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

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

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Applicants
(Appellants)

and

CITY OF HAMILTON

Respondent
(Respondent on Appeal)

RESPONDENT ON APPEAL'S FACTUM
(RE: MOTIONS FOR LEAVE TO INTERVENE)

Date: December 8, 2025

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PART I—OVERVIEW

1. The Respondent, City of Hamilton (the "**City**"), submits this factum in response, collectively, to the motions for leave to intervene as friends of the court in this appeal.

2. The City consents to the motions for leave to intervene brought by the following proposed intervenors:

   a. City of Toronto ("**Toronto**") (M56460); and

   b. The Corporation of the City of Kingston ("**Kingston**") (M56507).

3. The City does not oppose the motions for leave to intervene as friends of the court brought by the following proposed intervenors who are generally aligned with the Appellants, provided that certain terms are imposed on their participation:

   a. British Columbia Civil Liberties Association ("**BCCLA**") (M56467);

   b. Ontario Human Rights Commission ("**OHRC**") (M56501);

   c. Canadian Centre for Housing Rights ("**CCHR**") (M56454); and

   d. Canadian Civil Liberties Association ("**CCLA**") (M56504).

4. The City opposes the motions for leave to intervene as friends of the court brought by the following proposed intervenors (also generally aligned with the Appellants' position on appeal):

   a. Charter Committee on Poverty Issues ("**CCPI**") & National Right to Housing Network ("**NRHN**") (M56455);

b. Income Security Advocacy Centre ("**ISAC**") & Mental Health Legal Clinic ("**MHLC**") (motion number pending);

c. Women's Legal Education and Action Fund ("**LEAF**") (M56452); and

d. Niagara Community Legal Clinic ("**NCLC**") & Clinique Juridique Itinerante ("**CJI**") (M56498).

5. The City does not question the broader interests these proposed intervenors seek to advance; however, its opposition concerns their inability to meet the requirements for intervention as well as basic fairness considerations in this case. The proposed intervenors opposed by the City will not make a useful contribution to the resolution of this appeal distinct from that of the parties. They duplicate the Appellants' arguments and/or attempt to add to the issues and record, thereby creating a risk of injustice.

6. The City requests that, if leave is granted to any or all of the proposed intervenors, the following terms be ordered:

(a) Each intervenor may each file a factum not to exceed four thousand (4,000) words in length, confined to the issues raised in their intervention motions, except as otherwise directed by the court, and in substantially the form of the draft factums included with their intervention motions, within ten (10) days of the release of the court's decision on these motions;

(b) the City shall be permitted equal written and oral submissions to respond to each of the intervenors who are aligned with the Appellants' position on

appeal (all except Toronto and Kingston) with written submissions to be filed by January 23, 2026;

(c) The intervenors shall not expand the issues, adduce new evidence, or otherwise supplement the record before the court;

(d) The intervenors shall not make any submissions on the merits of the appeal;

(e) The interveners will make reasonable efforts to avoid duplicating each other's arguments and the arguments of the Appellants.

7. The City does not object to the proposed intervenors' requests that no costs are to be sought by or awarded against any intervenors granted leave, provided they abide by the court's directions and orders.

PART II—STATEMENT OF ISSUES, LAW & AUTHORITIES

A. Issues

8. The issues are (a) whether any of the proposed intervenors should be granted leave to intervene as a friend of the court,[1] and (b) if so, on what terms, if any.

B. Applicable Law

9. In determining motions for leave to intervene as a friend of the court, courts will generally consider the principles identified in *Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada Ltd.:* "the nature of the case, the issues which arise and the

[1] *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, r. 13.02.

likelihood of the applicant being able to make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties."[2]

10. Whether or not the proposed intervenor "will likely make a useful contribution to the litigation" is "central" to the overarching *Peel* principles.[3] This Honourable Court in *Bedford v. Canada*[4] identified three factors as helpful to determining whether a proposed intervenor will likely make a useful contribution in a *Charter* case: (1) it has a real substantial and identifiable interest in the subject matter of the proceedings; (2) it has an important perspective distinct from the immediate parties; or (3) it is a well-recognized group with a special expertise and a broadly identifiable membership base.

