras 18-20 [“Muscato Affidavit”] [ABC, Vol 5, Tab 62]; Wiwcharuk Affidavit, pp. 120-121, paras 2-6 [ABC, Vol 7, Tab 90 F]; Cross Examination of Mario Muscato, (August 14, 2024) p. 32, Q52-58, p. 40, Q208 [ABC, Vol 5, Tab 63]; Muscato Affidavit, paras 24-26 [ABC, Vol 5, Tab 62].	The references cited do not support this statement.
Shelter Access	The longest service restriction has been approximately six months. [...] One restriction lasted between 2.5 – three months. Muscato Affidavit, pp. 25-27, paras 6-23 [ABC, Vol 5, Tab 62];	The references cited do not support this statement. Further, Mr. Muscato admitted to having been service restricted after threatening someone and getting into a fight. Transcript of Muscato XE, p. 27, Q136-139, [ABC, Vol 5, Tab 63] <i>136 Q. Have you ever threatened someone in a shelter?</i>

	Transcript of Muscato XE, pp. 36-38, Q129-172, [ABC, Vol 5, Tab 63].	A. Yeah. 137 Q. You have? Did that result in a service restriction? A. Yes. 138 Q. Have you ever gotten into a fight with someone in a shelter? A. Yeah. 139 Q. And did that result in a service restriction? A. Yeah.
11. Linsley Greaves		
Encampment Stays	The City showed up with trucks and bulldozers and surrounded [...] <u>some supporters</u> who had showed up in protest. Greaves Affidavit, p. 30. Paras 17-21, [ABC, Vol 3, Tab 32]; Greaves XE, p. 42, Q95-101, [ABC Vol 23 Tab 34]; Greaves XE, p.42-43, Q101-116 ["Greaves XE"] [ABC, Vol 3, Tab 34]; Supplementary Greaves Affidavit, p. 33, para 1 [ABC, Vol 3, Tab 35]; Lamont Affidavit, p. 30, paras 3-4 [ABC, Vol 12, Tab 161 h]	This statement mischaracterizes the evidence: there was only one woman not "supporters." Mr. Greaves had been given advance notice and an offer to stay at a hotel. Greaves Affidavit, p. 30. Paras 17-21, [ABC, Vol 3, Tab 32]; 18. However, after three days, By-law and Social Navigation came back. They surrounded my tent with cars and police. The City's white trucks and bulldozers were there. I was the only one left. I was in the middle of it all and couldn't go anywhere. I felt very small. The Hamilton Encampment Support Network stood between me and the police and tried to negotiate a bit of time for me to move. <u>A woman who lived in the area came by and said that we should not be moved because we were not bothering anyone.</u> We were located at the back of a grassy field against a factory wall, mostly hidden from public view.

		• Greaves XE p. 27-28, Q.112-115; p. 29, Q.119-120 [ABC Vol 23 Tab 34] <i>114 Q. Did anyone tell you that you wouldn't have to move?</i> <i>A. No, no one told me that I wouldn't have to move. We all had to go.</i> <i>115 Q. Did you take any steps to move in those three days?</i> <i>A. Like I said, it's just hard to find anywhere to put yourself together. ...</i> <i>119 Q. Okay. At paragraph 19, you describe you were in the process of moving your belongings. "The City kept pressuring me to get my things out quicker. They started the trucks and were driving them around. It was a lot of pressure. They offered to drive some of my belongings to a yard for temporary storage. I agreed because I had no other option, but was worried about my belongings." They did, in fact, take your things to a yard for storage?</i> <i>A. Yeah, they did.</i> <i>120 Q. And at paragraph 21, you describe you were offered a shelter room at Four Points Hotel; that's correct?</i> <i>A. Yeah, they said there would be a shelter at Four Points, but I had no -- I couldn't bring any of my property with me. ...</i>
	• Before Woodlands, Linsley had difficulty being able to stay in one encampment location for	The witness qualified this evidence on cross examination such that this statement is not accurate. He did not think it

