

Court File No. CV-21-00077187-0000

ONTARIO SUPERIOR COURT OF JUSTICE

B E T W E E N:

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

Applicants

-and-

CITY OF HAMILTON

Respondent

APPLICANTS' APPLICATION RECORD

VOLUME 3 (TABS 43- 63)

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TAB (EXHIBIT LETTER)	Document
APPLICATION RECORD VOLUME 3	
<i>MISTY MARSHALL</i>	
43.	Affidavit of Misty Marshall dated May 12, 2022
44.	Affidavit of Misty Marshall dated May 8, 2023
45.	Transcript of the Cross Examination of Misty Marshall dated August 15, 2024
<i>CORY MONAHAN</i>	
46.	Affidavit of Cory Monahan dated May 12, 2022 (Misspelled in Affidavit)
47.	Affidavit of Cory Monahan dated April 25, 2023 (Misspelled in Affidavit)
48.	Transcript of the Cross Examination of Cory Monahan dated August 15, 2024
49.	Transcript of the continued Cross Examination of Cory Monahan dated August 30, 2024
<i>MARIO MUSCATO</i>	
50.	Affidavit of Mario Muscato dated September 29, 2021
51.	Transcript of the Cross Examination of Mario Muscato dated October 13, 2021
52.	Affidavit of Mario Muscato dated May 11, 2022
53.	Transcript of the Cross Examination of Mario Muscato dated August 14, 2024
<i>SHERRI OGDEN</i>	
54.	Affidavit of Sherri Ogden dated June 2, 2022
55.	Affidavit of Sherri Ogden dated March 27, 2023
56.	Transcript of the Cross Examination of Sherri Ogden dated August 14, 2024
<i>JAHMAL (JAMMY) PIERRE</i>	
57.	Affidavit of Jahmal Pierre dated June 7, 2022 (Mispelled in Affidavit)
58.	Affidavit of Jahmal Pierre dated April 27, 2023
59.	Transcript of the Cross Examination of Jahmal (Jammy) Pierre dated August 16, 2024
<i>GORD SMYTH</i>	
60.	Affidavit of Gord Smyth dated September 29, 2021
61.	Transcript of the Cross Examination of Gord Smyth dated October 13, 2021
62.	Affidavit of Gord Smyth dated March 9, 2023
63.	Transcript of the Cross Examination of Gord Smyth dated August 28, 2024

Court File No. CV-21-00077817-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**ASHLEY POFF, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO,
SHAWN ARNOLD et al.**

Applicants

-and-

CITY OF HAMILTON

Respondent

**AFFIDAVIT OF MISTY MARSHALL
(Sworn May 12, 2022)**

1. I, MISTY MARSHALL, of the City of Hamilton in the Province of Ontario, MAKE OATH AND STATE:
2. I am a 30 year old Indigenous woman.
3. I currently have no source of income. Between about April 2020 and April 2021, I was receiving CERB.
4. My medical conditions include anxiety, depression, PTSD, and a substance use disorder.
5. I have been homeless for just over two years.
6. Before becoming homeless, I was renting a hotel room and different Air B&Bs. I became homeless shortly after my wallet was stolen. I had just replaced my ID the week before.
7. I couldn't rent a room without ID. Not having a current address also acts as a barrier to finding new housing, so it makes the search more difficult. The longer you are homeless, the harder it is to get into housing.
8. Since becoming homeless, I have not been able to get into a shelter. I am not aware of all of the women's shelters, but keep being told by other women experiencing homelessness that they are always full. In April or May 2021,

Social Navigation called a couple times to try to get me into shelter, but they were full.

9. Carol Anne's Place is an overnight drop in centre for women that acts as an overflow shelter when the other women's shelters are full. They open at 10 p.m. Women line up for hours before they open. I have tried to get into Carol Anne's Place, but they have been full.
10. Carol Anne's Place has also had to limit the number of women permitted inside at various times during Covid. You get to the point where you know you have almost no chance of getting in, and it's not worthwhile waiting.
11. I have witnessed men driving around Carol Anne's Place while women are in line. They watch you and try to get women to come over to them. I believe they are there to solicit women for sex.
12. Willow's Place is a daytime drop in centre for women, operated by Mission Services. They occasionally have overnight drop in. I have attempted to access the overnight drop in services a few times, but they have always been full. Sometimes they are even full in the daytime.
13. 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, and then encourage you to leave.
14. Neither Carol Anne's Place or Willow's Place take your information when they are full.
15. I have stayed in a tent in several different locations. The following is a breakdown of the locations, timeframes and outcomes.

16. Location	Timeframe	Duration of stay	Outcome
Ferguson	Summer 2020	October 2020	Left shortly before the City removed all remaining tents during the mass clearing of the encampment.
John and Rebecca Park	Summer 2021	One week	By-Law Officers evicted me and my friend & I

			lost some belongings
Beasley Park	Right after John and Rebecca Park	About a week	Was staying with a friend in a tent and we were no longer getting along
John and Rebecca Park	Fall of 2021	About a week	City showed up with bobcats to remove belongings. 20 minutes notice given to remove belongings before police showed up. Lost more belongings but managed to save friend's tent
City Hall	October 2021	Nightly for a couple months	City blocked the outdoor heating vents and boarded it up in late December 2021 or early January 2022

17. I stayed in the tent at Ferguson in the summer of 2020 until the City dismantled the encampment on or about October 15, 2020. I had nowhere to go and ended up couch surfing with friends.

18. After leaving the Ferguson encampment, I went to stay at Beasley Park with a friend. We stayed in the same tent for security.

19. After one week, By-law officers and the police came and told everyone they had to move. There were about five tents there, pursuant to the previous Encampment Protocol. I was given 20 minutes to pack up our belongings. By-law officers and police told us that two weeks' notice had already been given to other residents at the park. This notice was before we arrived and we were not aware of a deadline. My friend was in the hospital at the time. We had a lot of

belongings at the time, and my friend's tent was very important to him. I asked By-law "what am I supposed to do right now?". No housing or support was offered. My friend showed up in his hospital gown and with a medical bag and hospital pole still attached to him, with his Dad to see the site bulldozed. I saved as much as I could, but we still lost a lot of belongings. It was traumatic.

20. We gathered up as much as we could, but lost blankets, clothing, and food in the process. Thankfully we were able to pack up my friend's tent.

21. After that, we went to City Hall to sleep on the outdoor heating grates. This lasted for about a couple months until the City blocked off the heating vents.

22. Since then, I have couch surfed and stayed outside in several different locations. I have slept in tunnels, outside a local Tim Horton's, the back of City Hall, and outside a church.

23. I have not put up a tent or stayed in a tent much in 2022 because the City has ramped up enforcement. People aren't bothering with it anymore because we know that you will just be told to move.

24. Not having a stable and secure place to stay overnight means that I almost never get a decent night's sleep. On average, I sleep one or maybe two hours at a time. Sometimes I don't sleep at all. Sometimes I am up for days at a time, and then I crash for a long time. I fall asleep several times during the day and end up having several small daytime naps. I am usually groggy and have difficulty concentrating. I feel scattered. I have mental health issues and have not been on any medications or seen a doctor to get treatment for a long time. I used to be on anti-anxiety and depression medication.

25. When I was able to stay in Ferguson for several months, I had all my belongings there. We had formed a community and people looked out for my things. Wesley was located across the street at the time and I could use their washrooms and showers. People delivered food every day. I felt safe. I could get medical treatment because doctors regularly came to the encampment site. One time I was having breathing difficulties, and Dr. Wiwcharuk was able to come to me and help. I was able to access harm reduction materials from Wesley. I slept much better and regularly because I was in one spot. I had more of a routine.

26. When I wander the streets in search of somewhere to stay, I have had men follow me in cars, doing circles and driving slowly alongside me, trying to solicit me for sex. This tends to happen more at night when there are fewer people around and they can drive slowly along the streets.

27. I feel more unsafe at night when I am wandering around trying to find a place to stay, as opposed to if I was already staying in a tent for the night, and had friends around me.

28. A couple weeks ago, some friends and I were at John Rebecca Park at around 11:00 p.m. It was cold and has started to rain, and we huddled under a friend's tarp and blankets. The police came by and said that the park was closing at 11:00 and they would be back 30 minutes later to make sure we left. I left to avoid getting arrested, and our group had to break up to avoid further enforcement. Someone in our group asked where we should go. There was no response. No housing options were offered to me at the time.
29. Last night, I stayed under a tarp with a friend. We had some belongings stolen because we could not secure the edges of the tarp. People are avoiding put tents up now because we know that they are not allowed. Tarps are easier to put up but offer less protection from theft and the weather, and security.
30. In March 2021, I was referred to the Hamilton Regional Indian Centre for an intake to get help with housing. I have not heard back from them then.

SWORN BEFORE ME in the City
of Hamilton, this 12th day of May, 2022


Misty Marshall


A Commissioner, etc.

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

KRISTEN HEEGSMAN, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO,
AND SHAWN ARNOLD, ET AL.

Applicants

-and-

CITY OF HAMILTON

Respondent

AFFIDAVIT OF Misty Marshall
Sworn May 8, 2023

I, Misty Marshall, of the City Hamilton in the Province of Ontario, Affirm and say:

1. Since June 2022, I have stayed in several locations, including couch surfing with friends, in tents outside City Hall and Carol Anne's Place, at Philpott Church and off
2. Wellington. I stayed briefly in an encampment off the escarpment, but it felt very unsafe so I left. I sometimes spend the night just walking around. I stayed at the Hub, but they cycle people out in one hour intervals. When I stay at Philpott, I am outside (not in a tent)

2.3. This past winter, I tried to access Carol Anne's Place about 10 times, but they were full each time. I would have to make my plans around 10:15 or 10:30 p.m. for the night. A4860

3.4. Since June 2022, I have been repeatedly robbed, to the point where I sometimes only have the clothes on my back. I have lost phones, money, clothing and more.

4.5. Couch surfing is dangerous. Over the years, I have repeatedly sexually assaulted, and threatened or coerced with sexual assault. Since June 2022, I have been sexually assaulted three times while couch surfing. I have been threatened many more times. Men sometimes expect ~~shel~~ sex in exchange for shelter, and having to seek shelter in cold weather puts me at an increased risk.

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AFFIRMED AND DECLARED
before me at the City of Hamilton,
in the Province of Ontario,
this 8 day of May, 2023.

)
)
)
)

Sharon Crane
A Commissioner etc.
Sharon Crane

Mary MacLellan

<div>1</div> <div>1 Court File No. CV-21-77187</div> <div>2 ONTARIO</div> <div>3 SUPERIOR COURT OF JUSTICE</div> <div>4</div> <div>5 B E T W E E N:</div> <div>6 KRISTEN HEEGSMAN, DARRIN MARCHAND, GORD SMYTH,</div> <div>7 MARIO MUSCATO, SHAWN ARNOLD, BRADLEY CALDWELL,</div> <div>8 CHRISTINE DELOREY, GLEN GNATUK, TAYLOR GOGO-HORNER,</div> <div>9 CASSANDRA JORDAN, JULIA LAUZON, AMMY LEWIS,</div> <div>10 ASHLEY MACDONALD, COREY MONAHAN, MISTY MARSHALL,</div> <div>11 SHERRI OGDEN, JAHMAL PIERRE, LINSLEY GREAVES and</div> <div>12 PATRICK WARD</div> <div>13 Applicants</div> <div>14</div> <div>15 and</div> <div>16</div> <div>17 CITY OF HAMILTON</div> <div>18 Respondent</div> <div>19</div> <div>20 --- This is the Cross-Examination of MISTY MARSHALL, an</div> <div>21 Applicant, herein, on her Affidavits Sworn the 12th day</div> <div>22 of, 2022, and the 8th day of May, 2023, taken via</div> <div>23 videoconference on the 15th day of August, 2024.</div> <div>24</div> <div>25</div> <div>Nimigan Mihailovich Reporting Inc.</div> <div>(905) 522-1653</div>	<div>3</div> <div>1 TABLE OF CONTENTS</div> <div>2</div> <div>3 INDEX OF EXAMINATIONS: PAGE NO.</div> <div>4</div> <div>5 MISTY MARSHALL: Affirmed..... 4</div> <div>6 CROSS-EXAMINATION BY MR. DIACUR..... 4</div> <div>7 RE-EXAMINATION BY MS. CROWE..... 46</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> <div>Nimigan Mihailovich Reporting Inc.</div> <div>(905) 522-1653</div>
<div>2</div> <div>1 APPEARANCES:</div> <div>2 Sharon Crowe For the Applicants</div> <div>3 Wade Poziomka</div> <div>4 Curtis Sell</div> <div>5 Nnonyechi Okenwa</div> <div>6 Michelle Sutherland</div> <div>7</div> <div>8 Bevin Shores For the Respondent</div> <div>9 Jordan Diacur</div> <div>10</div> <div>11 ALSO PRESENT:</div> <div>12 Liz Marr Summer law student</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> <div>Nimigan Mihailovich Reporting Inc.</div> <div>(905) 522-1653</div>	<div>4</div> <div>1 --- Upon commencing at 4:04 p.m.</div> <div>2 MISTY MARSHALL: Affirmed.</div> <div>3 CROSS-EXAMINATION BY MR. DIACUR:</div> <div>4 1 Q. Ms. Marshall, would you state your</div> <div>5 first and last name for the record, please?</div> <div>6 A. It's Misty Marshall.</div> <div>7 2 Q. How do we spell your first name?</div> <div>8 A. M-I-S-T-Y, M-A-R-S-H-A-L-L.</div> <div>9 3 Q. And your date of birth is</div> <div>10 December 18, 1991? Is that right?</div> <div>11 A. Yeah.</div> <div>12 4 Q. So that makes you 32 years old?</div> <div>13 A. I think so. It should be.</div> <div>14 5 Q. Coming up on 33?</div> <div>15 A. Yeah.</div> <div>16 6 Q. Okay. May I refer to you as</div> <div>17 Misty? Is that all right with you?</div> <div>18 A. Mm-hmm.</div> <div>19 7 Q. Or ma'am?</div> <div>20 A. Whichever you like.</div> <div>21 8 Q. Thank you. Misty, there are two</div> <div>22 affidavits that I'm going to have some questions for</div> <div>23 you about. One was from May 12, 2022, and one was from</div> <div>24 May 8, 2023. Can you let me know if you have a copy of</div> <div>25 those in front of you?</div> <div>Nimigan Mihailovich Reporting Inc.</div> <div>(905) 522-1653</div>

5

1 **A. May 12th? This one? All right.**
2 **Yes, I do.**
3 9 **Q.** Thank you. Have you reviewed
4 those affidavits more recently than you swore them?
5 **A. Yes.**
6 10 **Q.** Do you remember the last time you
7 reviewed them?
8 **A. Today. Right?**
9 MS. CROWE: I can't answer.
10 THE DEPONENT: Today.
11 BY MR. DIACUR:
12 11 **Q.** Did you review them completely?
13 You read through them from beginning to end?
14 **A. Yes. Yes, yes, I did.**
15 12 **Q.** Were there any errors or anything
16 you'd like to correct in it that you noted?
17 **A. Not really, no.**
18 13 **Q.** Before we turn to the affidavits,
19 there is also one other document that I'm going to show
20 to you. It's about you --
21 **A. Okay.**
22 14 **Q.** -- prepared by a Dr. Jill
23 Wiwcharuk. Do you know Dr. Jill Wiwcharuk?
24 **A. Mm-hmm.**
25 15 **Q.** I'm going to put the letter up on
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1 screen, and I believe you'll also have a hard copy of
2 it. Let me know if that can be provided. But it's the
3 letter dated June 9, 2022.
4 **A. Yeah.**
5 16 **Q.** This is a letter on the Shelter
6 Health Network letterhead dated June 9, 2022, and it's
7 stamped Exhibit G referred to in the affidavit of Jill
8 Wiwcharuk. Can you see all that?
9 **A. Mm-hmm.**
10 17 **Q.** It lists your date of birth and
11 the name Misty Marshall in bold in the re line. Can
12 you see that?
13 **A. That's it here. Right?**
14 18 **Q.** Dr. Wiwcharuk spells your first
15 name M-Y-S-T-Y. Do you sometimes spell it that way?
16 **A. Yeah.**
17 19 **Q.** Do you recall when you last saw
18 Dr. Wiwcharuk?
19 **A. It was about -- sorry, maybe --**
20 **when was it? Two years -- was it two years? I think**
21 **it was two years ago.**
22 20 **Q.** The letter was written about two
23 years ago, a little over two years ago in June. Would
24 it have been around the time that this letter was
25 written?
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1 **A. Yeah, probably. Because the last**
2 **time I saw her, she said that she was leaving to go to**
3 **B.C. shortly.**
4 21 **Q.** And how many times did you see
5 Dr. Wiwcharuk? Do you recall?
6 **A. I do not recall.**
7 22 **Q.** She says that she first met you
8 when you were living in a tent on Ferguson Avenue in
9 the summer of 2020. Does that sound right?
10 **A. Yes.**
11 23 **Q.** She also says that you have a past
12 medical history of opiate use disorder, stimulant use
13 disorder, major depressive disorder with suicidal
14 ideation, and asthma. Does that sound accurate as
15 well?
16 **A. Mm-hmm.**
17 24 **Q.** Have you received any treatment
18 for opiate use disorder or stimulant use disorder?
19 **A. No.**
20 25 **Q.** Have you received any treatment
21 for a major depressive disorder or any medication?
22 **A. Yes.**
23 26 **Q.** So you've received medication for
24 depression?
25 **A. Yeah.**
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8

1 27 **Q.** Do you know what medication you've
2 been prescribed?
3 **A. Sorry, a lot of the -- like, I was**
4 **on Cipralext and Celexa and mirtazapine and -- what was**
5 **it -- like, it was a blend of different -- different**
6 **ones.**
7 28 **Q.** Was that prescribed to you by
8 Dr. Wiwcharuk? Do you know?
9 **A. No, it was not.**
10 29 **Q.** It was prescribed by other doctors
11 or another doctor?
12 **A. Mm-hmm.**
13 30 **Q.** Do you recall when those
14 prescriptions were made to you?
15 MS. CROWE: Misty, did you hear the
16 question?
17 THE DEPONENT: Oh, my god. I'm sorry.
18 Did I what? Will you repeat that?
19 BY MR. DIACUR:
20 31 **Q.** Of course. Do you recall when
21 those were prescribed to you or by whom?
22 **A. The -- I missed that.**
23 32 **Q.** The depression medications that
24 you listed --
25 **A. Oh, yes.**
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1 33 Q. Do you recall when those were
2 prescribed or by whom?
3 A. That would have been, like, from
4 my family doctor. That would -- this was before I
5 moved to Hamilton.
6 34 Q. That was my next question. How
7 long have you lived in Hamilton?
8 A. I lived in Hamilton for about
9 seven -- close to seven years.
10 35 Q. And where did you move from?
11 A. Burlington.
12 36 Q. Are you from Burlington originally
13 or did you move there?
14 A. We moved there as well.
15 37 Q. Where did you move to Burlington
16 from?
17 A. B.C.
18 38 Q. How long were you in Burlington?
19 A. Did I answer that? I answered
20 that in my head.
21 39 Q. Okay.
22 A. Did I say it out loud?
23 40 Q. No, I didn't get an answer to that
24 one. How long were you living in Burlington?
25 A. I lived there for 11 years.

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1 41 Q. You moved there from British
2 Columbia?
3 A. Yeah.
4 42 Q. Are you from British Columbia
5 originally?
6 A. I was born in Burlington, and then
7 I moved to British Columbia when I was a baby.
8 43 Q. Understood, okay. So you moved
9 back to Burlington from British Columbia, and then from
10 Burlington to Hamilton seven years ago. Do I have that
11 right?
12 A. Mm-hmm.
13 44 Q. Was there a reason for the moves?
14 A. I had to move from B.C. to out
15 here because my mother had met a man online on a video
16 game, and she went to the States to go get married, so
17 I got sent out here to live with my dad.
18 45 Q. Your father lives in Hamilton?
19 A. No, in Burlington.
20 46 Q. Okay. So you lived with your
21 father in Burlington for that 11 years?
22 A. (Indiscernible).
23 COURT REPORTER: I'm sorry, was that a
24 yes?
25

THE DEPONENT: No, that was a no.
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1 BY MR. DIACUR:
2 47 Q. So you lived with your father for
3 some time, some part of that 11-year period in
4 Burlington?
5 A. In Burlington I lived with him for
6 about a year and a half.
7 48 Q. And then where did you live after
8 living with your father?
9 A. With -- well, I moved in with my
10 ex-boyfriend/ex-fiancé.
11 49 Q. Did you live with him for the rest
12 of the time or were there other places that you resided
13 in in that 11 years in Burlington?
14 A. There were other places.
15 50 Q. What led to your moving to
16 Hamilton?
17 A. Me moving to Hamilton? My
18 ex-fiancé had -- it -- we just -- my ex-fiancé had
19 cheated on me and I just -- we -- I just could not --
20 we -- like, we just couldn't be around each other.
21 51 Q. Okay. So in Burlington, you and
22 your ex-fiancé broke up?
23 A. Mm-hmm.
24 52 Q. And you moved to Hamilton at that
25 point?

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1 A. Yeah.
2 53 Q. Were you moving to a specific
3 place? Did you have a place to live in Hamilton?
4 A. I rented out an Airbnb.
5 54 Q. How long did you do that?
6 A. How long ago did I do that?
7 55 Q. No, no. For how long did you rent
8 an Airbnb?
9 A. Oh, that was on and off. So the
10 first -- like, when I first moved here was a year and a
11 half -- not a year and a half, a month and a half, and
12 then I moved to the Budget motel on and off between
13 there and the Airbnbs for a little while until
14 Ferguson -- like, at the -- they call it Tent City,
15 but...
16 56 Q. Right. And we'll come to that. I
17 know that there are references to that in your
18 affidavit. In Dr. Wiwcharuk's letter, she also
19 mentions asthma and she mentions that at one point you
20 were assessed by Dr. Wiwcharuk and provided with
21 emergency treatment for your asthma. Is that correct?
22 A. Yes.
23 57 Q. And what did that involve? What
24 emergency treatment was provided to you?
25 A. Well, because I -- someone had

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<p>13</p> <p>1 stolen my purse and it had, like, all my puffers in it, 2 and without those, like, I would become lethargic, kind 3 of. Right? Because oxygen deprivation and whatnot. 4 So Dr. Jill had come and she, like, brought me an 5 inhaler. I think back then, actually, we -- they, 6 like, called out for one and someone brought me one. 7 Right? And then she just prescribed me them so that I 8 could get them.</p> <p>58 Q. Did that emergency treatment 9 require that you be hospitalized or was it just 10 providing that medication?</p> <p>12 A. As long as I had -- if there 13 were -- if I weren't able to get that, then, yes, I 14 probably would have had to have been brought to the 15 hospital and put on an oxygen mask.</p> <p>59 Q. Had that ever happened to you 16 before? Have you had to be hospitalized for your 17 asthma?</p> <p>19 A. Yeah.</p> <p>60 Q. When was the last time that 20 happened?</p> <p>22 A. It would have been this past 23 winter.</p> <p>61 Q. So, subsequent to your affidavits, 24 your asthma worsened to the point that you had to enter 25 Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>	<p>15</p> <p>1 66 Q. Do you agree with that? A4864 2 A. At the time, I was -- like, I had 3 just left a very -- like, a very, very abusive 4 relationship, and I -- yeah, I was not in a safe -- 5 like, a proper mental space, and so -- I don't know. I 6 have really bad anxiety, so I have a hard time, like, 7 asking them for help, kind of, so...</p> <p>8 67 Q. I believe Dr. Wiwcharuk notes that 9 as well. She says, "It is noted that she does not 10 accept help from people readily." So you would agree 11 with that as well?</p> <p>12 A. Yeah.</p> <p>68 Q. Since that time, would you 13 consider yourself more ready to engage with treatment?</p> <p>15 A. Yeah, I've been thinking about 16 that recently.</p> <p>69 Q. Have you been offered treatment, 17 for example, methadone treatment?</p> <p>19 A. No, not offered it, no.</p> <p>70 Q. But you're considering asking for 20 such treatment in the future?</p> <p>22 A. I'm not too sure because -- I 23 don't know. I just had a bad experience with the 24 methadone.</p> <p>71 Q. So you have gone into methadone 25 Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>
<p>14</p> <p>1 the hospital?</p> <p>2 A. No. It actually has gotten 3 better.</p> <p>62 Q. Okay. So you weren't hospitalized 4 for your asthma subsequent to your affidavits?</p> <p>6 A. I had -- like, in this -- this 7 past winter I had to call the ambulance, and they had 8 an oxygen tank with them, so they put me on that. And 9 I had stopped at a pharmacy to call the ambulance. So 10 the paramedics or whatever, they asked the pharmacist 11 if I could get one of the blue inhalers or whatever.</p> <p>63 Q. So you received treatment from 12 paramedics and received a new inhaler from the 13 pharmacy, but you didn't have to go to the hospital?</p> <p>15 A. Mmm -- (indiscernible).</p> <p>64 Q. Sorry, I just want to be clear. 16 Was that no?</p> <p>18 A. That was a no.</p> <p>65 Q. Okay, thank you. One of the 19 things that Dr. Wiwcharuk says in her letter is 20 first -- this is on the second page towards the top in 21 the second paragraph. She says first, "Despite having 22 an addiction to opioids, she has not been ready to 23 engage with treatment." 24</p> <p>25 A. Mm-hmm. Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>	<p>16</p> <p>1 treatment in the past?</p> <p>2 A. Yeah.</p> <p>72 Q. When was that?</p> <p>4 A. This was before I had moved to 5 Hamilton.</p> <p>73 Q. More than seven years ago?</p> <p>7 A. Yeah.</p> <p>74 Q. Okay. Have you ever been offered 8 help by somebody and declined it?</p> <p>10 A. Like how so?</p> <p>75 Q. I'm just trying to understand what 11 Dr. Wiwcharuk means when she says "she does not accept 12 help from people readily." Have you been offered help 13 and said no?</p> <p>15 A. And said no? I don't think -- no. 16 It's just, for me, because -- like, being on the 17 streets, like -- like, it's really hard to be able to 18 keep your belongings, for one, and I'm not, like, an 19 aggressive person or anything, so -- like, especially, 20 like, back then, like, I was getting targeted a lot and 21 bullied and stuff, so, like, I -- I almost -- like, 22 anything of value, it was like -- I was getting, like, 23 stolen from, like, every day. You know? So...</p> <p>76 Q. Are you familiar with the Housing 24 Focused Street Outreach Team or sometimes just called 25 Nimigan Mihailovich Reporting Inc. A580 (905) 522-1653</p>

17

1 the Street Outreach Team?

2 **A. No.**

3 77 **Q.** I understand that in June of 2022

4 you were assisted with getting what's called Ontario

5 Works, a --

6 **A. Yeah.**

7 78 **Q.** -- reloadable card with money on

8 it every month?

9 **A. Yeah.**

10 79 **Q.** Do you recall being assisted with

11 that by anyone?

12 **A. Yeah.**

13 80 **Q.** Do you know who it was that

14 assisted you with that?

15 **A. I don't know her name, or the man,**

16 **if she was a man. I don't know.**

17 81 **Q.** Are you still getting that? Are

18 you still getting Ontario Works money every month?

19 **A. Yeah, I still get Ontario Works.**

20 82 **Q.** Have you ever applied for ODSP?

21 **A. I've been trying to.**

22 83 **Q.** You've been trying to do that?

23 **A. Yeah.**

24 84 **Q.** How so? How have you been trying?

25 **A. Like, I've asked whether I could**

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18

1 **get, like, put on the list or whatever, but now they**

2 **do -- like, I guess they changed it, so they're doing**

3 **the ODSP clinic.**

4 85 **Q.** So there's a clinic that you can

5 attend at to make applications?

6 **A. I think so.**

7 86 **Q.** And you're considering doing that?

8 **A. Yeah.**

9 87 **Q.** Have you ever made what's called

10 an Access to Housing application?

11 **A. No.**

12 88 **Q.** Do you have a case worker working

13 with you?

14 **A. No -- a case worker? What does**

15 **that mean?**

16 89 **Q.** Somebody who is trying to assist

17 you either with housing or with any other aspect of

18 your life.

19 **A. No.**

20 90 **Q.** If we could turn to the first of

21 your two affidavits. This is the May 12, 2022,

22 affidavit. I'll put it up on the screen as well, but

23 if you have a copy in front of you, that may be easier.

24 **A. Mm-hmm.**

25 91 **Q.** In paragraph 3, you indicate "I

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19

1 currently have no source of income." I understand that

2 this is just before your Ontario Works application was

3 made in June of 2022.

4 **A. Mm-hmm.**

5 92 **Q.** So it's true that as of that time

6 you had no source of income?

7 **A. Yeah.**

8 93 **Q.** And prior to that time in 2020 and

9 up to April 2021, you had been receiving CERB money?

10 **A. CERB money? That was before?**

11 **Yeah.**

12 94 **Q.** So during COVID there was funding

13 available and you obtained that?

14 **A. Yeah. Some of it, yeah.**

15 95 **Q.** You mentioned as well in paragraph

16 6 what you had been telling me earlier about renting a

17 hotel room and different Airbnbs. You also reference

18 "I became homeless shortly after my wallet was stolen."

19 Did your wallet contain all of the money that you had

20 at that time?

21 **A. Would my wallet contain all the**

22 **money that I had at the time? Yeah, usually. Yeah, it**

23 **did at the time.**

24 96 **Q.** Were you using your CERB money in

25 order to pay for things like Airbnbs and the hotel

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20

1 rooms?

2 **A. Yeah. Yes, I was.**

3 97 **Q.** In paragraph 8, you mention that

4 you have not been able to get into a shelter since

5 becoming homeless. I understand that that's the case

6 up until the time of this affidavit. Have you ever

7 entered a shelter in the City of Hamilton?

8 **A. Sorry, can you repeat that?**

9 98 **Q.** Yes. So I understand from

10 paragraph 8 of your affidavit that you say "I have not

11 been able to get into a shelter since becoming

12 homeless." Have you been able to get into a shelter in

13 the City of Hamilton after this affidavit was sworn in

14 2022, so in the last two years?

15 **A. Into a shelter -- like, yeah.**

16 **Like, I've been inside. I did stay at the CAP one**

17 **night over this last year.**

18 99 **Q.** Sorry, I don't mean to interrupt

19 you, but when you say "CAP," do you mean Carole Anne's

20 Place?

21 **A. Yeah.**

22 100 **Q.** So you've stayed there for one

23 night?

24 **A. Yeah.**

25 101 **Q.** And other than that, any other

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21

1 stays in shelter in the City of Hamilton?

2 **A. No.**

3 102 **Q.** You say in paragraph 8 that you

4 keep being told by other women experiencing

5 homelessness that they are always full, referencing the

6 women's shelters. Is that accurate?

7 **A. Sorry, where is it?**

8 103 **Q.** It's in paragraph 8, so at the

9 bottom of the first page.

10 **A. Yeah.**

11 104 **Q.** Do you recall who these other

12 women are who were telling you that?

13 **A. Just other -- it was just other**

14 **girls that are on the street. Like, I don't know**

15 **exactly who, no, but...**

16 105 **Q.** Did you ever contact a shelter

17 yourself?

18 **A. Yeah.**

19 106 **Q.** And you were told by them that

20 they were full up?

21 **A. Oh, yeah, even just the other day.**

22 **Yeah, I watched, like, three girls leave and -- and**

23 **they still said they were full up, and they let another**

24 **girl right after I said that go in.**

25 107 **Q.** How often have you checked with

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22

1 these women's shelters in the City of Hamilton?

2 **A. I go there -- like, I -- or knock**

3 **on the door or whatever. I don't know. Like, at least**

4 **probably twice a week.**

5 108 **Q.** Which shelters have you contacted?

6 Do you recall?

7 **A. Just the Willow's Place --**

8 **Willow's Place and Carole Anne's Place.**

9 109 **Q.** You do reference in paragraph 8

10 Social Navigation calling a couple of times to try to

11 get you into a shelter as well.

12 **A. Mm-hmm.**

13 110 **Q.** How did you contact or get in

14 touch with Social Navigation?

15 **A. They -- they happened to be at**

16 **the -- my friend's campsite.**

17 111 **Q.** They were visiting an encampment

18 and you spoke with them?

19 **A. Mm-hmm.**

20 112 **Q.** And how did that go? What did you

21 discuss with Social Navigation?

22 **A. It was good.**

23 113 **Q.** What did you discuss with them?

24 **A. What did I discuss with them?**

25 114 **Q.** Yeah.

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23

1 **A. Sorry, what was I -- this is about**

2 **what?**

3 115 **Q.** About your discussion with Social

4 Navigation. So you say you met with them because they

5 were at a friend's encampment site --

6 **A. Oh, they just asked me if any of**

7 **us had signed up for Ontario Works or -- or ODSP.**

8 116 **Q.** Okay. So was it Social Navigation

9 that assisted you with Ontario Works?

10 **A. It was one of the Social**

11 **Navigators. Right? Or it would be a -- yeah, I think**

12 **it was Social Nav, because there's all different teams.**

13 **Right?**

14 117 **Q.** Did they offer you any other

15 services?

16 **A. No, just that. But they helped**

17 **me. Like, they used -- like, the one lady used the**

18 **phone and, like, helped me.**

19 118 **Q.** And they contacted some shelters

20 for you?

21 **A. Some shelters? No, no shelters.**

22 119 **Q.** Well, the affidavit says that they

23 did call a couple of times to try to get you into a

24 shelter.

25 **A. Yeah, I did have Social Nav**

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24

1 **call -- was it the same lady? It probably was the same**

2 **lady. Yeah, she -- we called -- we called every single**

3 **one, and every single one said that they were full.**

4 120 **Q.** Did Social Navigation just do that

5 for you once or did they do it more than once?

6 **A. I think it was just the once. It**

7 **might have been one more time, but I don't know if it**

8 **was Social Nav. I can't remember.**

9 121 **Q.** So once, maybe twice?

10 **A. Maybe. That's a huge maybe.**

11 122 **Q.** In paragraph 12, you reference

12 Willow's Place?

13 **A. Yeah.**

14 123 **Q.** You reference it as a daytime

15 drop-in centre, but occasionally they have overnight

16 drop-in. Have you ever actually, whether before or

17 after this affidavit, stayed at Willow's Place?

18 **A. Not for the night, no. I've**

19 **dropped in there just to get, like, food or a drink --**

20 **yes, please -- sorry. I was, like, overheating.**

21 124 **Q.** Take your time.

22 **A. Okay. Yeah, just to get a food --**

23 **like, food or drinks or use the washroom or a shower,**

24 **whatnot, or supply -- yeah, just -- just those --**

25 125 **Q.** Where -- sorry, I didn't mean to

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1 cut you off.

2 **A. It's okay.**

3 126 **Q.** Where are you currently residing?

4 Where are you staying?

5 **A. There's nowhere, like -- like --**

6 **like, regularly that I stay. Like, I -- it's mostly**

7 **just outside. Like, it's the summertime, so...**

8 127 **Q.** So you move from place to place in

9 the summertime?

10 **A. Yeah.**

11 128 **Q.** What about in the winter? Do you

12 stay in one place during the winter?

13 **A. One or two.**

14 129 **Q.** Sorry, did you say one or two

15 places?

16 **A. Sorry, what did...**

17 MS. CROWE: Can you ask the question

18 again, please?

19 BY MR. DIACUR:

20 130 **Q.** No, no, of course. You said that

21 in the summertime you've been moving around, not

22 staying in any specific place. What about in the

23 wintertime? Do you tend to stay in one place during

24 the winter?

25 **A. No, I don't stay in one place.**
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1 **Just, like, in the wintertime, I will, like -- like,**

2 **you know, somebody, like -- like, if it's really cold**

3 **out and somebody invites, like, me over or something, I**

4 **will go. You know?**

5 131 **Q.** So if you have an offer to stay

6 somewhere, you will?

7 **A. Yeah, but it's like -- like, you**

8 **know, it's not usually like "oh, I have a place for you**

9 **to live." It's like -- like, if you need somewhere to**

10 **go, if it's too cold out or whatever. You know what I**

11 **mean?**

12 132 **Q.** Understood. I'd like to move to

13 the chart that you've provided at paragraph 16 of your

14 affidavit, the first affidavit. That's the May 12,

15 2022, affidavit. There's a chart that sets out some

16 timeframes and where you were staying over time. Can

17 you see that?

18 **A. Mm-hmm.**

19 133 **Q.** There's a couple of questions I

20 have for you about it because, in particular, there are

21 a couple of points that I'm not clear on, given a

22 couple of other statements in your affidavit. So I'll

23 explain what I mean. As I understand it, this is a

24 chronology. One of the places that you stayed starting

25 in the summer of 2020 was Ferguson, and you mentioned
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1 that that was called the Tent City? Is that right?

2 **A. Tent City, yes.**

3 134 **Q.** And you stayed from the summer of

4 2020 until October of 2020, and --

5 **A. Yeah.**

6 135 **Q.** -- you mentioned that you left

7 shortly before the clearing of that encampment, which I

8 understand occurred in the middle of October 2020. So

9 is that accurate that you left shortly before that?

10 MS. CROWE: Did you hear the question?

11 THE DEPONENT: Sorry, is that accurate

12 that I -- that I -- I did not hear the question, the

13 full question, no.

14 BY MR. DIACUR:

15 136 **Q.** No, no, that's fine. I understand

16 that the encampment at Ferguson was dismantled in the

17 middle of October 2020, and you indicate here --

18 **A. In the middle?**

19 137 **Q.** -- that you left shortly before

20 that. I just want to make sure that that's accurate.

21 **A. Yeah. I left right -- right at,**

22 **like, the first week of October.**

23 138 **Q.** Okay.

24 **A. So...**

25 139 **Q.** And I understand that advance
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1 notice was given by, among others, the City of Hamilton

2 that that encampment was going to be dismantled. Is

3 that the reason that you departed?

4 **A. No. I had gotten a really bad**

5 **flu.**

6 140 **Q.** So you became ill, and so you left

7 because of that?

8 **A. Yes.**

9 141 **Q.** I notice that you say that the

10 duration of that stay was until October of 2020. The

11 next entry in the chart is the summer of 2021. Can you

12 tell me where you were after October of 2020?