11. Even in *Charter* cases, is not sufficient for a proposed intervenor to just demonstrate one of the *Bedford* factors: they must still "satisfy the basic requirement that their participation will result in them making a useful and distinct contribution not otherwise offered by the parties."[5]

12. On the question of what constitutes a "useful contribution", the following summary was quoted with approval by this Honourable Court in *Fair Voting BC*:

> This factor really matters. Time and time again, applicants fail to address whether they will advance different and valuable insights and perspectives that will actually further the Court's determination of the matter. Instead,

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[2] *Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada Ltd. (C.A.)*, 1990 CanLII 6886 (ON CA) [***Peel***] (no pinpoint link available).

[3] *Fair Voting BC v. Canada (Attorney General)*, 2024 ONCA 619 [***Fair Voting BC***] at para. 11.

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

[5] *Trinity Western University v. Law Society of Upper Canada*, 2014 ONSC 5541 (Div. Ct.) at paras. 6-7.

> often they stress their lofty aims, good policy work and previous valuable interventions. Others raise issues that they find interesting but have nothing at all to do with the case. Some promise in one paragraph that they will take the evidentiary record as they find it but then in the next paragraph offer arguments dependent on facts absent from the evidentiary record. Still others assure us that if admitted to the proceedings they will have something important to say, but they don't tell us what they will say. Sometimes we get words that sound nice but don't really mean much at all. And sometimes we are confused for legislators or constitutional framers who can enshrine grand policies into law.
>
> Applicants that are successful investigate the evidentiary record and the specific issues in the case, enabling them to offer much detail and particularity on how they will assist the Court. They know that success depends upon the extent to which they can hone into the true nature of the case, locating the particular itch in the case that needs to be scratched, and telling us specifically how they will go about scratching it.[6]

13. Further, submissions that are duplicative of the submissions of others are not just 'not useful', they can imperil the fairness of the hearing.[7]

14. This Honourable Court has recognized that even where the *Bedford* factors are present, it is necessary, particularly where there are many potential intervenors aligned on one side, to deny intervenor status to proposed intervenors that have not established that they have a distinct perspective and will not be duplicative.[8]

15. In addition, while an intervenor is not required to be neutral or disinterested in an appeal,[9] "[a] friend of the court serves the court, not the parties. The role connotes an

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[6] *Fair Voting BC* at para. 12, citing *Ishaq v. Canada (Citizenship and Immigration)*, 2015 FCA 151 at paras. 9-10.

[7] *Fair Voting BC* at para. 13 citing *Right to Life Association of Toronto and Area v. Canada (Employment, Workforce and Labour)*, 2022 FCA 67 [***Right to Life Toronto***] at para. 15.

[8] *Fair Voting BC* at para. 14.

[9] *Childs v. Desormeaux*, 2003 CanLII 47870 (ON CA) at paras. 13-15. However, "difficulty arises where interveners, as friends of the court, weigh in on the actual merits of the

element of impartiality or altruism."[10] The proposed intervenor must establish that they can make a contribution that is useful *to the court*.[11]

C. The City's Positions on the Motions for Leave to Intervene

16. As indicated at paragraphs 2-3 above, the City consents to Kingston and Toronto being granted leave to intervene and does not oppose BCCLA, OHRC, CCHR, and CCLA being granted leave to intervene, provided such leave is subject to the terms proposed herein.

D. Opposed Motions

17. The City submits that CCPI/NRHN, ISAC/MHLC, LEAF and NCLC/CJI do not satisfy the overarching *Peel* principles: they would not make any useful contribution on the appeal. In fact, the considerations underlying the *Peel* principles militate against their being granted leave to intervene in this appeal, as set out below. Further, CCPI/NRHN do not satisfy the *Bedford* factors.

i. CCPI/NRHN

18. CCPI/NRHN do not satisfy the *Peel* principles or the *Bedford* factors.

19. CCPI/NRHN's materials exhibit shortcomings that this Honourable Court has

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appeal. No party should have to face the addition of what are tantamount to other parties opposite": *R. v. Doering*, 2021 ONCA 924 [***Doering***] at para. 21.

[10] *Caruso v. Law Society of Ontario*, 2025 ONCA 270 at para. 43, citing *Baldwin v. Imperial Metals Corporation*, 2021 ONCA 114, at para. 4.