	more than a night because the City would come in <u>the middle of the night – at 400 AM or 600 AM</u> – and tell them they had to move. Greaves Affidavit, p. 30. Paras 17-21, [ABC, Vol 3, Tab 32]; Greaves XE, p. 42, Q95 101, [ABC Vol 23 Tab 34]; Greaves XE, p.42-43, Q101-116 [“Greaves XE”] [ABC, Vol 3, Tab 34]; Supplementary Greaves Affidavit, p. 33, para 1 [ABC, Vol 3, Tab 35]; Lamont Affidavit, p. 30, paras 3-4 [ABC, Vol 12, Tab 161 h].	was By-Law Enforcement, and he was not sure what time it was. • Greaves XE, p.42-43, Q101-116 [“Greaves XE”] [ABC, Vol 3, Tab 34]; <i>“Q. And you said that when the by-law officers came to your site, they didn't do that, and you describe in your affidavit “we were given three days to move”?</i> <i>A. Well, that's what they said that we would have, at least three days to move before they'd come and remove the stuff from the tents. But in general, we had nowhere to go to, so it was, like, where do we go with our stuff? You know, it was a big question. It was hard to get up and move anywhere. They were telling us to move from everywhere we went before that. Before that, it was hard to even stabilize for one night. They would come in the middle of the night and they would tell you <u>you have to move in the middle of the night, or at four o'clock, or six o'clock</u>. And it's like -- you know, it's just upsetting, like, to get up and move to nowhere that you don't really -- you didn't really plan it.</i> <i>Q. When you say people come in the middle of the night, tell me about that. Has that ever happened to you?</i> <i>A. Yeah. They had officers and by-law -- <u>I don't think it was the by-law</u>. It was just officers in general telling us that we can't stay there. We had to pick up and leave. And it wasn't really a tent system. It was just, like, basic tarps, like, to keep from the wind and stuff. But they just kept on moving on consistently from everywhere that we settled down. [...]</i> <i>Q. When did that happen?</i>
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		<i>A. Like I said, I can't really put a date or time on anything. I just remember the event.</i> <i>Q. What time was it when it happened?</i> <i>A. It was later than usual, very late.</i> <i>Q. What's usual –</i> <i>A. It was very late, like -- I can't -- no, I don't know. It was just generally later than usual. I remember I had fallen asleep and I was woken up by officers just trying to tell us to take it down, and they were ready to move it right away, so we all had to get up and go.</i> <i><u>Q. Do you know for sure it was in the middle of the night, or was it just that you were sleeping and they woke you up?</u></i> <i><u>A. Well, being that there was no accurate clock there, I just felt as if it was way past, like, the middle of the night in general. It was later than usual.</u></i> <i>Q. Have you been told to move at night at any time other than the time at Ferguson that you just described to me?</i> <i>A. Well, late evening is also still night. But, yeah, generally around late evening too. We haven't been able to settle anywhere. It's like as soon as we put it down, they would come show up, and they would ask us to get up and go again. It was hard to stay anywhere.</i>
Impact of Encampment Evictions	... underwent an amputation below the left knee. Greaves Affidavit, p.31, paras 29- 31 [ABC, Vol 3, Tab 32];	Misstates the evidence: Mr. Greaves' frostbite and amputation was unrelated to City actions. He had turned down an offer to stay in a hotel after leaving Woodlands Park,