13 **A. After I was -- after 2020? Let's**

14 **see where I was. Where was I? Oh, oh, okay, so I --**

15 **because I was super sick, I had a friend drop me off at**

16 **another one of their friend's houses just so that I**

17 **could get better. Because, like, the weather was**

18 **really cold out and stuff, and I guess, like, with**

19 **stress and everything, like, my immune system couldn't**

20 **handle that, so -- yeah, so I stayed there until I got**

21 **better, and then -- like I said, like, I would just**

22 **walk around to, like, find, like, my friends and -- and**

23 **their camps that they're at, that they're staying at.**

24 142 **Q.** After you left the Ferguson

25 encampment, you recovered from that flu, and then you
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<p style="text-align: right;">29</p> <p>1 stayed in a number of different places with friends?</p> <p>2 MS. CROWE: Misty?</p> <p>3 THE DEPONENT: Sorry. I'm so sorry.</p> <p>4 Sorry, I missed that question.</p> <p>5 BY MR. DIACUR:</p> <p>6 143 Q. That's okay. I'm just trying to</p> <p>7 get the timeframes down. I understand you left the</p> <p>8 Ferguson encampment October 2020, that you went to a</p> <p>9 friend of a friend's house, recovered from the flu, and</p> <p>10 then you were staying with a number of different</p> <p>11 friends in a number of different places. Is that</p> <p>12 correct? Do I have that right?</p> <p>13 A. Yeah.</p> <p>14 144 Q. By the summer of 2021, you were at</p> <p>15 John and Rebecca Park as set out in the chart. Is that</p> <p>16 correct?</p> <p>17 A. Mm-hmm, yes.</p> <p>18 145 Q. And you mentioned there that you</p> <p>19 stayed for a week, and that by-law officers evicted you</p> <p>20 and your friend, and you lost some belongings, so I</p> <p>21 wanted to ask you about that.</p> <p>22 A. Okay.</p> <p>23 146 Q. In the summer of 2021, you're at</p> <p>24 John and Rebecca Park. Are you given notice that you</p> <p>25 need to depart from that park?</p> <p style="text-align: center;">Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>	<p style="text-align: right;">31</p> <p>1 about a week, but left because you were staying with a A4868</p> <p>2 friend in a tent and there was some conflict between</p> <p>3 you. Is that right?</p> <p>4 MS. CROWE: Did you hear the question?</p> <p>5 THE DEPONENT: No, I'm so sorry.</p> <p>6 BY MR. DIACUR:</p> <p>7 152 Q. You say that right after John and</p> <p>8 Rebecca Park you went to Beasley Park?</p> <p>9 A. Mm-hmm.</p> <p>10 153 Q. You were there for about a week.</p> <p>11 A. Mm-hmm.</p> <p>12 154 Q. You stayed with a friend, but then</p> <p>13 there was some conflict between you. Did you depart</p> <p>14 because of that conflict?</p> <p>15 A. Yes.</p> <p>16 155 Q. And did you go from there back to</p> <p>17 John and Rebecca Park or did you go somewhere else?</p> <p>18 A. Did I go from there back to John</p> <p>19 and Rebecca Park?</p> <p>20 156 Q. Yes. So the next entry in the</p> <p>21 chart is John and Rebecca Park, fall of 2021. It's</p> <p>22 just not clear to me whether you went straight there or</p> <p>23 somewhere else in between. So did you go from Beasley</p> <p>24 Park to John and Rebecca Park?</p> <p>25 A. Yeah, but...</p> <p style="text-align: center;">Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>
<p style="text-align: right;">30</p> <p>1 A. Because me and my friend -- like,</p> <p>2 the tent was only set up -- like, it was under a week.</p> <p>3 And so we did not get a notice, but I guess the other</p> <p>4 tents that were set up did, but they had never told us</p> <p>5 about it. Right?</p> <p>6 147 Q. How did you hear about the notice?</p> <p>7 A. So the one -- the one night they</p> <p>8 had before, like, completely blocked off, and then --</p> <p>9 so I had to wait until the next day to -- to return,</p> <p>10 and I see that they're starting to pack up. Like, the</p> <p>11 two other -- I think there's two other -- two or three</p> <p>12 other tents there, and I see that they're all starting</p> <p>13 to pack up and -- but we had to leave.</p> <p>14 148 Q. And did you do the same? You</p> <p>15 packed up things and you departed?</p> <p>16 A. Yeah.</p> <p>17 149 Q. So after that one week at John and</p> <p>18 Rebecca Park, you do say in the chart here, right after</p> <p>19 John and Rebecca Park, you went to Beasley Park? Is</p> <p>20 that right?</p> <p>21 A. Did I say yes out loud?</p> <p>22 150 Q. No, sorry, I didn't hear that.</p> <p>23 But if that's correct, then please do say yes.</p> <p>24 A. Yes.</p> <p>25 151 Q. I understand you stayed there for</p> <p style="text-align: center;">Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>	<p style="text-align: right;">32</p> <p>1 157 Q. I see that you say you stayed</p> <p>2 there for about a week, and then there was</p> <p>3 dismantlement of an encampment, that the City showed up</p> <p>4 with Bobcats to remove belongings, and there was</p> <p>5 20 minutes' notice. Is that accurate?</p> <p>6 A. For me, yes, because we -- I had</p> <p>7 never -- like, we had never gotten an eviction notice.</p> <p>8 They didn't come around to tell us that we had any</p> <p>9 amount of time that we had to be leaving and -- oh,</p> <p>10 sorry. Yeah, so -- so I had -- the person that I was</p> <p>11 staying with, they had -- they had gotten hurt badly,</p> <p>12 where they had to go to the hospital. So the police</p> <p>13 had actually caution-taped the whole park for the whole</p> <p>14 night and early morning, so...</p> <p>15 158 Q. There was a crime scene at the</p> <p>16 park? Is that right?</p> <p>17 A. Yeah, kind of.</p> <p>18 159 Q. So there was a requirement to</p> <p>19 depart because of an active crime scene?</p> <p>20 A. Well, I was already out, so -- so</p> <p>21 I didn't know. So when I came back to come, like, in</p> <p>22 for the night, they had the park, like -- like, roped</p> <p>23 off. Right?</p> <p>24 160 Q. But that was as a result of what</p> <p>25 had happened in the park? Somebody getting injured? A584</p> <p style="text-align: center;">Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>

1 **A. I guess so.**
2 161 **Q.** Then I see next in the chart is at
3 City Hall nightly for a couple of months. I just want
4 to understand that that is the order that these things
5 happened. From John and Rebecca Park, you did go to
6 City Hall and stayed there nightly for a couple of
7 months? Is that right?
8 **A. Mm-hmm.**
9 162 **Q.** And that's up to roughly January
10 of 2022. Do I have that accurate?
11 **A. That would have been the -- the --**
12 **like, the -- yeah.**
13 163 **Q.** You say that since that point,
14 since roughly January 2022 when you left City Hall, you
15 couch surfed and stayed outside in several different
16 locations. In terms of couch surfing, is that just
17 generally a friend letting you stay for a while?
18 **A. Kind of. It's -- well, yeah,**
19 **friends that say, like, "okay, you can come over," and**
20 **whatnot or, like, people that, like, you know -- like**
21 **acquaintances.**
22 164 **Q.** Right. Is that generally just
23 something that's offered to you or do you pay for that?
24 **A. Offered...**
25 165 **Q.** Does somebody just say to you
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1 yeah, you can come and stay for a couple of days, or is
2 it "well, it's going to cost you X dollars to do that"?
3 MS. CROWE: Oops, sorry.
4 THE DEPONENT: So sorry. No, well,
5 it's just they -- like, some -- it depends -- it just
6 depends on who the person is, really.
7 BY MR. DIACUR:
8 166 **Q.** So some do it out of the goodness
9 of their heart and some require payment?
10 **A. Not, like, exactly. Well, I don't**
11 **know. Not exactly payment, just -- like, most -- most**
12 **of the people that, like, invite -- you know, will go**
13 **out of their way to say "oh, I have a place," you know,**
14 **or a friend. Right? And so that's -- like, I don't**
15 **know. After being there for a couple days, like, they**
16 **just -- I don't know, but yeah.**
17 167 **Q.** This couch surfing, has that
18 continued occasionally? Do you still do that?
19 **A. No, not -- not really. Not**
20 **anymore.**
21 168 **Q.** Do you currently have a tent?
22 **A. No.**
23 169 **Q.** Have you spoken to Social
24 Navigator or anyone else about obtaining a tent?
25 **A. I -- not Social Nav, but I had a**
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1 **friend tell me that there are a couple places that you**
2 **can get a tent from.** A4869
3 170 **Q.** Have you looked into that?
4 **A. Like, followed through with it?**
5 **No, no.**
6 171 **Q.** Have you considered using any of
7 your Ontario Works money to purchase a tent?
8 **A. Well, I only get, like, \$300 --**
9 **like, \$340 for the whole month.**
10 172 **Q.** So, no, you haven't considered
11 doing that?
12 **A. No.**
13 173 **Q.** Because --
14 **A. That would not be able to be in**
15 **the budget at all.**
16 174 **Q.** You say in paragraph 23 of your
17 affidavit that enforcement has ramped up by the City in
18 2022. What does that mean?
19 **A. Oh, yeah, well -- okay, so all of**
20 **a sudden, like -- like, the encampment camps were okay,**
21 **but then they started moving us around, like -- like,**
22 **the -- the -- they -- the bill or the law or whatever**
23 **had changed for a little -- like, it was taken away for**
24 **a little bit. Right? So then all of a sudden, the**
25 **police were coming and making it, like -- like, nobody**
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1 **was able to even have a tent anywhere for, like, longer**
2 **than, like, a week or two. And then they were coming**
3 **in and, like, just bulldozing them down like -- you**
4 **know? Like, I had so many friends come back to their**
5 **places and -- and they didn't even know, like, you**
6 **know, that their things would be gone. And they'd be**
7 **out, like, you know, doing their errands and whatever**
8 **they need to do and coming back to nothing.**
9 175 **Q.** So there was a ramp-up by the
10 City, but at most it was every week or two that people
11 were being asked to move around? Is that fair?
12 **A. Yeah, at least, like, you know --**
13 **and sometimes, like -- like, they'd come and -- you**
14 **know, like -- like, we already know that. Like, you**
15 **know?**
16 176 **Q.** In paragraph 24 of your affidavit,
17 you mention that you have not been on any medications
18 or seen a doctor to get treatment for a long time. I
19 understand that this is right around the time that you
20 were seeing Dr. Wiwcharuk. You say that you had not
21 seen a doctor in a long time. Do you mean a doctor
22 other than Dr. Jill Wiwcharuk? Is that right?
23 **A. Yes.**
24 177 **Q.** You mentioned --
25 **A. Where --**
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<p style="text-align: right;">37</p> <p>1 178 Q. Sorry, no, please go ahead. I</p> <p>2 don't mean to cut you off.</p> <p>3 A. Like, I did have to go to the</p> <p>4 hospital, like, once -- or a couple times, but not</p> <p>5 like -- I don't have, like, a family doctor.</p> <p>6 179 Q. So is that what you mean, that you</p> <p>7 hadn't seen a family doctor?</p> <p>8 A. Yeah.</p> <p>9 180 Q. You do mention here as well that</p> <p>10 you used to be on antianxiety medication. This is at</p> <p>11 the end of paragraph 24. What antianxiety medication</p> <p>12 had you been taking previously?</p> <p>13 A. Clonazepam and -- and part of,</p> <p>14 like, my anti -- one of the antidepressants that I was</p> <p>15 on was also an antianxiety as well.</p> <p>16 181 Q. Okay, I understand. You gave me</p> <p>17 the list of those medications, thank you. Now, in</p> <p>18 terms of when there were any sort of steps taken to</p> <p>19 dismantle an encampment or ask people who were encamped</p> <p>20 to move, that occurred during the daytime. Is that</p> <p>21 correct?</p> <p>22 A. Yeah, because that's when they --</p> <p>23 the City workers are working. Right?</p> <p>24 182 Q. That's right. And you do mention</p> <p>25 in paragraph 30 of your first affidavit that, in</p> <p style="text-align: center;">Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>	<p style="text-align: right;">39</p> <p>1 spot in my heart. You know?</p> <p>2 187 Q. Understood. Paragraph 28 of your</p> <p>3 affidavit, there is a reference to a time "a couple of</p> <p>4 weeks ago" -- and this is again at John and Rebecca</p> <p>5 Park. You indicated it was around 11:00 p.m. and the</p> <p>6 police came by and said the park was closing. I just</p> <p>7 wanted to ask you about that. A couple of weeks ago,</p> <p>8 that would have been a couple of weeks before May 12,</p> <p>9 2022. Do you remember when that actually happened?</p> <p>10 MS. CROWE: Did you hear the question?</p> <p>11 THE DEPONENT: Yeah. Do I remember</p> <p>12 when that actually happened, the park was closing. I</p> <p>13 do not remember that, no. I can't recall exactly what</p> <p>14 was -- that was just a long time ago, like...</p> <p>15 BY MR. DIACUR:</p> <p>16 188 Q. Do you recall exactly what the</p> <p>17 police said to you?</p> <p>18 A. Which one is this on? Sorry, I</p> <p>19 never -- oh, I remember that day. Yeah, okay. So,</p> <p>20 yeah, they just -- they just told us that -- so I don't</p> <p>21 know why this was going on. Oh, yeah, this is when the</p> <p>22 bill -- this is when the bill landed about the</p> <p>23 encampments. Right? So the police were coming around</p> <p>24 and they were just asking -- they were even asking,</p> <p>25 like, everybody that was in the vicinity, like, their</p> <p style="text-align: center;">Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>
<p style="text-align: right;">38</p> <p>1 March 2021, you were referred to the Hamilton Regional</p> <p>2 Indian Centre for an intake to get help with housing.</p> <p>3 A. Mm-hmm.</p> <p>4 183 Q. You say that "I have not heard</p> <p>5 back from them." Did you ever hear back from them?</p> <p>6 A. No.</p> <p>7 184 Q. Have you made any other attempts</p> <p>8 to contact the Hamilton Regional Indian Centre?</p> <p>9 A. I don't remember. Like, maybe,</p> <p>10 like, once or twice, but I can't, like, fully remember.</p> <p>11 185 Q. Do you have a preference for</p> <p>12 contacting an association or a centre like the Hamilton</p> <p>13 Regional Indian Centre as opposed to others?</p> <p>14 A. A preference? Like, what do you</p> <p>15 mean?</p> <p>16 186 Q. Well, as an Indigenous person, do</p> <p>17 you prefer to work with an association or a centre like</p> <p>18 the Hamilton Regional Indian Centre as opposed to</p> <p>19 someone else?</p> <p>20 A. Well, they -- I don't know,</p> <p>21 really. Like, I haven't really worked with any -- any</p> <p>22 centres, not even really that one, so I guess it would</p> <p>23 just depend which one -- like, if they actually, like,</p> <p>24 care. You know? Like, that's why I -- like, Dr. Jill,</p> <p>25 like, she cared. Like, I really liked -- she has a</p> <p style="text-align: center;">Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>	<p style="text-align: right;">40</p> <p>1 names and -- you know, like, which -- even if they</p> <p>2 weren't doing anything wrong. You know what I mean?</p> <p>3 But -- but either way, yeah, they -- they -- they</p> <p>4 all -- yeah, we all -- we all -- there were these</p> <p>5 little benches, but they're square and kind of big,</p> <p>6 so -- and off the ground, so a tarp can fit, like, over</p> <p>7 it. Right? And there's no other, like -- like, cover.</p> <p>8 And we weren't allowed to put tents up at this time, so</p> <p>9 that's when everybody was just using -- was bringing</p> <p>10 around tarps and --</p> <p>11 189 Q. What -- sorry, I didn't mean to</p> <p>12 cut you off. Please go ahead.</p> <p>13 A. And -- yeah, they told us that</p> <p>14 we'd all be arrested if we -- if we didn't head out, or</p> <p>15 anybody who -- who decided not to, like, leave, then</p> <p>16 they'd be getting arrested.</p> <p>17 190 Q. I understand that you can't</p> <p>18 remember the exact date when this happened, but it's my</p> <p>19 understanding that there was, in fact, an encampment</p> <p>20 that was dismantled in John and Rebecca Park towards</p> <p>21 the end of April 2022. And so the question that I</p> <p>22 asked about what the police said, I'll ask it more</p> <p>23 specifically. Did the police say that because the</p> <p>24 encampment had been cleared, either that same day or</p> <p>25 very recently, that encampment was not permitted? Do</p> <p style="text-align: center;">Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>

<p>41</p> <p>1 you recall that?</p> <p>2 A. No.</p> <p>3 191 Q. Do you recall seeing any notices</p> <p>4 posted regarding an encampment having to be dismantled</p> <p>5 at John and Rebecca Park around that time?</p> <p>6 A. That was at the same time as -- as</p> <p>7 when we had -- like, when I had to take apart the --</p> <p>8 the tent. Like, when I was given 20 minutes' notice,</p> <p>9 that was around then and, like, shortly after that.</p> <p>10 192 Q. My understanding from the timeline</p> <p>11 is that that would have been the year before.</p> <p>12 A. A year before?</p> <p>13 193 Q. We can go back up to the chart,</p> <p>14 but that would have been either in the fall of 2021 --</p> <p>15 that was the reference to 20 minutes' notice being</p> <p>16 given -- or in the summer of 2021. Those are the only</p> <p>17 other references to John and Rebecca Park. My</p> <p>18 understanding from paragraph 28 is that it was only a</p> <p>19 couple of weeks before this affidavit was sworn in</p> <p>20 May 2022 that you were talking about.</p> <p>21 A. Yeah, so that would have been</p> <p>22 afterwards.</p> <p>23 194 Q. Yes. So we're not --</p> <p>24 A. That's because the --</p> <p>25 195 Q. -- talking about that time. We're</p> <p style="text-align: center;">Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>	<p>43</p> <p>1 knowledge --</p> <p>2 MR. DIACUR: Yes, I understand that</p> <p>3 that's what she had said previously. I'm trying to</p> <p>4 clarify, given that she's also said the contradictory</p> <p>5 thing that they were not. So if she doesn't want to</p> <p>6 clarify, that's fine. I'm happy to leave it there.</p> <p>7 BY MR. DIACUR:</p> <p>8 198 Q. We can move to your May 8, 2023,</p> <p>9 affidavit, which is partially handwritten. Do you have</p> <p>10 a copy of that in front of you?</p> <p>11 A. Yeah.</p> <p>12 199 Q. So in this affidavit -- which</p> <p>13 again, it's dated May 8, 2023, the following year --</p> <p>14 you reference having stayed in several locations. You</p> <p>15 also reference couch surfing with friends. You mention</p> <p>16 in tents outside City Hall, Carole Anne's Place, at</p> <p>17 Philpott Church and off Wellington. You also say you</p> <p>18 stayed briefly in an encampment off the escarpment but</p> <p>19 felt very unsafe, so you left.</p> <p>20 A. Mm-hmm, yes.</p> <p>21 200 Q. Is that a complete list of the</p> <p>22 places that you stayed after June 2022 up to May 8,</p> <p>23 2023?</p> <p>24 A. Well, like, because I -- I -- I</p> <p>25 don't have, like, set places that I stay. Right?</p> <p style="text-align: center;">Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>
<p>42</p> <p>1 talking about --</p> <p>2 A. No, that's what I mean. Like, it</p> <p>3 would have been after. So that's when the bill was,</p> <p>4 like -- like, they were still working on the bill to</p> <p>5 get fixed so that we could -- we were allowed to have,</p> <p>6 like, tents and enclosures and stuff, but...</p> <p>7 196 Q. I had understood from your</p> <p>8 evidence earlier that you had understood that even</p> <p>9 after all of that happened, tents and encampments were</p> <p>10 still permitted for a week or two at a time. That's</p> <p>11 correct?</p> <p>12 A. I don't -- I'm not -- I'm not a</p> <p>13 hundred percent sure. Like, during -- like, because</p> <p>14 that's why we had the -- that's why people were using</p> <p>15 tarps because they weren't allowed to have a tent set</p> <p>16 up for a little while.</p> <p>17 197 Q. I had understood this to say that</p> <p>18 you were --</p> <p>19 MS. CROWE: I think that question has</p> <p>20 been asked and answered.</p> <p>21 MR. DIACUR: Which question?</p> <p>22 MS. CROWE: The question about her</p> <p>23 understanding of whether or not tents were allowed</p> <p>24 during this time.</p> <p>25 THE DEPONENT: That's to my</p> <p style="text-align: center;">Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>	<p>44</p> <p>1 So...</p> <p>2 201 Q. No, I understand. I mean in terms</p> <p>3 of the list that I've just read out, was that a</p> <p>4 complete list for the period between June 2022 and</p> <p>5 May 2023?</p> <p>6 A. For the -- yeah, I -- yeah, I</p> <p>7 guess so.</p> <p>8 202 Q. You say that the escarpment</p> <p>9 encampment made you feel very unsafe. Why was that?</p> <p>10 A. I don't know. I just -- it's just</p> <p>11 too -- too -- it was -- it's just too far away from,</p> <p>12 like -- you know, like, any, like -- like, people. You</p> <p>13 know what I mean? Like, if something were to happen or</p> <p>14 something, then -- well, anything could happen there</p> <p>15 and, like, nobody would know. You know?</p> <p>16 203 Q. Do other encampments ever feel</p> <p>17 unsafe to you?</p> <p>18 A. Yeah.</p> <p>19 204 Q. For what reasons?</p> <p>20 A. Well, just because it's dangerous</p> <p>21 out here on the streets. Like, I was, like -- like,</p> <p>22 I've been bullied and, like, attacked and, like,</p> <p>23 assaulted and sexually assaulted and -- you know?</p> <p>24 Like, I've had a lot of bad things happen to me, like,</p> <p>25 out here.</p> <p style="text-align: center;">Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>

1 205 Q. So it's the threat and fact of the
2 physical violence that makes you feel unsafe?
3 A. Yeah. And then -- and then when
4 they do that, then they also -- like, they'll -- you'll
5 get robbed for everything. Like, you know? Like...

6 206 Q. I understand that you've been the
7 victim of several crimes. You indicate them in your
8 affidavit. Have you made any reports to the police of
9 those crimes?

10 A. No.

11 207 Q. Is there a reason why?

12 A. It's just not -- like, I -- I --
13 like, I -- I don't know. This has, like, nothing to do
14 with any of this. This was, like, way back when I was,
15 like -- like, young, young, like 19. But I had -- I
16 remember, like, I had -- I had had somebody steal my
17 wallet -- right? -- with all, like, my rent money in it
18 and stuff. And we were in a hotel room, so you would
19 have been -- my wallet was big, so you would have --
20 like, there's cameras and stuff. You know what I mean?
21 So, like, when I did call the police that time, they
22 told me that -- that there's nothing -- like, when it
23 comes to money and something like that, that there's
24 nothing they can really do unless the person decides to
25 give it back.

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1 208 Q. So because you'd been previously
2 told by the police that there's nothing they can really
3 do, that's the reason?

4 A. Well, for the most part, yeah.

5 MR. DIACUR: All right, Counsel, just a
6 moment's indulgence. I think I may be done. I just
7 want to make sure I didn't skip something.

8 --- (Off record)

9 MR. DIACUR: Yes, Counsel, those are
10 all my questions for this witness. Thank you, Misty,
11 for attending and answering.

12 THE DEPONENT: You're welcome. Thank
13 you.

14 MS. CROWE: Thank you. I just need one
15 moment before we get started on redirect.

16 --- Recess taken at 5:08 p.m.

17 --- Upon resuming at 5:09 p.m.

18 RE-EXAMINATION BY MS. CROWE:

19 209 Q. Okay, Misty. We're almost done.
20 Just a few questions. Okay?

21 A. Yeah.

22 210 Q. So I want to go back to
23 October 2020 and the Ferguson encampment. You
24 mentioned that you left before the encampment was
25 dismantled?

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1 A. Mm-hmm.

2 211 Q. When you left, did you know when
3 the City was planning on dismantling the encampment?

4 A. No. Well, I knew that they were
5 planning on doing it, like, soon. Like, I didn't know
6 exactly when, but there was talk of it that they were
7 going to -- like, we were going to need to start
8 figuring out where we're going.

9 212 Q. Okay. I want to talk to you about
10 the first time that you stayed at John and Rebecca.
11 Mr. Diacur asked you about packing up your things from
12 John and Rebecca when you left, and your affidavit
13 indicates that you lost some belongings. Can you
14 explain?

15 A. Where was...

16 213 Q. Let me show you. Here and the
17 next page.

18 A. Oh, yeah, just -- just, like,
19 because we had to, like, get up and leave right then,
20 you know, we -- I think I lost, like -- like, we
21 could -- we just couldn't carry everything with us. Do
22 you know what I mean? Like, so -- like, I lost a lot
23 of clothes and makeup and -- and, like -- like, just,
24 like, my journals, like -- you know? My -- just --

25 214 Q. Anything else that you can think

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1 of?

2 A. Like, I had, like, my purse.

3 215 Q. Was there anything in your purse?

4 A. Well, yeah, like, just -- just
5 normal things that go in your purse, like your wallet
6 and whatnot and -- but, yeah, like -- oh, yeah, I lost,
7 like -- I had just bought a perfume, like, one of my
8 favourite perfumes. That went missing, yeah. But --
9 yeah, I don't know. It was just, like, at that time,
10 like, I had, like -- like, all my makeup was really
11 expensive and -- you know? So just my clothes and
12 stuff, so -- and it just sucked.

13 216 Q. Do you remember what was in your
14 wallet?

15 A. In my wallet? I don't --
16 nothing -- like, probably just gift cards and, like,
17 cash and stuff. Oh, and my debit card. I was -- but
18 I -- I probably would have to replace my debit card,
19 like, at least, like, five times a month, so...

20 217 Q. Okay. I want to take you to the
21 second time you stayed at John and Rebecca. And so you
22 were explaining that there was police or caution tape
23 up at some point. Do you know anything about what had
24 happened?

25 A. No.

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<p style="text-align: right;">49</p> <p>1 218 Q. Did anyone tell you what may have 2 happened? 3 A. At John and Rebecca there was 4 caution tape up? Oh, yeah. That was my -- that was 5 my -- my -- my tent. You know, like, my roommate, I 6 guess, like, in the tent, but I don't know if -- like, 7 because it's just -- but, like, he had gotten injured 8 there, like -- or assaulted by another person with a 9 weapon and ended up in the hospital and... 10 219 Q. Okay. 11 A. Yeah. 12 220 Q. Okay. I want to talk to you about 13 couch surfing. Mr. Diacur had asked who you would 14 couch surf with, and he used the term "friend," and you 15 responded and you said friends or acquaintances. So 16 can you give us some sort of idea of who you would stay 17 with? Not names, but what kinds of people and how 18 would it come that you would couch surf with someone? 19 Did you hear? 20 A. That I would couch surf at -- yes, 21 sorry, I -- I missed that. 22 221 Q. That's okay. How would it happen 23 that you would get an offer, or who are the types of 24 people who would offer you to stay with them? 25 A. Oh, just, like -- well, mostly the Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>	<p style="text-align: right;">51</p> <p>1 start couch surfing, and you said "after a couple of 2 days," and then you didn't finish. A4873 3 A. Yeah, well, because it's usually 4 after two or three days that they -- I don't know. 5 They -- that guys either, like, proclaim that they have 6 feelings or something, or try to, like -- like, get, 7 like -- you know, either say that we're dating or 8 something. You know? Or -- I don't know. Or try to 9 just -- what ends -- like, you know, like, I -- like, 10 beforehand, like, I tell -- like, I have conversations 11 with these people and I tell them that it makes -- 12 like, it frustrates me all the time, that I -- that 13 whenever I go somewhere, that -- that it always ends up 14 being like that. You know? The same thing over and 15 over again, and then they tell me that -- that -- that 16 their place will be a safe place and -- you know, and 17 that they wouldn't do those things, and then they end 18 up doing the same thing. 19 224 Q. And how does that impact you? 20 A. It's just like -- like, I just -- 21 well, now I just either -- just don't even answer to 22 any ideas or anything like that. You know? Or I 23 just -- or, like, I -- I will, like, sit there and, 24 like -- like -- "so do you have any intentions?" Like 25 anything else, like -- you know? Like, try to be, Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>
<p style="text-align: right;">50</p> <p>1 guys that I -- like, guys that I met or people that I 2 had, like, seen around. You know? And -- like, when 3 they come up and talk to me or whatever, they're like 4 "oh" -- you know, they just say, "Oh, you seem nice. 5 You shouldn't be out here," or whatever. "If you need 6 a place to go, you can come to my place." 7 222 Q. Okay. And then Mr. Diacur asked 8 if you would be able to stay for free or if they expect 9 payment, and you responded "sort of." What did you 10 mean? 11 A. Like, well, they -- they -- that's 12 the thing. These people don't tell you, like -- 13 like -- like, they say, you know, "if you ever -- you 14 can come stay at my place," or whatever, but they 15 don't -- they don't say, like -- like -- like, "if you 16 want to come rent out a room," you know, "or come stay 17 at my place and rent" or whatever. Like, they -- like, 18 no talk of that or whatever. They don't really -- they 19 don't really say their intentions, I guess. But 20 usually -- and it usually ends up just the -- just men 21 just want to sleep with girls. I don't know. You 22 know? Like, that's what usually it ends up coming down 23 to. 24 223 Q. And then you had started an answer 25 to Mr. Diacur when you were talking about when you Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>	<p style="text-align: right;">52</p> <p>1 like, upfront because if somebody has secret motives or 2 whatever, it's not... 3 225 Q. You said that you sometimes feel 4 unsafe in an encampment? 5 A. Mm-hmm. 6 226 Q. And you've also slept outside of 7 an encampment under a tarp or unsheltered? 8 A. Mm-hmm. 9 227 Q. What's the difference between 10 living in a tent or living under a tarp? 11 A. What encampment? Nothing's 12 different. It's just -- like, at a tarp, you're not 13 living there. It's just something that you just, 14 like -- like, you're -- because there is a -- for quite 15 a while there where we were always having to, like -- 16 because you couldn't put up a -- you couldn't put up a 17 tent. Right? So when that bill ended or whatever, you 18 weren't allowed to put up a tent. And they said, like, 19 all the way down, like -- you know where Wild 20 Waterworks is? Like those type of -- that's what they 21 were telling us. So we were, like, you know, no. So 22 everybody was carrying around, like, just a tarp or 23 umbrellas or whatever they had. Right? And then if it 24 rained, then you, like -- then you'd, like, set that 25 up. Right? But in encampments, like, that -- that -- A589 Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>

1 they grow. Like, it becomes a -- like, a frequented
 2 place for people. Right?
 3 228 Q. What do you mean?
 4 A. Well, just because people are
 5 friends and -- you know what I -- like, it's just a --
 6 it becomes a little -- even if it's mini communities.
 7 You know? Like, because the encampment -- like, now
 8 you have to be, like, five tents or whatever, up to
 9 five tents. So if you have, like, five different
 10 people in them, or if, say, you're rooming with one or
 11 whatever, those people have friends, so then their
 12 friends stop by. Right? And then -- yeah, like, it --
 13 it's a bunch of little communities and little areas.
 14 You know? And -- but, like, still, people on the
 15 streets are, like, dangerous. You know? Like, almost
 16 everybody is, like, carrying, like, a weapon or, like,
 17 you know, a pole or something. You know?
 18 229 Q. Between a tent and using a tarp or
 19 an umbrella to stay outside, what do you prefer?
 20 A. Me? I -- I don't -- like -- like,
 21 if it's raining or something, like, I would rather --
 22 for me, I would just go -- rather, like, just find
 23 somewhere that I know, like, I'm not going to --
 24 because even being under a tarp, like, then
 25 everything -- like, you can't have your things on the

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A4874⁵⁵

1 --- Whereupon proceedings adjourned at 5:25 p.m.
 2 I HEREBY CERTIFY THE FOREGOING
 3 to be a true and accurate transcription
 4 of my shorthand notes
 5 to the best of my skill and ability.
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(Electronically signed on August 23, 2024)

Lydia Pak, Court Reporter
 Computer-Aided Transcription

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1 ground without them getting wet still because the rain
 2 moves. You know what I mean? So I'd just rather go
 3 find somewhere that's, like, still going to be dry that
 4 you can -- you know? Yeah, that or whatever, until the
 5 rain ends or until it lightens up, and then you run to
 6 the next spot, but -- yeah, I've had to -- like, I
 7 don't carry, like, very many things with me anymore
 8 just because I can't. For one, I can't. It's too
 9 heavy and too much to be bringing around everywhere. I
 10 mean, like, even, like, leaving things at, like,
 11 friends' apartments or whatever, it's just -- they have
 12 friends and -- and -- I don't know. People steal
 13 and...
 14 230 Q. Okay. Last question. You said
 15 that your reason for not reporting things to the police
 16 was that they might not be able to do anything about
 17 it. Are there any other reasons?
 18 A. Well, for one, like -- like,
 19 you -- well, out here, you get called, like, a rat or a
 20 snitch or whatever, and then people probably come after
 21 you to -- you know?
 22 MS. CROWE: Okay. Thank you very much,
 23 Misty. Those are my questions.
 24 THE DEPONENT: Okay.
 25

Nimigan Mihailovich Reporting Inc.
 (905) 522-1653

A590

Court File No. CV-21-00077817-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**ASHLEY POFF, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO,
SHAWN ARNOLD et al.**

Applicants

-and-

CITY OF HAMILTON

Respondent

AFFIDAVIT OF COREY MONAHAN
(Sworn May 12, 2022)

1. I, COREY MONAHAN of the City of Hamilton in the Province of Ontario, MAKE OATH AND STATE:
2. I am a 45 year old man.
3. I am in a person with a disability and in receipt of benefits from the Ontario Disability Support Program (ODSP). As a single person who is homeless, I receive approximately \$672.00 per month from ODSP for basic needs. I don't receive any shelter allowance while I am homeless. The shelter allowance is \$497.00 which is insufficient for the price of rent in the private rental market.
4. I have been on the access to housing wait list for what feels like 15 years and am still waiting for public housing.
5. I have been homeless my entire life except for small periods in a rental here and there.
6. My medical conditions include mental health (Fetal Alcohol Syndrome and ADHD), and substance use disorders. I also broke my back when I was 18 years old. As a result of my back condition and sleeping without a bed for so many years I always wake up in physical pain and it is very difficult for me to walk some ways and even brush my hair some days. The physical pain I experience contributes to my substance abuse because I am essentially self-medicating to alleviate the pain.

7. I have been homeless on and off for most of my adult life. The last housing I had was in 2021. I was housed for one year, when the landlord forged a notice to vacate and I was evicted. The Sheriff attended and kicked me out. I was completely blind-sided and did not have anything packed. I was immediately homeless and sitting in the back alley way of the house with nowhere to go. I stayed at the budget hotel hoping that I would find a new rental unit and I didn't and I ran out of money. I moved to Carter Park when I could no longer afford the hotel. I had erected a tent in Carter Park and three days after, the police and bylaw attended the park with trucks and bobcats to evict everyone and tear down their tents and throw out belongings. In response I packed my things and left to avoid interaction with the authorities and risk arrest or my possessions disposed.
8. I have stayed on and off in a tent at several different locations in Hamilton. For the past ten months, I have mostly stayed in tents. The following chart is a breakdown of the locations and general timeframes:

Location	Timeframe	Duration of stay	Outcome
Carter Park	2021	3 days	Evicted by By-Law officers
Gage Park (greenspace)	Late 2021	Three months	Evicted by By-law officers
Gage Park (parking lot)	Early 2022 until mid March 2022	Three months	Evicted by By-law officers
Ferguson	Back and Forth – 2021/2022	Days/weeks	Evicted by By-law officers
Various parks/Carter Park/Train Tracks	Present	Varies from days to a week	Evictions by by-law


9. David Buckle and Cole Gately, formerly of the City's Encampment Response Team under the previous Encampment Protocol, used to come by to check on me while I was at Gage Park. I have known David Buckle since I was 15 years old. They tried to get me inside, but the only available space was a dorm room at Mission Services. I do not do well in institutional settings.
10. I am not comfortable in shelters. I do not like sharing a shower and I don't do well in groups of strangers. I have a history of substance use. While I have a dependence on marijuana, I try to stay away from harder street drugs. Abstinence is very difficult in shelters, where drug use is all in your face.
11. Even though I am not comfortable in shelters, I do my best to stay inside. I stayed in Good Shepherd in March of this year for 3 days. I was doing arts and crafts and staff took issue with me using a knife to cut open a water bottle. I got in an argument with them and I was kicked out.

12. I then went to Salvation Army and stayed for a week. But I felt myself losing control and starting to lash out. Staff removed a safe that I had on my bed without my knowledge. I got angry and started arguing, and was banned for 30 days.
13. I also stayed at Mission Services this year. I left after 3 days because of the alcohol use in the shelter. I have Fetal Alcohol Syndrome and am trying to stay away from alcohol.
14. I find the erratic behaviour of those around me to be de-stabilizing. I do better in my own tent where I have some control over who is around me.
15. One of the first rules in shelters is that no drugs are allowed. I have a marijuana dependence, and it is also helpful to control my ADHD. I cannot use marijuana in the shelter and as a result I am at greater risk of destabilization when I am staying there and being kicked out for erratic behaviour.
16. I am more physically at risk in shelters because I do not do well with crowds of strangers because it destabilizes me. I have gotten into several fights in communal living settings.
17. I had three tents demolished by by-law within one month. I had nothing left. The City removed my belongings each time. Seeing your home disappear and the little possessions that I have is upsetting and psychologically draining because you feel kicked while you're down and you always have to try to start over again.
18. I have received tickets for being in public spaces, but this has not happened since Covid-19.
19. It would be nice to be able to stay in one spot instead of moving all over the place because it is hard to move all of my belongings day after day, and to not know from one day to the next where I am going to stay because I feel safer. I can control who is around me. When I stay in one location I can sleep much better. It was easier to concentrate and just feel healthier. When I have stayed in a tent in one location without being routinely evicted, I was the most stable I had been in years. I felt like I had control over myself and my space and was less physically and emotionally drained compared to when I am constantly packing and moving all over the place.
20. Being unable to stay in one location is very difficult. I can't sleep properly and hardly ever sleep. Moving all of the time is physically draining and psychologically draining.

21. Overall impact of evictions is that it is very traumatizing, emotionally draining, dysregulating, upsetting, physically draining and stressful.

22. Often times I have so many possessions that it is difficult to carry it away with me to relocate when by-law and police arrive with their trucks and bobcats. I have both returned to my space to see my life, "house" and possessions removed. More often than not though I am unable to remove everything I need and will leave with what I can and avoid watching the evictions and tear downs because watching it happen is too traumatic for me and adds to my sense of hopelessness. I do not know how people can be ok with doing this to us.

SWORN BEFORE ME in the City
of Hamilton, this 12th day of May, 2022


Corey Monahan


A Commissioner, etc.

Court File No. CV-21-00077817-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

KRISTEN HEEGSMAN, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO,
AND SHAWN ARNOLD, ET AL.

Applicants

-and-

CITY OF HAMILTON

Respondent

AFFIDAVIT OF Corey Monahan

I, Corey Monahan, of the City of Hamilton in the Province of Ontario, Affirm and say:

1. Since June 2022 have stayed in the following locations: Wesley / Wesley parking lot, John A. Macdonald, Central Park (end of railroad), Beasley Park (April 2022).
Nine Bay
this encampment has a large loud speaker that would tell of us
2. Victoria Park - I've been there since mid-April 2023.


- I was asked to move my tent in January 2023 from the location **A4880** outside of the HUB as I was kicked out of the Salvation Army shelter due to unfair practices at the shelter. When I was told to move, more tents appeared. During this move, I lost many belongings such as phone and computer as well as my tent.
- 3.