[11] *Oakwell Engineering Limited v. Enernorth Industries Inc.*, 2006 CanLII 60327 (ON CA) at para. 9.

identified as hallmarks of unhelpful intervention:

(a) none of the issues CCPI/NRHN propose to address are issues raised in this appeal;

(b) they seek additional *relief* which was not sought by any party;

(c) they attempt to augment the record with extrinsic documents and social science reports under the guise of "authorities";

(d) they lack an element of impartiality or altruism.

20. Adding issues does not assist the court in resolving the appeal, and causes injustice to the immediate parties.[12] Each of the issues that CCPI/NRHN seeks to address[13] are wholly new issues, and indeed the fourth seeks additional *relief* which was not sought by the Appellants in the hearing below:

a. whether ss.7 and 15 of the *Charter* require governments, including the City, to take positive measures to address harms experienced by homeless persons;

b. whether 'homelessness' should be recognized as an analogous ground for

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[12] *Bedford v. Canada (Attorney General)*, 2011 ONCA 209 at paras. 8-10. See also *Animal Justice v. Ontario (Attorney General)*, 2024 ONCA 941 at para. 13: "the issues in the litigation are defined by the parties and an intervener must take those issues as it finds them and not transform or add to them".

[13] CCPI/NRHN Draft Factum, para. 9; Motion Record of the Moving Party CCPI/NHRN (M56455) [**CCPI/NHRN MPMR**], p.40-41.

purposes of s.15 of the *Charter*;[14]

c. whether "judicially manageable standards" exist for assessing *Charter* compliance;

d. Whether a remedy can be crafted that vindicates the appellants' *Charter* rights; which CCPI/NRHN argues must be a "declaratory order requiring the respondent, within a reasonable period of time, to develop and implement a plan to reduce and eliminate homelessness".[15]

21. The within appeal deals with the issue of whether *Charter* breaches occurred in a discrete two-year period in the past. The record is accordingly ill-suited to adjudicate upon the broader, forward-looking issues that CCPI/NRHN propose to add. Their inclusion will cause injustice to the City, who would be required to argue these issues – including an entirely new claim for relief – without the evidentiary record below to address them.

22. In raising these new issues and seeking the additional relief of a declaratory order, CCPI/NRHN essentially request that this Honourable Court step into the policy-making arena, confusing the court 'for legislators or constitutional framers who can enshrine grand policies into law'. This would not be a proper request for a party, much less an intervenor.

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[14] As noted by Ramsay J., in the application below it was "agreed that homelessness is not an enumerated or analogous ground": *Heegsma v. Hamilton (City),* 2024 ONSC 7154 [***Heegsma***] at para. 82.

[15] CCPI/NRHN Draft Factum, para. 41; CCPI/NHRN MPMR pp.64-65.

23. Additionally, CCPI/NRHN attempt to augment the record under the guise of "authorities," citing the application record in an entirely different proceeding;[16] social science reports that are not introduced through affidavits and are not already in the record;[17] and a purported City of Hamilton document that, in addition to not being properly in evidence, pre-dated the material time frame.[18]

24. As the Federal Court of Appeal bluntly stated in *Right to Life Association of Toronto and Area v. Canada (Employment, Workforce and Labour)*:

> We deplore interveners who try to slip fresh evidence into the record through crafty, unprofessional means, such as smuggling into their books of authorities materials that contain facts and social science opinions not in evidence or sliding fresh evidence into their oral submissions.[19]

25. Further, CCPI/NRHN's materials lack the "element of impartiality or altruism". Several of CCPI/NHRN's authorities are articles, all but one of which were authored by their counsel Ms. Jackman, or CCPI's Coordinator and witness, Mr. Porter,[20] or both of them:[21] attempting to substantiate their argument by reference to their own work. These

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[16] CCPI/NRHN Draft Factum, footnote 34, citing the Application Record in Waterloo Court File No. CV-25-00000750-0000, *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*; CCPI/NRHN MPMR p.53.

[17] CCPI/NRHN Draft Factum, footnote 63, citing five different social science reports; CCPI/NRHN MPMR pp.60-61.

[18] CCPI/NRHN Draft Factum, footnote 73, citing "Coming Together to End Homelessness: Hamilton's Systems Planning Framework, July 2019"; CCPI/NRHN MPMR pp.60-63.

[19] *Right to Life Toronto* at para. 13.

[20] Affidavit of Bruce Porter affirmed November 10, 2025, para. 1; CCPI/NRHN MPMR, p.15.