	Supplementary Greaves Affidavit, p. paras 2-3 [ABC, Vol 3, Tab 33]; Bodkin Affidavit, p. 168, [ABC, Vol 5, Tab 74 a]; Bodkin XE, p. 175, Q60, [ABC, Vol 5, Tab 34]; Lamont Affidavit, pp. 30-31, paras 3-6 [ABC, Vol 12, Tab 161 h].	when the frostbite occurred. He had been offered storage for his belongings. • Greaves XE, p. 29, Q120, p. 31-32 (Q. 124-126), p. 37 Q145 [ABC, Vol 3, Tab 34]; <i>120 Q. And at paragraph 21, you describe you were offered a shelter room at Four Points Hotel; that's correct?</i> <i>A. Yeah, <u>they said there would be a shelter at Four Points</u>, but I had no -- I couldn't bring any of my property with me. And when they had the trucks take my property up and take them to their yard, they told me I can call back in a couple days and I can have my stuff brought back to me, but I had called back and no one had answered the phone. And then when I got a hold of someone, they said the person in charge of the moving was not available. They were out on -- in the -- they were out in the -- what do you call it -- in the field, so they weren't able to reach them. They didn't make no effort, and I was still stuck without my stuff.</i> <i>145 Q. At paragraph 31, you state you ended up getting frostbite on your left foot and toes last winter while sleeping outside. Do you remember when that frostbite happened?</i> <i>A. Well, I remember I was tenting in Woodlands Park and, like, about three, four days before that, they had asked me to take my tent down. So I was out in the general area for a while. I didn't sleep for, like, two days. And finally, I came to a spot where I felt like the weather would not affect me. And it wasn't even cold out or anything. It was just kind of chilly. I sat down for a rest and ended up falling asleep outside, and that's when I got frostbite.</i>
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	The loss of his leg has been devastating. <u>He feels ashamed</u> and his mental health has been negatively impacted. [...] Experiences <u>increased isolation and sense of despair.</u> Greaves Affidavit, p.31, paras 29- 31 [ABC, Vol 3, Tab 32]; Supplementary Greaves Affidavit, p. paras 2-3 [ABC, Vol 3, Tab 33]; Bodkin Affidavit, p. 168, [ABC, Vol 5, Tab 74 a]; Bodkin XE, p. 175, Q60, [ABC, Vol 5, Tab 34]; Lamont Affidavit, pp. 30-31, paras 3-6 [ABC, Vol 12, Tab 161 h].	Refers to struck evidence: Lamont Affidavit
12. Cory Monahan		
Impact of Encampment Evictions	Often loses belongings in the course of because he does not have enough time to move everything when the City's trucks and bobcats arrive Monahan XE, p. 146, Q245-256, [ABC, Vol 4, Tab 58]; Monahan Affidavit, p. 129-130, paras 19-22 [ABC, Vol 4, Tab 56];	Mischaracterizes the evidence. The witness qualified this evidence on cross examination such that this statement is not accurate. The witness had left for days when the alleged enforcement took place. Monahan XE pg. 42, Q. 217; pg. 42-43, Q. 224; pg. 43-44, Q. 229-236; pg. 46, Q. 250. [ABC, Vol 4, Tab 58]; <i>229 Q. Were you present in the parking lot when this occurred?</i> <i>A. No, no.</i>

	Lamont Affidavit, pp 18-19, paras 3-4 [ABC, Vol 12, Tab 161 d].	230 Q. Where were you when this happened? A. I don't know because I don't know when it happened. 231 Q. So you left the Gage Park parking lot and returned at some later time, and in the interim your property was removed? A. Yes, and thrown out. 232 Q. And you're not sure when that happened? A. Well, no, because I wasn't there when it happened. 233 Q. But you spoke to others about notice that was posted. Did you speak to anyone else about when it happened? A. No. They were all gone by then. 234 Q. Do you recall how long you weren't present in the parking lot at Gage Park? A. Over the weekend.
	Increased risk of theft when continuously moves his belongings Monahan XE, p. 146, Q245-256, [ABC, Vol 4, Tab 58];	The references cited and the evidence do not support this statement: theft is not mentioned.

	Monahan Affidavit, p. 129-130, paras 19-22 [ABC, Vol 4, Tab 56]; Lamont Affidavit, pp 18-19, paras 3-4 [ABC, Vol 12, Tab 161 d].	
13. Ammy Lewis		
Encampment Stays	... Ammy was also repeatedly assaulted while staying outside. ... Cross Examination of Ammy Lewis (August 14, 2024), ["Lewis XE"] p. 13, Q34-40, [ABC, Vol 4, Tab 45]; O'Shea Affidavit, p. 195, para 2 [ABC, Vol 6, Tab 84 b]; Lamont Affidavit, p. 90, paras 2-3 [ABC, Vol 4, Tab 79 e]; Affidavit of Ammy Lewis, (June 14, 2022), ["Lewis Affidavit"], p. 8, paras 2-8 [ABC, Vol 4, Tab 44]; Cross Examination of Rachel Lamont, (October 7, 2024), ["Lamont XE"], p. 126, Q277 [ABC, Vol 6, Tab 80].	Misstates the evidence: Assaults were related to interpersonal conflict Lewis XE p. 13, Q213-215, [ABC, Vol 4, Tab 45] 213 Q. Okay. Dr. O'Shea goes on to describe -- ... that on at least two occasions you've been physically assaulted at your camping site. A. Yeah. 214 Q. Do you know what he's referring to? Is that the <u>difficulty you had with the people at Barton and Barnesdale</u>? A. <u>Yeah, those ones and the other --yeah, there's many.</u> Like, the one cabbie, there was --yeah, there's lots of them. I can't remember which ones that he's writing about because there was many. 215 Q. There were many times, okay. And he's talking – A. More than -- more than once and more than twice.
14. Julia Lauzon		