4. I have been impacted by on-going encampment evictions since June 2022 in the following ways:

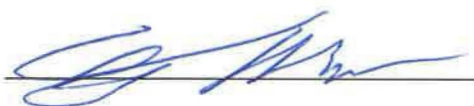
- loss of belongings - phone x3, computer
- loss of fingernails
- shoulder dislocation while moving tent
- ran over foot with buggy

5. I am currently at Victoria Park in an encampment there. Having to be told I need to move is very exhausting

AFFIRMED AND DECLARED)
before me at the City of Hamilton,)
in the Province of Ontario,)
this 25 day of April, 2023.)



A Commissioner etc.



<p>1 Court File No. CV-21-77187</p> <p>2 ONTARIO</p> <p>3 SUPERIOR COURT OF JUSTICE</p> <p>4</p> <p>5 B E T W E E N:</p> <p>6 KRISTEN HEEGSMAN, DARRIN MARCHAND, GORD SMYTH,</p> <p>7 MARIO MUSCATO, SHAWN ARNOLD, BRADLEY CALDWELL,</p> <p>8 CHRISTINE DELOREY, GLEN GNATUK, TAYLOR GOGO-HORNER,</p> <p>9 CASSANDRA JORDAN, JULIA LAUZON, AMMY LEWIS,</p> <p>10 ASHLEY MACDONALD, COREY MONAHAN, MISTY MARSHALL,</p> <p>11 SHERRI OGDEN, JAHMAL PIERRE, LINSLEY GREAVES and</p> <p>12 PATRICK WARD</p> <p>13 Applicants</p> <p>14</p> <p>15 and</p> <p>16</p> <p>17 CITY OF HAMILTON</p> <p>18 Respondent</p> <p>19</p> <p>20 --- This is the Cross-Examination of CORY MONAHAN, an</p> <p>21 Applicant, herein, on his Affidavits Sworn the 12th day</p> <p>22 of May, 2022, and affirmed the 25th day of April, 2023,</p> <p>23 taken via videoconference on the 15th day of August,</p> <p>24 2024.</p> <p>25</p> <p>Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>	<p>3</p> <p>1 TABLE OF CONTENTS</p> <p>2</p> <p>3 INDEX OF EXAMINATIONS: PAGE NO.</p> <p>4</p> <p>5 CORY MONAHAN: Affirmed..... 4</p> <p>6 CROSS-EXAMINATION BY MR. DIACUR..... 4</p> <p>7</p> <p>8</p> <p>9 INDEX OF UNDERTAKINGS</p> <p>10 Undertakings are noted by "U/T" and are found on the</p> <p>11 following pages: NONE</p> <p>12</p> <p>13 INDEX OF REFUSALS</p> <p>14 Refusals are noted by "R/F" and are found on the</p> <p>15 following pages: 15.</p> <p>16</p> <p>17 INDEX OF ADVISEMENTS</p> <p>18 Under AdviseMENTS are noted by "U/A" and are found on the</p> <p>19 following pages: NONE</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>
<p>2</p> <p>1 APPEARANCES:</p> <p>2 Sharon Crowe For the Applicants</p> <p>3 Wade Poziomka</p> <p>4 Curtis Sell</p> <p>5 Nnonyechi Okenwa</p> <p>6 Michelle Sutherland</p> <p>7</p> <p>8 Bevin Shores For the Respondent</p> <p>9 Jordan Diacur</p> <p>10</p> <p>11 ALSO PRESENT:</p> <p>12 Liz Marr Summer law student</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>	<p>4</p> <p>1 --- Upon commencing at 11:16 a.m.</p> <p>2 CORY MONAHAN: Affirmed.</p> <p>3 CROSS-EXAMINATION BY MR. DIACUR:</p> <p>4 1 Q. Sir, would you please state your</p> <p>5 full name for the record?</p> <p>6 A. Cory Robert Roscoe (ph) Monahan.</p> <p>7 2 Q. May I refer to you as Cory?</p> <p>8 A. Yes, sir.</p> <p>9 3 Q. I may also call you sir. Is that</p> <p>10 okay or is there another --</p> <p>11 A. Whatever is fine with me.</p> <p>12 4 Q. Okay. Well, I may call you sir as</p> <p>13 well.</p> <p>14 A. That's fine.</p> <p>15 5 Q. Your date of birth is April 26,</p> <p>16 1976? Is that right?</p> <p>17 A. Yes.</p> <p>18 6 Q. I think that makes you 48 years</p> <p>19 old. Is that right?</p> <p>20 A. Yes, sir. Yes, sir.</p> <p>21 7 Q. There are two affidavits that I</p> <p>22 have some questions for you about.</p> <p>23 A. Of course.</p> <p>24 8 Q. And potentially another couple of</p> <p>25 documents that are about you. The first of those</p> <p>Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>

5

1 affidavits is dated May 12, 2022. I want to make sure
2 that you have a copy of that.

3 **A. Yeah, right in front of me.**

4 9 **Q.** Okay. I can also put it up on my
5 screen. The second affidavit is dated April 25, 2023.
6 I just want to make sure you have that as well because
7 I'll be referring to it.

8 MS. CROWE: April 25, 2023?

9 MR. DIACUR: I believe that's the date.

10 Just let me confirm that. I could have that wrong.
11 Yes. So the other one is the largely handwritten one.
12 It says it's sworn April 25, 2023, commissioned by
13 Emily O'Keefe.

14 THE DEPONENT: The day before my
15 birthday?

16 MS. CROWE: I think --

17 MR. DIACUR: Yes, the day before your
18 birthday.

19 MS. CROWE: Unfortunately, I don't
20 think that we have that one.

21 MR. DIACUR: I can also put that one up
22 on the screen. I can make it as large as needed.

23 MS. CROWE: Yes, please.

24 MR. DIACUR: Okay. I'm not going to
25 come to that for a bit anyway.

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6

1 MS. CROWE: Okay.

2 BY MR. DIACUR:

3 10 **Q.** We can address the first one. The
4 affidavit that you do have in front of you, sir, have
5 you reviewed that recently?

6 **A. Yes.**

7 11 **Q.** Can you confirm for me that the
8 contents remain accurate?

9 **A. Of course.**

10 12 **Q.** There's no changes that you'd like
11 to make to that?

12 **A. Not that I can see.**

13 13 **Q.** Cory, how long have you lived in
14 Hamilton?

15 **A. My entire life.**

16 14 **Q.** Born in Hamilton, resided here --

17 **A. St. Joseph's was my place of**
18 **birth.**

19 15 **Q.** Where are you currently residing?

20 **A. No fixed address.**

21 16 **Q.** Understood. You're presently
22 unhoused, living --

23 **A. Yes, in a tent.**

24 17 **Q.** In a tent? Where is the tent
25 located?

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7

1 **A. City Hall, kind of off the street**
2 **from City Hall.** A4882

3 18 **Q.** Do you know if it's located in a
4 green space, a park, or on a sidewalk? What's the
5 location?

6 **A. Sidewalk. I had to move there**
7 **because my mother was trying to find me. The only**
8 **place that she could possibly find me is if I'm able to**
9 **be seen.**

10 19 **Q.** Okay. So that makes it easier for
11 your mother to locate you?

12 **A. Yes.**

13 20 **Q.** Where does your mother live?

14 **A. East Hamilton.**

15 21 **Q.** Does she have a house?

16 **A. Her and her husband have a**
17 **one-bedroom apartment.**

18 22 **Q.** How long have you been located
19 there near City Hall?

20 **A. Four days.**

21 23 **Q.** Where were you before that?

22 **A. Carter Park, the recreational**
23 **centre on the north side.**

24 24 **Q.** I know where that is. How long
25 were you there?

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8

1 **A. About a week. Before that, I**
2 **was -- I had crashed on my friend's couch because it**
3 **was too hot for the dog outside, so I found alternative**
4 **residence for the puppy. And in order for everybody to**
5 **be safe, I had to move in with him too.**

6 25 **Q.** What's the dog's name?

7 **A. Duke. He's three.**

8 26 **Q.** You've had Duke his whole life?

9 **A. No. I rescued him.**

10 27 **Q.** Rescued him from where --

11 **A. About a year ago. Yeah, they were**
12 **going to put him down.**

13 28 **Q.** From a dog shelter you obtained
14 him?

15 **A. No, no, no, from a breeder, but**
16 **the breeder was having problems with him, so they gave**
17 **him to me since I'm pretty well known for hard-case**
18 **dogs, that I can train them well.**

19 29 **Q.** So you've been training dogs for a
20 long time?

21 **A. Oh, yeah, yeah, a good 20 years at**
22 **least.**

23 30 **Q.** Is Duke the only dog that you have
24 currently?

25 **A. Yes.** A598

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<p style="text-align: right;">9</p> <p>1 31 Q. You said you had him for about a 2 year. Did you have a dog before that? 3 A. I haven't had a dog in ten years 4 before that. I had a bad incident where I lost a puppy 5 because of the pit bull ban. And she was my favourite, 6 so it kind of got me bad. 7 32 Q. Did that happened about ten years 8 ago? 9 A. Yeah. 10 33 Q. And so the friend that you moved 11 in with -- 12 A. Yeah, he -- 13 34 Q. You said that you crashed there. 14 How long did you stay with him? 15 A. About a month. And he changed his 16 mind and decided to get his own dog, so I had to move 17 my dog out because he doesn't get along with other 18 dogs. 19 35 Q. Prior to crashing with the friend, 20 where were you staying? 21 A. In a tent everywhere, couple days 22 here, couple days there. 23 36 Q. So you've been moving a tent 24 around for a long period before that? Is that fair? 25 A. It's not like I -- I get told to Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>	<p style="text-align: right;">11</p> <p>1 44 Q. Are there any other friends that 2 you've crashed with or couch surfed with? A4883 3 A. Over the years, I've -- not since 4 COVID, though. 5 45 Q. Before COVID, that was something 6 you could do but not since? 7 A. Well, it seems like everybody is a 8 little more paranoid to let people stay over after 9 COVID. 10 46 Q. So is that true, any couch surfing 11 that happened before COVID? 12 A. Oh, yeah. Yeah, right before 13 COVID I was doing that. And as soon as COVID hit, it 14 was over. The landlords came down hard on the people 15 that rented the places, and people who rented the 16 places asked me to leave. 17 47 Q. In terms of the places that you've 18 stayed, that you've been moving from and to, have they 19 typically been parks? 20 A. Oh, yeah, definitely. 21 48 Q. I know that you're staying 22 currently behind City Hall on a sidewalk -- 23 A. Yeah. That -- 24 49 Q. -- but have you ever done that 25 before? Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>
<p style="text-align: right;">10</p> <p>1 move, but I don't wait for the City to come to move me. 2 37 Q. Understood. But you've had the 3 same tent for a while? I suppose that's -- 4 A. Yep, yep. 5 38 Q. And you've been moving it around 6 when it's indicated to you that you should? 7 A. Yeah. If I get asked to leave, I 8 leave. 9 39 Q. The friend that you stayed with 10 for a period, was anything paid to that friend in 11 exchange? 12 A. Of course. 13 40 Q. You paid some rent? 14 A. Oh, yeah. 15 41 Q. Do you recall where the friend was 16 living? 17 A. King and Sherman -- no, Main and 18 Sherman -- no, King and Sherman. What is it? 196 King 19 Street East, Apartment 36, I believe. 20 42 Q. Got it. Can you share the 21 friend's name with us? 22 A. Phil. 23 43 Q. How long have you known Phil? 24 A. Six years. That's the only reason 25 I trusted him around my dog. Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>	<p style="text-align: right;">12</p> <p>1 A. Pardon me? 2 50 Q. Have you ever done that before -- 3 A. No, no, I've never done that. No, 4 I've never done that before. 5 51 Q. Before now, in the last four days, 6 you've been encamped in a tent in parks in various 7 places? 8 A. Yeah, definitely. 9 52 Q. Aside from the period where you 10 were couch surfing with a friend? 11 A. Right. It's been very sporadic. 12 It's not good for my dog or me. I need some stability. 13 53 Q. In terms of where you're located 14 now, I understand it's so your mother can locate you. 15 Does she provide support to you? Does she provide any 16 food or other goods to you? 17 A. No, no, she's just providing 18 emotional support. 19 54 Q. Does she come to visit you? 20 A. Yeah, on a regular basis. 21 55 Q. Is it every day or every other 22 day? 23 A. Yeah, pretty much. Whenever she 24 can find me. It's really nice to be cared about. 25 56 Q. There's no prospect of you being Nimigan Mihailovich Reporting Inc. (905) 522-1653 A599</p>

<p>13</p> <p>1 able to stay with your mother?</p> <p>2 A. They live in a one-bedroom</p> <p>3 apartment. There's already two of them, and then</p> <p>4 there's me and my dog, so it's like -- I don't think</p> <p>5 that's a good idea.</p> <p>6 57 Q. Do you have any siblings?</p> <p>7 A. No. Well, yeah, but none that I</p> <p>8 know.</p> <p>9 58 Q. Do you have any other family</p> <p>10 members in Hamilton?</p> <p>11 A. My adopted mother is still here,</p> <p>12 her entire family, my dad's family, but I don't know</p> <p>13 any of them because, well, I was the black sheep. I'm</p> <p>14 almost 50 now, so I can't be, like, asking them for</p> <p>15 handouts. It just doesn't seem right.</p> <p>16 59 Q. The mother that you referenced who</p> <p>17 comes to see you, that's your natural mother?</p> <p>18 A. Yes.</p> <p>19 60 Q. And were you adopted as a baby?</p> <p>20 A. Yeah, at three weeks old.</p> <p>21 61 Q. Did you have any sort of</p> <p>22 relationship with your adopted family?</p> <p>23 A. Not until now. What do you</p> <p>24 mean -- what? I'm sorry.</p> <p>25 62 Q. Well, I understand your natural</p> <p>Nimigan Mihailovich Reporting Inc.</p> <p>(905) 522-1653</p>	<p>15</p> <p>1 relevant.</p> <p>2 THE DEPONENT: I'm 48 -- A4884</p> <p>3 MS. CROWE: Can I suggest that you ask</p> <p>4 questions that are more directed in that way as opposed</p> <p>5 to trying to get him to disclose the nature of his</p> <p>6 relationships?</p> <p>7 MR. DIACUR: No. I think it's</p> <p>8 perfectly relevant to ask him questions about the</p> <p>9 nature of the relationship with his family. I'm not</p> <p>10 going to agree to limit the questions that I ask on</p> <p>11 that subject. It's relevant. The questions are</p> <p>12 relevant.</p> <p>13 R/F MS. CROWE: I'm going to object, and I</p> <p>14 think the questions should be "What are your options?</p> <p>15 Can you stay with family?"</p> <p>16 MR. DIACUR: Well, we have to establish</p> <p>17 who they are and what his relationship is to them</p> <p>18 before we can ask those questions. I don't think</p> <p>19 there's anything improper about laying that groundwork.</p> <p>20 MS. CROWE: Okay.</p> <p>21 BY MR. DIACUR:</p> <p>22 67 Q. The question is, when is the last</p> <p>23 time that you saw your adopted mother?</p> <p>24 A. A year and a half ago.</p> <p>25 68 Q. That was due to COVID? You</p> <p>Nimigan Mihailovich Reporting Inc.</p> <p>(905) 522-1653</p>
<p>14</p> <p>1 mother comes to visit you --</p> <p>2 A. Yeah, but before -- before, like,</p> <p>3 COVID, I had a regular relationship with my adopted</p> <p>4 family. My adopted mom and me are very close. We're a</p> <p>5 lot alike and, yeah, we still talk on a regular basis.</p> <p>6 This -- my birth mom is all new. This is -- yeah, it's</p> <p>7 all new.</p> <p>8 63 Q. So you have a standing long-term</p> <p>9 relationship with your adopted family?</p> <p>10 A. Yes.</p> <p>11 64 Q. And you've just recently become</p> <p>12 better acquainted with your birth mother?</p> <p>13 A. Exactly.</p> <p>14 65 Q. When was the last time --</p> <p>15 A. It was in the last --</p> <p>16 66 Q. Sorry, go ahead.</p> <p>17 A. It was in the last, like, couple</p> <p>18 weeks. I saw her last night.</p> <p>19 MS. CROWE: Mr. Diacur, these questions</p> <p>20 are very personal. Can you explain the relevance,</p> <p>21 please?</p> <p>22 MR. DIACUR: Well, of course. We're</p> <p>23 testing his evidence about having no other place to go</p> <p>24 than encamping. The questions about his family, their</p> <p>25 residences and their ability to support him are clearly</p> <p>Nimigan Mihailovich Reporting Inc.</p> <p>(905) 522-1653</p>	<p>16</p> <p>1 brought that up when you were discussing --</p> <p>2 A. Yeah, I haven't -- I haven't been</p> <p>3 going around because of COVID. She's 75 now. I don't</p> <p>4 want her to --</p> <p>5 69 Q. Does your mother reside in the</p> <p>6 city?</p> <p>7 A. Yeah. She has COPD, so I can't go</p> <p>8 around because --</p> <p>9 70 Q. Does she have a residence in the</p> <p>10 city?</p> <p>11 A. Of course. She has a one-bedroom</p> <p>12 apartment on the mountain.</p> <p>13 71 Q. Sir, I'd like to take you now to a</p> <p>14 document that was created about you by a Dr. Jill</p> <p>15 Wiwcharuk. Do you know who that is?</p> <p>16 A. Of course.</p> <p>17 72 Q. I'd like to show it to you. It's</p> <p>18 attached to an affidavit that she has sworn. I'll put</p> <p>19 it up on the screen, but let me know if you have a hard</p> <p>20 copy that you can refer to.</p> <p>21 A. I got one right here in front of</p> <p>22 me.</p> <p>23 73 Q. This is a letter on the Shelter</p> <p>24 Health Network letterhead dated May 31, 2022. Do you</p> <p>25 have that?</p> <p>Nimigan Mihailovich Reporting Inc.</p> <p>(905) 522-1653</p> <p>A600</p>

17

1 **A. Yeah.**

2 74 **Q.** It's marked as Exhibit A to the

3 affidavit of Jill Wiwcharuk?

4 **A. Dr. Jill's a nice lady.**

5 75 **Q.** I understand that you have met

6 with Dr. Jill Wiwcharuk.

7 **A. Yeah, on many occasions.**

8 76 **Q.** When was the last time you saw

9 her?

10 **A. This would have been it.**

11 77 **Q.** So in May of 2022?

12 **A. Yeah.**

13 78 **Q.** She's a physician. Has she ever

14 given you any --

15 **A. She's a public health nurse.**

16 79 **Q.** I understand that she's a

17 physician. She identifies herself as a doctor in this

18 letter --

19 **A. Well, she is, but then -- she's a**

20 **public health doctor, sorry.**

21 80 **Q.** Got it. No, no, understood. Has

22 she ever provided any medical treatment to you?

23 **A. Of course.**

24 81 **Q.** Just --

25 **A. My --**

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18

1 82 **Q.** Sorry. Just as a clarification,

2 this letter references you and your date of birth, but

3 I believe there may be a typographical error in your

4 name. You spell your name C-O-R-E-Y; correct?

5 **A. No.**

6 83 **Q.** That's not correct?

7 **A. There's no E in my name.**

8 84 **Q.** Okay. I just want to clarify

9 something, then. If you could go to your first

10 affidavit dated May 12, 2022. I'll put it up on the

11 screen.

12 **A. Yeah, I know. There's obviously**

13 **an error there.**

14 85 **Q.** I just want to confirm. The typo

15 or the error is in the affidavit --

16 **A. Yeah.**

17 86 **Q.** -- not in Dr. Wiwcharuk's letter?

18 **A. No, no. She's my doctor. She**

19 **knows how to spell my name properly.**

20 87 **Q.** Okay. Just to be clear again,

21 this affidavit, May 12, 2022 --

22 **A. It has an E in it, but there**

23 **shouldn't be one.**

24 88 **Q.** No, I understand that's an error,

25 but I had asked you previously if there were any errors

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19

1 in this document. Are there any other errors you're

2 aware of in this document? **A4885**

3 **A. Well, you would know better than I**

4 **would. You've obviously been even -- been preparing**

5 **for this a lot better than I have.**

6 89 **Q.** What have you done in terms of

7 preparation for today?

8 **A. Staying alive.**

9 90 **Q.** I understand you've reviewed this

10 document recently?

11 **A. No. I've looked it over, but I --**

12 **I'm not a lawyer. I don't know what you guys expect of**

13 **me.**

14 91 **Q.** I'm just asking. This document,

15 which was prepared in your name and signed by you,

16 sworn to by you, when was the last time that you

17 reviewed this before today?

18 **A. I don't know. I have no idea.**

19 92 **Q.** You don't recall reviewing this

20 document before today?

21 **A. Well, of course not. I haven't --**

22 **it was yesterday.**

23 93 **Q.** So you reviewed this document

24 yesterday?

25 **A. Yeah. It was read to me.**

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20

1 94 **Q.** I just want to clarify. There is

2 no other error in this document that you're aware of?

3 **A. Reviewing the -- the -- the**

4 **document was done as somebody read it to me, so there's**

5 **no way I could have told you that there was a typo or**

6 **not, because it was read to me.**

7 95 **Q.** Understood. So the document was

8 read to you, you listened, you confirmed that it was

9 accurate?

10 **A. Right.**

11 96 **Q.** Thank you. Turning back to

12 Dr. Wiwcharuk's letter, Dr. Wiwcharuk references some

13 notes that she has referred to throughout this time,

14 notes that indicate -- or one note dated March 9, 2022.

15 This is in the first paragraph. Do you see that?

16 **A. Yeah.**

17 97 **Q.** Do you know what notes she's

18 referencing?

19 **A. She has a notebook that she takes**

20 **notes in.**

21 98 **Q.** So these are her notes?

22 **A. Oh, no, no. This is in addition.**

23 **I also explained to her that I was frustrated that I**

24 **can't get into a shelter, and that's what the note --**

25 **what she means by notes. "He also says." A601**

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<p>21</p> <p>1 99 Q. I understand that she's</p> <p>2 referencing written documents. She refers --</p> <p>3 A. No --</p> <p>4 100 Q. -- to one --</p> <p>5 A. -- no, it's not a written -- there</p> <p>6 is no written document. She's just stating that I</p> <p>7 also -- I also said -- that's what she means by that.</p> <p>8 101 Q. So she's recording things that you</p> <p>9 told her?</p> <p>10 A. Yes. My -- my other -- yeah,</p> <p>11 yeah, that I wasn't able to get into any shelters</p> <p>12 because I have been kicked out, and I have a dog now,</p> <p>13 and all kinds of things. That wasn't at this time,</p> <p>14 though.</p> <p>15 102 Q. She also references the health</p> <p>16 care practitioner who saw you. She says "at that</p> <p>17 time." I believe that's a reference back to March 9,</p> <p>18 2022. She references a different health care</p> <p>19 practitioner. Do you know who that is?</p> <p>20 A. There's only two places that I've</p> <p>21 been.</p> <p>22 103 Q. Okay --</p> <p>23 A. The Hub, the doctor at the Hub or</p> <p>24 the doctor at the Wesley Centre.</p> <p>25 104 Q. So this would be a doctor or a</p> <p>Nimigan Mihailovich Reporting Inc.</p> <p>(905) 522-1653</p>	<p>23</p> <p>1 stimulant use disorder?</p> <p>2 A. No. There's no diagnosis, but I</p> <p>3 do use.</p> <p>4 109 Q. There's never been a medical</p> <p>5 diagnosis of --</p> <p>6 A. I don't know -- I think that -- I</p> <p>7 don't understand how -- what would a medical diagnosis</p> <p>8 of that be.</p> <p>9 110 Q. Has a physician told you that you</p> <p>10 have those conditions?</p> <p>11 A. No.</p> <p>12 111 Q. Has a physician ever offered you</p> <p>13 treatment for those conditions?</p> <p>14 A. No, but --</p> <p>15 112 Q. Have you -- sorry.</p> <p>16 A. Sorry, you go ahead.</p> <p>17 113 Q. Okay. Have you ever received any</p> <p>18 treatment for any mental health condition?</p> <p>19 A. Not -- no mental health. I'm -- I</p> <p>20 have been diagnosed with fetal alcohol syndrome. I've</p> <p>21 been diagnosed with attention deficit hyperactivity</p> <p>22 disorder. I've been diagnosed with attention deficit</p> <p>23 disorder. ODD is oppositional defiance disorder.</p> <p>24 These all stem from my -- my alcoholic -- alcoholism as</p> <p>25 a baby.</p> <p>Nimigan Mihailovich Reporting Inc.</p> <p>(905) 522-1653</p>
<p>22</p> <p>1 different health care practitioner either at the Hub or</p> <p>2 at the Wesley Centre?</p> <p>3 A. Yes.</p> <p>4 105 Q. And it does reference that she was</p> <p>5 able to help secure a bed for you at Mission Services</p> <p>6 Men's Centre --</p> <p>7 A. Yeah, I stayed for quite a while,</p> <p>8 actually, but then I was --</p> <p>9 106 Q. Is that true that a health care</p> <p>10 practitioner assisted you with getting that shelter?</p> <p>11 A. Well, I don't know if she assisted</p> <p>12 me. She more, like, pointed me in the right direction.</p> <p>13 107 Q. How long did you stay at Mission</p> <p>14 Services Men's Shelter at that time?</p> <p>15 A. Maybe three weeks. Like, you</p> <p>16 know, they have an alcoholics program there, and I was</p> <p>17 born with fetal alcohol syndrome, so I can't really be</p> <p>18 around that kind of thing. It causes me great grief</p> <p>19 and internal pain. It makes it hard for me to keep my</p> <p>20 anger management managed.</p> <p>21 108 Q. Dr. Wiwcharuk says here that she</p> <p>22 knows that you suffer from opioid use disorder,</p> <p>23 stimulant use disorder, and she states "I am convinced</p> <p>24 that he has undiagnosed mental health issues." Is that</p> <p>25 true that you've been diagnosed with opioid use and</p> <p>Nimigan Mihailovich Reporting Inc.</p> <p>(905) 522-1653</p>	<p>24</p> <p>1 114 Q. Have you ever sought treatment for</p> <p>2 those conditions?</p> <p>3 A. Yeah. Well, I was under treatment</p> <p>4 throughout my entire school. I graduated twice.</p> <p>5 115 Q. Did you ever speak to</p> <p>6 Dr. Wiwcharuk about those mental health conditions?</p> <p>7 A. No, because I was under the</p> <p>8 understanding that most of that stuff buried itself</p> <p>9 with age.</p> <p>10 116 Q. Who told you that?</p> <p>11 A. Well, the -- my childhood doctor</p> <p>12 told me that most of this stuff goes away with age.</p> <p>13 117 Q. You haven't shared that with any</p> <p>14 medical practitioner since then?</p> <p>15 A. I do, but they're under the</p> <p>16 impression that it also goes away with age. Because</p> <p>17 there's a difference between ADD and adult ADD. And</p> <p>18 then there's ADHD, and then there's adult ADHD. I was</p> <p>19 diagnosed as a child, so it's just regular childhood,</p> <p>20 and that stuff goes away, but I believe that I still</p> <p>21 have adult symptoms. So -- but, no, I haven't been</p> <p>22 diagnosed yet, but I guarantee that I will because I'm</p> <p>23 on ODSP for it.</p> <p>24 118 Q. Dr. Wiwcharuk also references near</p> <p>25 fatal opioid overdoses --</p> <p>Nimigan Mihailovich Reporting Inc.</p> <p>(905) 522-1653</p>

1 **A. Oh, yeah.**
2 119 **Q.** -- that's required multiple doses
3 of naloxone --
4 **A. Yes.**
5 120 **Q.** -- and emergency care?
6 **A. Yes, on two or three different**
7 **occasions.**
8 121 **Q.** Do you recall when those occasions
9 were?
10 **A. Four years ago.**
11 122 **Q.** That's the most recent?
12 **A. Yeah.**
13 123 **Q.** All right. I'd like to turn to
14 your first affidavit. That's the one you have a copy
15 of in front of you, May 12, 2022. I'm just going to
16 jump there myself. Paragraph 3 -- you just referenced
17 that you receive ODSP. Is that still correct?
18 **A. Yes.**
19 124 **Q.** Is that monthly?
20 **A. Yes.**
21 125 **Q.** You referenced that the mental
22 conditions are the disability that qualifies you for
23 ODSP --
24 **A. Not only that -- not only that,**
25 **but I've also broken my back and both of my ankles, and**
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1 **I've had multiple concussions as well.**
2 126 **Q.** Right. That's referenced later in
3 your affidavit. All of that is what's qualifying you
4 for ODSP?
5 **A. Yes, sir. I tried to retrain, but**
6 **my ADHD symptoms made it almost impossible.**
7 127 **Q.** I understand that you have made --
8 and you reference this in paragraph 4 -- an Access to
9 Housing application. Is that true?
10 **A. Yeah, yeah.**
11 128 **Q.** I understand that that was
12 submitted --
13 **A. That was 12 years ago.**
14 129 **Q.** Well, I understand that an Access
15 to Housing application was submitted in July of 2020.
16 Does that sound right --
17 **A. More recently, yes.**
18 130 **Q.** I understand that you were housed
19 at an address, 28 Madison Avenue, in Hamilton?
20 **A. Sure. Yes, I was.**
21 131 **Q.** That was from October 2020 to
22 November 30, 2021. Is that right?
23 **A. Yeah, yeah. My landlord was**
24 **breaking into my apartment when I wasn't home, and then**
25 **she -- and then she forged a promise to vacate and gave**
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1 **it to the sheriff who promptly evicted me.** A4887
2 132 **Q.** Understood. I'll have a couple of
3 questions for you about that. The Madison Avenue, was
4 it an apartment?
5 **A. Yeah, it was a room in a house.**
6 **Her name was Sabine (ph).**
7 133 **Q.** And was that obtained as part of
8 the Access to Housing application? Is that how you --
9 **A. No, I had a -- I had a housing**
10 **worker from Wesley Centre who was working on finding**
11 **me -- applying for apartments for me.**
12 134 **Q.** Understood. But that was due to
13 the Access to Housing application that you filled
14 out --
15 **A. No. I think it was a separate --**
16 **a separate thing, like just a housing worker.**
17 135 **Q.** Okay. So you had a separate case
18 worker working with you?
19 **A. Yes.**
20 136 **Q.** You say in paragraph 4 that you've
21 been on the Access to Housing wait list for what feels
22 like 15 years.
23 **A. Well, it has been because that was**
24 **when I first applied, and then they lost track of me.**
25 137 **Q.** Right. Well, that's the question
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1 that I have for you. How often have you been housed in
2 the last 15 years?
3 **A. I'd say half the time.**
4 138 **Q.** Is that relatively short-term each
5 time or are there periods where you've been housed for
6 a long period of time?
7 **A. There have been a few periods**
8 **where I've been housed for a year here, a year there,**
9 **and then there have been times when I've not gotten**
10 **along with my roommates, so I just left. But up until**
11 **recently after COVID, I have never, ever, ever had a**
12 **problem finding a place to sleep on a couch of a friend**
13 **of mine until COVID. Because the landlords have too**
14 **much power now.**
15 139 **Q.** That's a change you've noticed
16 since COVID began?
17 **A. Oh, huge change since COVID began.**
18 140 **Q.** I understand that you've also
19 worked with Mission Services to try to obtain housing.
20 Is that right?
21 **A. Yes.**
22 141 **Q.** So you've had a case worker at the
23 Wesley Centre?
24 **A. Yeah. They're the ones that ever**
25 **did anything.** A603
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1 142 Q. You've also had a case worker at
 2 Mission Services? Is that true?
 3 A. They tried to set me up with the
 4 same landlord in the same house.
 5 143 Q. That's a question that I have for
 6 you. I understand that Mission Services, in December
 7 of 2021, made arrangements for housing. You're saying
 8 that's with the same landlord as before?
 9 A. Yes, yes. They actually had me do
 10 an appointment down in the east end at one of the --
 11 what do they call it -- a section for people that can't
 12 take care of themselves. There's inhouse doctors.
 13 They have rooms but that are shared.
 14 144 Q. A residential care facility? Is
 15 that what you're referring to?
 16 A. That's exactly what -- yes, that
 17 would be it.
 18 145 Q. So they set you up with a
 19 residential care facility --
 20 A. And I went -- I went to the
 21 appointment and they denied me.
 22 146 Q. I just want to be clear. Was that
 23 with the same landlord as the Madison
 24 Avenue apartment --
 25 A. No, no, it wasn't. It wasn't.
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1 But they did try to do that too. Because she's a very
 2 well-known landlord.
 3 147 Q. On what basis was the residential
 4 care facility declining to house you?
 5 A. I don't -- I didn't really ask. I
 6 was kind of upset because it was kind of a guarantee,
 7 at least I thought it was, so I just --
 8 148 Q. They just said no --
 9 A. Instead of causing issues, I just
 10 decided to just take the high road.
 11 149 Q. The City of Hamilton maintains
 12 written records when individuals interact with the
 13 City-funded homelessness-serving system. Are you aware
 14 of that?
 15 A. No.
 16 150 Q. Would you sign an authorization
 17 permitting records relating to you maintained as part
 18 of those notes to be disclosed in this litigation?
 19 A. I need to discuss that with my
 20 lawyer.
 21 151 Q. We'll provide an authorization for
 22 you to consider it.
 23 A. Thank you.
 24 152 Q. In all fairness, I should note
 25 that I understand that at the time that shelter was
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1 offered to you in December 2021, those notes may show
 2 that Mission Services noted that when the time came for
 3 you to move in, you did not attend. A4888
 4 A. Oh, well, yeah, that's also true.
 5 It's kind of hard to keep an apartment when you don't
 6 have a phone or a way to get to the -- to the
 7 appointment.
 8 153 Q. I just want to be clear. You --
 9 A. I was -- I was late. I was late.
 10 I was not unattending. I go to Mission Services all
 11 the time. I was living right by there. But they had
 12 access to housing rooms, short-term and long-term rooms
 13 where you pay for rent, but you're still not allowed to
 14 have any kind of company or anything, actually, but you
 15 still get to eat.
 16 154 Q. I understand that there are also
 17 short-term shelter options available, but --
 18 A. Right.
 19 155 Q. -- just about this time,
 20 December 2021, residential care facility, a spot is
 21 offered. As I understand --
 22 A. I went to the -- I went to the
 23 appointment. I sat there and we had the -- the
 24 meeting, and then I got back to the Salvation Army and
 25 they told me that I was denied. It was kind of weird,
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1 too, because one of the nurses that works there is a
 2 friend of mine's wife. That might have been why.
 3 156 Q. You indicated that you attended
 4 late. How late did you attend --
 5 A. Oh, no. No, no, no, no, no. That
 6 was -- that was the Mission Services one. The one that
 7 I got from the Salvation Army for this residential care
 8 facility was -- I wasn't late for the appointment at
 9 all. I made it. I took a bus there. I was there
 10 with -- with bells on. I sat down, had the
 11 appointment, then left, then got back to the shelter,
 12 and they told me that I didn't get it.
 13 157 Q. I think I understand now. I think
 14 we're talking about two different times --
 15 A. And what you're talking about was
 16 the inhouse rooms that they had at the actual facility.
 17 They gave me a choice to move into one of the houses --
 18 or one of the rooms that they had in the building.
 19 158 Q. I see. So Mission Services
 20 offered you shelter at the Mission Services location --
 21 A. Yes, with my own private room, but
 22 I'd still have to keep a curfew, no visitors. I'd pay
 23 rent and -- yeah, it just didn't seem right to me.
 24 159 Q. Okay. I understand now. Mission
 25 Services offers you that shelter --
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		33
1	A. Yeah.	
2	160 Q. -- and you did not intend to	
3	accept that shelter --	
4	A. No, it didn't seem right to me.	
5	161 Q. And then on a separate occasion	
6	via Salvation Army --	
7	A. Right.	
8	162 Q. -- there was a meeting --	
9	A. At a --	
10	163 Q. -- at a residential care facility?	
11	A. Yes, yes.	
12	164 Q. Okay. When did that happen?	
13	A. I'd say about a year ago now,	
14	maybe about six months, actually. No, no, it was about	
15	a year ago, right before I got my dog.	
16	165 Q. Was it in the summer last year?	
17	Does that sound right?	
18	A. Just around the middle of summer	
19	last year, yes, I believe so.	
20	166 Q. Your recollection is you were	
21	given no reason why that residential care facility	
22	wasn't available to you?	
23	A. No. There was rooms available.	
24	They just didn't give it to me.	
25	167 Q. Was there any follow-up via	
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		34
1	Salvation Army, to your knowledge?	
2	A. Oh, yes, of course. The ladies	
3	that work at the Salvation Army do a really good job.	
4	It's really hard to deal with today's landlords.	
5	168 Q. Turning to paragraph 6 in your	
6	affidavit, you mention medical conditions. You also	
7	reference what you told me earlier that you broke your	
8	back when you were 18 years old?	
9	A. Yup.	
10	169 Q. How did that come to pass?	
11	A. I fell off a roof four storeys	
12	high.	
13	170 Q. Was that for work? Or what was	
14	the reason that you were on the roof?	
15	A. It was accidental.	
16	171 Q. What was the reason you were on	
17	the roof?	
18	A. Oh, I lived there.	
19	172 Q. Okay. Were you doing maintenance?	
20	A. Yes.	
21	173 Q. Did you receive medical care at	
22	that time?	
23	A. I did a year and a half in the	
24	hospital.	
25	174 Q. And you recovered from that --	
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		35
1	A. Completely. But with -- obviously	
2	not -- there's no recovery from a back injury like that	
3	completely. But as good as possible? Yeah, I	
4	recovered.	
5	175 Q. Turning to paragraph 7 of your	
6	affidavit -- this is at the top of the second page --	
7	you reference that, as of the time of this affidavit in	
8	2022, the last housing you had was in 2021 --	
9	A. Yup.	
10	176 Q. -- and you reference what you told	
11	me earlier, the landlord forged a note as to vacate?	
12	A. Yes.	
13	177 Q. This was the Madison Avenue --	
14	A. Yes, yes.	
15	178 Q. -- apartment?	
16	A. Yes. Right before the end of the	
17	fall this happened, so just as winter was coming.	
18	179 Q. Upon the sheriff attending, you	
19	say that you were kicked out by the sheriff. Where did	
20	you go?	
21	A. I went to the Budget motel.	
22	180 Q. Where is that Budget motel that	
23	you went to?	
24	A. Sanford and King.	
25	181 Q. Again, in fairness, I understand	
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		36
1	that there was some contact with the City-funded	
2	homelessness-serving system at that time and that you	
3	advised them that you were evicted from the unit you	
4	were in --	
5	A. Mm-hmm.	
6	182 Q. -- due to damage to the unit.	
7	Does that sound familiar?	
8	A. What unit? What are you talking	
9	about?	
10	183 Q. We're talking about the Madison	
11	Avenue property.	
12	A. There was no damage. She made up	
13	whatever she wanted to, just to get me out. The reason	
14	that I was evicted was because she forged my name on a	
15	promise to vacate, and then put the date down as that	
16	date and then handed it to the sheriff.	
17	184 Q. I understand that that's your	
18	evidence. But in fairness, I understand that there are	
19	records that indicate that there was damage to the unit	
20	that --	
21	A. Can I see the -- is there photos?	
22	185 Q. I'm sorry?	
23	A. Is there photos?	
24	186 Q. I don't know. What I'm telling	
25	you is what I understand --	
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1 **A. Yeah, okay. Well, they can say**
2 **whatever they want to say --**
3 187 **Q.** -- and I've asked for an
4 authorization to disclose documents. But does it sound
5 familiar to you that there was an allegation that there
6 was damage --
7 **A. No.**
8 188 **Q.** -- to the unit?
9 **A. No.**
10 189 **Q.** I understand that they were also
11 told that guests that were invited to the unit by you
12 were using drugs on the property. Does that sound
13 familiar to you?
14 **A. My son, my child, he has some**
15 **problems.**
16 190 **Q.** Is that true that your son was a
17 guest in the unit and was using drugs there?
18 **A. I believe that he was, yeah.**
19 191 **Q.** And I also understand that this
20 was during COVID lockdown. Is that true?
21 **A. Well, yes. My son had nowhere to**
22 **go, so I had him move in with me.**
23 192 **Q.** I also understand that you had a
24 case worker at that time, and I'm referring now to the
25 time of your eviction from the Madison Avenue unit --
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1 **A. I had to fire her because she was**
2 **handing over my money without my permission.**
3 193 **Q.** I understand that she attended at
4 the time that you were given notice to vacate and she
5 spoke to you then. Is that true?
6 **A. I explained to her that I**
7 **wasn't -- I did not agree with this notice to vacate.**
8 **I did not sign this document, and I was not in any way**
9 **ready to move out, but they still proceeded with**
10 **eviction.**
11 194 **Q.** How long did you stay at the
12 Budget motel or hotel?
13 **A. Six months.**
14 195 **Q.** It was your ODSP income that was
15 used to pay for that?
16 **A. No. COVID payments.**
17 196 **Q.** You received CERB? Is that right?
18 C-E-R-B?
19 **A. Yup.**
20 197 **Q.** And that was used to pay for the
21 Budget hotel?
22 **A. Yup.**
23 198 **Q.** Do you recall what you were paying
24 in order to stay there?
25 **A. \$2,000 a month.**
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1 199 **Q.** I understand from that Budget
2 hotel you moved to Carter Park. Is that true?
3 **A. I had no choice, and that only**
4 **lasted three days.**
5 200 **Q.** From 28 Madison, you go to the
6 Budget hotel for six months. From the Budget hotel,
7 you go to Carter Park for three days?
8 **A. Yeah, and then I went to Gage**
9 **Park.**
10 201 **Q.** And then to Gage Park. Before
11 that happens, before you leave Carter Park, you mention
12 here that police and by-law attended at Carter Park?
13 **A. Oh, yeah. There was --**
14 202 **Q.** There was advance notice given
15 that the people encamped there had to depart? Is that
16 true?
17 **A. I have no idea. I was only there**
18 **for three days.**
19 203 **Q.** But you were told before police
20 and by-law attended --
21 **A. No, not me --**
22 204 **Q.** -- that you were going to be
23 vacating?
24 **A. I had no idea.**
25 205 **Q.** Were others in the park, to your
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40

1 knowledge, given that advance notice?
2 **A. I guess so. People said that**
3 **there was after the fact, but I had no prior notice.**
4 206 **Q.** When police and by-law attended,
5 that was during the daytime?
6 **A. It was still dark out, but it was**
7 **morning.**
8 207 **Q.** And you were able to pack your
9 possessions and depart?
10 **A. Well, I had only been there for**
11 **three days, so my camp had not been established much.**
12 208 **Q.** That's a yes? You were able to
13 pack your possessions and depart --
14 **A. Oh, easily, and I took a cab to**
15 **Gage Park.**
16 209 **Q.** So there is a chart in your
17 affidavit at paragraph 8 that sets out some timelines.
18 Carter Park, 2021, three days, then to Gage Park, and
19 there's a green space period, three months, and then a
20 parking lot period, three months. Is that true?
21 **A. Yup.**
22 210 **Q.** Was that continuous? You moved
23 from the green space at Gage Park to the parking lot at
24 Gage Park, or were you somewhere else in between?
25 **A. No. I was -- I was in Gage Park**
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1 **all winter.**

2 211 **Q.** You say that you were evicted by

3 by-law officers from the green space. Were you told to

4 leave the green space in Gage Park by by-law officers?