[21] Table of Authorities, Schedule "A" to CCPI/NRHN Draft Factum ("Secondary Sources"); CCPI/NRHN MPMR, pp.68-69.

authorities are relied on for fundamental underpinnings of CCPI/NHRN's submissions. For example, CCPI/NHRN claim that "[s]s. 7 and 15 of the *Charter* require governments to do more than refrain from evicting residents of encampments when adequate housing and supports are unavailable. They must address the underlying cause of the violations at issue," despite that in the over twenty years since *Gosselin,*[22] no court has found a positive right under the *Charter*. CCPI/NHRN's sole authority cited for this bold statement is an article written by their counsel.[23]

26. This self-referential approach departs even from the commonplace advocacy of intervenors and offers little assurance that CCPI/NRHN's participation would meaningfully assist the court.

27. With respect to the *Bedford* factors, it is not disputed that CCPI/NRHN are well-recognized groups; but any special expertise they have is of no assistance in a case where they do not propose address the issues actually raised by the appeal and instead propose to raise others. For the same reason, they do not have an "important perspective" to bring to this case. CCPI/NRHN do not meet the *Bedford* criteria.

28. CCPI/NRHN should not be granted leave to intervene in this appeal.

ii. ISAC/MHLC

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[22] *Gosselin v. Québec (Attorney General),* 2002 SCC 84 at paras. 81-82.

[23] CCPI/NRHN Draft Factum, para. 6, footnote 31, citing "Martha Jackman, 'Charter Remedies for Socio-Economic Rights Violations: Sleeping Under a Box?', in Robert J. Sharpe and Kent Roach (eds.), *Taking Remedies Seriously* (Ottawa: Canadian Institute for the Administration of Justice, 2010) at 284-285"; CCPI/NRHN MPMR, p.52.

29. ISAC/MHLC's proposed intervention does not satisfy the *Peel* principles, as they would not make a useful contribution. ISAC/MHLC propose to make two submissions: that (a) relying on stereotypical reasoning to make credibility and reliability findings is an error of law; and b) when available evidence can refute an alleged fact, courts cannot take judicial notice of that alleged fact. The first submission duplicates the Appellants' arguments.[24] The second submission regarding judicial notice raises a new issue that was not raised by either of the parties on this appeal.

30. Regarding the stereotyping allegation, in addition to the arguments that duplicate the Appellants' argument, ISAC/MHLC's assertion that stereotypes could have negative implications if relied on in other proceedings in other forums[25] is not distinct from the argument advanced by the Appellants on this issue. Further, it does not require any particular expertise.

31. ISAC in particular has been denied leave to intervene in a past case in part because "it would be unfair to require the respondent to respond to an additional voice which is so closely allied with the appellants" and "any perspective that the ISAC might be able to provide on the appeal will be reflected in the submissions of counsel for the appellants". [26] This is equally true in this case: ISAC/MHLC's perspective is already accounted for in the Appellants' factum.

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[24] See Appellants' Factum [**FAP**] at paras. 65 – 82, and ISAC/MHLC Proposed Factum at paras. 4-16, Motion Record of the Moving Parties ISAC/MHLC (No motion number assigned at date of filing this Factum) [**ISAC/MHLC MPMR**], pp.37-42.

[25] ISAC/MHLC Draft Factum para. 20; ISAC/MHLC MPMR p.43.

[26] *Bowman v. Ontario*, 2021 ONCA 795 at paras. 11-12.

32. ISAC/MHLC also impermissibly seek to expand the issues in its second submission arguing that when available evidence can refute an alleged fact, courts cannot take judicial notice of that alleged fact. This is not a ground of appeal raised by the Appellants. Even more importantly, Ramsay J. did *not* take judicial notice of any facts. This is tacitly acknowledged by ISAC/MHLC who instead argue that Ramsay J. took "implicit" judicial notice in making findings that ISAC/MHLC disagree with. Not only does this amount to expanding the issues, it is "offer[ing] arguments dependent on facts absent from the evidentiary record"[27] as cautioned against in *Fair Voting BC.*

33. Additionally, in their draft factum, ISAC/MHLC appear to be inappropriately taking a position on the merits of the appeal,[28] as they suggest that this court should find that at least certain of the appellants were evicted overnight.[29]

34. Further, ISAC/MHLC are not proposing to make submissions on the constitutional aspects of the appeal, but rather the credibility assessment of the Appellants; which the City submits is "closer to the 'private dispute' end of the spectrum".[30] As such, there is a heavier burden on ISAC/MHLC to justify intervention, as the need for broader

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[27] ISAC/MHLC also impermissibly attempt to add to the record under the guise of an authority, namely the Ontario Human Rights Commission's June 2014 "Policy on preventing discrimination based on mental health disabilities and addictions": see ISAC/MHLC Draft Factum footnote 4, ISAC/MHLC MPMR, p.37.