Shelter Access	There used to be a protocol where, if all shelters were full, Mary's Place would do a referral. <u>That did not happen for Julia.</u> [...] Lauzon Affidavit, p. 137-138, paras 7-12 [ABC, Vol 3, Tab 41]; Lauzon XE, p. 142, Q39-43, p. 144, Q78-line 79-84, p. 145, Q110-111, [ABC, Vol 3, Tab 42].	This statement mischaracterizes the evidence: Ms. Lauzon did not get denied access to a referral, the program ended. Lauzon Affidavit, p. 137-138, paras 7-12 [ABC, Vol 3, Tab 41]; 9. <i>There used to be a protocol where if all the shelters were full, Mary's Place would do a hotel referral. <u>However, that no longer happens.</u></i>
Precarious Housing/ Sleeping Rough	She slept outside on several occasions, including the time she was <u>sexually assaulted</u>. Lauzon Affidavit, paras 12-13 [ABC, Vol 3, Tab 41]; Lauzon XE, pp. 145-146, Q112-118, [ABC, Vol 3, Tab 42].	This statement mischaracterizes the evidence: the incident described was not a sexual assault, and Ms. Lauzon was convicted of an offence in connection with the incident. - Lauzon Affidavit, paras 12-13 [ABC, Vol 3, Tab 41]; 13. <u>I have been assaulted</u> while sleeping outside without a tent. - Lauzon XE, p.5-6, Q. 19-20 p. 145-146, Q112-118, [ABC, Vol 3, Tab 42]. 19 Q. All right. And the <u>assault that you were convicted of</u>, did that involve another person experiencing homelessness? A. Yes.

		20 Q. What were the circumstances of that assault? A. The male that I was dealing with, Rodney Reid, had previously assaulted me, as it states in my disclosure. <u>I was trying to defend myself and it ended up getting out of hand and violent, and I regret it very much.</u> 112 Q. At paragraph 13 you state that <u>you've been assaulted</u> while sleeping outside without a tent. <u>Is that the incident that you described to me earlier?</u> A. <u>Yes.</u>
Impact of Encampment Evictions	• <u>Sexually assaulted</u> while sleeping outside without a tent. [...] Lauzon XE, p. 144, Q88-91, pp. 145-146, Q112-118, p. 147, Q-138-145 [ABC, Vol 3, Tab 42]; Lauzon Affidavit, p. 138, paras. 13, 15-16 [ABC Vol 3, Tab 41].	This statement mischaracterizes the evidence: the incident described was not a sexual assault, and Ms. Lauzon was convicted of an offence in connection with the incident. • Lauzon Affidavit, paras 12-13 [ABC, Vol 3, Tab 41]; 13. <u>I have been assaulted</u> while sleeping outside without a tent. • Lauzon XE, p.5-6, Q. 19-20 p. 145-146, Q112-118, [ABC, Vol 3, Tab 42]. 19 Q. All right. And the <u>assault that you were convicted of</u>, did that involve another person experiencing homelessness? A. Yes. 20 Q. What were the circumstances of that assault?

	A. The male that I was dealing with, Rodney Reid, had previously assaulted me, as it states in my disclosure. <u>I was trying to defend myself and it ended up getting out of hand and violent, and I regret it very much.</u> 112 Q. At paragraph 13 you state that <u>you've been assaulted</u> while sleeping outside without a tent. <u>Is that the incident that you described to me earlier?</u> A. <u>Yes.</u>
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SCHEDULE A - LIST OF AUTHORITIES