5 **A. No, by Dave Buckle.**

6 212 **Q.** So by David Buckle, okay. I will

7 come to him in a moment because he's referenced in the

8 next paragraph.

9 **A. Yeah.**

10 213 **Q.** So it was David Buckle from the

11 City --

12 **A. Yeah.**

13 214 **Q.** -- who told you that you had to

14 leave the green space?

15 **A. Me and David get along quite well.**

16 215 **Q.** So you departed from the green

17 space and went to the parking lot? Is that --

18 **A. Yes, yes.**

19 216 **Q.** And you stayed there for a further

20 three months?

21 **A. Well, until the end of the winter.**

22 217 **Q.** And you say there you were evicted

23 by by-law officers again. Was that Mr. Buckle who

24 attended --

25 **A. Well, I wasn't evicted. I was**
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1 **bulldozed out of there.**

2 218 **Q.** I'm sorry. Were you asked to

3 leave by Mr. Buckle at that time again?

4 **A. No, no. They just showed up and**

5 **bulldozed me.**

6 219 **Q.** So this is during the period that

7 you were in the parking lot?

8 **A. Yes.**

9 220 **Q.** You're saying that bulldozers

10 attended at that time?

11 **A. Well, the Caterpillars, the little**

12 **mini ones.**

13 221 **Q.** What notice was given to you that

14 you needed to depart?

15 **A. I don't know. Not as far as I**

16 **knew, but apparently there was some notice given.**

17 222 **Q.** Do you recall how that was done?

18 **A. Through paperwork that was left on**

19 **the doorstep. I never got it, but somebody else did.**

20 223 **Q.** There was a notice posted?

21 **A. As far as I know, but I wasn't --**

22 **I didn't receive it. Somebody else did.**

23 224 **Q.** So you were told by someone else

24 encamped?

25 **A. That there was notice given, yeah.**
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1 **But I was a little late.**

2 225 **Q.** Were you able to pack up your

3 possessions and depart?

4 **A. No.**

5 226 **Q.** What possessions did you lose at

6 that time?

7 **A. Everything I owned.**

8 227 **Q.** What did that include?

9 **A. How do you -- how do you state an**

10 **entire life?**

11 228 **Q.** Well, did it include a tent?

12 **A. Multiple tents, multiple bikes,**

13 **multiple -- like, everything, everything I owned.**

14 229 **Q.** Were you present in the parking

15 lot when this occurred?

16 **A. No, no.**

17 230 **Q.** Where were you when this happened?

18 **A. I don't know because I don't know**

19 **when it happened.**

20 231 **Q.** So you left the Gage Park parking

21 lot and returned at some later time, and in the interim

22 your property was removed?

23 **A. Yes, and thrown out.**

24 232 **Q.** And you're not sure when that

25 happened?
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1 **A. Well, no, because I wasn't there**

2 **when it happened.**

3 233 **Q.** But you spoke to others about

4 notice that was posted. Did you speak to anyone else

5 about when it happened?

6 **A. No. They were all gone by then.**

7 234 **Q.** Do you recall how long you weren't

8 present in the parking lot at Gage Park?

9 **A. Over the weekend.**

10 235 **Q.** So it could have occurred at any

11 point over a weekend?

12 **A. Yeah. I only went out on the**

13 **weekends because I knew that the City didn't work on**

14 **the weekends, but apparently this date they were there.**

15 236 **Q.** Do you recall where you went for

16 the weekend?

17 **A. I was at a friend's room at the**

18 **Y -- or at the Salvation -- no, wait. I was at the**

19 **Budget Inn, actually, that weekend with a girlfriend.**

20 237 **Q.** So sometimes you would go back to

21 that Budget hotel?

22 **A. Well, yeah. It wasn't me paying,**

23 **though. I'd rather stay in a hotel room than a tent**

24 **any day.**

25 238 **Q.** So a hotel room is better?
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<p style="text-align: right;">45</p> <p>1 A. It's not worse.</p> <p>2 239 Q. Well, you say that you would</p> <p>3 prefer it --</p> <p>4 A. I can take a shower.</p> <p>5 240 Q. Are there any other reasons why</p> <p>6 you would prefer a hotel room rather than a tent?</p> <p>7 A. Heat, beds. Yeah, it's a</p> <p>8 building. Who doesn't want to live in a building?</p> <p>9 241 Q. When the Gage Park parking lot was</p> <p>10 cleared --</p> <p>11 A. I would much rather live inside</p> <p>12 than outside.</p> <p>13 242 Q. Understood. When the Gage Park</p> <p>14 parking lot was cleared, this chart indicates that the</p> <p>15 next place you went was Ferguson --</p> <p>16 A. Yeah, but that was 12 hours -- I</p> <p>17 was there for 12 hours, and they took my stuff again.</p> <p>18 243 Q. So you went from the Gage Park</p> <p>19 parking lot over to the Ferguson encampment? Is that</p> <p>20 true?</p> <p>21 A. In -- no. I built my own</p> <p>22 encampment at first, and then I -- I went to the Hub to</p> <p>23 get my ID that had -- that had been mailed there, and</p> <p>24 brought it back to my camp. I went to the store, came</p> <p>25 back, and my entire camp was down.</p> <p style="text-align: center;">Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>	<p style="text-align: right;">47</p> <p>1 identification and dropped it off at my camp, and then</p> <p>2 I went to go get something to eat. And on my way back,</p> <p>3 one of the Social Navigators stopped and said, "Cory, I</p> <p>4 think they took your stuff from Ferguson Station." I</p> <p>5 showed up and it was all gone.</p> <p>6 252 Q. From that location, Ferguson</p> <p>7 Station, the next place that's listed is just various</p> <p>8 parks, Carter Park and train tracks.</p> <p>9 A. Yeah, up in the air for a while.</p> <p>10 253 Q. So you moved around --</p> <p>11 A. I gave up.</p> <p>12 254 Q. -- quite a bit during that period?</p> <p>13 A. I had just given up.</p> <p>14 255 Q. In terms of various parks, though,</p> <p>15 do you recall where you were staying or is it just a</p> <p>16 number of parks and you can't remember where?</p> <p>17 A. I just -- I didn't care anymore.</p> <p>18 I just slept wherever I slept. I lost about 15 pounds.</p> <p>19 256 Q. During that period?</p> <p>20 A. Yeah. I wasn't taking care of</p> <p>21 myself.</p> <p>22 257 Q. The next paragraph, paragraph 9,</p> <p>23 you mention David Buckle. How do you know David</p> <p>24 Buckle?</p> <p>25 A. He was my Wesley worker when I was</p> <p style="text-align: center;">Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>
<p style="text-align: right;">46</p> <p>1 244 Q. Where did you encamp at Ferguson?</p> <p>2 A. In the back, in between King and</p> <p>3 Main.</p> <p>4 245 Q. Is that in an alley or on a</p> <p>5 sidewalk?</p> <p>6 A. No. I was in -- I was in a</p> <p>7 garden.</p> <p>8 246 Q. Is it a private property?</p> <p>9 A. No.</p> <p>10 247 Q. So it was in a park?</p> <p>11 A. It was Ferguson Station.</p> <p>12 248 Q. So in the garden at Ferguson</p> <p>13 Station?</p> <p>14 A. Yes.</p> <p>15 249 Q. And were you told that you</p> <p>16 couldn't remain there?</p> <p>17 A. They didn't even reach out to me.</p> <p>18 They just took my stuff.</p> <p>19 250 Q. Were you present when they took</p> <p>20 your things?</p> <p>21 A. No. I showed up at the end of it</p> <p>22 while they were driving away.</p> <p>23 251 Q. And where were you in the interim?</p> <p>24 A. I told you. I was over at the Hub</p> <p>25 getting my -- no, I went to the Hub, got my</p> <p style="text-align: center;">Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>	<p style="text-align: right;">48</p> <p>1 young.</p> <p>2 258 Q. You mention that you've known him</p> <p>3 since you were 15 years old?</p> <p>4 A. Yeah, he was my first Wesley</p> <p>5 worker.</p> <p>6 259 Q. So he was a case worker out at the</p> <p>7 Wesley Centre that you had spoken to at that --</p> <p>8 A. Yes, at Alternatives for Youth and</p> <p>9 Wesley. He was the case worker at the time.</p> <p>10 260 Q. I understand that David Buckle and</p> <p>11 Cole Gately, who you mentioned formerly of the City's</p> <p>12 Encampment Response Team, tried to get you inside at</p> <p>13 Mission Services. Were you offered a space at Mission</p> <p>14 Services at that point?</p> <p>15 A. That was all bullshit. They</p> <p>16 didn't try anything. They were just trying to get me</p> <p>17 to move.</p> <p>18 261 Q. I just want to confirm when this</p> <p>19 happened. Was it at the point when you were in various</p> <p>20 parks from time to time after you left the Ferguson</p> <p>21 Station?</p> <p>22 A. I don't even know what you're</p> <p>23 talking about, sir. I have no idea.</p> <p>24 262 Q. I'm just trying to clarify that</p> <p>25 exact thing. In paragraph 8 --</p> <p style="text-align: center;">Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>

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1 **A. Yeah, I don't know --**

2 263 **Q.** -- there is a chart that says

3 where you went. There were places that you went over

4 time. And then --

5 **A. Since I don't --**

6 264 **Q.** -- David Buckle and Cole Gately --

7 **A.** -- know, there's no way I can

8 clarify it.

9 **COURT REPORTER: Sorry, I can't hear**

10 **either of you --**

11 **BY MR. DIACUR:**

12 265 **Q.** So you're not sure when David

13 Buckle and Cole Gately tried to get you into a room at

14 Mission Services?

15 **A. They didn't try. They just stated**

16 **that they were.**

17 266 **Q.** It does say that they tried to get

18 inside, but the only available space was at Mission

19 Services. That's suggesting that they tried --

20 **A. It was bullshit.**

21 267 **Q.** Is that true?

22 **A. No. It's just bullshit, talking**

23 **out their asses, trying to make it look like they care,**

24 **but they don't.**

25 268 **Q.** I'm confused. If available space

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1 was noted and --

2 **A. Yeah, and when I get there -- and**

3 **when I get there --**

4 269 **Q.** -- you say you do not do well in

5 institutional settings, were you offered a space or

6 not?

7 **A. And when I -- I went there, and**

8 **when I got there, there was no space. This happens on**

9 **a regular basis.**

10 270 **Q.** So you recall, then, going to

11 Mission Services --

12 **A. On multiple occasions --**

13 271 **Q.** -- and you were told there were no

14 spaces? Well, was that accurate --

15 **A. -- I show up --**

16 272 **Q.** -- David Buckle and Cole Gately --

17 **A. It has nothing to do with those**

18 **guys. Those guys were just -- they're not even**

19 **affiliated with Mission Services. I go to Mission**

20 **Services -- this is how they do it. "You come back at**

21 **ten o'clock, please." I come back at ten o'clock.**

22 **They have nowhere to put me. I go out on the streets**

23 **for the night. They put more people out on the streets**

24 **than -- than landlords do. They're supposed to take**

25 **people off the streets.**

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1 273 **Q.** You say in paragraph 9 "I do not

2 do well in institutional settings." Is that the reason

3 why you have declined available space at Mission

4 Services in the past?

5 **A. I haven't, though. I've gone**

6 **there, and then things get screwed up because they**

7 **don't want people there. They want -- what they want**

8 **is they want turnover. Turnover gets them more money.**

9 **The longer you stay there, the less money they make off**

10 **of you.**

11 274 **Q.** The statement "I do not do well in

12 institutional settings" --

13 **A. I don't. I've been in jail**

14 **before.**

15 275 **Q.** When was the last time that you

16 were incarcerated?

17 **A. Fifteen years ago.**

18 276 **Q.** Is the reason why at any time in

19 the past that you have declined spaces in a shelter was

20 due to the fact that you do not do well in

21 institutional settings?

22 **A. Well, it's mostly because I don't**

23 **like the way it feels like jail.**

24 277 **Q.** So it is the case that in the past

25 there has been space in a shelter available to you --

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1 **A. Well, no.**

2 278 **Q.** -- and you had said no --

3 **A. I have a dog.**

4 279 **Q.** -- "I do not do well in

5 institutional settings"?

6 **A. I have a dog. There's no way that**

7 **I can take it at any kind of shelter setting, no. They**

8 **won't even offer it anymore. There's no pets --**

9 280 **Q.** So it's not completely the case

10 that you don't do well in institutional settings --

11 **A. There are --**

12 281 **Q.** -- it's also the fact that you

13 have a dog?

14 **A. There are absolutely no**

15 **pet-friendly shelters in Hamilton at all.**

16 282 **Q.** If you look at paragraph 10 of

17 your affidavit, you indicate "I am not comfortable in

18 shelters."

19 **A. Yeah, I agree. I don't like**

20 **taking showers in front of people. I don't like**

21 **strangers around me.**

22 283 **Q.** Is that what you've told me

23 already, that it reminds you of being incarcerated?

24 **A. Exactly.**

25 284 **Q.** You mention also that you have a

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1 history of substance abuse, that you try to stay away
 2 from harder street drugs. "Abstinence is very
 3 difficult in shelter where drug use is all in your
 4 face."
 5 **A. Yeah, it is. It's, like, rampant.**
 6 285 **Q.** My understanding is that drug use
 7 is not permitted in shelters --
 8 **A. Sure, they say that, but at the**
 9 **same time, Mission Services has an alcoholics program**
 10 **there where you get a drink every hour. That's stupid.**
 11 286 **Q.** In what way --
 12 **A. Bunch of drunk people.**
 13 287 **Q.** In what way is drug used in the
 14 shelters?
 15 **A. Well, they don't allow it, but**
 16 **it's not -- it's like -- if they're allowing people to**
 17 **drink, then they're allowing people to do drugs.**
 18 **Right? Alcohol is the worst of all the drugs.**
 19 288 **Q.** I think we might be confusing two
 20 things. We're referring here to drug use. You refer
 21 to harder street drugs --
 22 **A. What do you consider drugs?**
 23 289 **Q.** Well, exactly. That's my question
 24 for you. What do you include in that? Are you
 25 including just alcohol or are you including --

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1 **A. Well, no, alcohol is not a street**
 2 **drug. It's legalized by the government, so it makes it**
 3 **okay.**
 4 290 **Q.** When you say drug use is in your
 5 face in shelters, you're including alcohol in that?
 6 **A. Of course I am. I was fetal**
 7 **alcohol syndrome as a child. Still am.**
 8 291 **Q.** Is any harder street drug use in
 9 your face --
 10 **A. Well, yeah, it is because I'm**
 11 **there. The people that are addicts, they do drugs.**
 12 **It's just the way it is. The ones that are alcoholics,**
 13 **they do -- they drink alcohol.**
 14 292 **Q.** How do shelters enforce their
 15 rules against drug use in the shelters?
 16 **A. They kick the people back out on**
 17 **the streets.**
 18 293 **Q.** And you've seen that occur?
 19 **A. Like I said, they put more people**
 20 **on the streets than landlords.**
 21 294 **Q.** Is there drug use in encampments,
 22 sir?
 23 **A. Not if it's your own.**
 24 295 **Q.** What does that mean?
 25 **A. I start my own encampments.**

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1 296 **Q.** So you prefer to -- **A4894**
 2 **A. I don't -- I don't allow anybody**
 3 **there that does things that I don't agree with.**
 4 297 **Q.** So you prefer to encamp alone? Is
 5 that right?
 6 **A. Not necessarily alone, but I like**
 7 **to pick and choose where I live. Because if I don't**
 8 **make the decision, then somebody else is, and I don't**
 9 **like that. It's so easy to make the wrong decision**
 10 **when you're trying to organize a group of people.**
 11 298 **Q.** In paragraph 11 of your affidavit
 12 you reference Good Shepherd as well. I believe that's
 13 the first time they've come up during our discussion.
 14 You've mentioned Mission Services and Salvation --
 15 **A. This is the first time that the --**
 16 **that a shelter had actually put me back out on the**
 17 **streets.**
 18 299 **Q.** So you were at Good Shepherd, one
 19 of their facilities, in March of 2022 for --
 20 **A. For a matter of six hours.**
 21 300 **Q.** It was not three days? It was six
 22 hours?
 23 **A. Yeah. I got there, and I went**
 24 **downstairs. I was making -- doing arts and crafts with**
 25 **a water bottle, trying to make a bong, and then they**

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1 **walked -- the lady walked up and took my knife right**
 2 **off the table in front of me and walked away like she**
 3 **was stealing it. And she made some false accusations**
 4 **that I had slurred some racial slurs towards her, which**
 5 **was -- there's no way that I would do that. I'm**
 6 **absolutely opposite of racist -- racist -- excuse me --**
 7 **but --**
 8 301 **Q.** Was it your knife?
 9 **A. Hmm?**
 10 302 **Q.** Was it your knife --
 11 **A. Of course it was my knife. Of**
 12 **course it was my knife. They don't allow weapons and**
 13 **stuff. But in the criminal court of Canada, weapons**
 14 **are only weapons if they're being used as such or if**
 15 **the intent is to be used as a weapon. Other than that,**
 16 **it's just a tool.**
 17 303 **Q.** What kind of knife was it?
 18 **A. It was a jackknife.**
 19 304 **Q.** How large?
 20 **A. Like a folding knife, like a**
 21 **pocketknife.**
 22 305 **Q.** Sure. And how large?
 23 **A. No bigger than my hand, but I have**
 24 **a big hand. About 5 inches, 6 inches.**
 25 306 **Q.** Was the reason given to you why

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1 you were no longer --

2 **A. Because we're not allowed to have**

3 **weapons, she said. And I -- I insist that the criminal**

4 **court in Canada says that any tool is only a tool until**

5 **it is intended as using it as a weapon. Your intent --**

6 **if you intend to use it as a tool, it's only a tool.**

7 **It's not a weapon.**

8 307 **Q. Do you agree that having rules**

9 **against carrying knives --**

10 **A. I think it's a great idea. But I**

11 **don't think that anybody should walk up to you, take**

12 **something off the table in front of you and walk away**

13 **with not even a question or a statement whatsoever.**

14 308 **Q. Paragraph 12, you say "I then went**

15 **to Salvation Army and stayed for a week." Is this**

16 **directly after you left Good Shepherd?**

17 **A. I can't -- I wasn't staying**

18 **outside at that time because it was -- I had no**

19 **preparations for outdoor living at that time.**

20 309 **Q. Do you recall that this was in**

21 **March of that same year, 2022, when you went to**

22 **Salvation Army and stayed for a week?**

23 **A. ADHD and dates and stuff, they're**

24 **no good with me. But, yeah, if I written it down, then**

25 **it's the way it is.**

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1 310 **Q. When you say the Salvation Army,**

2 **is that the Booth Centre that's in downtown Hamilton?**

3 **A. Yes.**

4 311 **Q. You mention here that you felt**

5 **yourself losing control and starting to lash out.**

6 **A. Yeah, yeah.**

7 312 **Q. And what does that mean --**

8 **A. I was having some --**

9 313 **Q. In these circumstances, what did**

10 **you do?**

11 **A. I left.**

12 314 **Q. In terms of lashing out, what does**

13 **that mean? Were you violent?**

14 **A. No. My anger management is under**

15 **control now. But, yeah, I might have -- I might**

16 **have -- I might have gotten verbally aggressive.**

17 315 **Q. And you also say here staff**

18 **removed a safe that you had on your bed?**

19 **A. Yeah.**

20 316 **Q. You were carrying a safe?**

21 **A. No. I just had a safe on my bed,**

22 **because you kind of have to there.**

23 317 **Q. Is this something that's provided**

24 **to you at the Booth Centre?**

25 **A. No, no, it was mine.**

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1 318 **Q. What was in the safe?** **A4895**

2 **A. Nothing at the time.**

3 319 **Q. Did you have any other possessions**

4 **that you brought with you?**

5 **A. Well, I usually have a whole bunch**

6 **of stuff, but at the moment I had just been robbed of**

7 **everything I own. That's why I went and got the safe.**

8 320 **Q. Do you recall if you were violent**

9 **at that time?**

10 **A. I've always had issues with anger**

11 **management, but I don't think I was violent at the**

12 **time. I haven't lashed out with violence in a long**

13 **time.**

14 321 **Q. Do you recall the last time that**

15 **you did?**

16 **A. No. I'm 48 years old. This is --**

17 **that's child's play.**

18 322 **Q. In paragraph 13 of your affidavit,**

19 **you say that you stayed at Mission Services. You say**

20 **"this year" meaning 2022.**

21 **A. Yeah, I was there for a little**

22 **while.**

23 323 **Q. And you say you left after three**

24 **days because of the alcohol use in the shelter. That's**

25 **what you were referring to earlier?**

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1 **A. Yeah, yeah. They have people**

2 **drunk in the middle of the night, running around the**

3 **building. It's impossible -- it gives me a headache.**

4 324 **Q. In paragraph 14, you say "I do**

5 **better in my own tent where I have some control over**

6 **who is around me." Is it the case that you sometimes**

7 **prefer encamping because --**

8 **A. No, I prefer to have my own**

9 **apartment.**

10 325 **Q. I understand --**

11 **A. I don't have my own apartment.**

12 **I'd like to have my own control.**

13 326 **Q. I understand. But I think you**

14 **might be anticipating my questions, so let me ask it.**

15 **Is it the case that sometimes you prefer encamping --**

16 **A. No.**

17 327 **Q. -- because there are no rules to**

18 **follow in an encampment?**

19 **A. No. It's not about no rules.**

20 **It's about following my rules.**

21 328 **Q. So you get to set the rules in an**

22 **encampment --**

23 **A. Yeah, and I get to enforce them,**

24 **too, as to where they pick and choose the rules and the**

25 **people that they want to enforce them to.**

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<p style="text-align: right;">61</p> <p>1 329 Q. So you prefer to set your own 2 rules. That's accurate? 3 A. Not even, no. It's -- I prefer to 4 follow the rules, and everybody has to be equally -- 5 equally expected to follow the rules just as much as 6 everybody else. You can't pick and choose who to 7 follow the rules and who can't. It's like -- not -- 8 that's not the way it goes. Everybody has to follow 9 them equally, and they -- they play favourites at the 10 shelters. 11 330 Q. In an encampment you get to set 12 the rules? 13 A. I get to, yeah, and I get to 14 enforce them too. 15 331 Q. In paragraph 15 -- 16 A. And I don't play favourites. 17 332 Q. Understood. In paragraph 15, you 18 mention that you have a marijuana dependence? 19 A. Had a marijuana dependence. I 20 beat it. 21 333 Q. That's now no longer the case? 22 A. Yeah, no, no. 23 334 Q. And you say "I cannot use 24 marijuana in the shelter" -- 25 A. Yeah, I don't use anymore anyways. Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>	<p style="text-align: right;">63</p> <p>1 fights. They're like -- just everybody yells and talks 2 and then walks away. A4896 3 342 Q. When was the last time that you 4 were in a fight like that? 5 A. Like, what do you mean? Just an 6 argument? 7 343 Q. Well, you're referencing fights in 8 this paragraph -- 9 A. Yeah, but, like, fights as in 10 physical violence or as in conversing? Like -- like, 11 physical or not physical? 12 344 Q. Well, that's my question to you. 13 What does "fights" mean in this paragraph? 14 A. Well, it's just arguments, really. 15 I should have picked my words better. 16 345 Q. So you don't mean that there was 17 any physical confrontations -- 18 A. No. No, no. 19 346 Q. In paragraph 17, you reference 20 three tents demolished by by-law within one month. Was 21 that during the period that's referenced in the chart 22 where you were moving a number of times over -- you 23 know, Carter Park, Gage Park, Ferguson -- 24 A. No, it was -- it would have 25 been -- Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>
<p style="text-align: right;">62</p> <p>1 335 Q. Okay. So that's no longer any 2 barrier? 3 A. No. It's legal now, anyways, so 4 it doesn't matter. 5 336 Q. You use the word "destabilization" 6 in this paragraph. What does that mean to you? 7 A. My life, like, gets out of 8 control. 9 337 Q. Does it mean losing your temper? 10 A. No. I haven't lost my temper in a 11 long time. I took nine years of martial arts to 12 control my temper. 13 338 Q. You're trained in martial arts? 14 A. Yes, sir. 15 339 Q. In which martial art? 16 A. Judo. 17 340 Q. Paragraph 16, you say "I am more 18 physically at risk in shelters because I do not do well 19 with crowds of strangers because it destabilizes me. I 20 have gotten into several fights in communal living 21 settings." 22 A. I have in the past. 23 341 Q. So when was the last time that you 24 were in a fight in such a setting? 25 A. They really don't turn out to be Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>	<p style="text-align: right;">64</p> <p>1 347 Q. -- or was that more recent? 2 A. It would have been Ferguson, Gage 3 Park. No, it was the first -- the first -- yeah, it 4 was, like, the first time that I was out. Those are 5 all older. 6 348 Q. Where do the tents come from? 7 A. I bought them. 8 349 Q. So you would buy a tent -- 9 A. Canadian Tire, Walmart. 10 350 Q. Then a tent would be lost; it 11 would be replaced? Is that how that went? 12 A. I'd have to go get a new one. 13 351 Q. In paragraph 18, you say you've 14 received tickets for being in public spaces. 15 A. Yeah. 16 352 Q. It says "but this has not happened 17 since COVID-19." Is that still true? 18 A. I haven't had a ticket in a long 19 time. 20 353 Q. Do you recall who was giving you 21 tickets? 22 A. The Hamilton -- City of Hamilton 23 Enforcement officer. 24 354 Q. By-law Enforcement? 25 A. Yes. A612 Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>

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1 355 Q. Do you recall what the tickets
2 were for?
3 A. What do they call it? No, I
4 don't. Trespassing.
5 356 Q. Have you ever received a trespass
6 notice?
7 A. Sure. Those are recent, though.
8 357 Q. They would say that you can no
9 longer remain in a particular place, and if you do,
10 there might be consequences?
11 A. That was recently, though. They
12 didn't do that before.
13 358 Q. And this reference that it's not
14 happened since COVID-19, does that mean before the --
15 A. Things have changed. Since it
16 ended, since they made this new -- this new
17 encampment -- what do they call that -- the new
18 encampment rules.
19 359 Q. Got it. When you say this has not
20 happened since COVID-19, you mean since the end of
21 COVID-19 --
22 A. Since the new encampment rules,
23 yes.
24 360 Q. Okay. I'm moving down now to the
25 last paragraph, paragraph 22. You say "oftentimes I
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1 have so many possessions that it's difficult to carry
2 it away with me."
3 A. Yeah.
4 361 Q. You again reference by-law and
5 police trucks and Bobcats. Earlier when you
6 referenced --
7 A. They still do that.
8 362 Q. I understand. I'm just saying,
9 earlier you referenced Bobcats as the bulldozers that
10 you were talking about? Is that true?
11 A. Yup. Yes, sir.
12 363 Q. Have you ever received notice that
13 an encampment was going to be dismantled?
14 A. Yes.
15 364 Q. And then left material behind when
16 you left?
17 A. Yes. Well, they -- they tell us
18 to leave anything that's garbage behind.
19 365 Q. And have you done that?
20 A. Of course.
21 366 Q. Have you ever been told that the
22 property that is left behind will be removed as
23 abandoned or as garbage?
24 A. Well, what they wanted us to do,
25 anything that we didn't need, we would just leave it
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1 behind and we were just following their instructions. A4897
2 367 Q. And you've done that?
3 A. Yeah, of course. Who wouldn't?
4 You want to carry everything around? Even garbage?
5 No.
6 368 Q. Have you ever made the decision to
7 leave behind things that are not garbage --
8 A. No. No, no. That's also a matter
9 of your opinion, what garbage is and what isn't.
10 Because one man's garbage can be another man's
11 treasure.
12 369 Q. Have you ever decided that it
13 would be too difficult to move all of your possessions
14 and left goods behind that would then be disposed of?
15 A. No. I would leave people behind
16 to watch them, and then come back later. But it's
17 turned out that way, though, sometimes.
18 MR. DIACUR: All right. So we've come
19 to the point of the second affidavit that we've
20 received, Counsel. I'm going to put it on the
21 screen --
22 THE DEPONENT: But the second affidavit
23 is after the...
24 MS. CROWE: We have a -- sorry,
25 Mr. Diacur. Just one moment. We're going to show him
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1 that handwritten one.
2 MR. DIACUR: You found it, Counsel?
3 MS. CROWE: We did find it, yes.
4 MR. DIACUR: Okay, great. That's no
5 problem. Please, I'm happy to have him review it.
6 THE DEPONENT: The second affidavit was
7 done during the encampment camp rules, after the new
8 encampment rules?
9 MS. CROWE: I can't speak to that right
10 now, but we're going to have you take a look at it.
11 Okay?
12 THE DEPONENT: Okay.
13 MS. CROWE: If you could just give him
14 a moment to read it over, please.
15 MR. DIACUR: Not a problem. It's
16 brief. That's fine.
17 THE DEPONENT: Yeah, I remember that.
18 Six weeks in the middle of winter, kicked out of the
19 Salvation Army, out in the tent, 30 degrees below.
20 BY MR. DIACUR:
21 370 Q. You've had a chance to review this
22 now, sir?
23 A. Yes, sir. I vividly recall the
24 incident.
25 371 Q. In paragraph 1 of this second
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1 affidavit, April 25, 2023, there are a number of other
2 locations that we haven't discussed yet. You reference
3 a parking lot at Vine and Bay, John A. Macdonald. Is
4 that a park or a school?

5 **A. John A. Macdonald is at Vine and**
6 **Bay.**

7 372 **Q.** So that is the same location?
8 **A. Yeah.**

9 373 **Q.** Central Park, end of railroad?
10 **A. Railroad Avenue, which is a block**
11 **away from there.**

12 374 **Q.** Right. Yeah, I know that area
13 pretty well. I'm just trying to confirm all of the
14 locations that you've indicated. And then --

15 **A. They were just trying to push me**
16 **down into the belly of the -- of the new place where**
17 **they were putting everybody. I wouldn't -- I wouldn't**
18 **have it.**

19 375 **Q.** There's a reference to Wesley or
20 the Wesley parking lot?
21 **A. Yeah.**

22 376 **Q.** And Beasley Park, and you say
23 April 2022 for Beasley Park --
24 **A. I never did stay in Beasley Park**
25 **long.**

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1 377 **Q.** How long did you stay there?
2 **A. Only overnight.**

3 378 **Q.** You say that this encampment has a
4 large loudspeaker.
5 **A. Yeah, yeah, that's why I didn't**
6 **stay long.**

7 379 **Q.** That's a reference to Beasley
8 Park?
9 **A. Yeah.**

10 380 **Q.** Who was operating the loudspeaker?
11 **A. The security company.**

12 381 **Q.** And what would they say?
13 **A. I can't remember exactly, but it**
14 **was a warning that anybody that was caught on this**
15 **property would be woken up and kicked off.**

16 382 **Q.** So a security company had a
17 loudspeaker that would repeat that?
18 **A. Yeah. Well, no, it was a live**
19 **person on the other end.**

20 383 **Q.** Did security personnel visit the
21 park regularly?
22 **A. Yes, because it was under**
23 **construction at the time.**

24 384 **Q.** Was this loudspeaker brought with
25 them or was it somewhere --

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1 **A. Yes, it was the construction**
2 **company.** A4898

3 385 **Q.** Oh, it was the construction
4 company?

5 **A. Yes.**

6 386 **Q.** You were advised that it wasn't
7 possible to remain on an active construction site? Is
8 that fair?

9 **A. No. We weren't even near the**
10 **construction site, but it still kept waking us up.**

11 387 **Q.** All of these locations you say
12 since June 2022 -- and this is sworn in April of 2023.
13 Are these the only locations that you stayed in during
14 that period?

15 **A. Yeah. Yeah, pretty much.**

16 388 **Q.** But you do mention --
17 **A. I was -- it was only because --**
18 389 **Q.** -- Victoria Park. In fairness,
19 you mention Victoria Park as well. That was also one
20 of the areas?

21 **A. Yeah, it was only short-term I was**
22 **staying at the Salvation Army, kind of permanently,**
23 **semi-permanently there. And I had just been put on a**
24 **suspension for -- for -- I can't remember exactly --**
25 **for misconduct of some sort, and they put me out in the**

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1 **streets in the middle of winter.**

2 390 **Q.** Right. So this is paragraph 3 of
3 your affidavit. You say you were asked to move your
4 tent in January 2023 from the Vine location outside of
5 the Hub, and you reference being kicked out of the
6 Salvation Army due to unfair practices at the shelter.
7 In fairness, I understand that the Salvation Army
8 reported that you had accused someone of stealing your
9 drugs at the Booth Centre at that time. Is that true?

10 **A. Yup, it's true. I found them and**
11 **that's when I got kicked out.**

12 391 **Q.** Who did you suspect of the theft?
13 **A. I'd rather not name names.**

14 392 **Q.** But you found them?
15 **A. Yeah.**

16 393 **Q.** What did you do to them?
17 **A. I put them in my pocket and then**
18 **got kicked out.**

19 394 **Q.** What does that mean, put them in
20 your pocket?
21 **A. I took my drugs back and put them**
22 **in my pocket, because we found them.**

23 395 **Q.** Did --
24 **A. As soon as I found them, then they**
25 **kicked me out.** A614

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1 396	Q. Did the person who had them --
2	A. They were not present at the time.
3 397	Q. Oh, I see. I understand that
4	you've refused to re-attend at the Salvation Army Booth
5	Centre since that time. Is that true?
6	A. No. I've been back and forth.
7 398	Q. You mention here that you moved
8	your tent in January of 2023 from Vine and Bay to
9	outside the Hub. You were physically able --
10	A. It's just safer there.
11 399	Q. You were physically able to pack a
12	tent and move it?
13	A. Yeah.
14 400	Q. You say here that you lost a phone
15	three times and a computer? Is that true?
16	A. Yeah, on a regular basis. I
17	haven't been able to keep a phone or a computer in the
18	last three years.
19 401	Q. You say --
20	A. And I've boughten one -- almost
21	every month I buy one.
22 402	Q. Right. And you say that this is
23	an impact of ongoing encampment evictions?
24	A. It's a -- and thievery.
25 403	Q. So it's not necessarily an impact
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1	of ongoing encampment evictions? It's theft?
2	A. It is. It's both.
3 404	Q. So it's not necessarily --
4	A. Because I'm not sanctioned -- it's
5	because I'm not in one spot, that I'm moving around and
6	my stuff is all in one thing, that it's very easy for a
7	thief to grab my stuff out of my buggy.
8 405	Q. Understood. And you would go and
9	buy a phone and a computer every month you're saying?
10	A. I'd have to because I need to have
11	Internet access. In order to find a place or to get a
12	hold of my mom or to get a hold of anybody, I need
13	Internet access. So that means I need some sort of
14	electronic device that'll get me online.
15 406	Q. Understood. Paragraph 4, you say
16	"loss of fingernails." How did that occur?
17	A. Frostbite.
18 407	Q. You suffered frostbite. Have you
19	received medical treatment for frostbite?
20	A. I -- I did it myself. I know how
21	to deal with it. I was a boy scout for nine years.
22 408	Q. Have you gone to a hospital for
23	frostbite?
24	A. Yes, of course.
25 409	Q. How often does that happen?
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1	A. Only once or twice. I don't
2	usually get frostbite, but I did get it that year.
3 410	Q. Have you ever been admitted to
4	hospital for such injuries?
5	A. No. That's extreme, extreme
6	frostbite. You don't really need to get admitted
7	unless your, like, whole hand goes black.
8 411	Q. You mention here that you
9	dislocated your shoulder while moving your tent. When
10	did that happen?
11	A. Yeah. That was when the -- the
12	City Enforcement was waking us up every day and making
13	us move. I would wake up angry because they would be
14	yelling at me, and then I would end up hurting myself
15	because I would be moving myself too rapidly.
16 412	Q. Have you received medical
17	treatment for your dislocated shoulder?
18	A. Yes.
19 413	Q. When did that happen?
20	A. I don't know. It would have been
21	at the Hamilton -- or at the Hub.
22 414	Q. So when you moved from Vine and
23	Bay to outside of the Hub?
24	A. Yeah.
25 415	Q. And has that healed, the
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1	dislocated shoulder?
2	A. Yeah, yeah. I feel pretty good
3	now, actually.
4 416	Q. You also reference someone or
5	maybe yourself ran over your foot with a buggy?
6	A. Oh, yeah.
7 417	Q. Was that somebody else or was
8	that --
9	A. No, that was me. That was me.
10	Yeah, that was me.
11 418	Q. How did that happen? Can you tell
12	me?
13	A. First thing in the morning, trying
14	to move my stuff.
15 419	Q. So it was as part of the move?
16	A. Yeah.
17 420	Q. Did you receive any medical
18	treatment arising from that to your foot?
19	A. Yes, I received care from the Hub.
20 421	Q. Has that healed?
21	A. Yes.
22 422	Q. Have you ever entered a methadone
23	program?
24	A. Never.
25 423	Q. Have you ever been referred to
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1 one?