[28] *Doering* at para. 21; see also *Dorsey v. Canada (Attorney General),* 2023 ONCA 64 at para. 43: "[t]here is no injustice to the parties from the positions of the proposed interveners *as they do not inappropriately weigh in on the actual merits of the appeal* [emphasis added]".

[29] See, e.g., ISAC/MHLC Draft Factum at para. 16, ISAC/MHLC MPMR, p.41.

[30] *Authorson (Guardian of) v. Canada (Attorney General),* 2001 CanLII 4382 (ON CA) [***Authorson***] at para. 9.

perspectives that may be called for on constitutional issues is not present.[31]

35. For the reasons set out above, ISAC/MHLC will not be able to make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties, and therefore they cannot satisfy the overarching *Peel* principles.

36. ISAC/MHLC should not be granted leave to intervene in this appeal.

iii. LEAF

37. LEAF's proposed intervention duplicates the Appellants' argument and that of another proposed intervenor, and therefore does not satisfy the *Peel* principles.

38. LEAF raises several arguments related to s.15 of the *Charter*, which overwhelmingly duplicate the Appellants' argument, as summarized below:

Issue	**Appellants' Factum**	**LEAF Proposed Factum**
Section 15 must be considered	Paras. 97, 99-100	Paras. 5-8[32]
Section 15 analysis should consider intersectionality	Paras. 98, 108-110	Para. 9, 13-17[33]
Women and gender-diverse persons are disproportionately impacted	Paras. 106-107	Paras. 18-23[34]
Encampment "bans and evictions" perpetuate and exacerbate disadvantage	Para. 101-105	Paras. 24-25[35]

[31] *Authorson* at paras. 9, 14.
[32] Motion Record of the Moving Party LEAF (M56452) [**LEAF MPMR**], pp.25-26.
[33] LEAF MPMR, pp.27-30.
[34] LEAF MPMR, pp.31-33.
[35] LEAF MPMR, pp.33-34.

39. The only argument that does not duplicate an argument raised by the Appellants is LEAF's argument that proving causation under s.15 should not require an undue burden,[36] which duplicates the same argument made by OHRC.[37]

40. LEAF has been denied leave to intervene in a past appellate case[38] for duplicating the submissions of the parties. The same issue is evident in this case.

41. For the reasons set out above, LEAF will not be able to make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties, and therefore it cannot satisfy the overarching *Peel* principles. LEAF should not be granted leave to intervene in this appeal.

iv. NCLC/CJI

42. NCLC/CJI do not satisfy the *Peel* principles, as their arguments repeat the Appellants' position, impermissibly expand the issues, and would not assist the court.

43. NCLC/CJI proposes to submit that the City's Encampment Process and By-Laws were "grossly disproportionate" under s.7 of the *Charter*. This submission is already advanced by the Appellants.[39] Further, NCLC/CJI's argument is premised on another argument already made by the Appellants, i.e. that Ramsay J. was bound by horizontal

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[36] LEAF Draft Factum paras. 10-12; LEAF MPMR, pp.28-29.

[37] OHRC Draft Factum, paras. 13-18; Motion Record of the Moving Party OHRC (M56501), pp.31-34.

[38] *R. v. Hadvick*, 2023 YKCA 8 at para. 38.

[39] FAP paras. 85, 96.

stare decisis to follow the decision of Valente J. in *Waterloo*[40] regarding s.7.[41]

44. NCLC/CJI also repeat the Appellants' argument that Ramsay J. erred in declining to find that any of the Appellants have ever been 'evicted' from a City park overnight.[42]

45. The remainder of NCLC/CJI's proposed argument asserts that cases which are either not binding or not on point ought to be followed, arguing without authority that these cases establish "norms".[43] This argument does not assist the court. Irrelevant and confusing submissions have been found not to satisfy the usefulness requirement of the test for leave to intervene.[44]

46. Additionally, NCLC/CJI's arguments (relying on a Superior Court-level interlocutory injunction decision from BC) that judicial notice of the fentanyl crisis ought to be taken[45] or regarding proportionality in criminal sentencing[46] impermissibly expands the issues. Neither the fentanyl crisis nor sentencing for offences were issues raised at

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[40] *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2023 ONSC 670 [***Waterloo***].