	Case	Para(s)
1.	<i>1679753 Ontario Ltd. v. Muskoka Lakes (Township)</i> 2011 ONSC 1997 (Div. Ct.)	35
2.	<i>Abbotsford (City) v. Shantz</i> , 2015 BCSC 1909	222-224 , 240 , 241
3.	<i>Atlantic Lottery Corp. Inc. v. Babstock</i> , 2020 SCC 19	33
4.	<i>B. (R.) v. Children's Aid Society of Metropolitan Toronto</i> , [1995] 1 S.C.R. 315	p. 317 ¹⁹²
5.	<i>Bamberger v. Vancouver (Board of Parks and Recreation)</i> , 2022 BCSC 49	4 , 12-15
6.	<i>Barendregt v. Grebliunas</i> , 2022 SCC 22	1 , 77
7.	<i>Batty v City of Toronto</i> , 2011 ONSC 6862	105-108
8.	<i>Bedford v. Canada (Attorney General)</i> , 2013 SCC 72	49 , 51 , 56 , 75 , 76
9.	<i>Black et al. v. City of Toronto</i> , 2020 ONSC 6398	34
10.	<i>Blencoe v. British Columbia (Human Rights Commission)</i> , 2000 SCC 44	47 , 56-57
11.	<i>Boily v. Canada</i> , 2022 FC 1243	195-196
12.	<i>Brazeau v. Canada (Attorney General)</i> , 2020 ONCA 184	72
13.	<i>Canada (Attorney General) v. Hislop</i> , 2007 SCC 10	100 , 101 , 103
14.	<i>Canada (Attorney General) v. Power</i> , 2024 SCC 26	45 , 70-71
15.	<i>Canadian Council for Refugees v. Canada (Citizenship and Immigration)</i> , 2023 SCC 17	85
16.	<i>Canadian Council for Refugees v. Canada (Citizenship and Immigration)</i> , 2023 SCC 17	176 , 177
17.	<i>Carr v Ottawa Police Services Board</i> , 2017 ONSC 4331	248

¹⁹² No pinpoint link available.

	Case	Para(s)
18.	<i>Charkaoui v Canada (Citizenship and Immigration)</i> , 2007 SCC 9	66
19.	<i>Chippewas of Saugeen First Nation v. South Bruce Peninsula (Town)</i> , 2024 ONCA 884	119
20.	<i>Clements v. Clements</i> , 2012 SCC 32	33 , 37 , 46
21.	<i>Doucet-Boudreau v. v. Nova Scotia (Minister of Education)</i> , 2003 SCC 62	34
22.	<i>Elmardy v Toronto Police Services Board</i> , 2017 ONSC 2074	35
23.	<i>F.H. v. McDougall</i> , 2008 SCC 53	45 , 46
24.	<i>Fair Voting BC v. Canada (Attorney General)</i> , 2025 ONCA 581	71
25.	<i>Fraser v. Canada (Attorney General)</i> , 2020 SCC 28	60 , 76
26.	<i>Goodwin v. Goodwin</i> , 2020 ONSC 6686	5
27.	<i>Gosselin v. Québec (Attorney General)</i> , 2002 SCC 84	81
28.	<i>Gottardo Properties (Dome) Inc v Toronto (City)</i> , 1998 CanLII 6184 (ON CA)	48
29.	<i>Gottardo Properties (Dome) Inc v Toronto (City)</i> , 1998 CanLII 6184 (ON CA)	48
30.	<i>Grillone (Re)</i> , 2023 ONCA 844	24
31.	<i>Heegsma v. Hamilton (City)</i> , 2024 ONSC 7154	14 , 15 , 21 , 42 , 54 , 62 , 63 , 66 , 70-72 , 75 , 76 , 80
32.	<i>Henry v. British Columbia (Attorney General)</i> , 2015 SCC 24	95 , 98
33.	<i>Housen v. Nikolaisen</i> , 2002 SCC 33	8 , 12 , 13 , 14 , 22 , 23 , 24 , 25 , 36 , 37 , 70
34.	<i>Hydro-Québec v. Matta</i> , 2020 SCC 37	33
35.	<i>Imeson v. Maryvale (Maryvale Adolescent and Family Services)</i> , 2018 ONCA 888	83
36.	<i>M.(B). v. British Columbia</i> , 2003 SCC 53	54