2 **A. No.**

3 424 **Q. Has a doctor --**

4 **A. I'm able -- I'm able to quit and**
 5 **control my opiate addiction issues with -- on my own.**
 6 **Like, the last time I quit, I quit for ten years, and**
 7 **that worked fine. I was -- I was alone for too long**
 8 **and got very bored and started up again.**

9 425 **Q. Have you ever been referred to a**
 10 **detox facility by the doctor?**

11 **A. No.**

12 426 **Q. Have you ever seen a Dr. Rachel**
 13 **Lamont?**

14 **A. Maybe. Yeah, yeah, I believe so.**

15 427 **Q. Do you recall when that might have**
 16 **been?**

17 **A. Recently.**

18 428 **Q. Have you seen her more than once?**

19 **A. I don't believe so.**

20 429 **Q. Do you recall what she did for**
 21 **you, if anything?**

22 **A. No. I have a very, very tough --**
 23 **I can't recall memories off the hop like that.**

24 430 **Q. While you were staying outside the**
 25 **Hub after moving from Vine and Bay --**

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1 **A. Yeah.**

2 431 **Q. -- did your drug use increase?**

3 **A. No. Actually, it decreased**
 4 **because I wasn't around anybody doing drugs.**

5 432 **Q. Was there an encampment outside of**
 6 **the Hub or was it just you?**

7 **A. Just me.**

8 **MR. DIACUR: Just a moment's**
 9 **indulgence, Counsel. I think I may be finished. I**
 10 **just want to make sure I didn't inadvertently miss a**
 11 **question. I'll just take one moment.**

12 **MS. CROWE: Okay.**

13 --- (Off the record)

14 **MR. DIACUR: Yes, thank you. Those are**
 15 **all of my questions for this witness. Thank you, sir,**
 16 **for attending and answering.**

17 **THE DEPONENT: Awesome.**

18 **MS. CROWE: Thank you. I just need a**
 19 **couple of minutes, please.**

20 **MR. DIACUR: No problem at all. Can we**
 21 **go off the record?**

22 --- Recess taken at 12:39 p.m.

23 (Deponent exited during recess prior to re-examination)

24 --- Whereupon proceedings adjourned at 1:09 p.m.

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A4900

1 I HEREBY CERTIFY THE FOREGOING
 2 to be a true and accurate transcription
 3 of my shorthand notes
 4 to the best of my skill and ability.

7 [Electronically signed on August 25, 2024]

8 Lydia Pak, Court Reporter
 9 Computer-Aided Transcription

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ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

KRISTEN HEEGSMAN, DARRIN MARCHAND, GORD SMYTH, MARIO

MUSCATO, SHAWN ARNOLD, BRADLEY CALDWELL, CHRISTINE

DELOREY, GLEN GNATUK, TAYLOR GOGO-HORNER, CASSANDRA

JORDAN, JULIA LAUZON AMY LEWIS, ASHLEY MACDONALD, COREY

MONAHAN, MISTY MARSHALL, SHERRI OGDEN, JAHMAL PIERRE,

LINSLEY GREAVES and PATRICK WARD

Applicants

- and -

CITY OF HAMILTON

Respondent

--- This is the Continued Cross-Examination of CORY
MONAHAN, an Applicant herein, on his affidavits, sworn
May 12, 2022 and April 25, 2023, taken via Zoom
videoconference, on Friday, the 30th day of August,
2024.

NIMIGAN MIHAILOVICH REPORTING INC.
Hamilton, Ontario - nmreporting.ca - (905) 522-1653

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CORY MONAHAN - 81

APPEARANCES:

SHARON CROWE For the Applicants

BEVIN SHORES For the Respondent

JORDAN DIACUR

MICHELLE SUTHERLAND Community Legal Clinic of
York Region

Also Present:

Jojo Johnson Articling Student,
Gowling WLG (Canada) LLP

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CORY MONAHAN - 83

--- Upon commencing at 3:52 p.m.

CORY MONAHAN; Previously affirmed.

RE-EXAMINATION MS. CROWE:

Q. Okay, Mr. Monahan, I just have a

few questions that are a follow-up to the exam that
took place a couple of weeks ago, some of the things
that you discussed with Mr. Diacur, okay?

A. Okay.

Q. So the first is, have you

discussed opioid use with any doctors?

A. No.

Q. Okay. And what about overdoses?

A. What about overdoses?

Q. Have you discussed your overdoses

with any doctors?

A. Only paramedics.

Q. Okay.

A. And the social navigators.

Q. Do you know what a stimulant use

disorder is?

A. Like ADHD?

Q. Well, what's your understanding of

what a stimulant use disorder is?

A. Well, a disorder that is treated

with stimulants.

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A617

CORY MONAHAN - 84

1 440 Q. Okay. So, you mentioned that
 2 there was a room in Mission Services that was offered
 3 to you at some point.
 4 A. Yes.
 5 441 Q. Do you remember when that was?
 6 A. It was in the middle of the summer
 7 last summer, I believe, or maybe the summer before
 8 that.
 9 442 Q. So the middle of summer either
 10 2023 or 2022?
 11 A. Yeah, I can't exactly remember, it
 12 was a while ago.
 13 443 Q. Okay. And so Mission Services,
 14 what kind of facility is that?
 15 A. It's a -- well, it's not there
 16 anymore, but it's drop in and housing for homeless, and
 17 they have treatment for alcoholism there.
 18 444 Q. And --
 19 A. So basically everybody is drunk.
 20 445 Q. Okay. And why isn't it there
 21 anymore?
 22 A. Oh, they moved it from Jane Street
 23 North, because of the change in the area, to Victoria
 24 and King.
 25 446 Q. And do you know if you were

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CORY MONAHAN - 85

1 expected to pay rent?
 2 A. Oh, yes.
 3 447 Q. Do you know how much?
 4 A. Around 400.
 5 448 Q. Do you know how long you're
 6 allowed to stay there?
 7 A. It's an 11-month program.
 8 449 Q. How many months?
 9 A. Eleven.
 10 450 Q. And you indicated that it didn't
 11 feel right to you; why didn't it feel right?
 12 A. Well, I don't like being around
 13 alcoholics.
 14 451 Q. Why is that?
 15 A. Well, I was born fetal alcohol,
 16 and I try to stay away from that kind of thing.
 17 452 Q. Okay. You mentioned that David
 18 Buckle and Cole Gatley had offered you a dorm at
 19 Mission Services, what does a dorm --
 20 COURT REPORTER: I'm sorry, Ms. Crowe,
 21 your audio was cutting out in that question, if you
 22 could repeat it.
 23 MS. CROWE: Sure.
 24 BY MS. CROWE:
 25 453 Q. David Buckle and Cole Gatley had

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CORY MONAHAN - 86

1 offered you a dorm room at Mission Services --
 2 A. No, not dorm, it's a -- it was a
 3 private room with the chance to -- like, you can use it
 4 for 11 months and pay rent, and then, and then get back
 5 into the community like that. I can't remember the
 6 exact word that they used -- transitional, it's called
 7 "transitional housing," and the rooms are -- that's
 8 what the program is called.
 9 454 Q. Is --
 10 A. But I missed my appointment by
 11 about half an hour to pay the rent and I lost a chance
 12 at that.
 13 455 Q. Okay. You talked about one time
 14 getting service restricted from Good Shepherd because
 15 you were doing arts and craft?
 16 A. I was making a bong.
 17 456 Q. Right. And you mentioned that you
 18 were using a pocket knife --
 19 A. Yes.
 20 457 Q. -- that was about the size of your
 21 hand.
 22 A. Yes.
 23 458 Q. So I want to clarify, what was the
 24 size -- and you said it was about 5 or 6 inches?
 25 A. Yeah, it was just a regular pocket

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CORY MONAHAN - 87

1 knife, like nothing special.
 2 459 Q. What was the size of the blade?
 3 A. Like, no, no bigger than my hand.
 4 460 Q. So the blade was the size of your
 5 hand --
 6 A. Yes.
 7 461 Q. -- or the entire knife was the
 8 size of your hand?
 9 A. No, the blade -- from here to
 10 here, the blade was no bigger than that. I'd say two
 11 and a half, three inches.
 12 462 Q. Okay. Thank you. You mentioned
 13 that you were restricted from the Salvation Army in
 14 2023?
 15 A. Mm-hmm.
 16 463 Q. Do you remember for how long?
 17 A. Uh, what month?
 18 464 Q. About a month?
 19 A. What month was it?
 20 465 Q. Oh.
 21 A. I can't remember, because in 2023,
 22 I believe that it was in the wintertime, I was
 23 restricted for eight weeks, in the middle of winter.
 24 466 Q. Okay. And then you mentioned that
 25 at some point during the encampment evictions, the City

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A4903

1 was waking you up every day and you said first thing in
2 the morning; do you know what time?
3 A. Sometimes it wasn't even light out
4 yet.

5 467 Q. I'm sorry?

6 A. Sometimes it was still dark.

7 468 Q. Okay. Do you have any idea of a
8 timeframe though?

9 A. I can't really be sure because at
10 this moment, I don't know what time the sun came up.

11 MS. CROWE: Okay. Okay, thank you, Mr.
12 Monahan, those are my questions.

13 THE DEPONENT: Thank you.

14 --- Whereupon proceedings adjourned at 3:59 p.m.

15 I HEREBY CERTIFY THE FOREGOING
16 to be a true and accurate
17 transcription of my shorthand notes
18 to the best of my skill and ability.
19
20
21

22 _____
23 Dayne Snell, Court Reporter
24 Computer-Aided Transcription
25

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A619

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN

Applicants

-and-

CITY OF HAMILTON

Respondent

AFFIDAVIT OF MARIO MUSCATO
(affirmed September 29, 2021)

I, Mario Muscato, of the City of Hamilton, in the Province of Ontario, AFFIRM AND SAY:

1. I have personal knowledge with respect to the facts set out below, except where stated otherwise. Where the information is not based on my personal knowledge, it is based upon information provided by others which I believe to be credible and true.
2. I am an indigenous man who is homeless and has been homeless living on the street in between encampments and men's shelters since 2017.
3. I am a person living with disabilities and receive income from the Ontario Disability Support Program. When I have shelter costs I am entitled to \$497.00 in shelter allowance from ODSP but since becoming homeless I am only entitled to \$672.00 of the "basic needs" portion of ODSP entitlements.
4. In October of 2018 I was severely electrocuted and I lost my right hand and the majority of my left fingers as a result. Consequently, I require a lot of assistance from others as I do not have hands and digits to grab things and hold items. I do not have any dexterity.
5. I was evicted from my rental housing because Ontario Works was not remitting my shelter portion to the landlord. I was unaware of this and I was suddenly faced with a large sum of arrears owing to the landlord. I was evicted.

6. When I was evicted I was forced to find refuge in a men's shelter. I lost all of my personal possessions when I was evicted because I had no way of storing them.
7. The men's shelter was a difficult experience for me as I am an independent capable person and suddenly I was treated like a child with many rules that micromanaged my every move. As well, the shelter is very dirty, if staff don't like you they can give you a lot of attitude and be condescending. In one instance I was kicked out for allegedly bringing in alcohol in a backpack to the shelter. I had picked up another shelter user's back pack and brought it to him when he asked staff to grab it for him. I did not see in the backpack, nor did staff, but they assumed that this guy's backpack had alcohol in it and that I was facilitating bringing it in. They promptly escorted me out without even investigating or hearing my version of events. I do not drink and yet I was kicked out for allegedly having alcohol on the premises. No one looked to verify and when I asked them to review the video surveillance they refused. I was restricted for 20 days and left to camp outside where I was advised by By-Law and the Police to move.
8. The shelter system is very unpredictable. My possessions have been stolen, when they have been placed in a safe place by staff, it can be difficult to get staff to retrieve them because they are often busy and ask me to return at a later time, until eventually there is no convenient time. I am walking around daily looking for food and maintaining appointments, after sleeping rough or not sleeping at all. This makes it difficult to repeatedly be returning to a shelter hoping the timing is right to get my possessions. As well, I have been kicked out for not being in my bed when "bed checks" occur throughout the night – usually four times. Understandably the shelter wants beds to be used and accounted for but there have been times that I have been in the bathroom or having a cigarette or stretching when they have come around. The following morning I am advised that I am restricted from getting breakfast and services because of not being in the bed the night before – even though I was checked in and there. This uncertainty is exhausting and makes life more difficult. It makes it easier to want to stay outside where you have a semblance of agency and predictability.
9. In the first outbreak of Covid I had just been restricted from shelters. I was left outside with only my clothing on. There was nowhere for me to go to find peace and warmth from the elements. Libraries, Tim Hortons and other spaces have been inaccessible due to Covid and this makes staying outside in the day extra difficult. I was also losing connection to supports bouncing between locations and without "in person" access to agencies.
10. While living outside I sometimes have a tent, other times not. It is near impossible for me to erect and tent and take it down because of my disabilities. It also takes me longer to bag possessions, organize them and move in a timely way demanded by By-law and the police.
11. As a Native American I find it difficult to accept that I cannot stay in public space. Back in 2020 the City said I could stay at Sir John A. McDonald school. I moved there and then within a week, the City attended with police and told us to move. That prompted the

injunction as there was an agreement made that the City broke. Then the City revoked the protocol, which was an agreement with encampment residents settling the injunction. These broken agreements reminds me of how Canada broke treaties with my people. This furthers my distrust of the City, government and agencies such as shelters. This is public land that I should not be kicked off.

12. Even when I tell By-law that there isn't capacity at the shelter or that I am restricted, they still make me dismantle my tent and move, or they dispose of my tent and I move in search of another green space.
13. I need to be close to other people to help me and constantly moving makes it difficult to remain connected to those that assist me. I see Dr. Jill Wiwcharuk for medical care at the Salvation Army and I go to Wesley and sometimes the Salvation Army for food. I have had various housing workers with the Homeward Bound program and they have yet to provide me with affordable housing or private market housing. I have had 5 housing workers and it is difficult for me to get to their agency which is buses away from me. They do not come to me. The last time I saw a housing worker was five months ago roughly. I was on the access to housing waitlist for subsidized housing, but I do not know the status of this. I do not have a phone or a mailing address.
14. The City of Hamilton has not offered me shelter or housing prior to evicting me from encampments.

AFFIRMED BEFOR ME in the
City of Hamilton, this 29 day of
September, 2021

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)
)

AFFIRMED at the City of
Hamilton, in the Province of
Ontario, this 29 day of
September, 2021.


A Commissioner etc.

LSUC 65404F



Court File No: CV-21-00077187-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

ASHLEY POFF, DARRIN MARCHAND, GORD SMYTH, MARIO
MUSCATO and SHAWN ARNOLD

Applicants

and

CITY OF HAMILTON

Respondent

Teleconference (Zoom) Cross-Examination on affidavit
of
MARIO MUSCATO
affirmed on September 29, 2021,
taken by Nimigan Mihailovich Reporting Inc.,
One James St. S., Suite 701, Hamilton, Ontario,
Canada L8P 4R5,
on OCTOBER 13, 2021

APPEARANCES:

for Plaintiff: MS. STEPHANIE COX
Hamilton Community Legal Clinic

For Defendant: MR. MICHAEL BORDIN
GOWLING

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2 Examination of MARIO MUSCATO affirmed 3

3 Examination by MR. MICHAEL BORDIN 3

4 EXHIBITS

5 No exhibits entered.
6

7 GUIDE TO UNDERTAKINGS

8
9 This should be regarded as merely a guide
10 and does not necessarily constitute a full
11 and complete list.
1213
14 UNDERTAKINGS ARE FOUND ON THE FOLLOWING PAGES:15 n/a
16
17

18 Under advisements are found on the following pages:

19 n/a
20
21

22 Refusals are found on the following pages:

23 n/a
24
25

1 -- Upon commencing at 2:03 p.m.

2 MARIO MUSCATO, affirmed.

3 EXAMINATION BY MR. BORDIN:

4 BY MR. BORDIN:

5 1 Q. Good afternoon, Mr. Muscato.

6 A. Good afternoon.

7 2 Q. I am the lawyer for the City of
8 Hamilton, and it is my information that you swore an
9 affidavit on September 29, 2021; correct?

10 A. Yes.

11 3 Q. And you swore that affidavit in
12 support of your application to obtain an injunction
13 against the City of Hamilton for the removal of
14 encampments; correct?

15 A. Yes.

16 4 Q. Okay. You have a copy of the
17 affidavit in front of you, sir?

18 A. Yeah, I do.

19 5 Q. Okay. So I understand, sir, from
20 your affidavit, that you have been homeless living
21 since 2017; is that correct?

22 A. Yes.

23 6 Q. Okay. And at paragraph two of your
24 affidavit you say you've been doing that between
25 encampments and men's shelters since 2017; is that

1 correct?

2 A. Yeah.

3 7 Q. Okay. Now, when you used the word
4 'encampments' in that paragraph, what do you mean?

5 A. Tents, you know, with other
6 homeless people living in tents.

7 8 Q. Okay. So can that be a tent by
8 yourself as well as a tent with other people in their
9 tents?

10 A. I have done that as well with a
11 girlfriend, but we've mainly been, you know, around
12 other people with tents.

13 9 Q. When did you start living in --
14 sorry, when did you start living in tents with other
15 people in tents?

16 A. July of 2017.

17 10 Q. Sorry, did you say July 2017?

18 A. Yes.

19 MS. COX: Could you clarify the
20 question? Are you referring to other people in the
21 tent or other tents beside his tent?

22 MR. BORDIN: Well, let me do this,
23 yeah.

24 11 Q. So, sir, if I say, just for the
25 purpose of this examination, if I say 'encampments',

1 I mean you're in a tent and there's other people who
2 are in their own tents nearby; okay? Do you
3 understand that?

4 A. Yeah.

5 12 Q. Okay. And if I'm going to refer to
6 you living by yourself or just with your girlfriend
7 in a tent, I'll say that; okay?

8 A. Okay.

9 13 Q. Okay. So when did you first start
10 living in a tent with other people nearby you in
11 their own tents, in other words in an encampment as
12 we've defined it?

13 A. July 2017.

14 14 Q. Now, if you look at paragraph six
15 of your affidavit, you say there: "When I was
16 evicted, I was forced to find refuge in a men's
17 shelter," okay?

18 A. Yes.

19 15 Q. So, did you first go and use men's
20 shelters when you were evicted?

21 A. My cousin was in one at the
22 Salvation Army and I went there; I was there for
23 about two nights before I was kicked out.

24 16 Q. Okay. And why were you, do you
25 recall why you were kicked out at that time?

1 A. I wasn't back by 10:00 o'clock.
2 There's a curfew of 10:00 p.m., and I was about 15
3 minutes late.

4 17 Q. When is the last time you stayed in
5 a shelter?

6 A. Probably a couple weeks ago.
7 Again that was just pretty much overnight.

8 18 Q. Is it possible you stayed in a
9 shelter on October 7th, 2020?

10 A. That might have been what I'm
11 talking about, yeah.

12 19 Q. And so --

13 A. I went there and --

14 MS. COX: He's still speaking, I don't
15 think you can hear him.

16 A. I went there and I showered; it
17 was late -- or early in the morning, too late to
18 really go to sleep; I stayed up and, you know, I
19 mean I didn't sleep at all really, I just went there
20 and showered. And actually, I still have some of my
21 clothes in their lockup right now.

22 BY MR. BORDIN:

23 20 Q. So between 2017 and about a week or
24 so ago when you last stayed in a shelter, have you
25 used shelters in the City of Hamilton? In other

1 words, have you been in and out of shelters during
2 that time?

3 A. In and out adverse for any length
4 of time, though, you know, never more than, I'd say
5 probably not even five or six days.

6 21 Q. Okay. And which shelters during
7 that time have you stayed in?

8 A. Mainly the Salvation Army. And
9 that issue, put staff at Good Shepherd, that was
10 2019, I had a couple of exchanges that didn't go so
11 well, and they made some comments I didn't like.
12 And I went to the store, they gave me a 15-minute
13 time limit, I took 17 minutes and found out that I
14 was not allowed back in.

15 22 Q. Yeah. All right. I just want to
16 make sure I understood. This is the Good Shepherd?

17 A. Yeah.

18 23 Q. And you think this was in 2019?

19 A. Yes.

20 24 Q. And have you ever been back to the
21 Good Shepherd since then?

22 A. When I had the Salvation Army call
23 the Good Shepherd, but the Salvation Army was full,
24 I was informed that I was 'restrictive service' at
25 the Good Shepherd at that time.

1 25 Q. Okay. So did you ever try again to
2 go to the Good Shepherd after that time?

3 A. No.

4 26 Q. Have you ever gone to Mission
5 Services?

6 A. Whenever I tried to go there,
7 they're full, they would tell me to come back at
8 10:00 o'clock at night and basically wait in line
9 and hope that someone would not show up so I could
10 take their bed. I tried a few times that, but I
11 never actually got in there, no.

12 27 Q. I understand that you see Dr. Jill
13 for medical care at the Salvation Army; is that
14 correct?

15 A. Yes.

16 28 Q. So you know that she's there from
17 time to time and you go there for the medical
18 assistance you need; is that correct?

19 A. Yeah.

20 29 Q. And where did you stay, where did
21 you sleep last night, sir?

22 A. Outside.

23 30 Q. Does that mean at an encampment or
24 --

25 A. Yeah, in a tent across the street

1 from Urban Core, on John and Rebecca.

2 31 Q. So during the day, sir, where do
3 you go during a typical day when you are not sleeping
4 in a shelter?

5 A. Sit around the Wesley Day Centre.

6 32 Q. Is that the main place that you go?

7 A. Mainly, yeah. There's times, you
8 know, I'll go to my cousin's; they live beside the
9 Indigenous Housing Hub; I'll stop in there to see my
10 worker who -- I don't really do too much -- asks me
11 how I'm doing and then find me a bus ticket.

12 33 Q. Okay. And is it common for people
13 in your situation to spend time around the Wesley Day
14 Centre?

15 A. You see a lot of the same people
16 there, yeah.

17 34 Q. And I didn't catch where you said
18 you would go see your cousin; where does he stay?

19 A. 16 Kenilworth Avenue.

20 35 Q. It's on Kenilworth?

21 A. Yeah, it's by the Indigenous
22 Housing Hub.

23 36 Q. Beside the Indigenous Housing, and
24 I didn't catch the last word?

25 A. Hub.

1 37 Q. Hub. Thank you.

2 A. It's like their office, secondary
3 office, I guess.

4 MR. BORDIN: Sorry, counsel, maybe you
5 can assist, I don't know what the last part of what
6 Mr. Muscato said.

7 MS. COX: He thinks it's their
8 secondary office; he said the Indigenous Housing
9 Hub, their office.

10 MR. BORDIN: Okay.

11 A. Last I heard, the buildings are
12 being knocked down this month.

13 BY MR. BORDIN:

14 38 Q. And, sir, was there a period of
15 time this year where, sometime between August 2020
16 and earlier this year, say April, did you move into
17 a, some form of residential care facility?

18 A. No. I was shown a residential
19 care by Gord, who's a worker; he took me to go look
20 at a housing place, and they informed me there that
21 they would take basically all my money except \$150,
22 and I would have to isolate for two weeks upon
23 moving in, which would be impossible to do, and --

24 39 Q. Sir, I'm sorry, I'm going to have
25 to interrupt, I really apologize. It is very, very

1 difficult for me to hear you.

2 What I heard you say was you were
3 shown a place, some kind of residence by your worker
4 who took you there to go look at it, and then he
5 told you that they would take the money you
6 received, which I understand to be ODSP, and leave
7 you \$150; is that correct so far?

8 A. Yes.

9 40 Q. Okay. And then if you can just
10 tell me what you were going to say after that?

11 A. I just don't believe I fit in in
12 that place. There was, it's more suited for, I mean
13 the people I seen there were more mental issues,
14 needed help, you know, because, I guess.

15 41 Q. And then do I understand, sir, that
16 because of that you didn't accept this placement?

17 A. It was that, as well as the two
18 weeks of self-isolation, and leaving me with \$150
19 for the whole month.

20 42 Q. Okay. So --

21 A. I had --

22 43 Q. Sorry, so you turned it down;
23 correct?

24 A. Yes.

25 MS. COX: Did you hear his entire

1 explanation?

2 MR. BORDIN: Sorry?

3 MS. COX: Were you able to hear his
4 entire explanation?

5 MR. BORDIN: I think I was.

6 Mr. Reporter, were you able to hear
7 it?

8 COURT REPORTER: Yes.

9 MR. BORDIN: Thank you.

10 44 Q. And, sir, do you, I take it you
11 don't have a phone, do you?

12 A. No.

13 45 Q. Have you ever taken a bus before?

14 A. Yes.

15 46 Q. Am I correct that you were not
16 barred from all of the men's shelters; is that
17 correct?

18 A. That's correct.

19 47 Q. So, sir, are you vaccinated?

20 A. Yes.

21 48 Q. And I think in your affidavit, sir,
22 at paragraph 13, if you do want to look at it, you
23 say, it's about a little bit better than halfway
24 down, you say you have had five housing workers;
25 correct? Where, like where are the housing workers

1 from, what agency or organization? Do you know?

2 A. Maybe they're from Homeward Bound,
3 that's the Indigenous Housing Service. The first
4 one, her name was Kristen; the second one was
5 Darienne I think her name was; the third one was
6 Michele; the fourth one I think is Micka. And I'm
7 not sure if she actually even works there still or
8 not; every time I've gone there to see her, she
9 hasn't been there.

10 49 Q. Okay. And I want to make sure I
11 understand; you said they were with Indigenous
12 Housing Services; correct?

13 A. Yes.

14 50 Q. Okay.

15 MS. COX: -- (inaudible) it's part of
16 the Homeward Bound program that's part of Indigenous
17 Housing Services.

18 MS SEIDEL: I didn't hear that,
19 counsel.

20 MS. COX: He said that it's part, it's
21 called the Homeward Bound Program, and that's part
22 of Indigenous Housing Services.

23 MR. BORDIN: Okay.

24 Thank you. Those are all my
25 questions, sir.

1 MS. COX: Okay. Thank you.

2 (inaudible)

3 MR. BORDIN: We lost you there for a
4 minute, Ms. Cox, I don't know what you said.

5 MS. COX: Sorry. We will go get Gord
6 now for the next cross-examination.

7 MR. BORDIN: Okay. Thank you.

8 Thank you, sir.

9 -- Adjourned at 2:21 p.m.

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1
2 I HEREBY CERTIFY THE FOREGOING
3 to be a true and accurate
4 transcription of my shorthand notes
5 to the best of my skill and ability.
6

7 -----

8 MARC BEEBE, O.C.R.
9 Computer-Aided Transcription
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Court File No. CV-21-00077817-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**ASHLEY POFF, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO
SHAWN ARNOLD et al.**

Applicants

-and-

CITY OF HAMILTON

Respondent

**AFFIDAVIT OF MARIO MUSCATO
(Sworn May 11, 2022)**

1. I, MARIO MUSCATO, of the City of Hamilton in the Province of Ontario, MAKE OATH AND STATE:
2. I am a 48 year old Indigenous man. My current source of income is ODSP. As a single person without housing, I receive \$906 per month. This includes additional funds for a special diet. If I found housing, I'd receive a maximum of \$1169 per month, plus my existing special diet allowance.
3. In 2018, I was electrocuted and lost my right hand the majority of my fingers on my left hand. As a result, I need a lot of assistance from others to pick up and hold items. I do not have dexterity. I also have a substance use disorder.
4. I have been homeless since 2017 and have been living in tents, in shelters and on the streets since then.
5. Before becoming homeless, I was living in rental housing. I was evicted after Ontario Works failed to remit my shelter allowance to the landlord. I was not aware of this and suddenly owed a large amount of arrears to the landlord. I was evicted.
6. When I was evicted, I had to seek refuge in a men's shelter. I had nowhere to store my belongings and lost almost everything.
7. Staying in a shelter was difficult for me. I had previously been an independent and capable person. Suddenly I was treated like a child with so many rules and

micromanaged by every move. Shelters are dirty and staff are often rude and condescending. The environment can really make you feel like a second class citizen.

8. The shelter system is very unpredictable. I spend a lot of time walking around all day, looking for food and figuring out where I will sleep that night.
9. I have tried staying in shelters several times. I am repeatedly kicked out, or service restricted. The amount of time that I am banned from shelters ranges – sometimes it is overnight and sometimes for months.
10. The reasons for the shelter bans vary. I often miss curfew because it takes me longer to walk, especially on ice. I have been kicked out of a shelter for missing curfew by two minutes. I have been accused of bringing in a bottle of alcohol even though I don't I don't drink.
11. I have waited in line for 45 minutes to sleep on a mat on the floor at a shelter when they have run out of beds. Sometimes I can't even get a mat on the floor.
12. I can't carry a lot of my belongings around due to my disabilities. When I previously stayed in an encampment with a friend, he carried my tent and helped me put it up and take it down. I am not physically able to put up and take down my tent.
13. I am currently banned from the Salvation Army shelter until June 22, 2022 after I was falsely accused of using drugs in the bathroom and got into an argument with the manager. I was taking extra time in the bathroom because I was getting changed and it takes me longer than normal because I don't have hands.
14. At the same time that I was banned from Salvation Army, the men's shelters at Mission Services and Good Shepherd were full.
15. Almost every time I go to Mission Services, they are full. Good Shepherd is also often full.
16. There are people in shelters who stay up all night just so they can steal from you as you sleep. Some people will befriend you so you let your guard down, only to find out that they are not your friend after all and they planned to steal from you.
17. As a person experiencing homelessness, the loss of any of the few possessions you own is completely devastating. I have lost almost everything I own. When I report it to staff, they act like it's an everyday thing and there is nothing they can do about it. They do not help with figuring out how I can replace the items. They have security cameras but checking them to see what happened doesn't seem to be part of the process.

18. If I don't have a tent and cannot get into shelter (because they are full or I am service restricted), I try to find a stairwell or hallway to sleep. I can sometimes stay with friends, but I have no way of planning around this.
19. I stayed at the Sandman Hotel, operated by Mission Services, sometime in 2020. The first time, I stayed about 5 weeks and was then evicted. My ex-girlfriend was staying there as well and I was discharged the next day after a false allegation that I threatened her and her new boyfriend.
20. I stayed at the Sandman Hotel a second time – probably in the summer of 2021 – for about 2.5-3 months. I was kicked out after being falsely accused of dealing drugs.
21. There are no independent investigations at shelters or the hotel program. Once an allegation is made, you are kicked out.
22. The hotel program has since been shut down.
23. During the first wave of Covid, I was service restricted from one and possibly two shelters. Everything was shut down – Tim Horton's, the mall, the library, public washrooms. I had nowhere to go.
24. I have stayed in tents in different locations over the past few years. The following is a breakdown of the locations and approximate timeframes.

Location	Timeframe	Duration of stay	Outcome
Different locations, including Wellington/Victoria	Sometime in 2017	It ranged from overnight to a month.	Sometimes left for shelter in the extreme cold
Sir John A MacDonald (school)	Early 2020	One week	Police and By-law evicted me
Ferguson Avenue	Roughly early 2020	About 7 months	Police and By-law evicted me
Various locations	Throughout 2021	It ranged from 3-4 days until 2 weeks	Police came and evicted me
Various locations	Throughout 2022	Couples days	Move to avoid run-ins with police.

25. During the time of the Encampment Protocol, we tried to stay in the parks where we thought it was permitted, but we would still be kicked out. It still felt like

nothing was ok. It seemed like what we were supposed to do was go hide in the mountainside, away from everyone's view.

26. Now, when I stay in a tent, I tried to move before the police come. I know when the police come, you have to go. I worry that I will be arrested or that there will be confrontation. I also know that if I stay in an area that is more visible to the public, I will not be able to stay very long before the police arrive.
27. I feel safer in an encampment because of the people around me, who I usually know and trust. Sometimes I feel less safe because of other people throwing things at tent, or worrying that police will come. In the past, people outside encampments have set off fireworks inside tents in order to scare us away. But I still feel safer in a tent over the shelter or the streets.
28. Not having a stable and secure place to stay overnight means that I almost never get a decent night's sleep. On average, I sleep about 1-2 hours a night that is broken up. Most nights I don't sleep at all. I fall asleep repeatedly during the day, especially if I'm sitting down. My body just shuts down.
29. I am usually groggy and have difficulty concentrating. It is difficult for me to attend appointments. For example, I have a housing worker with the Hamilton Regional Indian Centre. I am in methadone treatment. But it is very difficult for me to keep track of my appointments and physically make it.

SWORN BEFORE ME in the City
of Hamilton, this 11 day of May, 2022



Mario Muscato



A Commissioner, etc.

Sharon Crowe

<div>1</div> <div>1 Court File No. CV-21-77187</div> <div>2 ONTARIO</div> <div>3 SUPERIOR COURT OF JUSTICE</div> <div>4</div> <div>5 B E T W E E N:</div> <div>6 KRISTEN HEEGSMAN, DARRIN MARCHAND, GORD SMYTH,</div> <div>7 MARIO MUSCATO, SHAWN ARNOLD, BRADLEY CALDWELL,</div> <div>8 CHRISTINE DELOREY, GLEN GNATUK, TAYLOR GOGO-HORNER,</div> <div>9 CASSANDRA JORDAN, JULIA LAUZON, AMMY LEWIS,</div> <div>10 ASHLEY MACDONALD, COREY MONAHAN, MISTY MARSHALL,</div> <div>11 SHERRI OGDEN, JAHMAL PIERRE, LINSLEY GREAVES and</div> <div>12 PATRICK WARD</div> <div>13 Applicants</div> <div>14</div> <div>15 and</div> <div>16</div> <div>17 CITY OF HAMILTON</div> <div>18 Respondent</div> <div>19</div> <div>20 --- This is the Cross-Examination of MARIO MUSCATO, an</div> <div>21 Applicant, herein, on his Affidavit Sworn the 11th day</div> <div>22 of May, 2022, taken via videoconference on the 14th day</div> <div>23 of August, 2024.</div> <div>24</div> <div>25</div> <div>Nimigan Mihailovich Reporting Inc.</div> <div>(905) 522-1653</div>	<div>3</div> <div>1 TABLE OF CONTENTS</div> <div>2</div> <div>3 INDEX OF EXAMINATIONS: PAGE NO.</div> <div>4</div> <div>5 MARIO MUSCATO: Affirmed..... 4</div> <div>6 CROSS-EXAMINATION BY MS. SHORES..... 4</div> <div>7 RE-EXAMINATION BY MS. CROWE..... 42</div> <div>8</div> <div>9</div> <div>10 INDEX OF UNDERTAKINGS</div> <div>11 Undertakings are noted by "U/T" and are found on the</div> <div>12 following pages: NONE</div> <div>13</div> <div>14 INDEX OF REFUSALS</div> <div>15 Refusals are noted by "R/F" and are found on the</div> <div>16 following pages: 50, 56.</div> <div>17</div> <div>18 INDEX OF ADVISEMENTS</div> <div>19 Under AdviseMENTS are noted by "U/A" and are found on the</div> <div>20 following pages: NONE</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> <div>Nimigan Mihailovich Reporting Inc.</div> <div>(905) 522-1653</div>
<div>2</div> <div>1 APPEARANCES:</div> <div>2 Sharon Crowe For the Applicants</div> <div>3 Curtis Sell</div> <div>4 Nnonyechi Okenwa</div> <div>5 Michelle Sutherland</div> <div>6</div> <div>7 Bevin Shores For the Respondent</div> <div>8 Jordan Diacur</div> <div>9 Vivian Caldas</div> <div>10</div> <div>11 ALSO PRESENT:</div> <div>12 Katherine Finlayson Summer law student</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> <div>Nimigan Mihailovich Reporting Inc.</div> <div>(905) 522-1653</div>	<div>4</div> <div>1 --- Upon commencing at 11:36 a.m.</div> <div>2 MARIO MUSCATO: Affirmed.</div> <div>3 CROSS-EXAMINATION BY MS. SHORES:</div> <div>4 1 Q. Good morning, sir. As I</div> <div>5 introduced off record, my name is Bevin Shores. My</div> <div>6 pronouns are "she" and "her." Can we start by getting</div> <div>7 you to state your full name?</div> <div>8 A. My name is Mario Joseph Muscato.</div> <div>9 2 Q. And how would you like to be</div> <div>10 addressed today?</div> <div>11 A. "Mario" is fine.</div> <div>12 3 Q. And do you have any pronouns that</div> <div>13 you use or wish to share?</div> <div>14 A. "Him," I guess. Just "him."</div> <div>15 4 Q. Okay. You've been affirmed to</div> <div>16 tell the truth?</div> <div>17 A. Yes.</div> <div>18 5 Q. Mr. Muscato, before we went on</div> <div>19 record, you expressed being sleepy, and your lawyer</div> <div>20 Ms. Crowe observed that you were nodding off. I want</div> <div>21 to confirm. I asked you if you felt that you were okay</div> <div>22 to proceed today and you said yes. Is that correct?</div> <div>23 A. Yes.</div> <div>24 6 Q. And that's still true? You're</div> <div>25 still feeling comfortable answering questions today?</div> <div>Nimigan Mihailovich Reporting Inc.</div> <div>(905) 522-1653</div>

5

1 **A. Yes.**

2 7 **Q.** And you think that you're in a

3 position to do that truthfully?