[41] This is discussed in FAP at paras. 85-86, 90; and in NCLC/CJI Draft Factum paras. 13-15; Motion Record of the Moving Party NCLC/CJI (M56498) [**NCLC/CJI MPMR**] pp.26-27.

[42] This is discussed in FAP at paras. 66, 83; and in NCLC/CJI Draft Factum para. 11; NCLC/CJI MPMR p.25.

[43] See NCLC/CJI Draft Factum para. 14; NCLC/CJI MPMR p.26: "[t]hese cases now constitute the normative standards for an analysis of gross disproportionality" (referring to *Waterloo* and a later interlocutory injunction motion in a proceeding related to *Waterloo*, decided after the hearing below).

[44] *Caruso v. Law Society of Ontario*, 2025 ONCA 270 at para. 40.

[45] See NCLC/CJI Draft Factum para. 16; NCLC/CJI MPMR p.27.

[46] See NCLC/CJI Draft Factum para. 18; NCLC/CJI MPMR p.28.

the hearing below or on this appeal.

47. For the reasons set out above, NCLC/CJI will also not be able to make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties, and therefore cannot satisfy the overarching *Peel* principles.

48. NCLC/CJI should not be granted leave to intervene in this appeal.

E. Prejudice of Multiple Intervenors "Piling On"

49. In this case, there is a clear delineation of intervenors aligned with the Appellants, and intervenors aligned with the City: eight groups are aligned with the Appellants (BCCLA, OHRC, CCHR, CCLA, CCPI/NRHN, ISAC/MHLC, LEAF, and NCLC/CJI), and only two are aligned with the City (Toronto, Kingston).

50. The City submits that this Honourable Court should consider the collective effect on this appeal of the total number of intervenors aligned with one side:

(a) If all eight Appellant-aligned groups are granted leave, the City will be obliged to respond to eight factums before the hearing in February, less than two months away.

(b) Further, this Honourable Court has repeatedly recognized the "importance of ensuring that intervenors do not overwhelm the appeal or result in the

court receiving submissions that unduly skew towards one of the parties."[47] "Multiple interveners making overlapping submissions on only one side of a dispute can imperil the fairness of the hearing."[48] In this case, allowing all eight Appellant-aligned intervenor groups would indeed overwhelm the appeal and skew the perspectives towards the Appellants -- particularly given the amount of duplication and overlap with the Appellants' arguments. This would not assist the court and would work prejudice to the City.

51. These factors further support denying leave to intervene to CCPI/NRHN, ISAC/MHLC, LEAF, and NCLC/CJI.

F. Terms for Intervenors Granted Leave

52. For reasons discussed below, should this Honourable Court grant leave to any or all intervenors, the City requests that the following terms be imposed:

(a) Each intervener may each file a factum not to exceed four thousand (4,000) words in length, confined to the issues raised in their intervention motions, except as otherwise directed by the court, and in substantially the form of the draft factums included with their intervention motions, within ten (10)

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[47] *Baker v. Van Dolder's Home Team Inc.,* 2025 ONCA 829 at para. 5, citing *Yatar v. TD Insurance Meloche Monnex*, 2022 ONCA 173 at para. 12 (noting the concern "to ensure that the intervener(s) do not overwhelm the appeal, or 'pile on' one of the parties."

[48] *Baker v. Van Dolder's Home Team Inc.,* 2025 ONCA 578 at para. 16 citing *Fair Voting BC* at para. 13; *Right to Life Toronto* at para. 15. See also *Fair Voting BC* 2024 ONCA 619 at para. 21: "Where there is a plethora of groups seeking leave to intervene, and where those groups all crowd into the same conceptual space to argue for the same end, it would be unhelpful and unfair to grant leave."

days of the release of this decision;

(b) The City be permitted equal written and oral submissions to respond to each of the intervenors who are aligned with the Appellants' position on appeal (all except Toronto and Kingston) with written submissions to be filed by January 23, 2026;

(c) The intervenors shall not expand the issues, adduce new evidence, or otherwise supplement the record before the court;

(d) The intervenors shall not make any submissions on the merits of the appeal;

(e) The interveners will make reasonable efforts to avoid duplicating each other's arguments and the arguments of the Appellants;

(f) If this Honourable Court is satisfied that costs ought not to be sought by or awarded against any intervenor, this should be subject to a requirement that the intervenors abide by the court's directions and orders.