	Case	Para(s)
37.	<i>Mackin v. New Brunswick (Minister of Finance); Rice v. New Brunswick</i> , 2002 SCC 13	78-79
38.	<i>Mangal v. William Osler Health Centre</i> , 2014 ONCA 639	61
39.	<i>Mathur v. Ontario</i> , 2024 ONCA 762	7
40.	<i>Matsqui-Abbotsford Impact Society v. Abbotsford (City)</i> , 2024 BCSC 1902	99
41.	<i>McGowan v Montréal</i> , 2018 QCCS 1740	168
42.	<i>Nelson (City) v. Marchi</i> , 2021 SCC 41	43
43.	<i>Nelson (City) v. Mowatt</i> , 2017 SCC 8	38
44.	<i>New Brunswick (Minister of Health and Community Services) v. G. (J.)</i> , [1999] 3 SCR 46	59
45.	<i>Pershad v Lachan</i> , 2015 ONSC 5290	68
46.	<i>Quebec (Attorney General) v. 9147-0732 Québec inc.</i> , 2020 SCC 32	27-47
47.	<i>R v Donnelly</i> , 2017 ONCA 988	108
48.	<i>R v Letourneau</i> , 2025 ABCA 230	28
49.	<i>R v Oakes</i> , [1986] 1 S.C.R. 103	69-71
50.	<i>R v. Kapp</i> , 2008 SCC 41	17
51.	<i>R. v. Abbey</i> , [1982] 2 SCR 24	p. 40-46
52.	<i>R. v. Caesar</i> , 2016 ONCA 599	34
53.	<i>R. v. Collins</i> , [1987] 1 S.C.R. 265	21
54.	<i>R. v. Corbett</i> , 2025 ONCA 681	7
55.	<i>R. v. Gerrond</i> , 2021 ONSC 4475	27
56.	<i>R. v. Kruk</i> , 2024 SCC 7	48 , 30 , 45 , 46 , 57 , 72 , 79 , 82 , 92 , 93-99
57.	<i>R. v. Lévesque</i> , 2000 SCC 47	24

	Case	Para(s)
58.	<i>R. v. Malmo-Levine; R. v. Caine</i> , 2003 SCC 74	86
59.	<i>R. v. P. (A.)</i> 1996 CanLII 871 (ON CA)	15
60.	<i>R. v. R.E.M.</i> , 2008 SCC 51	15 , 17 , 32 , 42 , 43 , 49
61.	<i>R. v. S.M.</i> , 2025 ONCA 373	25
62.	<i>R. v. Sharma</i> , 2022 SCC 39	37-38 , 44-45 , 49-50 , 51 , 55 , 59
63.	<i>R. v. Sheppard</i> , 2025 SCC 29	44-50 , 54
64.	<i>R. v. Sheppard</i> , 2002 SCC 26	15 , 24-26 , 28 , 42 , 55
65.	<i>R. v. Sullivan</i> , 2022 SCC 19	24 , 65 , 86
66.	<i>R. v. Whatcott</i> , 2023 ONCA 536	34
67.	<i>Re BC Motor Vehicle Act</i> , [1985] 2 SCR 486	85
68.	<i>Roher v. Canada</i> , 2019 FCA 313	30
69.	<i>Ruby v Canada (Solicitor General)</i> , 2002 SCC 75	39
70.	<i>Russell v BC</i> , 2018 BCSC 1757	75
71.	<i>Schachter v. Canada</i> , [1992] 2 S.C.R. 679	31
72.	<i>St. Marthe v. O'Connor</i> , 2021 ONCA 790	28
73.	<i>Stewart v Toronto Police Services Board</i> , 2020 ONCA 255	149
74.	<i>The Corporation of the City of Kingston v. Doe</i> , 2023 ONSC 6662	88-95 , 113
75.	<i>The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained</i> , 2023 ONSC 670	105
76.	<i>Thibodeau v GTAA</i> , 2024 FC 274	94
77.	<i>Vancouver (City) v Ward</i> , 2010 SCC 27	23-57 ; 32 , 33 , 35 , 48 , 57
78.	<i>Victoria (City) v Adams</i> , 2008 BCSC 1363	200 , 203

	Case	Para(s)
79.	<i>Victoria (City) v. Adams</i> , 2009 BCCA 563	128 , 160 , 166
80.	<i>Welbridge Holdings Ltd v Greater Winnipeg</i> , 1970 CanLII 1 (SCC)	p. 968-969
81.	<i>Westerhof v. Gee Estate</i> , 2015 ONCA 206	60 , 63 , 64
82.	<i>White Burgess Langille Inman v Abbott and Haliburton Co</i> , 2015 SCC 23	14 , 17 , 32 , 46
83.	<i>Withler v. Canada (Attorney General)</i> , 2011 SCC 12	67
84.	<i>Wunsche v. Wunsche</i> , 1994 CanLII 548 (ON CA)	19