4 **A. Yeah.**

5 8 **Q.** Okay. Have you taken any

6 medications before coming today?

7 **A. The only medications I'm on right**

8 **now is methadone. That's it.**

9 9 **Q.** Have you consumed any other

10 substances before attending today?

11 **A. No, not even a coffee.**

12 10 **Q.** Does the methadone affect your

13 ability to understand or remember things?

14 **A. No. I'm not on that high of a**

15 **dose.**

16 11 **Q.** If during this cross-examination

17 you don't understand one of my questions, please let me

18 know. Okay?

19 **A. Yeah.**

20 12 **Q.** Otherwise, I'll assume that you do

21 understand. Okay?

22 **A. Okay.**

23 13 **Q.** All right. We're here for a

24 cross-examination on your affidavit dated May 11, 2022.

25 Have you reviewed that affidavit?

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6

1 **A. Yes.**

2 14 **Q.** Thank you. And do you confirm

3 that it's accurate?

4 **A. Yes.**

5 15 **Q.** How long have you lived in

6 Hamilton?

7 **A. The very first week of**

8 **January 2016.**

9 16 **Q.** Where did you live before coming

10 to Hamilton?

11 **A. Buffalo, New York.**

12 17 **Q.** Buffalo, New York, okay. Where is

13 your current residence?

14 **A. I live in Hamilton. You know, no**

15 **permanent address.**

16 18 **Q.** So you're not housed?

17 **A. No.**

18 19 **Q.** In your May 2022 affidavit, you

19 say you've been homeless since 2017. Since 2017, have

20 you ever had any periods of being housed?

21 **A. May periods...**

22 20 **Q.** Have you been housed at any time

23 since becoming homeless?

24 MS. CROWE: Mario?

25 THE DEPONENT: I'm just trying to

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7

1 think. No, I haven't been. A4927

2 BY MS. SHORES:

3 21 **Q.** Where are you currently staying?

4 I know you said you have no fixed address, but are you

5 staying in a shelter, are you staying in a park, are

6 you staying somewhere else?

7 **A. Well, some nights do get a little**

8 **chilly out there and I do get a little too tired, and**

9 **it's those nights I feel safer even if it is going to a**

10 **shelter.**

11 22 **Q.** So when it's cold out, you'll go

12 into a shelter?

13 **A. Hmm.**

14 23 **Q.** Was that a yes? I'm sorry, I

15 didn't hear --

16 **A. Yes, yes.**

17 24 **Q.** Thank you.

18 **A. Sorry.**

19 25 **Q.** That's okay. If you forget to

20 keep your voice up, one of us will remind you. On the

21 nights where it's not too cold out, you stay outside?

22 **A. Yes.**

23 26 **Q.** And you stay in a tent?

24 **A. They're a little hard to put up by**

25 **myself, so most of the time I'd have to say no.**

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8

1 27 **Q.** Okay. And so you'll stay in a

2 park, but you won't have a tent because it's hard for

3 you to put up?

4 **A. Yeah. The one -- yeah, yeah.**

5 28 **Q.** Do you have a tent?

6 **A. I used to.**

7 29 **Q.** When was the last time you had a

8 tent?

9 **A. Just before November of last year.**

10 30 **Q.** And what happened to that tent?

11 **A. It was just stolen.**

12 31 **Q.** Do you know who stole it?

13 MS. CROWE: Mario, did you hear the

14 question?

15 THE DEPONENT: No.

16 BY MS. SHORES:

17 32 **Q.** Do you know who stole your tent?

18 **A. Yeah, someone stole it, yeah.**

19 33 **Q.** But you don't know who that was,

20 who took your tent?

21 **A. No. There was a period of people**

22 **going around stealing tents, and at this point there**

23 **was people going around just burning tents, you know?**

24 34 **Q.** Was your tent ever burned?

25 **A. No.**

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<div>9</div> <div> <p>1 35 Q. And so you said since November of</p> <p>2 last year, if I understand correctly, if it's cold out,</p> <p>3 you would go into a shelter, and if it's not too cold</p> <p>4 out, you'll stay outside?</p> <p>5 A. Yeah. I do have a cousin. I will</p> <p>6 try his apartment first. He's not always home, so then</p> <p>7 I'm left with a shelter or go find somewhere warm.</p> <p>8 36 Q. Have you tried to get a new tent</p> <p>9 to replace the one that was stolen?</p> <p>10 A. Not from any organization. And</p> <p>11 for me to go out and buy a tent, you know, it cuts into</p> <p>12 my monthly income a nice amount. And I'm just taking</p> <p>13 that chance as someone just stealing it or burning it</p> <p>14 on fire again, and I'm out that money.</p> <p>15 37 Q. You said "not from any</p> <p>16 organization." Are there organizations that you could</p> <p>17 get a tent from for free? Have you looked into that?</p> <p>18 A. There was a few of them. They do</p> <p>19 run out fairly quick.</p> <p>20 38 Q. Okay. Have you tried to get a</p> <p>21 tent from them?</p> <p>22 A. They told me on two different</p> <p>23 occasions that they're working on one for me, but I</p> <p>24 have yet to see it.</p> <p>25 39 Q. Turning to your May 11, 2022,</p> <p>Nimigan Mihailovich Reporting Inc.</p> <p>(905) 522-1653</p> </div>	<div>11</div> <div> <p>1 45 Q. Have you submitted an application</p> <p>2 to get housing?</p> <p>3 A. Yeah.</p> <p>4 46 Q. And what steps have been taken to</p> <p>5 try to get you housing?</p> <p>6 MS. CROWE: Did you hear the question?</p> <p>7 THE DEPONENT: No, no.</p> <p>8 MS. CROWE: Could you repeat, please?</p> <p>9 BY MS. SHORES:</p> <p>10 47 Q. What steps have been taken to try</p> <p>11 to get you housing?</p> <p>12 A. I don't really feel like any have.</p> <p>13 I have looked myself. I mean, my worker at the</p> <p>14 Salvation Army, Chelsea, tried to hook up with a new</p> <p>15 program called Housing UP! and I was turned down.</p> <p>16 48 Q. When was that?</p> <p>17 A. About a month and a half ago.</p> <p>18 49 Q. Did they tell you why you were</p> <p>19 turned down?</p> <p>20 A. I'm a little hard to take care of.</p> <p>21 50 Q. Is that the reason that they gave</p> <p>22 you, that you were hard to take care of?</p> <p>23 A. Yes.</p> <p>24 51 Q. Did they tell you what the next</p> <p>25 steps are? Are there other options for you to get</p> <p>Nimigan Mihailovich Reporting Inc.</p> <p>(905) 522-1653</p> </div>
<div>10</div> <div> <p>1 affidavit at paragraph 2, you said at that point in</p> <p>2 time your current source of income was ODSP. You were</p> <p>3 receiving \$906 per month. Is that still correct? Has</p> <p>4 there been any updates to your income?</p> <p>5 A. Yes.</p> <p>6 40 Q. Yes, that's correct?</p> <p>7 A. Yeah. No, there is -- I do have a</p> <p>8 higher income than \$906.</p> <p>9 41 Q. What do you get now?</p> <p>10 A. I get my bus allowance and my --</p> <p>11 my allowance.</p> <p>12 42 Q. How much in total does that add up</p> <p>13 to? Do you know?</p> <p>14 MS. CROWE: Did you hear the question?</p> <p>15 THE DEPONENT: No, I...</p> <p>16 MS. CROWE: Can you repeat, please?</p> <p>17 BY MS. SHORES:</p> <p>18 43 Q. How much do your benefits add up</p> <p>19 to? Do you know how much you get every month in total?</p> <p>20 A. It varies, you know, by \$2 here or</p> <p>21 there. It's mainly been around \$990.</p> <p>22 44 Q. Is it still the case that you</p> <p>23 would receive more money if you found housing because</p> <p>24 you'd get money for that housing?</p> <p>25 A. I do believe so, yeah.</p> <p>Nimigan Mihailovich Reporting Inc.</p> <p>(905) 522-1653</p> </div>	<div>12</div> <div> <p>1 housing?</p> <p>2 A. No.</p> <p>3 52 Q. Do you know what they mean when</p> <p>4 they say you're hard to take care of?</p> <p>5 A. Kind of. They want me into a --</p> <p>6 they want to put me into a lodging home, and I'm not</p> <p>7 so...</p> <p>8 53 Q. Sorry, I didn't quite catch that.</p> <p>9 I think you trailed off a bit. You said they wanted to</p> <p>10 put you in a lodging home. So they offered you a place</p> <p>11 in a lodging home?</p> <p>12 A. Not yet. They just told me there</p> <p>13 are many lodging homes that they are sure they can get</p> <p>14 me into.</p> <p>15 54 Q. Okay. Well, that sounds</p> <p>16 promising. Did you take them up on that?</p> <p>17 A. No.</p> <p>18 55 Q. And why not?</p> <p>19 A. Because I've heard from many</p> <p>20 other (indiscernible) -- yeah, it's not good enough.</p> <p>21 56 Q. I think I only heard part of what</p> <p>22 you said, Mr. Muscato. You said you've heard, and then</p> <p>23 I didn't hear what you said, and then you said "not</p> <p>24 good enough." Can you repeat that?</p> <p>25 A. The housing's not -- they require</p> <p>Nimigan Mihailovich Reporting Inc.</p> <p>(905) 522-1653</p> </div>

<p>13</p> <p>1 a little too much.</p> <p>2 57 Q. And what do you mean by that?</p> <p>3 A. Well, by the time I'm left paying</p> <p>4 them, from what I hear -- I've been told by many other</p> <p>5 people that have been through these lodging programs --</p> <p>6 I'm left with \$150 for the whole month, and they dish</p> <p>7 that out more as an allowance. Some places will do</p> <p>8 your laundry and your cooking. Some places, it seems</p> <p>9 like they won't do nothing at all.</p> <p>10 58 Q. Okay. Have you talked to anyone</p> <p>11 about whether that's true or whether you can get into</p> <p>12 one of the places that do your laundry and your</p> <p>13 cooking? It seems like if you can get in there, you</p> <p>14 can stretch that \$150 pretty far.</p> <p>15 A. I wouldn't know where one of those</p> <p>16 are.</p> <p>17 59 Q. Have you talked to anyone about</p> <p>18 that?</p> <p>19 A. No.</p> <p>20 60 Q. Mr. Muscato, do you remember</p> <p>21 seeing a Dr. Wiwcharuk? Or sometimes she goes, I</p> <p>22 think, by "Dr. Jill." Have you seen her before?</p> <p>23 A. No, not lately. She used to be my</p> <p>24 doctor.</p> <p>25 61 Q. Do you remember when she stopped</p> <p>Nimigan Mihailovich Reporting Inc.</p> <p>(905) 522-1653</p>	<p>15</p> <p>1 other's schedule down.</p> <p>2 68 Q. So you knew where you could go to</p> <p>3 find her?</p> <p>4 A. Yeah.</p> <p>5 69 Q. Dr. Jill, in her June 9, 2022,</p> <p>6 letter in the second paragraph -- I'm just going to</p> <p>7 zoom in here. I placed it on the screen. I suppose I</p> <p>8 should say for the record this is appended to the</p> <p>9 affidavit of Dr. Jillian Wiwcharuk. I'm just looking</p> <p>10 for the exhibit letter. Exhibit F. Do you have it</p> <p>11 there, Counsel?</p> <p>12 MS. CROWE: Yes.</p> <p>13 MS. SHORES: Okay.</p> <p>14 BY MS. SHORES:</p> <p>15 70 Q. In the second paragraph, second</p> <p>16 sentence, Dr. Wiwcharuk states that you suffer from</p> <p>17 opioid use disorder and stimulant use disorder. She</p> <p>18 goes on to list a few other things, but I'm going to</p> <p>19 ask you about the opioid use disorder and stimulant use</p> <p>20 disorder first. Is that correct? Do you have those</p> <p>21 disorders?</p> <p>22 A. Yes. Unfortunately, yes.</p> <p>23 71 Q. Which substances do you use?</p> <p>24 A. Mostly fentanyl at this time.</p> <p>25 72 Q. Okay. Are you in treatment for</p> <p>Nimigan Mihailovich Reporting Inc.</p> <p>(905) 522-1653</p> <p>A4929</p>
<p>14</p> <p>1 being your doctor?</p> <p>2 A. About a year and a half ago.</p> <p>3 62 Q. Do you know her by Dr. Jill or Dr.</p> <p>4 Wiwcharuk?</p> <p>5 A. Dr. Jill.</p> <p>6 63 Q. Dr. Jill, okay. I'm going to call</p> <p>7 her Dr. Jill so it's not confusing. Dr. Jill wrote a</p> <p>8 letter about you dated June 9, 2022. Have you seen</p> <p>9 this letter?</p> <p>10 A. No, I haven't, I don't believe.</p> <p>11 64 Q. Okay. I'm going to ask you some</p> <p>12 things about that letter, but before I do, when</p> <p>13 Dr. Jill was your doctor, how often would you see her?</p> <p>14 A. At least once a week.</p> <p>15 65 Q. And where would you see her?</p> <p>16 A. Sometimes I'd see her at the</p> <p>17 Wesley and I'd see her at the Hamilton Clinic or I</p> <p>18 would see her at the Hub.</p> <p>19 66 Q. You would go to her at those</p> <p>20 places --</p> <p>21 A. In the Hub there, yes.</p> <p>22 67 Q. When you see her, does she tell</p> <p>23 you where she can find you next -- I'm sorry, where you</p> <p>24 can find her next or where she will meet you next?</p> <p>25 A. No. We had pretty much each</p> <p>Nimigan Mihailovich Reporting Inc.</p> <p>(905) 522-1653</p>	<p>16</p> <p>1 either of those disorders?</p> <p>2 A. Yes.</p> <p>3 73 Q. What treatment are you getting?</p> <p>4 A. Methadone.</p> <p>5 74 Q. That's the methadone. And the</p> <p>6 methadone treatment, what does that involve? What do</p> <p>7 you have to do for your methadone treatment?</p> <p>8 A. Just a bunch of -- just staying</p> <p>9 positive and trying to keep busy.</p> <p>10 75 Q. Okay. How often do you take --</p> <p>11 A. Lots of --</p> <p>12 76 Q. Sorry, I didn't mean to interrupt</p> <p>13 you. Go ahead.</p> <p>14 A. Just lots of phone calls from</p> <p>15 different peers and support.</p> <p>16 77 Q. Phone calls with treatment</p> <p>17 providers?</p> <p>18 A. What do you mean "treatment</p> <p>19 providers"?</p> <p>20 78 Q. People who are trying to help you</p> <p>21 get treatment?</p> <p>22 A. Yeah, she's called me a number of</p> <p>23 times. They wanted me to start this -- a change that</p> <p>24 we're trying to make. She thought mine was a little</p> <p>25 unique because it stemmed a lot more from an accident</p> <p>Nimigan Mihailovich Reporting Inc.</p> <p>(905) 522-1653</p> <p>A645</p>

<p style="text-align: right;">17</p> <p>1 that I had suffered, and losing my daughter -- or her 2 mother back in Buffalo and -- yeah, she nailed it on 3 the nose. 4 79 Q. So your accident, is that the 5 electrocution incident that she describes? 6 A. Hmm. 7 80 Q. Sorry, I didn't hear your answer. 8 MS. CROWE: Did you hear the question? 9 THE DEPONENT: No. 10 MS. CROWE: Can you please repeat? 11 BY MS. SHORES: 12 81 Q. You referred to an accident, and I 13 want to know is that the electrocution incident in 14 2018? 15 A. Yeah. 16 82 Q. Okay. Going back to -- sorry, you 17 said there were phone calls. Do you have a phone? 18 MS. CROWE: Mario, did you hear the 19 question? 20 THE DEPONENT: Yeah. Sorry, I shook my 21 head. I'm sorry, no. 22 BY MS. SHORES: 23 83 Q. You don't have a phone. How do 24 you use a phone? 25 A. Pay phone or a friend's phone. Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>	<p style="text-align: right;">19</p> <p>1 every day for, something like an injection you can get? 2 A. That's the -- that's the -- where 3 they put the needle in you. Right? Sublocade shot, I 4 think it's called. 5 92 Q. Yeah, yeah. Has anyone suggested 6 that to you? 7 A. No. 8 93 Q. Okay -- 9 A. Because that's more Suboxone. 10 94 Q. Would that be easier for you? 11 A. At this time, no. 12 95 Q. Okay. Dr. Wiwcharuk goes on to 13 describe the electrocution that you had in 2018, and I 14 just want to get your information as to whether she's 15 describing it correctly. She says you had a partial 16 amputation of your left forearm, severe burn injuries 17 to your right forearm with grafting that needed to be 18 done, and you have extremely limited use of your right 19 forearm so that you can't fully extend it, and your 20 fingers are in a claw shape. Is that correct so far? 21 A. Yeah. 22 96 Q. And you have no sensation in any 23 of the fingers on your right? 24 A. It would be my left. 25 97 Q. On your left, okay. I was Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>
<p style="text-align: right;">18</p> <p>1 Like, I'll buy a phone, but I'm downtown. It gets 2 stolen. Everybody's phone gets stolen. 3 84 Q. I want to ask about the methadone 4 treatment in particular. Is that something that you 5 have to take every day? 6 MS. CROWE: Did you hear the question? 7 THE DEPONENT: No, sorry. 8 BY MS. SHORES: 9 85 Q. Do you have to take your methadone 10 every day? 11 A. Yes. 12 86 Q. And do you have to take it in a 13 specific place? 14 A. Yes. 15 87 Q. Where do you have to take it? 16 A. 211 James Street South. 17 88 Q. Is that a pharmacy? 18 A. Yes. 19 89 Q. Do you, in fact, take it every 20 day, go to that pharmacy? 21 A. I miss the odd day here and there. 22 90 Q. Overall, you're able to take it? 23 A. Yes. 24 91 Q. Has anyone discussed with you a 25 treatment that you might not have to go to the pharmacy Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>	<p style="text-align: right;">20</p> <p>1 wondering if maybe she got that mixed up. She says in 2 the winter you have suffered frostbite injuries to your 3 hand due to an inability to feel the cold. Do you 4 remember getting frostbite? 5 MS. CROWE: Mario, did you hear? 6 THE DEPONENT: Huh? 7 BY MS. SHORES: 8 98 Q. Have you had frostbite on your 9 hand? 10 A. Yeah. Yeah, yeah. 11 99 Q. Did you get treatment for that 12 frostbite? 13 A. Yes. 14 100 Q. Do you remember when it was that 15 you got frostbite? 16 A. In January of 2019. 17 101 Q. Okay. Do you remember where you 18 were when you got frostbite? 19 A. Behind City Hall. 20 102 Q. Behind City Hall. Were you in a 21 tent? 22 A. No. 23 103 Q. You were just outside? 24 A. Yeah. I was walking to my 25 friend's house. Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>

		21
1	104	Q. You said you were walking to your
2		friend's house?
3		A. Yes.
4	105	Q. Did you make it to your friend's
5		house eventually?
6		A. Yeah.
7	106	Q. Okay. And then you got that
8		treatment for your frostbite, as you told me before;
9		right?
10		A. Yeah.
11	107	Q. Okay. Now, Dr. Wiwcharuk also
12		says -- I'm going to go back to the second paragraph --
13		that you have HIV?
14		A. Yes.
15	108	Q. Okay. Further down on the second
16		page, she describes it as untreated HIV. Is that still
17		correct, you're not getting any treatment for your HIV?
18		A. I'm starting treatment with the
19		Wellkare Clinic that I'm at now.
20	109	Q. Okay. Is that treatment something
21		you have to go to the clinic for?
22		A. The pharmacist that I go to now,
23		yeah.
24	110	Q. Is that the same pharmacist for
25		your methadone?
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		22
1		A. Yes.
2	111	Q. You can go there, you can get your
3		methadone and your HIV treatment all in one?
4		A. Yes.
5	112	Q. You told me before that other than
6		missing maybe a day here or there, you can make it for
7		your methadone. Is that also true with your HIV
8		treatment?
9		A. Yes.
10	113	Q. I'm glad to hear that. Do you
11		currently have a doctor who's treating you now that Dr.
12		Wiwcharuk is no longer your doctor -- or Dr. Jill?
13		A. Dr. Gupta, I think her name is.
14		It's just mainly the one that's toward my methadone.
15	114	Q. Where do you see Dr. Gupta?
16		A. At 211 James Street South.
17	115	Q. Okay.
18		A. I'm seriously considering on
19		changing that, though.
20	116	Q. And why is that?
21		A. I'm supposed to have a couple more
22		surgeries on my arm and nobody seems to be pushing for
23		that.
24	117	Q. You want someone who can help you
25		try to get those surgeries for your arm?
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		23
1		A. Yeah.
2	118	Q. What are those surgeries supposed
3		to do for you? Do you know?
4		MS. CROWE: Did you hear the question?
5		THE DEPONENT: Yeah. They're going to
6		cut my left arm open again, shave down -- they put an
7		extra, like, padding over the tendon to protect them.
8		So they're going to shave that down to look more like a
9		regular forearm. I think that'll hold 'er.
10		BY MS. SHORES:
11	119	Q. Is that supposed to make your
12		forearm more useful for you? What is the reason they
13		say that --
14		A. Yeah, yeah, because it's kind of a
15		dead hand right now. I'm very, very limited in what I
16		can do with it.
17	120	Q. Okay. Is anybody other than
18		Dr. Gupta providing you with medical care right now?
19		A. No.
20	121	Q. One more thing about
21		Dr. Wiwcharuk, because she identified some other things
22		that -- some other conditions that you've sustained.
23		She also describes -- bear with me. I'm just trying to
24		find my place in her report. On the second page of her
25		report, the fifth paragraph down, she states that you
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		24
1		have posttraumatic stress disorder from events in your
2		childhood as well as the electrocution injury in 2018.
3		Is that also correct?
4		A. Well, I'd like to think I'm
5		stronger than that, but, yeah, she's probably correct.
6	122	Q. Okay. Are you in treatment for
7		that, the posttraumatic stress disorder?
8		A. No.
9	123	Q. Have you tried to get treatment
10		for that or has anyone offered you treatment for that?
11		A. No.
12	124	Q. Have you asked about getting some
13		treatment or some help with your PTSD?
14		A. Yeah.
15	125	Q. And what do they tell you?
16		A. About what? Me in treatment?
17	126	Q. Yeah, yeah. If I understand you
18		correctly, you said you tried to get treatment. What
19		were you told?
20		A. That I shouldn't go until I am
21		completely ready, that I should have everything settled
22		on -- in my everyday life before I do something like
23		that, and...
24	127	Q. Do you remember who told you that?
25		A. Maybe Dr. Bob (ph). There's
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1 various other workers.

2 128 Q. Okay. You're not sure?

3 A. No. Well, I know I've been told
4 that, you know, going through some of these centres can
5 be hard work and...

6 129 Q. I'm going to take you back to your
7 affidavit of May 2022. At page 2, paragraph 9, you
8 state "I have tried staying in shelters several times.
9 I am repeatedly kicked out or service restricted. The
10 amount of time that I am banned from shelters ranges.
11 Sometimes it is overnight and sometimes for months."

12 A. Yes.

13 130 Q. Okay. How many times would you
14 say that you've been service restricted from a shelter?

15 MS. CROWE: Did you hear the question?

16 THE DEPONENT: Yeah. How many times?

17 Quite a bit. The longest service restricted was -- I
18 have a hard time going to the bathroom, and if I'm
19 wearing jeans, it's very hard for me to either unbutton
20 or button up my jeans and do up my belt. If I'm
21 wearing jogging pants, it's very hard to, you know, tie
22 the knot in my jogging pants. It takes me, you know, a
23 fair amount of time. It's not like I want to be in
24 there that amount of time. And during that time, knock
25 after knock after knock on the doors. It's been

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1 workers, it's been the superintendent. They're all
2 yelling at me to hurry up. I'm telling them, "You know
3 who I am. You know the problem I have and I'm trying
4 to hurry up."

5 BY MS. SHORES:

6 131 Q. So they're telling you you're
7 taking too long in the bathroom or the washroom. Is
8 that why you were service restricted? Did you hear the
9 question, Mr. Muscato?

10 A. Yes. Yeah, that's why I'm being
11 service restricted.

12 132 Q. Were you doing anything else in
13 the bathroom?

14 A. No.

15 133 Q. Mr. Muscato, I put it to you that
16 service restrictions in these shelters are only used
17 where someone is being violent or threatening or
18 repeatedly breaking the rules. Is that not the case?

19 A. No, it's not the case.

20 134 Q. Okay. And so that time --

21 A. They like to think -- they like
22 other people to think that's the case, but that is not
23 the case at all.

24 135 Q. Okay --

25 A. All it takes -- all it takes is

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1 the staff to have some type of personal issue with you.
2 If they don't like the way you look or dress, or maybe
3 you spoke to them in an off manner a couple days ago,
4 and you will find yourself service restricted within a
5 day or two.

6 136 Q. Have you ever threatened someone
7 in a shelter?

8 A. Yeah.

9 137 Q. You have? Did that result in a
10 service restriction?

11 A. Yes.

12 138 Q. Have you ever gotten into a fight
13 with someone in a shelter?

14 A. Yeah.

15 139 Q. And did that result in a service
16 restriction?

17 A. Yeah.

18 140 Q. Have you ever used substances in a
19 shelter?

20 A. No.

21 141 Q. No? So --

22 A. I have -- I have used -- when I
23 was, like, 18 years old and I went to rehab in Simcoe,
24 surprise, surprise (indiscernible).

25 142 Q. I didn't catch that.

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1 A. I'm sorry. I trailed off. I
2 forget what I was talking about.

3 143 Q. Okay.

4 A. Repeat that again, because I
5 really want to get on that. I just trailed off.

6 144 Q. The original question was whether
7 you've used substances in a shelter, and you said no,
8 and then you went on to explain --

9 A. Yeah, no. No, I haven't used
10 substances in a shelter.

11 145 Q. Okay. So you did just tell me,
12 though, that you've threatened people in shelter and
13 you got service restricted from that, and you've gotten
14 into fights with people at shelter and you've gotten
15 service restricted for that. So you would agree with
16 me that it's not only --

17 A. The fights -- the fights -- like,
18 I'm not out there to try to get into a fight. You
19 know? They have a very big disadvantage or advantage
20 on me. So it's not like I'm the one that's picking the
21 fight. They're stepping up to me and getting into my
22 face and yelling at me because they see that they have
23 the advantage on me, and then it still don't matter. I
24 was in a fight; I'm restricted.

25 146 Q. When you say "they," who are you

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<p style="text-align: right;">29</p> <p>1 talking about?</p> <p>2 A. Other residents. You know, you</p> <p>3 put that many people in a building and you're not all</p> <p>4 going to like each other. People are going to want to</p> <p>5 play the tough guy, and there you go. The fight's on.</p> <p>6 They figure, you know, if they can slap someone like me</p> <p>7 around, then people will be afraid of them.</p> <p>8 147 Q. The other people fighting with</p> <p>9 you, they get service restricted too?</p> <p>10 A. Oh, yeah. Everybody does.</p> <p>11 148 Q. At paragraph 10 of your affidavit,</p> <p>12 you say "I often miss curfew because it takes me longer</p> <p>13 to walk, especially on ice." But that's not a service</p> <p>14 restriction that you get for missing curfew; right?</p> <p>15 They just --</p> <p>16 A. Yes, it is.</p> <p>17 149 Q. Oh, it is?</p> <p>18 A. Yes.</p> <p>19 150 Q. Okay. Tell me about that,</p> <p>20 because -- I'll tell you my understanding is that if</p> <p>21 you're not there for curfew and they think you've given</p> <p>22 up your bed, they might give away your bed, but you can</p> <p>23 come back. So tell me what I'm getting wrong.</p> <p>24 A. Yeah, no, you can come back. You</p> <p>25 are not going to get a bed that night, though.</p> <p style="text-align: right;">Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>	<p style="text-align: right;">31</p> <p>1 A. No. Being attacked because some</p> <p>2 kid has the wrong idea of what it's going to get him?</p> <p>3 I have to listen. I understand staff might have a bad</p> <p>4 day. Okay, I might take five minutes to walk up the</p> <p>5 stairs. They don't have to be standing up the stairs</p> <p>6 telling me to "hurry up, Muscato, you're wasting my</p> <p>7 time." You know, I...</p> <p>8 155 Q. Now --</p> <p>9 A. I get treated very much</p> <p>10 second-rate at these places right now.</p> <p>11 156 Q. Okay. Now, at paragraph 19 and</p> <p>12 20, you describe staying two times where you've stayed</p> <p>13 at the Sandman Hotel. Do you remember that?</p> <p>14 A. Yes.</p> <p>15 157 Q. And you say that, at paragraph 19,</p> <p>16 your ex-girlfriend was staying there and you were</p> <p>17 discharged after a false allegation that you threatened</p> <p>18 her and her new boyfriend.</p> <p>19 A. Yeah.</p> <p>20 158 Q. Okay. So your evidence is that</p> <p>21 that's wrong; you didn't threaten them?</p> <p>22 A. No.</p> <p>23 159 Q. So tell me, then, what your</p> <p>24 evidence is, why you were asked to leave.</p> <p>25 A. Because that is what they were</p> <p style="text-align: right;">Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>
<p style="text-align: right;">30</p> <p>1 151 Q. Okay. So --</p> <p>2 A. Maybe not service restricted, but</p> <p>3 you may as well not even go because you're not going to</p> <p>4 stay.</p> <p>5 152 Q. So what prevents you from being at</p> <p>6 the shelter for the curfew?</p> <p>7 A. When it's icy outside -- when I</p> <p>8 fall now, it hurts. I don't know if it's just because</p> <p>9 I'm missing this right hand and it, you know, helped</p> <p>10 break the fall that much. But when I slip and fall,</p> <p>11 it's like I slam myself down on the ground. It knocks</p> <p>12 the wind out of me and I am not quick to walk fast</p> <p>13 after that, you know?</p> <p>14 153 Q. Okay. So you could just stay in,</p> <p>15 though, when it's icy out, and then you don't have to</p> <p>16 worry about missing curfew; right?</p> <p>17 A. Yeah, I could do that. And then</p> <p>18 there's going to be more problems with the other people</p> <p>19 that live there. Like, I just want to hurry up and</p> <p>20 find a place and get away from the people that feel</p> <p>21 I -- if they can, you know, bother me and badger me and</p> <p>22 hit me, it's going to make them look tough and get them</p> <p>23 a better name. It doesn't, you know, at all. I still</p> <p>24 have to go through that.</p> <p>25 154 Q. You don't like that.</p> <p style="text-align: right;">Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>	<p style="text-align: right;">32</p> <p>1 able to convince the staff. For some reason, what the</p> <p>2 staff failed to look at is I have one hand. I have</p> <p>3 next to no balance. I ain't going to be quick to start</p> <p>4 a fight with anybody. I have never hit a female in my</p> <p>5 life. And as far as I was concerned, that relationship</p> <p>6 was over. It was three or four years prior. She was</p> <p>7 just upset because I was in the motel.</p> <p>8 160 Q. Are you saying she made it up or</p> <p>9 the people at the hotel made it --</p> <p>10 A. I'm telling you she made it up.</p> <p>11 And I did talk to her after that and she did say that</p> <p>12 she never said nothing like that, not to that extent.</p> <p>13 161 Q. So you think she made it up, but</p> <p>14 then she told you later that she did?</p> <p>15 A. She said that she was fearful I</p> <p>16 might attack them, not that I had threatened them. I</p> <p>17 did not say one word to her.</p> <p>18 162 Q. And at paragraph 20, you describe</p> <p>19 staying at the Sandman Hotel a second time for about</p> <p>20 two to three months, but you say you were kicked out</p> <p>21 after being falsely accused of dealing drugs.</p> <p>22 A. Yeah.</p> <p>23 163 Q. Were you dealing drugs at any time</p> <p>24 when you stayed at the Sandman in 2021?</p> <p>25 A. No.</p> <p style="text-align: right;">Nimigan Mihailovich Reporting Inc. A649 (905) 522-1653</p>

1 164 Q. No. And so who alleged that you
2 were dealing drugs? Do you know?
3 A. I don't know.
4 165 Q. After either of these times at the
5 Sandman, did you go into a shelter? Do you remember?
6 Did you understand the question?
7 A. Not -- not really. I got confused
8 with a different question. Can you repeat that one
9 again?
10 166 Q. I'll break it down to make it
11 easier for you. After the first time you stayed at the
12 Sandman Hotel, the time where your ex-girlfriend said
13 you were threatening her or she was afraid that you
14 threatened her, where did you go?
15 A. Back down here downtown, the
16 shelters.
17 167 Q. Okay. And then the second time
18 you stayed at the Sandman Hotel, the time they said
19 that you were dealing drugs, where did you go after the
20 hotel?
21 A. Well, the second time -- the
22 reason I was able to go back to the Sandman the second
23 time was because she owned up to it.
24 168 Q. She owned up to it meaning she
25 told someone that she wasn't telling the truth?
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1 A. Exactly. Telling the truth, yes.
2 169 Q. So they let you back in?
3 A. Yeah.
4 170 Q. Okay.
5 A. Because even my doctor kind of
6 chuckled at them and said, "You've got to be kidding me
7 if you think Mr. Muscato was going to assault anybody."
8 171 Q. And then the second time when you
9 left the Sandman, where did you go?
10 A. Right back downtown.
11 172 Q. To one of the shelters?
12 A. Yeah.
13 173 Q. Mr. Muscato, the City of Hamilton
14 has records of your attempts to access shelter and
15 other homelessness services including things like the
16 service restrictions. Would you sign an authorization
17 allowing that record to be disclosed in this
18 litigation?
19 A. No, because I don't really
20 understand it.
21 174 Q. The City has records of when you
22 stay at shelters and things like your service
23 restrictions, but we need your permission for those to
24 be disclosed or, rather, the City needs your permission
25 and I'm asking if you'll give that permission. You'll
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1 have to sign a piece of paper. A4934
2 A. To give that permission to what?
3 175 Q. For the record of --
4 A. To show how many times I've been
5 in a shelter?
6 176 Q. And any service restrictions and
7 other homelessness services that you've accessed.
8 A. Yeah, sure, as long as you also
9 put in there that all it takes to be restricted is for
10 one single staff to have an issue with a person. And
11 they can say what they want; the restriction still
12 stands.
13 177 Q. Mr. Muscato, I do have to let you
14 know that what -- I can't tell you what's in those
15 records, but my understanding is it's what they write
16 down, so it is going to be their version of events.
17 A. Yeah, and only their version of
18 events and that's very unfair, I believe. It's very
19 unfair.
20 178 Q. Well, we're here asking you
21 questions, getting your version of events, which the
22 Court will also be able to hear. And so my question
23 again is, will you sign the authorization allowing that
24 record to be disclosed in this litigation?
25 A. If we can go through every time
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1 I've been restricted and I can have my say on it in
2 what happened, yeah.
3 179 Q. I'm not sure if the procedural
4 mechanism exists for that. So I will move on. I'll
5 leave that request --
6 A. Listen, I'm not saying -- I'm not
7 saying they were wrong every time. You know, sure,
8 I've lost my temper. I may have called them some
9 names. Have I ever threatened any harm to anybody?
10 No. Have I ever broken anything of theirs? No. Have
11 I ever gotten into any fights there? No.
12 180 Q. You told me earlier that you did
13 get in some fights.
14 A. When they were brought to me,
15 yeah. I'm not going to have someone pummel the hell
16 out of me. But take a good look at me. What kind of a
17 fight do you think I could put up?
18 181 Q. Mr. Muscato, I have to tell you,
19 you seem like you're someone who could hold your own.
20 MS. CROWE: I don't know if we're going
21 down a proper road right now.
22 THE DEPONENT: No.
23 BY MS. SHORES:
24 182 Q. Well, I've made my request --
25 A. Missing one hand, and my other
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1 hand works about 30 percent at best. I have no balance
2 at all. I'm as easy to knock over as a 10-year-old
3 kid.

4 183 Q. Mr. Muscato, I'm going to change
5 subjects and ask you about some places where you've
6 stayed in tents, which is indicated in your affidavit
7 at paragraph 24. You say, starting sometime in 2017,
8 you stayed in different lotions near Wellington and
9 Victoria. I'm going to focus more on the timeframe
10 from 2020 going forward. In early 2020, you stayed
11 near Sir John A. Macdonald for one week and that was in
12 a tent?

13 A. Yeah.

14 184 Q. Okay. When you say "police and
15 by-law evicted me," do you mean that they came and told
16 you you can't be there?

17 A. Yeah.

18 185 Q. Okay. And did they tell you how
19 much time you had to move?

20 A. Yeah.

21 186 Q. So you packed up and moved?

22 A. Yes.

23 187 Q. And you went somewhere else? I'm
24 sorry, I didn't hear your answer.

25 A. Yes.

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1 188 Q. Okay. So they're not coming up to
2 you in the middle of the night; they're coming to you
3 in the day and saying, hey, you can't be here anymore?

4 A. Yeah. They would make -- mainly
5 make it during the morning hours.

6 189 Q. Is that all of the time when the
7 police and by-law come and tell you you have to move
8 it's mainly in the morning hours?

9 A. Mainly.

10 190 Q. Okay. If it's not in the morning
11 hours, when do they come and talk to you about having
12 to move?

13 A. Late afternoon, early evening.

14 191 Q. Okay. After John A. Macdonald,
15 you list here you've stayed at Ferguson Avenue in early
16 2020 for about seven months? That's correct?

17 A. Yeah.

18 192 Q. And then again, police and by-law
19 said you have to move, so you moved? I'm sorry, I
20 didn't hear your answer.

21 A. Yes, yes.

22 193 Q. And then through 2021 you stayed
23 in various locations. Again, you're still in a tent?

24 A. Yes.

25 194 Q. And three to four days up until

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1 two weeks would be about the length of time you would
2 stay in any one place? **A4935**

3 A. Yeah.

4 195 Q. And again you moved because --
5 here it just says police. So the police told you to
6 move?

7 A. Yeah.

8 196 Q. Okay. And throughout 2022, you
9 say you stayed in various locations for a couple of
10 days at a time. Is that correct?

11 A. Yes.

12 197 Q. And then here it says "moved to
13 avoid run-ins with police." Would I be correct in
14 understanding that you moved on your own; they didn't
15 tell you you had to move?

16 A. Yeah, because I know it was
17 coming.

18 198 Q. And so since then -- we asked a
19 little bit earlier, but since then, you've been staying
20 either in tents or going into shelters?

21 A. I've been staying at a cousin's a
22 bit.

23 199 Q. Okay. So tents or shelters or
24 staying at your cousin's?

25 A. Yeah.

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1 200 Q. When the police or by-law have
2 told you to move, they haven't taken your tent from
3 you?

4 A. No. We were always pretty civil
5 about it.

6 201 Q. At paragraph 27, you say you feel
7 safer in an encampment because of the people around
8 you, who you usually know and trust. You'd agree that
9 anyone can come into an encampment; right?

10 A. Yeah.

11 202 Q. Including someone who might have a
12 problem with you or want to start something?

13 A. Yeah, that's true.

14 203 Q. Have you ever gotten into a fight
15 with anyone at an encampment?