G. Equal Opportunity to Respond to Intervenors

53. The case law shows that terms may be imposed upon intervention, and that their scope is case-dependent. This includes terms permitting equal (or nearly equal) opportunity for a party to respond, in both written and oral submissions.[49]

[49] See, e.g., *Justice Centre for Constitutional Freedoms v. Costa*, 2023 ONCA 405 at para. 21 (intervenors directed to file a joint 10-page factum and permitted 10 minutes of oral submissions; responding party permitted an additional 8 pages for its factum and additional 10 minutes of oral submissions); *Association for Reformed Political Action v.*

54. While there are cases in which the responding party was allotted less than equal pages or hearing time to respond to an Intervenor,[50] the circumstances of this case warrant the City being given equal opportunity to respond, especially given that there are more intervenors aligned with the Appellants than aligned with the City. In the interests of fairness, the City should be given equal time and space to respond.

55. The remaining terms sought by the City (that intervenors will not expand the issues, file additional evidence, add to the record, or duplicate arguments or submissions) are commonly granted terms and are in keeping with the role of "friend of the court" intervenors and the *Peel* principles.

PART III—ORDER REQUESTED

56. The City consents to Kingston and Toronto's motions for leave to intervene as

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City of Hamilton, 2022 ONSC 6691 at para. 24 (intervenor permitted to serve a 15-page factum and 20 minutes for oral submissions; responding party permitted a 15-page factum to respond); *Dorsey v. Canada (Attorney General)*, 2023 ONCA 64 at paras. 47-49 (four friend of the court intervenors given 10 pages each and 10 minutes for oral submissions; one party intervenor given 15 pages and 15 minutes. The responding party was permitted an additional 35 pages in its factum to respond); four friend of the court intervenors were given 10 pages each and 10 minutes for oral submissions; and one party intervenor was given 15 pages and 15 minutes. The responding party was permitted an additional 35 pages in its factum to respond); *Animal Justice et al v. Attorney General of Ontario*, 2023 ONSC 3147 at para. 40 (three intervenors granted 15 pages and 30 minutes each; responding party granted 10 pages and equal additional hearing time to respond to the intervenors).

[50] See, e.g., *Fair Voting BC v. Canada (Attorney General)*, 2023 ONSC 2182 at para. 58: four intervenors granted 20 pages and 20 minutes each; applicant permitted single factum of 10 pages and respondent granted single factum of 20 pages to respond; *Chippewas of Nawash Unceded First Nation v. Canada (Attorney General)*, 2022 ONCA 755 at paras. 8-9; four intervenors granted 20 pages and 20 minutes each; responding parties permitted one combined factum up to 25 pages in length in response.

friends of the court and submits their motions ought to be granted.

57. The City does not oppose leave to intervene as friends of the court being granted to BCCLA, OHRC, CCHR, CCLA,.

58. The City requests that the motions for leave to intervene as friends of the court brought by CCPI/NRHN, ISAC/MHLC, LEAF and NCLC/CJI be dismissed.

59. The City requests that, if this Honourable Court is satisfied to grant leave to intervene to any of the proposed intervenors, that such leave be granted on the terms set forth in paragraph 52 above, namely that:

(a) Each intervener may each file a factum not to exceed four thousand (4,000) words in length, confined to the issues raised in their intervention motions, except as otherwise directed by the court, and in substantially the form of the draft factums included with their intervention motions, within ten (10) days of the release of this decision;

(b) The City be permitted equal written and oral submissions to respond to each of the intervenors who are aligned with the Appellants' position on appeal (all except Toronto and Kingston), with written submissions to be filed by January 23, 2026;

(c) The intervenors shall not expand the issues, adduce new evidence, or otherwise supplement the record before the court;

(d) The intervenors shall not make any submissions on the merits of the appeal;

(e) The interveners will make reasonable efforts to avoid duplicating each other's arguments and the arguments of the Appellants;

(f) No costs are to be sought by or awarded against any intervenor, provided they abide by the court's directions and orders.