SCHEDULE B - TEXT OF STATUTES, REGULATIONS & BY – LAWS

[Rules of Civil Procedure](#), R.R.O. 1990, Reg. 194, rr. [4.1.01](#), [39.02\(2\)](#)

Duty of Expert

4.1.01 (1) It is the duty of every expert engaged by or on behalf of a party to provide evidence in relation to a proceeding under these rules,

- (a) to provide opinion evidence that is fair, objective and non-partisan;
- (b) to provide opinion evidence that is related only to matters that are within the expert's area of expertise; and
- (c) to provide such additional assistance as the court may reasonably require to determine a matter in issue.

Duty Prevails

(2) The duty in subrule (1) prevails over any obligation owed by the expert to the party by whom or on whose behalf he or she is engaged

Evidence by Cross-Examination on Affidavit

On a Motion or Application

39.02 (2) A party who has cross-examined on an affidavit delivered by an adverse party shall not subsequently deliver an affidavit for use at the hearing or conduct an examination under rule 39.03 without leave or consent, and the court shall grant leave, on such terms as are just, where it is satisfied that the party ought to be permitted to respond to any matter raised on the cross-examination with evidence in the form of an affidavit or a transcript of an examination conducted under rule 39.03.

[Evidence Act](#), R.S.O. 1990, c. E.23, [s. 25](#)

Copies of statutes, etc.

25 Copies of statutes, official gazettes, ordinances, regulations, proclamations, journals, orders, appointments to office, notices thereof and other public documents purporting to be published by or under the authority of the Parliament of the United Kingdom, or of the Imperial Government or by or under the authority of the government or of any legislative body of any dominion, commonwealth, state, province, colony, territory or possession within His Majesty's dominions, shall be admitted in evidence to prove the contents thereof.

[Canadian Charter of Rights and Freedoms](#), ss. 1, 7, 15(1)

Rights and freedoms in Canada

1 The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

City of Hamilton Report for Consideration [PED 25083 Coordinated Encampment Response Post-protocol](#) dated February 26, 2025, p. 6-7/10

Encampment Response

The City of Hamilton's Licensing and By-law Services Division will be the first point of contact for complaints regarding structures and tents in parks, road allowances and private property. Complaints may be received by phone, online complaint form, directly through the dedicated email and/or forwarded by Councillors and their staff. Complaints will be monitored Monday to Friday between the hours of operation of 8:30am-4:30pm and responses may take up to 48 hours. Within 48 hours of receiving a complaint, the complaint will be assigned to an officer to investigate, where possible.

Municipal Law Enforcement Officers will respond Monday to Friday from 8:00am-4:00pm to align enforcement operations with Hamilton Police Service. Officers will work in teams with Hamilton Police Service when attending sites to confirm the presence of an encampment, issue a Notice of Trespass, remove an encampment and coordinate clean-up of the site. City parks are open to the public between 6:00am-11:00pm. Orders will not be issued, and encampments will not be removed or cleaned up by staff in Licensing and By-law Services or Public Works outside of their hours. For Parks staff, daily hours are 7:00am-3:00pm. Encampments will not be removed outside operational hours. The Trespass to Property Act is enforced by Hamilton Police Service and requires their attendance on site to facilitate compliance. Municipal Law Enforcement and Parks staff cannot proceed with site clean-up until compliance with the Trespass to Property Act has been met.

[City of Hamilton By-Law 25-047 To Confirm the Proceedings of City Council](#) (March 5, 2025)

8.2 PED25083 Coordinated Encampment Response Post-protocol (City Wide)

...

Main Motion on Item 8.2 , CARRIED by a vote of 13 to 2,

...

That Bills No. 25-030 to No. 25-047 be passed, and that the Corporate Seal be affixed thereto, and that the By-laws, be numbered, be signed by the Mayor and the City Clerk to read as follows:

...

047 To Confirm the Proceedings of City Council

KRISTEN HEEGSMA et al.

Applicants
(Appellants)

- and -

CITY OF HAMILTON

Court File No.: COA-25-CV-0166
Superior Court File No. CV-21-00077187-0000

Respondent
(Respondent on Appeal)

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT
HAMILTON

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