16 A. No.

17 204 Q. Have you ever had things stolen
18 from you in an encampment?

19 A. Maybe some clothes.

20 205 Q. You told me earlier that you've
21 had a phone stolen. Was your phone stolen from a tent,
22 or where was it stolen from you, if you remember?

23 A. Cab? I wasn't sure if I left it
24 in a cab, when I came home (indiscernible).

25 COURT REPORTER: Sorry, Mr. Muscato,
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<p>41</p> <p>1 could you please repeat that?</p> <p>2 THE DEPONENT: I had no idea where I</p> <p>3 really lost it. I mean, it could have been one of a</p> <p>4 few places.</p> <p>5 BY MS. SHORES:</p> <p>6 206 Q. Okay, that's fair. Mr. Muscato,</p> <p>7 have you understood all of the questions that I've</p> <p>8 asked you today?</p> <p>9 A. Yeah, yeah.</p> <p>10 207 Q. Okay. Are there any of your</p> <p>11 answers that you wish to change? I'm sorry, I didn't</p> <p>12 hear your answer.</p> <p>13 A. I didn't give one yet.</p> <p>14 208 Q. Okay. Take your time.</p> <p>15 A. I don't think I would like to</p> <p>16 change any of my answers. I wish we could change the</p> <p>17 outlook. I understand why the public has an issue with</p> <p>18 the people that live in tents. I don't appreciate the</p> <p>19 mess that many of them leave behind either. I don't</p> <p>20 like living in a mess. You'll see me pick up more</p> <p>21 stuff than I think anyone else. But at the same time,</p> <p>22 I think the public needs to be aware of the fact that</p> <p>23 we are out here because the rent is very, very high.</p> <p>24 People say it takes two people to move in. I'm</p> <p>25 thinking more like around the number of four.</p> <p>Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>	<p>43</p> <p>1 you need to answer.</p> <p>2 A. Yeah. During this time of the</p> <p>3 year, it's not so bad. But start getting into end of</p> <p>4 September, October, it's getting colder. You tend to</p> <p>5 have a little hard time here and there.</p> <p>6 214 Q. What do you mean by "hard time"?</p> <p>7 A. Not enough beds.</p> <p>8 215 Q. Okay. And are there any other</p> <p>9 problems that you have in accessing the shelter when</p> <p>10 you try to? Did you hear the question?</p> <p>11 A. Pardon? No.</p> <p>12 216 Q. That's okay. Do you have any</p> <p>13 other difficulty accessing shelter when you try to?</p> <p>14 A. No.</p> <p>15 217 Q. You were talking about service</p> <p>16 restrictions. Can you explain what that means in terms</p> <p>17 of your ability to go into shelter?</p> <p>18 A. They stop you even before you get</p> <p>19 started.</p> <p>20 218 Q. Okay.</p> <p>21 A. They don't want to hear it, and</p> <p>22 you're service restricted. They say they don't know</p> <p>23 why and it's not up to them as to why, just you need to</p> <p>24 go now.</p> <p>25 219 Q. Have you been service restricted</p> <p>Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>
<p>42</p> <p>1 209 Q. Mr. Muscato, is that something</p> <p>2 that you would actually consider, living with some</p> <p>3 roommates to get a place of your own?</p> <p>4 A. Yes.</p> <p>5 210 Q. Is that something that you're</p> <p>6 working towards?</p> <p>7 MS. CROWE: Did you hear that last</p> <p>8 question?</p> <p>9 THE DEPONENT: Yes. I said yes.</p> <p>10 BY MS. SHORES:</p> <p>11 211 Q. Okay. I'm sorry, I didn't hear</p> <p>12 you. Thank you. You said yes, okay.</p> <p>13 A. Yeah.</p> <p>14 212 Q. I don't have any more questions</p> <p>15 for you, Mr. Muscato. Thank you for coming in today</p> <p>16 and talking to me.</p> <p>17 A. Okay, thank you.</p> <p>18 RE-EXAMINATION BY MS. CROWE:</p> <p>19 213 Q. Thank you, okay. Mario, I'm going</p> <p>20 to be asking you a few question just to go back and</p> <p>21 clarify some of what we've already discussed today.</p> <p>22 Okay? The first is you said that you sometimes go to</p> <p>23 the shelter system when it's too cold outside. When</p> <p>24 you try to access the shelter system, do you ever have</p> <p>25 any difficulties actually being able to get in? Sorry,</p> <p>Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>	<p>44</p> <p>1 from more than one shelter in Hamilton? Did you hear</p> <p>2 my question?</p> <p>3 A. No.</p> <p>4 220 Q. Have you been service restricted</p> <p>5 from more than one shelter in Hamilton?</p> <p>6 A. At one time, no.</p> <p>7 221 Q. Not at one time?</p> <p>8 A. Yeah.</p> <p>9 222 Q. Okay. And what's the longest time</p> <p>10 that you've been service restricted for?</p> <p>11 A. I'd have to say maybe six months.</p> <p>12 223 Q. When you go to the shelters when</p> <p>13 it's too cold outside, how long are you allowed to stay</p> <p>14 inside a shelter?</p> <p>15 A. If I get into overflow, which is</p> <p>16 usually the case -- even if it's not the case, you have</p> <p>17 to be outside eight o'clock in the morning.</p> <p>18 224 Q. So eight o'clock in the morning</p> <p>19 you have to leave. When are you allowed to return to</p> <p>20 the shelter? Mario, did you hear me?</p> <p>21 A. Yeah. 5:00.</p> <p>22 225 Q. Okay. And so you made a</p> <p>23 distinction. You talked about overflow shelters and</p> <p>24 then, I guess, regular shelters. Do they both have the</p> <p>25 same rules in terms of when you have to leave in the</p> <p>Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>

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1 morning and when you're allowed to come back? Sorry?

2 **A. Yeah.**

3 226 **Q.** What are the different rules?

4 **A. At the Mission, from what I**

5 **hear -- I've never gone there. The Mission, you can**

6 **sleep on your bed all day long if you feel like it.**

7 **Many people feel like it. Those are the people that I**

8 **feel are just here sucking the system dry.**

9 227 **Q.** You said you've never gone to

10 Mission Services? Sorry, can you answer for the

11 record?

12 **A. No.**

13 228 **Q.** And why is that?

14 **A. I've gone to the Good Shepherd.**

15 **As far as I know, they're about the same. The Good**

16 **Shepherd -- we got off on a bad foot. I asked them if**

17 **I could go to the store one night. They told me I had**

18 **15 minutes to get back. I ran to the store, hurried**

19 **back. I'm not sure if they were mad at me or what.**

20 **Come to find out, I got back in 17 seconds and I was**

21 **not allowed.**

22 229 **Q.** 17 seconds or 17 minutes?

23 **A. 17 minutes, sorry.**

24 230 **Q.** Okay. So we talked about that you

25 were applying for housing through a program called

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1 Housing UP! and that your housing worker told you that

2 you might be -- the term that you used was "hard to

3 take care of." Have you heard that kind of thing

4 before about being able to access housing or shelter?

5 **A. No.**

6 231 **Q.** Do you know what they meant?

7 Mario, do you know what they meant?

8 **A. No.**

9 232 **Q.** Okay. You mentioned concerns

10 about lodging homes because you might not be left with

11 very much of your cheque at the end. Do you know

12 exactly how much would be left?

13 **A. No.**

14 233 **Q.** Are there other expenses that you

15 would have to pay for while in a lodging home? Mario,

16 are there other expenses that you would have to pay for

17 while in a lodging home?

18 **A. (Indiscernible).**

19 **MS. CROWE: Are you hearing his**

20 **response?**

21 **THE DEPONENT: (Indiscernible) --**

22 **MS. SHORES: I honestly didn't hear**

23 **that he was responding. Mr. Muscato, can you please**

24 **keep your voice up?**

25 **THE DEPONENT: Okay, go on.**

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1 BY MS. CROWE:

2 234 **Q.** Are there other expenses that you

3 would have while staying at a lodging home? Let me ask

4 it a different --

5 **A. Yes, yes.**

6 235 **Q.** Sorry, go ahead.

7 **A. I have my youngest daughter in**

8 **Buffalo and I enjoy sending her money every month.**

9 236 **Q.** Okay. Are you concerned that if

10 you were -- the rough number that you mentioned before

11 was \$150 left over. Are you concerned that you might

12 not be able to cover other expenses if that's all you

13 were left with?

14 MS. SHORES: I'm just going to speak up

15 and state on the record, Counsel, I've been giving you

16 a fair bit of leeway, but as I'm sure you know, leading

17 questions in cross-examination are not proper for

18 re-examination, and re-examination's purpose is really

19 to clarify answers that may have been unclear during

20 direct examination.

21 BY MS. CROWE:

22 237 **Q.** What is the reason that being left

23 with approximately \$150 is a concern to you, Mario?

24 **A. \$150 for what?**

25 238 **Q.** We were talking about that you

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1 might only be left with around \$150. Why is that a

2 concern?

3 **A. I send more than that to my**

4 **daughter. Even if I was to cut that \$150 in half and**

5 **send \$75 to my daughter, the other \$75 (indiscernible).**

6 **COURT REPORTER: I'm sorry, I didn't**

7 **hear the last half of that answer. "Even if I was to**

8 **cut that \$150 in half and send \$75 to my daughter, the**

9 **other \$75..."**

10 **THE DEPONENT: What would \$75 in**

11 **Hamilton be able to get me other than some toothpaste**

12 **and some shampoo, you know?**

13 **BY MS. CROWE:**

14 239 **Q.** Is that a difficult choice for

15 you, to decide between housing in a lodging home and

16 having some additional money available, Mario?

17 **A. Yeah, it is difficult.**

18 MS. SHORES: Again, Counsel, I really

19 need to remind you about leading questions on

20 re-examination.

21 BY MS. CROWE:

22 240 **Q.** Okay. I want to talk about the

23 time that you were seeing Dr. Jill back in 2022, Mario.

24 Are you hearing me okay?

25 **A. Yeah.**

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<p style="text-align: right;">49</p> <p>1 241 Q. You mentioned that you were able</p> <p>2 to see her regularly. I want to bring you to the</p> <p>3 letter that she provided, where she's talking about on</p> <p>4 top of the care that she is providing you, that you had</p> <p>5 some other medical needs that you needed attention for.</p> <p>6 We're looking at page 2, Mario, if you're able to</p> <p>7 follow along, paragraphs 3, 4 and 5. In paragraph 3,</p> <p>8 she talks about that you would be eligible for a</p> <p>9 right-arm prosthesis, but the process to require one</p> <p>10 requires multiple appointments and fittings. And you</p> <p>11 were having difficulty at the time, and she mentions</p> <p>12 your precarious housing situation and not having access</p> <p>13 to a phone and a chaotic lifestyle and your brain</p> <p>14 injury. Can you tell us about your ability to follow</p> <p>15 through with medical appointments beyond Dr. Jill? Let</p> <p>16 me say it a different way. So Dr. Jill mentions that</p> <p>17 you were having difficulty attending appointments for a</p> <p>18 prosthesis to get fitted, and then in paragraph 5 --</p> <p>19 are you with me?</p> <p>20 A. Yeah.</p> <p>21 242 Q. Yeah? She mentions untreated HIV</p> <p>22 and that you weren't able to access your medications</p> <p>23 consistently. And then lastly, she talks about not</p> <p>24 being able to access methadone therapy regularly. So</p> <p>25 can you tell us what that was like for you? So you're</p> <p style="text-align: center;">Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>	<p style="text-align: right;">51</p> <p>1 tell us about why you were having difficulty following</p> <p>2 up with your arm prosthesis, getting treatment for your</p> <p>3 HIV and methadone treatment while you were seeing</p> <p>4 Dr. Jill? Are you okay? Are you okay, Mario?</p> <p>5 A. Yeah, I'm...</p> <p>6 245 Q. I think we'll move on from that</p> <p>7 question.</p> <p>8 A. I'm sad. It just brings me back</p> <p>9 some other memories.</p> <p>10 246 Q. Right, I'm sorry. You talked</p> <p>11 about one of the issues in shelter is that you were</p> <p>12 taking too long -- they thought you were taking too</p> <p>13 long in the washroom.</p> <p>14 A. Yeah.</p> <p>15 247 Q. Can you explain why that might be</p> <p>16 a concern for shelter staff?</p> <p>17 A. Yeah, I understand why they're</p> <p>18 concerned about it. But again, look at me. What am I</p> <p>19 going to do? I'm not going to cook up a shot. I'm not</p> <p>20 going to stick it in my vein and flag it and push it</p> <p>21 in. I don't have that movement.</p> <p>22 248 Q. Okay. So what --</p> <p>23 A. I don't have the ability to do</p> <p>24 what these people are thinking I can do.</p> <p>25 249 Q. Just so we're clear, are you</p> <p style="text-align: center;">Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>
<p style="text-align: right;">50</p> <p>1 better now at accessing this medication, but can you</p> <p>2 tell us why you struggled to access this medical</p> <p>3 treatment and the medications at the time?</p> <p>4 R/F MS. SHORES: Counsel, I'm going to</p> <p>5 object. That wasn't addressed in the questioning or in</p> <p>6 Mr. Muscato's affidavit.</p> <p>7 MS. CROWE: Well, you did ask him about</p> <p>8 being able to get regular medical treatment from</p> <p>9 Dr. Jill. You were talking about once a week.</p> <p>10 MS. SHORES: You're speaking about the</p> <p>11 time period prior to that.</p> <p>12 MS. CROWE: I think that these -- these</p> <p>13 are concurrent with the treatment that Dr. Jill was</p> <p>14 providing.</p> <p>15 MS. SHORES: I've noted my objection.</p> <p>16 I think this going beyond the scope of redirect</p> <p>17 examination.</p> <p>18 BY MS. CROWE:</p> <p>19 243 Q. Mario, is there anything that you</p> <p>20 can tell us about why you were having difficulty</p> <p>21 following up with the prosthesis -- sorry, the</p> <p>22 treatment and methadone at the same time that you were</p> <p>23 seeing Dr. Jill?</p> <p>24 A. Pardon?</p> <p>25 244 Q. Is there anything that you can</p> <p style="text-align: center;">Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>	<p style="text-align: right;">52</p> <p>1 saying that the concern from shelter staff is that</p> <p>2 you're doing drugs in the washroom?</p> <p>3 A. Yeah.</p> <p>4 250 Q. Okay.</p> <p>5 MS. SHORES: Again, Counsel, that's a</p> <p>6 leading question.</p> <p>7 BY MS. CROWE:</p> <p>8 251 Q. You talk about in your -- back to</p> <p>9 your affidavit, you were talking about the incidents</p> <p>10 where you've been service restricted. Ms. Shores had</p> <p>11 referred you to paragraph 19 and 20, where you were</p> <p>12 service restricted from the Sandman. In paragraph 21,</p> <p>13 you talk about that there were no independent</p> <p>14 investigations at shelters or the hotel program. What</p> <p>15 has your experience been of the process or what steps</p> <p>16 are taken before a service restriction is imposed?</p> <p>17 Mario? I'm going to ask you again. What has your</p> <p>18 experience been in the shelter system of the service</p> <p>19 restriction process? What happens before they impose a</p> <p>20 service restriction?</p> <p>21 A. That they believe they heard you</p> <p>22 say something or they believe they saw you do</p> <p>23 something, and that's it.</p> <p>24 252 Q. Okay. Are you given an</p> <p>25 opportunity to respond? I don't think they're going to</p> <p style="text-align: center;">Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>

<div>53</div> <div>1 be catching this answer on the recording.</div> <div>2 MS. SHORES: No, I didn't hear</div> <div>3 anything.</div> <div>4 THE DEPONENT: It's not? It just takes</div> <div>5 one single staff member to have a bad day, and they can</div> <div>6 restrict half the damn place and nobody's going to bat</div> <div>7 an eye about it. Nobody's going to think twice about</div> <div>8 it.</div> <div>9 BY MS. CROWE:</div> <div>10 253 Q. Okay, thank you. When was the</div> <div>11 last time you stayed in a shelter?</div> <div>12 A. I still am.</div> <div>13 254 Q. Sorry?</div> <div>14 A. I'm still there.</div> <div>15 255 Q. You still are. Where are you</div> <div>16 staying in?</div> <div>17 A. (Indiscernible) but it's very on</div> <div>18 and off.</div> <div>19 256 Q. Okay, thank you.</div> <div>20 COURT REPORTER: I'm sorry, I didn't</div> <div>21 hear the answer.</div> <div>22 MS. SHORES: I'm sorry --</div> <div>23 BY MS. CROWE:</div> <div>24 257 Q. Can you repeat that, Mario?</div> <div>25 A. It's the Sally Ann, but it's very</div> <div>Nimigan Mihailovich Reporting Inc.</div> <div>(905) 522-1653</div>	<div>55</div> <div>1 262 Q. Mario, Ms. Shores had asked you</div> <div>2 about whether the police or by-law have taken your</div> <div>3 tent. I wanted to ask you, can you pack up and move</div> <div>4 your tent?</div> <div>5 A. No.</div> <div>6 263 Q. Can you explain?</div> <div>7 A. I have one hand that barely works.</div> <div>8 264 Q. What happens when you are told to</div> <div>9 leave an encampment site?</div> <div>10 A. I don't have a lot of stuff. You</div> <div>11 seen me walk in here with one bag today. That's the</div> <div>12 stuff I own.</div> <div>13 265 Q. Okay. So what about your other</div> <div>14 belongings when you --</div> <div>15 A. I don't --</div> <div>16 266 Q. Do you ever lose belongings or</div> <div>17 have to leave belongings behind?</div> <div>18 A. All the time.</div> <div>19 267 Q. I want to go back to Dr. Jill's</div> <div>20 affidavit -- or letter. She talks about some of your</div> <div>21 disabilities. In paragraph 2, she mentions that from</div> <div>22 your acquired brain injury, that you can struggle with</div> <div>23 your memory, your mood, i.e., you're often quick to</div> <div>24 anger and have difficulty with emotions and have a</div> <div>25 harder time managing psychiatrist diagnoses such as</div> <div>Nimigan Mihailovich Reporting Inc.</div> <div>(905) 522-1653</div>
<div>54</div> <div>1 on and off.</div> <div>2 258 Q. Okay, thank you.</div> <div>3 MS. SHORES: Did you say "Sally Am,"</div> <div>4 like meaning the Salvation Army?</div> <div>5 BY MS. CROWE:</div> <div>6 259 Q. Did you hear the question? Mario,</div> <div>7 she asked you if when you said "Sally Ann," do you mean</div> <div>8 the Salvation Army?</div> <div>9 A. Yeah.</div> <div>10 260 Q. Thank you.</div> <div>11 A. Sorry, I thought everyone got</div> <div>12 that.</div> <div>13 261 Q. That's okay.</div> <div>14 MS. SHORES: Mr. Muscato, your voice is</div> <div>15 really trailing off and it's very difficult for those</div> <div>16 of us who aren't in the room with you to hear, so can</div> <div>17 you speak up?</div> <div>18 THE DEPONENT: Yeah. I just -- I</div> <div>19 thought everybody understood Sally Ann was the</div> <div>20 Salvation Army.</div> <div>21 MS. SHORES: We could guess, but the</div> <div>22 judge who eventually reads this might not know, so we</div> <div>23 just wanted to clarify.</div> <div>24 THE DEPONENT: All right, I understand.</div> <div>25 BY MS. CROWE:</div> <div>Nimigan Mihailovich Reporting Inc.</div> <div>(905) 522-1653</div>	<div>56</div> <div>1 anxiety and depression. When we talk about how you are</div> <div>2 in shelters, can you tell us, are you able to manage</div> <div>3 your mood, your anger when you're in shelter?</div> <div>4 R/F MS. SHORES: Counsel, I'm going to</div> <div>5 object. That's suggesting the answer to the witness.</div> <div>6 BY MS. CROWE:</div> <div>7 268 Q. Mario, you mentioned that you had</div> <div>8 sometimes lost your temper.</div> <div>9 A. Mm-hmm.</div> <div>10 269 Q. While in shelter?</div> <div>11 A. Yes.</div> <div>12 270 Q. Can you tell us about what makes</div> <div>13 it difficult to not lose your temper when you're in</div> <div>14 shelter? Sorry, can you answer a little bit louder so</div> <div>15 they can hear? Okay, Mario, we're going to move on and</div> <div>16 we're almost done. Ms. Shores asked you whether anyone</div> <div>17 is able to come into a park or where an encampment</div> <div>18 might be located. Do you have any control over who you</div> <div>19 stay with at an encampment? Did you hear my question?</div> <div>20 A. No.</div> <div>21 271 Q. Sorry, we're almost done.</div> <div>22 Ms. Shores had asked you about the fact that anyone</div> <div>23 could come into a park. Do you have any control over</div> <div>24 who you stay with when you're staying in an encampment?</div> <div>25 Pardon? Mario? Mario, we're almost done. Do you ever</div> <div>Nimigan Mihailovich Reporting Inc.</div> <div>(905) 522-1653</div>

1 decide who you stay with when you're in an encampment?

2 Did you answer? I didn't catch it.

3 **A. Yes.**

4 272 **Q.** Your answer was yes?

5 **A. Yes.**

6 273 **Q.** Okay, thank you. Just one more

7 question. Do you have any control over who is around

8 you when you're in a shelter? Mario?

9 **MS. SHORES:** For the record,

10 Mr. Muscato appears to be kind of slumping over in his

11 seat. I have to ask, Mr. Muscato, are you okay to

12 continue giving answers? Do you feel like you can

13 focus enough to give answers?

14 **THE DEPONENT:** I'm getting tired. You

15 can do a couple more, though.

16 **BY MS. CROWE:**

17 274 **Q.** We're almost done. I just wanted

18 to know, when you're in shelter, Mario, do you have any

19 control over who else is in the shelter with you?

20 **A. No.**

21 **MS. CROWE:** Thank you. Those are my

22 questions.

23 **MS. SHORES:** Thank you, Mr. Muscato.

24 --- Whereupon proceedings adjourned at 1:02 p.m.

25

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1 I HEREBY CERTIFY THE FOREGOING
2 to be a true and accurate transcription
3 of my shorthand notes
4 to the best of my skill and ability.

5

6

7 [Electronically signed on August 22, 2024]

8 Lydia Pak, Court Reporter

9 Computer-Aided Transcription

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Court File No. CV-21-00077817-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**KRISTEN HEEGSMA, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO,
SHAWN ARNOLD ET AL**

Applicants

-and-

CITY OF HAMILTON

Respondent

AFFIDAVIT OF SHERRI OGDEN
(Sworn June 2, 2022)

1. I, SHERRI OGDEN of the City of Hamilton in the Province of Ontario, MAKE OATH AND STATE:
2. I am a 28 year old Indigenous woman.
3. I am in a person with a disability and in receipt of benefits from the Ontario Disability Support Program (ODSP). As a single person who is homeless, I receive approximately \$672 per month from ODSP for basic needs. I don't receive any shelter allowance while I am homeless.
4. My medical conditions include mental health and substance use disorders.
5. I have been homeless for the past five years.
6. Before becoming homeless, I lived with my mom. However, the relationship was strained and I had to move out.
7. I have stayed on and off in a tent at several different locations in Hamilton. The following chart is a breakdown of the locations and general timeframes:

Location	Timeframe	Duration of stay	Outcome
Durand Park	About a year and a half ago	Approximately seven months	By-Law Officers evicted me
Beasley Park	About a year ago	Few nights	By-Law Officers

			evicted me, took my tent & lost some belongings
Beasley Park	Month and a half later	One night	24 hours notice from By-law to leave. Lost another tent and some clothes
Durand Park	Winter 2021	Three nights	Had to move because of some problems at the encampment, and because By-law had already been there and warned them about garbage at the site
Beasley Park	Early 2022	Approximately two months	Police evicted me

8. In between staying in tents in parks, I am sometimes able to stay in a tent in my mom's yard. However, my mom's landlord doesn't like me staying in the yard so I can never stay for long.
9. I have received trespassing tickets and repeatedly told to move while staying in a tent.
10. It would be nice to be able to stay in one spot instead of moving all over the place because it is hard to move all of my belongings day after day. I feel safer. I sometimes stay in parks with friends, which makes me feel safer. When I stayed in Durand for seven months, I could sleep much better. It was easier to concentrate and just feel healthier.
11. I have repeatedly tried to get into shelters. Even though I don't have a phone, I am sometimes able to contact a shelter every day to ask about a bed. Staff at the Wesley Day Centre sometimes call for me, and are also told that they are full. When you call to ask for a bed, they do not take your name if they are full. The shelter tells you to just keep calling back to see if a bed as opened up.

12. I was able to stay at the Four Points hotel with an ex-boyfriend. We stayed for about two weeks, but were kicked out because of a false allegation of domestic violence. Staff alleged that my ex-boyfriend had kicked me, but it was an accident. Even though we tried to explain and there were no other incidents, we were kicked out and banned for about a month. The City since ended the hotel program for couples.
13. Carol Anne's Place is an overnight drop in centre for women that acts as an overflow shelter when the other women's shelters are full. You sleep on a cot a gymnasium floor (double check). They open at 10 p.m.
14. I have stayed at Carol Anne's Place once. I hate it because it was dirty and crowded.
15. If I can't stay in a tent, a shelter, or my mom's backyard, I sleep in stairwells and parking garages. Last night, I stayed at John Rebecca park underneath blankets.
16. Being unable to stay in one location is very difficult. I can't sleep properly and hardly ever sleep.
17. I have had a housing worker with the Hamilton Regional Indian Centre on Ottawa Street for the past few months. Although they have tried to get me into housing, I have been denied supportive housing through both Indwell and the YWCA Transitional Living Program because I am too unwell. They said they would not be able to support me.
18. Being evicted from encampments, and having to live and sleep without a tent has been very difficult.

SWORN BEFORE ME in the City
of Hamilton, this 2nd day of June, 2022

Sherri Ogden
Sherri Ogden

Sharon Crowe
A Commissioner, etc.
Sharon Crowe
Barrister & Solicitor

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

KRISTEN HEEGSMA, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO,
AND SHAWN ARNOLD, ET AL.

Applicants

-and-

CITY OF HAMILTON

Respondent

AFFIDAVIT OF Sherri Ogden

(Sworn March 27, 2023)

I, Sherri Ogden, of the City Hamilton in the Province of Ontario, Affirm and say:

1. Since June 2022 have stayed in the following locations:

Bayfront
Vine St


2. I have been impacted by on-going encampment evictions since June 2022 in the following ways:

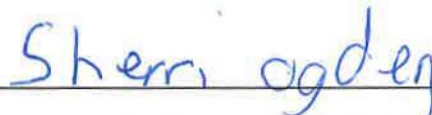
- Loss of belongings
-
-
-

3. been denied of shelter

AFFIRMED AND DECLARED
before me at the City of Hamilton,
in the Province of Ontario,
this day of March, 2023.

)
)
)
)


A Commissioner etc.



<div>1</div> <div> <div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> </div> <div> <p>Court File No. CV-21-77187</p> <p>ONTARIO</p> <p>SUPERIOR COURT OF JUSTICE</p> <p>B E T W E E N:</p> <p>KRISTEN HEEGSMAN, DARRIN MARCHAND, GORD SMYTH,</p> <p>MARIO MUSCATO, SHAWN ARNOLD, BRADLEY CALDWELL,</p> <p>CHRISTINE DELOREY, GLEN GNATUK, TAYLOR GOGO-HORNER,</p> <p>CASSANDRA JORDAN, JULIA LAUZON, AMY LEWIS,</p> <p>ASHLEY MACDONALD, COREY MONAHAN, MISTY MARSHALL,</p> <p>SHERRI OGDEN, JAHMAL PIERRE, LINSLEY GREAVES and</p> <p>PATRICK WARD</p> <p>Applicants</p> <p>and</p> <p>CITY OF HAMILTON</p> <p>Respondent</p> <p>--- This is the Cross-Examination of SHERRI OGDEN, an Applicant, herein, on her Affidavits Sworn the 2nd day of June, 2022, and the 27th day of March, 2023, taken via videoconference on the 14th day of August, 2024.</p> <p>Nimigan Mihailovich Reporting Inc. (905) 522-1653</p> </div>	<div>3</div> <div> <div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> </div> <div> <p>TABLE OF CONTENTS</p> <p>INDEX OF EXAMINATIONS:</p> <p>SHERRI OGDEN: Affirmed..... 4</p> <p>CROSS-EXAMINATION BY MS. SHORES..... 4</p> <p>PAGE NO.</p> <p>Nimigan Mihailovich Reporting Inc. (905) 522-1653</p> </div>
<div>2</div> <div> <div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> </div> <div> <p>APPEARANCES:</p> <p>Sharon Crowe For the Applicants</p> <p>Curtis Sell</p> <p>Nnonyechi Okenwa</p> <p>Michelle Sutherland</p> <p>Bevin Shores For the Respondent</p> <p>Jordan Diacur</p> <p>Vivian Caldas</p> <p>ALSO PRESENT:</p> <p>Katherine Finlayson Summer law student</p> <p>Nimigan Mihailovich Reporting Inc. (905) 522-1653</p> </div>	<div>4</div> <div> <div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> </div> <div> <p>--- Upon commencing at 4:02 p.m.</p> <p>SHERRI OGDEN: Affirmed.</p> <p>CROSS-EXAMINATION BY MS. SHORES:</p> <p>Q. Good afternoon, Ms. Ogden. Can you please state your full name for the record?</p> <p>A. Sherri Ogden.</p> <p>Q. And how would you like to be addressed today? What name do you go by?</p> <p>A. Sherri.</p> <p>Q. Sherri?</p> <p>A. Yeah.</p> <p>Q. Okay. And do you have any pronouns that you wish to share?</p> <p>A. No.</p> <p>Q. Okay. So you've been affirmed to tell the truth today. You understand that that means that you have to give truthful answers to the questions that I'm asking?</p> <p>A. Yeah.</p> <p>Q. And at any time during this cross-examination if you don't understand a question, please let me know. Is that understood?</p> <p>A. Yeah.</p> <p>Q. Okay. If you don't tell me you don't understand, I'm going to assume you do</p> <p>Nimigan Mihailovich Reporting Inc. (905) 522-1653</p> </div>

5

1 understand. Okay?

2 **A. Mm-hmm. Okay.**

3 8 **Q.** There you go, thank you. I was

4 also going to remind you to give verbal answers, and if

5 you forget, that's okay. One of us will just remind

6 you. Now, we're here today to cross-examine you on two

7 affidavits. One of them is an affidavit dated June 2,

8 2022, and the other is an affidavit dated March 27,

9 2023. Have you reviewed your affidavit dated June 2,

10 2022?

11 **A. Yes, I have.**

12 9 **Q.** Okay. Can you confirm everything

13 in that affidavit is accurate?

14 **A. Yeah.**

15 10 **Q.** And your affidavit dated March 27,

16 2023, have you reviewed that affidavit?

17 **A. Yes, I have as well.**

18 11 **Q.** Okay. And you confirm that

19 everything in that affidavit is accurate?

20 **A. Yeah.**

21 12 **Q.** Where are you currently living?

22 **A. Well, I'm across the street from**

23 **the Hub, outside.**

24 13 **Q.** Okay. So you're not currently

25 housed?

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6

1 **A. No.**

2 14 **Q.** Okay. Where you are currently,

3 across the street from the Hub, what street is that

4 near?

5 **A. That's at Vine and Park.**

6 15 **Q.** Vine and Park. Are you in a tent

7 there?

8 **A. No.**

9 16 **Q.** No? Are you staying at any

10 shelter currently?

11 **A. No.**

12 17 **Q.** You're just staying outside?

13 **A. Yeah, with my older brother.**

14 18 **Q.** With your older brother. Is your

15 brother in a tent?

16 **A. No. He's outside currently with**

17 **me.**

18 19 **Q.** How long have you been living

19 outside not in a tent near the Hub?

20 **A. Well, it's only been a couple of**

21 **nights. Last time, we were in the corner part of the**

22 **parking lot of the Philpott Church. That's --**

23 20 **Q.** And when you were -- sorry, go on.

24 **A. That's also on Vine Street but**

25 **more closer to Bay Street.**

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7

1 21 **Q.** And when you were in the parking

2 lot of the Philpott Church, were you in a tent there?

3 **A. No.**

4 22 **Q.** Let's just back up a little bit.

5 In your June 2, 2022, affidavit, you say that you've

6 been homeless for the past five years. If I'm doing

7 the math correctly, that means you've been homeless

8 since about 2017?

9 **A. Yeah.**

10 23 **Q.** Since 2017 to date, have there

11 been any time periods that you've been housed?

12 **A. They tried offering me housing,**

13 **but I didn't take it.**

14 24 **Q.** Okay. When did they offer you

15 housing?

16 **A. Around 2019 they tried to offer me**

17 **housing.**

18 25 **Q.** Why didn't you take the housing?

19 **A. Because I figured people needed it**

20 **more than I did.**

21 26 **Q.** Were there any other reasons that

22 you didn't take the housing?

23 **A. No.**

24 27 **Q.** Ms. Ogden, there's been some

25 evidence from the City of Hamilton, a witness named Rob

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8

1 Mastroianni, who I don't think you've ever met, but he

2 reviews or has reviewed housing records. He's

3 indicated that you made an Access to Housing

4 application and obtained housing on September 28, 2022.

5 Do you remember obtaining housing on September 28,

6 2022, or sometime around then?

7 **A. No.**

8 28 **Q.** No? So that's not correct?

9 **A. Mm-mm, no.**

10 29 **Q.** No, okay. So only in 2019 was

11 when you were offered housing?

12 **A. Yeah.**

13 30 **Q.** Have you ever lived in a tent in

14 the City of Hamilton?

15 **A. Yes, I have.**

16 31 **Q.** When was the last time you were in

17 a tent?

18 **A. The last time I was in a tent was**

19 **at Beasley Park.**

20 32 **Q.** When would that have been?

21 **A. Early 2022.**

22 33 **Q.** Early 2022?

23 **A. Yeah.**

24 34 **Q.** Since early 2022, where have you

25 been living?

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9

1 **A. Everywhere, like everywhere**

2 **outside with my brother and my sister in a compound.**

3 35 **Q.** Have you ever gone inside into a

4 shelter since --

5 **A. No.**

6 36 **Q.** -- 2022?

7 **A. No, I haven't.**

8 37 **Q.** And what's the reason for that?

9 **A. It's usually because they're full**

10 **or, like, they don't have any beds or I've been denied**

11 **shelter.**

12 38 **Q.** You've been denied shelter, okay.

13 We're going to come back to that and break that down a

14 little bit. Have you stayed anywhere indoors at all --

15 **A. No.**

16 39 **Q.** -- since early 2022?

17 **A. No.**

18 40 **Q.** I'm going to share my screen so

19 you can see your affidavit. We'll start with your

20 June 2, 2022, affidavit. At paragraph 4, you state "my

21 medical conditions include mental health and substance

22 use disorders." Is that correct?

23 **A. Yeah.**

24 41 **Q.** Now, there's a doctor who's also

25 written a letter on your behalf. It's Dr. Wiwcharuk,

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10

1 Dr. Jill Wiwcharuk. We understand that she also goes

2 by "Dr. Jill." Do you remember her?

3 **A. Yeah.**

4 42 **Q.** So she's written a letter dated

5 June 2, 2022. Have you ever seen this letter before?

6 **A. Yes, I have.**

7 43 **Q.** How many times have you seen

8 Dr. Wiwcharuk?

9 **A. Probably a few times before she**

10 **went back to B.C. Was it B.C.? Yeah, she went back to**

11 **B.C.**

12 44 **Q.** Do you remember when she went to

13 B.C.?

14 **A. No.**

15 45 **Q.** I assume it was sometime after she

16 wrote this letter in June of 2022?

17 **A. Yeah.**

18 46 **Q.** Do you know for how long a period

19 of time you saw Dr. Wiwcharuk before she went back to

20 B.C.?

21 **A. It was a while. I can't really**

22 **remember. It was a while.**

23 47 **Q.** Was it more than a month?

24 **A. Yeah, it was probably over a**

25 **month.**

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11

1 48 **Q.** Was it more than six months?

2 **A. I think it was, like, over two**

3 **years before she first went back.**

4 49 **Q.** Where would you see Dr. Wiwcharuk

5 when you saw her?

6 **A. At the Wesley Centre.**

7 50 **Q.** At the Wesley Centre? You would

8 go to her there?

9 **A. Yeah.**

10 51 **Q.** What kind of things or what reason

11 would you see Dr. Wiwcharuk for?

12 **A. Prescriptions, antibiotics.**

13 52 **Q.** Okay. At the bottom of the first

14 page of Dr. Wiwcharuk's letter, she says "Ms. Ogden

15 would see me with complaints of poor sleep and being

16 tired." Do you agree? Is that something that you

17 would talk to Dr. Wiwcharuk about?

18 **A. Yeah.**

19 53 **Q.** Okay. In the next paragraph on

20 the following page at the beginning, Dr. Wiwcharuk says

21 "hospital records indicate that Ms. Ogden has accessed

22 the emergency department on ten occasions since the

23 fall of 2020." Is that accurate? You've gone to

24 emergency about ten times between 2020 and when this

25 letter was written in 2022?

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12

1 **A. Yes.**

2 54 **Q.** Okay. Do you remember what those

3 visits were for?

4 **A. I had abdominal pain before**

5 **because something -- I didn't know what it was.**

6 55 **Q.** Now, Dr. Wiwcharuk describes these

7 visits as something called functional pain, and she

8 says that's something like headaches or abdominal pain

9 that's related to stress and anxiety but has no

10 underlying pathology and is not associated with any

11 abnormal lab work or imaging, and then she goes on to

12 say "this would be in keeping with the extraordinarily

13 stressful situation that Ms. Ogden has been in as she

14 continues to remain homeless, often unsheltered and at

15 times unable to access a shelter bed when she needs

16 one."

17 **A. Mm-hmm, yeah.**

18 56 **Q.** So you agree with that? That's

19 accurate?

20 **A. Yeah.**

21 57 **Q.** Now, Dr. Rachel Lamont also wrote

22 a letter on your behalf dated February 22, 2024. Have

23 you seen this letter before?