60. The City does not seek its costs of this motion, on the condition that no costs are sought against it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of December, 2025.

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

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SCHEDULE "A": LIST OF AUTHORITIES

Name		Paras. cited	Factum paras.
1.	*Animal Justice et al v. Attorney General of Ontario*, 2023 ONSC 3147	para. 40	53
2.	*Animal Justice v. Ontario (Attorney General)*, 2024 ONCA 941	para. 13	20
3.	*Association for Reformed Political Action v. City of Hamilton*, 2022 ONSC 6691	para. 24	53
4.	*Authorson (Guardian of) v. Canada (Attorney General)*, 2001 CanLII 4382 (ON CA)	paras. 9, 14.	34
5.	*Baker v. Van Dolder's Home Team Inc.*, 2025 ONCA 578	para. 16	50
6.	*Baker v. Van Dolder's Home Team Inc.*, 2025 ONCA 829	para. 5	50
7.	*Baldwin v. Imperial Metals Corporation*, 2021 ONCA 114	para. 4	15
8.	*Bedford v. Canada (Attorney General)*, 2009 ONCA 669	para. 2.	10
9.	*Bedford v. Canada (Attorney General)*, 2011 ONCA 209	paras. 8-10	20
10.	*Bowman v. Ontario*, 2021 ONCA 795	paras. 11-12	31
11.	*Caruso v. Law Society of Ontario*, 2025 ONCA 270	para. 43	15
12.	*Caruso v. Law Society of Ontario*, 2025 ONCA 270	para. 40	45
13.	*Childs v. Desormeaux*, 2003 CanLII 47870 (ON CA)	paras. 13-15	15
14.	*Chippewas of Nawash Unceded First Nation v. Canada (Attorney General)*, 2022 ONCA 755	paras. 8-9	54
15.	*Dorsey v. Canada (Attorney General)*, 2023 ONCA 64	para. 43	33
16.	*Dorsey v. Canada (Attorney General)*, 2023 ONCA 64	paras. 47-49	53
17.	*Fair Voting BC v. Canada (Attorney General*), 2023 ONSC 2182	para. 58	54
18.	*Fair Voting BC v. Canada (Attorney General)*, 2024 ONCA 619	paras. 11, 12, 13, 14, 21	10, 12, 13, 14, 50
19.	*Gosselin v. Québec (Attorney General)*, 2002 SCC 84	paras. 81-82	25
20.	*Heegsma v. Hamilton (City)*, 2024 ONSC 7154	para. 82	20

Name		Paras. cited	Factum paras.
21.	*Ishaq v. Canada (Citizenship and Immigration)*, 2015 FCA 151	paras. 9-10.	12
22.	*Justice Centre for Constitutional Freedoms v. Costa*, 2023 ONCA 405	para. 21	53
23.	*Oakwell Engineering Limited v. Enernorth Industries Inc.*, 2006 CanLII 60327 (ON CA)	para. 9	15
24.	*Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada Ltd. (C.A.)*, 1990 CanLII 6886 (ON CA)	(no pinpoint available)	9
25.	*R. v. Doering*, 2021 ONCA 924	para. 21	15, 33
26.	*R. v. Hadvick*, 2023 YKCA 8	para. 38	40
27.	*Right to Life Association of Toronto and Area v. Canada (Employment, Workforce and Labour)*, 2022 FCA 67	paras. 13, 15	13, 24, 50
28.	*The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2023 ONSC 670	N/A	43, 45
29.	*Trinity Western University v. Law Society of Upper Canada*, 2014 ONSC 5541 (Div. Ct.)	paras. 6-7	11
30.	*Yatar v. TD Insurance Meloche Monnex*, 2022 ONCA 173	para. 12	50

SCHEDULE “B”: TEXT OF STATUTES, REGULATIONS & BY - LAWS

1. *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, Rule 13.02:

Leave to Intervene as Friend of the Court

13.02 Any person may, with leave of a judge or at the invitation of the presiding judge or associate judge, and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument.

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

KRISTEN HEEGSMA et al. - and - CITY OF HAMILTON

Applicants (Appellants) Respondent (Respondent)

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT
HAMILTON

RESPONDING PARTY'S FACTUM
(RE: MOTIONS FOR LEAVE TO INTERVENE)

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