24 **A. Yeah.**

25 58 **Q.** How many times have you seen

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<p>13</p> <p>1 Dr. Lamont?</p> <p>2 A. Who is that again?</p> <p>3 59 Q. I'm sorry, what was that?</p> <p>4 A. I was asking which one was</p> <p>5 Dr. Lamont again.</p> <p>6 60 Q. I'm not able to tell you that. Do</p> <p>7 you remember Dr. Lamont at all?</p> <p>8 A. I don't remember, really.</p> <p>9 61 Q. Okay. Her first name is Rachel.</p> <p>10 Do you remember someone going by the name of Rachel?</p> <p>11 A. Oh, okay. Yeah, okay. I know who</p> <p>12 she is now. Yeah, I remember her. I remember her.</p> <p>13 62 Q. Okay. How many times have you</p> <p>14 seen Rachel?</p> <p>15 A. Probably, like, five times.</p> <p>16 63 Q. About five times? Okay.</p> <p>17 A. Mm-hmm.</p> <p>18 64 Q. And where do you see Rachel?</p> <p>19 A. She's with the Social Medicine</p> <p>20 Response Team.</p> <p>21 65 Q. Okay. So do you go to see her at</p> <p>22 a particular location or does she come to you?</p> <p>23 A. She comes to me outside when I'm</p> <p>24 outside.</p> <p>25 66 Q. So she comes to find you? She</p> <p>Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>	<p>15</p> <p>1 complex posttraumatic stress disorder, major depressive</p> <p>2 disorder, attention deficit hyperactivity disorder,</p> <p>3 opioid use disorder and stimulant use disorder. Is</p> <p>4 that correct?</p> <p>5 A. Yeah. But the depression one is</p> <p>6 confirmed by my family doctor.</p> <p>7 74 Q. Who's your family doctor?</p> <p>8 A. Dr. Bigby (ph).</p> <p>9 75 Q. Do you know how to spell the last</p> <p>10 name?</p> <p>11 A. No, I do not.</p> <p>12 76 Q. How often do you see your family</p> <p>13 doctor?</p> <p>14 A. Well, I haven't seen him in a</p> <p>15 couple years, because due to -- I mean, I haven't seen</p> <p>16 him in a couple years.</p> <p>17 77 Q. Okay. Where is your family doctor</p> <p>18 located?</p> <p>19 A. I have no idea.</p> <p>20 78 Q. You don't know where your family</p> <p>21 doctor is?</p> <p>22 A. Not anymore because he's moved.</p> <p>23 79 Q. He's moved, okay. So is that why</p> <p>24 you haven't seen him?</p> <p>25 A. Yeah.</p> <p>Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>
<p>14</p> <p>1 knows where you are?</p> <p>2 A. Yeah.</p> <p>3 67 Q. Do you ever go to see her where</p> <p>4 she is, in an office or one of the Outreach centres or</p> <p>5 the day centres?</p> <p>6 A. No.</p> <p>7 68 Q. No? Okay. What does Dr. Lamont</p> <p>8 do for you?</p> <p>9 A. She's with the Social Navigation,</p> <p>10 Social Response, yeah.</p> <p>11 69 Q. Can you explain what that means?</p> <p>12 A. She's with -- she does, like,</p> <p>13 street outreach or something.</p> <p>14 70 Q. And what exactly does that mean</p> <p>15 that she's doing for you?</p> <p>16 A. She provides care to people who</p> <p>17 are unhoused, because she's like -- she comes outside</p> <p>18 and she takes care of people who are living outside.</p> <p>19 71 Q. Okay. Is she treating you for any</p> <p>20 medical conditions? Does she give you medication?</p> <p>21 A. No.</p> <p>22 72 Q. Or refer you to other specialists?</p> <p>23 A. No.</p> <p>24 73 Q. Okay. In her letter, in the</p> <p>25 second paragraph, she states that you have diagnoses of</p> <p>Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>	<p>16</p> <p>1 80 Q. Have you gotten a new family</p> <p>2 doctor?</p> <p>3 A. No.</p> <p>4 81 Q. Are you still getting medication</p> <p>5 for your depression?</p> <p>6 A. Yes, I am, at the Hub.</p> <p>7 82 Q. At the Hub, okay. Do you know who</p> <p>8 prescribes you medication at the Hub?</p> <p>9 A. Well, my -- I don't go see anybody</p> <p>10 to get the prescription filled because it's sent there.</p> <p>11 So I probably have, like, a few months -- like, a good</p> <p>12 six, seven months of prescription there.</p> <p>13 83 Q. Let me make sure I understand. At</p> <p>14 the Hub, they can give you six to seven months' worth</p> <p>15 of your medication?</p> <p>16 A. No, that's how much medication has</p> <p>17 been delivered there. Every time -- every week they</p> <p>18 deliver new meds there. So I'm kind of, like, behind</p> <p>19 on my meds.</p> <p>20 84 Q. I'm sorry. I don't understand, so</p> <p>21 let me back up and make sure that I get this clear.</p> <p>22 You do take medication for your depression and you get</p> <p>23 that through the Hub; correct?</p> <p>24 A. Yeah.</p> <p>25 85 Q. Okay. What medication is that?</p> <p>Nimigan Mihailovich Reporting Inc. (905) 522-1653</p>

		17
1	A. It's sertraline, Zoloft, and a --	
2	I can't pronounce the last one. It's like a sodium	
3	pill.	
4	86 Q. So those are given. They're	
5	dispensed to you at the Hub?	
6	A. Yeah.	
7	87 Q. How often do you get those	
8	medications from the Hub?	
9	A. I get them every day on Friday. I	
10	get them for the weekend too.	
11	88 Q. So you go there every day, and on	
12	Friday they'll give you enough to get you through the	
13	weekend?	
14	A. Yeah.	
15	89 Q. And you're able to make it there	
16	every day to get your medication?	
17	A. Yeah.	
18	90 Q. Is there any reason why you have	
19	to go there every day?	
20	A. Well, because they also have a	
21	drop-in program where I can go eat at nighttime.	
22	91 Q. You're there for the drop-in	
23	program and you can just pick up your medication when	
24	you're there?	
25	A. Yeah.	
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		18
1	92 Q. If you weren't going there for the	
2	drop-in program, would they give you medication to last	
3	until you're going to come there next?	
4	A. If I ask them to.	
5	93 Q. Do you ever stay there overnight?	
6	A. No. They're not an overnight	
7	program.	
8	94 Q. They're not an overnight program,	
9	okay. Have you ever talked to anyone there about	
10	finding you a place to stay overnight?	
11	A. No.	
12	95 Q. With respect specifically to your	
13	opioid use disorder and your stimulant use disorder, do	
14	you still have those disorders?	
15	A. Yeah.	
16	96 Q. Which substances do you use?	
17	A. I use fentanyl and I smoke	
18	marijuana too.	
19	97 Q. How often do you use fentanyl?	
20	A. I use it every day.	
21	98 Q. Every day. Are you in treatment	
22	for your substance use disorder?	
23	A. No.	
24	99 Q. Do you have any plans to get into	
25	treatment for your substance use disorder?	
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		19
1	A. Well, I tried, but then I	
2	chickened out at the last minute and didn't show up	A4950
3	when I was supposed to go.	
4	100 Q. And then you didn't take any	
5	further steps after that, do I take it?	
6	A. Mm-hmm, yeah.	
7	101 Q. Yes, okay. Has any of the	
8	doctors, either Rachel or any other people at the Hub,	
9	talked to you about getting help for your substance use	
10	disorder?	
11	A. No.	
12	102 Q. Have you asked them about getting	
13	help?	
14	A. No, I haven't.	
15	103 Q. Dr. Lamont has referenced use of	
16	stimulants. Do you use any stimulants?	
17	A. What's a stimulant? What's a	
18	stimulant?	
19	104 Q. Things to help keep you awake?	
20	A. No.	
21	105 Q. No?	
22	A. Mm-mm, no.	
23	106 Q. And you haven't used those since	
24	you've become -- since you've started experiencing	
25	homelessness?	
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		20
1	A. Well, I had used them for a little	
2	bit, but I -- at the same time as crystal meth. I	
3	don't like the taste of it. So the only way for me to	
4	do it was to shoot it, but I don't want to do that	
5	anymore, so I stopped doing that myself.	
6	107 Q. Approximately when were you using	
7	crystal meth?	
8	A. Couple years.	
9	108 Q. Do you remember from when to when?	
10	A. No.	
11	109 Q. Okay. You stopped because you	
12	didn't like the taste of it?	
13	A. Yeah. And the only way was to	
14	shoot it, and I don't like the needle marks that were	
15	going in my arm.	
16	110 Q. When you were using crystal meth,	
17	would you use it the same amount whether you were	
18	inside or outside? Did it make a difference?	
19	A. Yeah, it wouldn't make a	
20	difference, really.	
21	111 Q. Okay. I'm going to ask you some	
22	more questions about where you've been, where you've	
23	been staying since you began experiencing homelessness.	
24	At paragraph 6 of your affidavit, you state, "Before	
25	becoming homeless, I lived with my mom. However, the	A666
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21

1 relationship was strained and I had to move out."
 2 Where did you go once you moved out from your mom's
 3 place?
 4 **A. I went to -- I'd go stay at Durand**
 5 **Park.**
 6 112 **Q.** You stayed at Durand Park? Okay.
 7 I want to be fair to you because according to paragraph
 8 7 of your affidavit, it says that was about a year and
 9 a half ago. So if I'm doing the math right, that's
 10 about 2021. I think you told us earlier that you
 11 became homeless sometime around 2017, so that leaves
 12 about four years unaccounted for. Do you remember
 13 where you went?
 14 **A. No.**
 15 113 **Q.** No? Is your mom's apartment --
 16 sorry, your mom's home in Hamilton?
 17 **A. Yes.**
 18 114 **Q.** Are you from Hamilton?
 19 **A. No, I'm not. I'm from Toronto.**
 20 115 **Q.** You're from Toronto. When did you
 21 come to Hamilton?
 22 **A. When I turned ten.**
 23 116 **Q.** Okay. And since experiencing
 24 homelessness, have you always been in Hamilton or have
 25 you gone to other places?

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22

1 **A. I've been in Hamilton.**
 2 117 **Q.** You've been in Hamilton the whole
 3 time?
 4 **A. Yeah.**
 5 118 **Q.** Okay. Before 2021, do you
 6 remember where you were staying at all?
 7 **A. No.**
 8 119 **Q.** Okay. It could have been in a
 9 shelter, it could have been in a tent, you don't
 10 remember?
 11 **A. No.**
 12 120 **Q.** Okay. Let's look at paragraph 7
 13 of your affidavit. At paragraph 7, you said "I have
 14 stayed on and off in a tent at several different
 15 locations in Hamilton. The following chart is a
 16 breakdown of the locations and general timeframes." So
 17 you say Durand Park, about a year and a half ago, and
 18 you stayed there for approximately seven months. Is
 19 that correct?
 20 **A. Mm-hmm.**
 21 121 **Q.** Yes?
 22 **A. Yeah.**
 23 122 **Q.** Okay. And so you're in a tent in
 24 Durand Park and you stayed there for seven months;
 25 right?

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23

1 **A. Mm-hmm.** A4951
 2 123 **Q.** Sorry, you have to say yes or no.
 3 **A. Yes. Sorry, yeah.**
 4 124 **Q.** I'm not trying to be mean. It's
 5 just that --
 6 **A. I know.**
 7 125 **Q.** -- it's not clear what you mean.
 8 You say "by-law officers evicted me." I want to talk
 9 about that a little bit. The by-law officers, did they
 10 come by and say you can't be here?
 11 **A. Yes, that's what they told me.**
 12 126 **Q.** Did they say when you had to move
 13 by?
 14 **A. The next day.**
 15 127 **Q.** The next day? Okay. What did you
 16 do in response to them telling you that you --
 17 **A. I'm taking my tent down and I**
 18 **bring it back during the night.**
 19 128 **Q.** Sorry, I didn't catch that. You
 20 took your tent down...
 21 **A. I take my tent down during the day**
 22 **and I bring it back at nighttime.**
 23 129 **Q.** Okay.
 24 **A. And put it back up.**
 25 130 **Q.** Okay. Then would you take it down

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24

1 again before the morning?
 2 **A. Yes.**
 3 131 **Q.** Okay. So the by-law officers came
 4 by in the day, and you took the tent down, and then you
 5 put it back up at night when they wouldn't see you?
 6 **A. Yeah.**
 7 132 **Q.** Okay. How long did you do that,
 8 taking your tent down in the day and putting it back up
 9 in the night?
 10 **A. I did it for quite a bit, and then**
 11 **they caught on to what I was doing.**
 12 133 **Q.** And tell me about that.
 13 **A. They'd come by early in the**
 14 **morning. I wouldn't see them. So they'd come by early**
 15 **in the morning. I don't know how. They're not**
 16 **supposed to be at work until, like, 8:30, I think.**
 17 134 **Q.** So what time in the morning?
 18 **A. Like 5:30.**
 19 135 **Q.** 5:30 in the morning. Are you
 20 certain of that? Did you have a clock or anything
 21 nearby?
 22 **A. I have -- I do have cell phones.**
 23 136 **Q.** Okay. So let's break this down.
 24 So when is it that someone came by at 5:30 in the
 25 morning?

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1 **A. I don't remember.**
 2 137 **Q.** You don't remember. Do you
 3 remember what time of year it was?
 4 **A. No.**
 5 138 **Q.** Do you remember what year it was?
 6 **A. No.**
 7 139 **Q.** But you're certain of the time?
 8 **A. Mm-hmm, yeah.**
 9 140 **Q.** So tell me what the person did
 10 when they came by at 5:30 in the morning.
 11 **A. They were shaking my tent, telling**
 12 **me I wasn't allowed to be there. Because I recognized**
 13 **the by-law officer. It was the (indiscernible) guy.**
 14 141 **Q.** The who?
 15 **A. The by-law officer. I don't know**
 16 **how to -- I don't want to sound racist.**
 17 142 **Q.** I'm sorry, I didn't catch that.
 18 **A. I don't want to sound like I'm**
 19 **racist, but it was the Black by-law officer, the Black,**
 20 **fat one.**
 21 143 **Q.** Okay. There was a Black by-law
 22 officer and he came by at 5:30 in the morning and told
 23 you you needed to move?
 24 **A. Yeah.**
 25 144 **Q.** And so what did you do?
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1 **A. Kind of, like -- I swore and**
 2 **told him to leave me alone.**
 3 145 **Q.** And what did he do?
 4 **A. He called the police.**
 5 146 **Q.** Right away?
 6 **A. Oh, yeah.**
 7 147 **Q.** What happened next?
 8 **A. The police came and I took my tent**
 9 **down and moved.**
 10 148 **Q.** You took your tent down and moved?
 11 **A. Yeah.**
 12 149 **Q.** Okay. How long did it take the
 13 police to arrive?
 14 **A. Ten minutes.**
 15 150 **Q.** Ten minutes. Can you describe the
 16 police officer?
 17 **A. Not really, because I had just**
 18 **woken up.**
 19 151 **Q.** Was the by-law officer wearing a
 20 uniform?
 21 **A. No.**
 22 152 **Q.** The by-law officer was not wearing
 23 a uniform. Did the by-law officer issue you a ticket?
 24 **A. No. He wasn't in uniform, so I**
 25 **don't think he can do that, but the cop issued a**
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1 **ticket.**
 2 153 **Q.** What did the cop say they were
 3 issuing you a ticket for?
 4 **A. Trespassing.**
 5 154 **Q.** Where were you at the time?
 6 **A. Durand Park.**
 7 155 **Q.** What part of the park were you in?
 8 **A. The part that's on Hunter Street**
 9 **(ph).**
 10 156 **Q.** How close to the street were you?
 11 **A. I was by the bathrooms, so it**
 12 **wasn't close to the street.**
 13 157 **Q.** Were you doing -- sorry. Were you
 14 making any sort of noise at the time that the by-law
 15 officer came up to you?
 16 **A. No. Well, I don't know. I talk**
 17 **in my sleep a lot.**
 18 158 **Q.** Was anybody else around? Did
 19 anyone else witness this by-law officer come up to you
 20 at 5:30 in the morning?
 21 **A. My ex-boyfriend was previously in**
 22 **jail.**
 23 159 **Q.** I'm sorry?
 24 **A. My ex-boyfriend was previously in**
 25 **jail.**
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1 160 **Q.** How do you spell his name?
 2 **A. It's Kevin, K-E-V-I-N, Gowers,**
 3 **G-O-W-E-R-S.**
 4 161 **Q.** Where was Kevin when all of this
 5 happened?
 6 **A. He was right beside me.**
 7 162 **Q.** So he was staying in the tent with
 8 you?
 9 **A. Yeah.**
 10 163 **Q.** So you said Kevin's in -- Kevin's
 11 in jail?
 12 **A. Yeah.**
 13 164 **Q.** When was the last time you saw
 14 Kevin?
 15 **A. Almost a year ago.**
 16 165 **Q.** Ms. Ogden, the City of Hamilton's
 17 by-law officers have given evidence that they don't, in
 18 fact, work overnight, and that they --
 19 **A. It wasn't overnight. It was 5:30.**
 20 166 **Q.** 5:30 in the morning.
 21 **A. Not in uniform.**
 22 167 **Q.** Not in uniform. This person, you
 23 believe, was just acting on their own volition?
 24 **A. Yeah.**
 25 168 **Q.** Now, on the chart you say you went
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1 to Beasley Park about a year ago. This is your
 2 affidavit of June 2022, so that would have been
 3 June 2021. Does that sound about right?
 4 **A. Yeah.**
 5 169 **Q.** You say you were there for a few
 6 nights?
 7 **A. Mm-hmm.**
 8 170 **Q.** Yes?
 9 **A. Yeah, sorry.**
 10 171 **Q.** You were there in a tent?
 11 **A. Yeah, I believe so.**
 12 172 **Q.** You say the by-law officers
 13 evicted you again. Does that again mean they came up
 14 to you and said you have to move?
 15 **A. Yeah.**
 16 173 **Q.** And how much time did they tell
 17 you you had to move?
 18 **A. Five minutes.**
 19 174 **Q.** Five minutes. Had they come up to
 20 you before then?
 21 **A. Couple days before that, I think.**
 22 175 **Q.** All right. So they told you you
 23 had to move a couple days before that, and then they
 24 came back and said now you have five minutes?
 25 **A. Yeah.**

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1 176 **Q.** When they came up to you the first
 2 time, did you take any steps to move?
 3 **A. No.**
 4 177 **Q.** Okay. Why not?
 5 **A. I didn't feel like moving.**
 6 178 **Q.** And then when they came back and
 7 said, no, you have five minutes to move, did you move
 8 at that time?
 9 **A. Yeah.**
 10 179 **Q.** Okay. Did you pack up your things
 11 and move?
 12 **A. Yeah.**
 13 180 **Q.** You said you lost some belongings.
 14 What belongings did you lose?
 15 **A. I lost clothes plus -- I lost all**
 16 **my clothes. I lost my blankets.**
 17 181 **Q.** How did you lose those?
 18 **A. The -- from when they came into**
 19 **the -- bulldoze the things and took the tents.**
 20 182 **Q.** I didn't hear that, sorry.
 21 They --
 22 **A. When they came and picked up my --**
 23 **those bulldozer things that they have. They bulldozed**
 24 **my tent.**
 25 183 **Q.** Were you there?

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1 **A. No, but I watched them and viewed**
 2 **it from afar.**
 3 184 **Q.** So you had left, and then they
 4 came and they bulldozed your tent?
 5 **A. Yeah.**
 6 185 **Q.** How long had you been gone when
 7 that happened?
 8 **A. A day.**
 9 186 **Q.** You left, and then a day later
 10 they came and cleared out your tent?
 11 **A. Mm-hmm.**
 12 187 **Q.** Yes?
 13 **A. Yes, sorry.**
 14 188 **Q.** Okay. Where did you stay next
 15 after that?
 16 **A. I don't remember.**
 17 189 **Q.** You don't remember. Why didn't
 18 you take your tent with you when you left?
 19 **A. Because I guess I gained too much**
 20 **stuff, and so I don't feel like taking it all with me.**
 21 **Because I know I can get another tent somewhere.**
 22 190 **Q.** You knew you could get another
 23 tent somewhere else, so you prioritized the other
 24 things that you could take with you?
 25 **A. Yeah.**

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1 191 **Q.** And you don't remember where you
 2 went after that? Did I hear you correctly?
 3 **A. Yes, you did.**
 4 192 **Q.** Okay. Did you talk to anyone
 5 about getting into a shelter or finding somewhere else
 6 to go?
 7 **A. No.**
 8 193 **Q.** Did you ask for help getting into
 9 a shelter or finding somewhere else to go?
 10 **A. No.**
 11 194 **Q.** The next place that you say you
 12 stayed was also Beasley Park, and you say that was a
 13 month and a half later. I just want to be clear.
 14 You're not sure where you went for that month and a
 15 half?
 16 **A. Yeah.**
 17 195 **Q.** Sorry, that was confusing. So it
 18 is correct that you're not sure where you went?
 19 **A. Yes.**
 20 196 **Q.** But at some point, about a month
 21 and a half later, you end up at Beasley Park again? Is
 22 that correct?
 23 **A. Yeah.**
 24 197 **Q.** Okay. And you say that you were
 25 there for one night?

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1 **A. Mm-hmm, yes.**
 2 198 **Q.** Okay. So you got another tent;
 3 you were there for one night. And then according to
 4 this chart in your affidavit, you got 24 hours' notice
 5 from by-law to leave; is that correct?
 6 **A. Yes.**
 7 199 **Q.** They came back and said you have
 8 24 hours' notice to leave?
 9 **A. Yeah.**
 10 200 **Q.** Okay. And so did you leave within
 11 the 24 hours?
 12 **A. I left.**
 13 201 **Q.** You said you left. Did -- well,
 14 I'll just leave that there, then. It says you lost
 15 another tent and some clothes. Did you do the same
 16 thing you did last time?
 17 **A. Yes, I did.**
 18 202 **Q.** So you left your tent behind
 19 because you had other things you wanted to take with
 20 you and knew you could get another tent; right?
 21 **A. Yeah.**
 22 203 **Q.** Okay. And so where did you go
 23 after leaving Beasley Park?
 24 **A. I stayed with my friends outside.**
 25 204 **Q.** Stayed with your friends outside,
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1 okay --
 2 **A. I stayed in their tent.**
 3 205 **Q.** In their tent, okay. Where were
 4 they staying in their tent?
 5 **A. I honestly don't remember.**
 6 206 **Q.** You don't remember which park it
 7 was or which neighbourhood?
 8 **A. No.**
 9 207 **Q.** Do you remember for how long you
 10 were staying with your friends in their tent?
 11 **A. No, I don't remember.**
 12 208 **Q.** Okay. Again, at that point in
 13 time, did you talk to anyone about finding a place to
 14 stay or getting into a shelter?
 15 **A. No.**
 16 209 **Q.** The next place -- sorry. When did
 17 you stop staying with your friends in their tent?
 18 **A. I don't remember.**
 19 210 **Q.** You don't remember. But at some
 20 point in winter of 2021 you went to Durand Park,
 21 according to your affidavit; is that correct?
 22 **A. Yeah.**
 23 211 **Q.** Just again to be really clear,
 24 between when you stopped staying with friends in your
 25 tent and when you went to Durand Park in winter of
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1 2021, you don't remember where you were? **A4954**
 2 **A. No.**
 3 212 **Q.** Okay. You don't remember if you
 4 were in a tent or in shelter or somewhere else?
 5 **A. No, I wasn't in a shelter.**
 6 213 **Q.** You weren't in a shelter?
 7 **A. Yeah.**
 8 214 **Q.** Do you remember anything else
 9 about where you were?
 10 **A. No, not really.**
 11 215 **Q.** Now we're at winter of 2021, and
 12 you say that you're staying in Durand Park and you were
 13 there for three nights. Is that correct?
 14 **A. Yeah.**
 15 216 **Q.** So you were in a tent for three
 16 nights in Durand Park in winter of 2021?
 17 **A. Yeah. That was also when I was**
 18 **using heroin and fentanyl.**
 19 217 **Q.** That's when you were -- okay. So
 20 you mentioned that that's when you were using heroin
 21 and fentanyl. Why is that significant to you?
 22 **A. That stuff usually makes you fall**
 23 **asleep.**
 24 218 **Q.** Okay. And so were you falling
 25 asleep in your tent?
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1 **A. Yeah.**
 2 219 **Q.** And in the chart here, you say you
 3 had to move because of some problems at the encampment.
 4 What problems were there at the encampment?
 5 **A. This lady, she started on me and**
 6 **my ex-boyfriend when we were staying there at the time.**
 7 220 **Q.** So there was a conflict with
 8 another person at the encampment?
 9 **A. Yeah.**
 10 221 **Q.** Okay. And --
 11 **A. She was --**
 12 222 **Q.** Go on, sorry.
 13 **A. It was someone who lived next**
 14 **door.**
 15 223 **Q.** Someone who lived next door. You
 16 mean someone who lived next door in the encampment?
 17 **A. No, to the park.**
 18 224 **Q.** To the park. So who was the
 19 person who lived next door to the park?
 20 **A. I have no idea who she was.**
 21 225 **Q.** Okay. And so is this the person
 22 that had a problem with you?
 23 **A. Yeah.**
 24 226 **Q.** So it wasn't another person in the
 25 encampment; it was somebody --
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<p>37</p> <p>1 A. No, yeah.</p> <p>2 227 Q. -- near the park where you were</p> <p>3 staying?</p> <p>4 A. Yeah.</p> <p>5 228 Q. And what specifically was --</p> <p>6 describe what happened. What was that conflict?</p> <p>7 A. She was arguing about why we were</p> <p>8 staying in the park. Because she didn't like us -- she</p> <p>9 didn't like seeing us in the park because she thought</p> <p>10 we were bad people.</p> <p>11 229 Q. Were you using drugs at the time?</p> <p>12 A. Yeah.</p> <p>13 230 Q. Were you using intravenous drugs?</p> <p>14 A. I was smoking fentanyl and</p> <p>15 shooting crystal.</p> <p>16 231 Q. So you were using needles and you</p> <p>17 were smoking, using a glass pipe?</p> <p>18 A. Yeah.</p> <p>19 232 Q. And where were you discarding your</p> <p>20 needles and your --</p> <p>21 A. I have a sharps container.</p> <p>22 233 Q. You had a sharps container? Where</p> <p>23 was that?</p> <p>24 A. It was outside of my tent.</p> <p>25 234 Q. Is it possible that any of the</p> <p>Nimigan Mihailovich Reporting Inc.</p> <p>(905) 522-1653</p>	<p>39</p> <p>1 say that by-law had already been there and warned them</p> <p>2 about garbage at the site. But by-law, based on what</p> <p>3 you just told me, by-law wasn't the people who made you</p> <p>4 leave; you decided to leave when the woman told you</p> <p>5 that there are kids there?</p> <p>6 A. Yes.</p> <p>7 241 Q. Okay. Did you observe garbage at</p> <p>8 the site?</p> <p>9 A. No.</p> <p>10 242 Q. Do you know anything about by-law</p> <p>11 having come and warning people at the encampment about</p> <p>12 garbage at the site?</p> <p>13 A. No.</p> <p>14 243 Q. I do have to ask: Why is that in</p> <p>15 your affidavit?</p> <p>16 A. I don't -- because that's what it</p> <p>17 says.</p> <p>18 244 Q. Because -- I'm sorry --</p> <p>19 A. That's what I told him.</p> <p>20 245 Q. You said that there was garbage at</p> <p>21 the site, but you don't remember?</p> <p>22 A. I didn't want people to know I was</p> <p>23 using drugs.</p> <p>24 246 Q. Sorry, I caught part of that --</p> <p>25 A. I didn't want people to know I was</p> <p>Nimigan Mihailovich Reporting Inc.</p> <p>(905) 522-1653</p>
<p>38</p> <p>1 sharps or pipes may have ended up on the ground?</p> <p>2 A. It's most likely my pipe's there.</p> <p>3 235 Q. I didn't catch that.</p> <p>4 A. It's most likely my pipe's there,</p> <p>5 but I'd always make sure my needles were in my sharps</p> <p>6 container.</p> <p>7 236 Q. Is there anything that the woman</p> <p>8 said to you about why she thought you were bad people?</p> <p>9 A. No.</p> <p>10 237 Q. No. And do you have any knowledge</p> <p>11 or belief as to what she may have objected to about you</p> <p>12 being there?</p> <p>13 A. No. She said there's kids that go</p> <p>14 around in the park, and we smoke drugs and we use drugs</p> <p>15 there.</p> <p>16 238 Q. Did that cause you concern, that</p> <p>17 there are kids at the park where you're in the space</p> <p>18 where you're admittedly doing drugs?</p> <p>19 A. I was concerned, yes, for the</p> <p>20 kids, but that's why I stopped going to the parks.</p> <p>21 239 Q. So she said that there's kids</p> <p>22 there, and you agreed that that was a concern, so you</p> <p>23 left?</p> <p>24 A. Yeah.</p> <p>25 240 Q. Now, in your affidavit you also</p> <p>Nimigan Mihailovich Reporting Inc.</p> <p>(905) 522-1653</p>	<p>40</p> <p>1 using drugs.</p> <p>2 247 Q. You didn't want people to know you</p> <p>3 were using drugs?</p> <p>4 A. Yeah.</p> <p>5 248 Q. Where did you go after you left</p> <p>6 Durand Park after the woman told you that there were</p> <p>7 kids there?</p> <p>8 A. Well, it's in the affidavit. In</p> <p>9 2022 I went to Beasley Park. And I don't -- I stayed</p> <p>10 everywhere after that.</p> <p>11 249 Q. So you went right from Durand Park</p> <p>12 back to Beasley Park?</p> <p>13 A. For two months.</p> <p>14 250 Q. For two months, okay. Now we're</p> <p>15 into early 2022. You went to Beasley Park. You were</p> <p>16 in a tent again in Beasley Park; correct?</p> <p>17 A. Mm-hmm --</p> <p>18 251 Q. Yes?</p> <p>19 A. -- for two months, and then I've</p> <p>20 just been staying outside since then.</p> <p>21 252 Q. So when you say -- let's just talk</p> <p>22 about Beasley Park again. In early 2022 you're in</p> <p>23 Beasley Park for two months. You say "police evicted</p> <p>24 me." Is it the police now who came and told you you</p> <p>25 couldn't be there?</p> <p>Nimigan Mihailovich Reporting Inc.</p> <p>(905) 522-1653</p>

		41
1	A. Yes.	
2 253	Q. How much time did the police say	
3	that you had before you had to leave?	
4	A. They didn't really give me a time.	
5 254	Q. They just said you can't be here	
6	anymore?	
7	A. Yeah.	
8 255	Q. And so what did you do in response	
9	to the police saying you can't be there anymore?	
10	A. I told him I been there -- same	
11	thing. I'd go back and -- but I didn't have a tent	
12	with me that time. I just stayed outside for about two	
13	months.	
14 256	Q. You were just staying outside for	
15	two months?	
16	A. After the police evicted me.	
17 257	Q. After the police evicted you,	
18	okay. Let's just talk before the police evicted you.	
19	You were in a tent, and the police said you can't be	
20	here; correct?	
21	A. Yeah.	
22 258	Q. And so what did you do in response	
23	to the police saying you can't be here?	
24	A. I took my tent down and gave it	
25	away to somebody.	
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		42
1 259	Q. Why did you give your tent away to	
2	someone?	
3	A. So then I wouldn't be bothered by	
4	the cops or by-law officers anymore.	
5 260	Q. Why not just take it down but keep	
6	it with you?	
7	A. No. It's too much hassle.	
8 261	Q. Too much hassle, okay. Who did	
9	you give the tent to? Is it someone you knew?	
10	A. Yeah, I gave it to one of my	
11	friends who passed away now.	
12 262	Q. When did your friend pass away?	
13	A. Gosh, sometime last year.	
14 263	Q. My condolences. Before your	
15	friend passed away, did you ever ask for your tent back	
16	or stay with your friend?	
17	A. No.	
18 264	Q. Any particular reason why not?	
19	A. No.	
20 265	Q. Do you think your friend would	
21	have let you stay in the tent if you asked?	
22	A. She would have.	
23 266	Q. Okay. After that police -- and	
24	again, the police are coming up to you during the day	
25	and saying you can't be here; right?	
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		43
1	A. Yeah.	
2 267	Q. And so where did you go after you	A4956
3	left Beasley Park after the police said you can't be	
4	here and you gave your tent away to your friend?	
5	A. Just staying everywhere.	
6 268	Q. Can you be more specific than	
7	that?	
8	A. Just everywhere in the	
9	neighbourhood, in parking lots, on the side of the	
10	roads, on church steps.	
11 269	Q. During that time, did you make any	
12	attempts to get into a shelter?	
13	A. No.	
14 270	Q. No, okay. Now, at paragraph 8,	
15	you do say "in between staying in tents and parks, I'm	
16	sometimes able to stay in a tent in my mom's yard.	
17	However, my mom's landlord doesn't like me staying in	
18	the yard, so I can never stay for long." Is that	
19	correct?	
20	A. I haven't been to my mom's in a	
21	while.	
22 271	Q. When was the last time you stayed	
23	at your mom's?	
24	A. I can't remember.	
25 272	Q. Would it have been within the past	
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		44
1	year?	
2	A. No.	
3 273	Q. Would it have been sometime in	
4	2023?	
5	A. No.	
6 274	Q. Sometime in 2022?	
7	A. Possibly.	
8 275	Q. Any particular reason why you	
9	haven't stayed in your mom's yard in so long?	
10	A. Because my younger sister, she got	
11	kicked out of her place, so her stuff's in my mom's	
12	backyard.	
13 276	Q. Sorry, I didn't catch all of that.	
14	Did I hear --	
15	A. My younger sister, she had a place	
16	that she got kicked out of. She got locked out of her	
17	own place, and so my mom has a ton of her grandchildren	
18	there, and my sister's stuck in her backyard.	
19 277	Q. Your sister's using the space in	
20	the backyard and there's no room for you, I take it?	
21	A. Exactly.	
22 278	Q. Okay. And there's no room for you	
23	to stay inside at your mom's house?	
24	A. No, there's not.	
25 279	Q. Have you asked if you can share a	A672
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1 tent with your sister in the backyard?

2 **A. No.**

3 280 **Q.** Any particular reason why not?

4 **A. She's got her boyfriend there.**

5 281 **Q.** She's got her boyfriend there. Is

6 there room for two tents?

7 **A. No.**

8 282 **Q.** At paragraph 15 -- I'm going to

9 skip ahead a little bit -- you say if you can't stay in

10 a tent, shelter or your mom's backyard, you sleep in

11 stairwells and parking garages. How many times have

12 you stayed in a stairwell or a parking garage?

13 **A. Sixteen, seventeen times.**

14 283 **Q.** Do you remember when that would

15 have been?

16 **A. No.**

17 284 **Q.** Do you remember what year?

18 **A. No.**

19 285 **Q.** Do you remember what time of year?

20 **A. No, not really.**

21 286 **Q.** You do say in paragraph 15, "Last

22 night, I stayed at John Rebecca Park underneath

23 blankets." This is your affidavit in June of 2022,

24 so --

25 **A. No, that was the park where the**
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1 **Urban Core used to be.**

2 287 **Q.** I'm sorry, what was that?

3 **A. That was the park where the Urban**

4 **Core used to be.**

5 288 **Q.** Where the what used to be?

6 **A. The Urban Core.**

7 289 **Q.** Urban Core.

8 **A. It's not there anymore. They tore**

9 **it down.**

10 290 **Q.** Okay. So when the Urban Core was

11 still there, you would sleep in the park under some

12 blankets?

13 **A. Yeah.**

14 291 **Q.** Okay. So this was in June that

15 you were staying outside at John Rebecca Park under

16 some blankets?

17 **A. Mm-hmm, I think so.**

18 292 **Q.** I believe you said before that

19 since 2022 and up until now you haven't stayed in a

20 shelter. Is that correct?

21 **A. Yeah.**

22 293 **Q.** Mr. Mastroianni, the gentleman

23 with the City of Hamilton who took a look at the

24 housing records, he's given evidence that you were

25 offered shelter at least three times. He's named three

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1 times: on March 22, April 1, and April 7 of 2022. And

2 he says that, according to those records, you declined

3 shelter each of those times. Do you remember that?

4 **A. No, I don't remember.**

5 294 **Q.** Okay. Is it possible that's

6 correct, that you were offered shelter but decided not

7 to take it?

8 **A. Not that I'm aware of.**

9 295 **Q.** Not that you're aware of, okay.

10 But you don't remember?

11 **A. Mm-hmm, yes.**

12 296 **Q.** When was the last time you tried

13 to get into a shelter?

14 **A. Before 2022, early -- before 2022**

15 **ended.**

16 297 **Q.** Before 2022 ended, okay. And is

17 there any reason that you haven't tried to get into

18 shelter since then?

19 **A. No.**

20 298 **Q.** Now, Ms. Ogden, the City does keep

21 records of stays in shelter, attempts to access

22 homeless services, and any service restrictions from

23 shelter. Would you be willing to sign an authorization

24 to allow those records to be disclosed in this

25 litigation?

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1 **A. No.**

2 299 **Q.** Okay. Why not?

3 **A. I kind of feel -- I don't feel --**

4 **I just don't feel like doing that.**

5 300 **Q.** Are you concerned it might say

6 something different than what you remember?

7 **A. Yeah.**

8 301 **Q.** Okay. So I'm going to repeat my

9 request on the record because there are some things

10 that you can't remember and it would help us figure out

11 where potentially you've been staying or what offers of

12 shelter have been made. Again, my request is that you

13 sign an authorization so that we can obtain your

14 record.

15 **A. Yeah.**

16 302 **Q.** Will you sign the authorization?

17 **A. Yes.**

18 303 **Q.** Okay, thank you. We've sent a

19 copy to your lawyer and she can help you sign it. Now,

20 you have talked about -- so a couple of things. At

21 paragraph 11 of your affidavit -- we've talked about

22 trying to get into shelters. You say, "Staff at Wesley

23 Day Centre sometimes call for me, and are also told

24 that they are full." You told me the last time you

25 tried to get into shelter was in 2022. So that would

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1 have been around then?

2 **A. Mm-hmm, yeah.**

3 304 **Q.** Yes? Okay. Do you still go to
4 the Wesley Day Centre?

5 **A. No, because they're no longer**
6 **open.**

7 305 **Q.** Right, of course, sorry. And you
8 go to the Hub now?

9 **A. Yes.**

10 306 **Q.** Okay.

11 **A. But I'm supposed to be there in**
12 **ten minutes.**

13 307 **Q.** Okay. Well, I'm very sorry. I'll
14 try to wrap up quickly. Do you have to be there to get
15 some medication?

16 **A. Yeah.**

17 308 **Q.** Okay.

18 MS. SHORES: Counsel, do you want to
19 adjourn this examination so Ms. Ogden can get her
20 medication? Or are there other arrangements that can
21 be made? Why don't we go off for just a moment.

22 --- (Off-record discussion)

23 MS. SHORES: Following a discussion off
24 the record, Ms. Ogden has very kindly agreed to come
25 back. We're going to adjourn this examination so that

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1 she can go back to the Hub and get her medication, so
2 this cross-examination is adjourned.

3 --- Whereupon proceedings adjourned at 4:53 p.m.

4 I HEREBY CERTIFY THE FOREGOING
5 to be a true and accurate transcription
6 of my shorthand notes
7 to the best of my skill and ability.

8
9

10 [Electronically signed on August 22, 2024]

11 Lydia Pak, Court Reporter
12 Computer-Aided Transcription
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**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**KRISTEN HEEGSMA, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO,
SHAWN ARNOLD, ET AL.**

Applicants

-and-

CITY OF HAMILTON

Respondent

AFFIDAVIT OF JAHMEL LOPIERRE

1. I, JAMHEL LOPIERRE (aka JAMMY LO), of the City of Hamilton in the Province of Ontario, MAKE OATH AND STATE:
2. I am a 32 year old Black Transgender woman.
3. I am on Ontario Works. I receive \$343 per month. I am not eligible for a shelter portion while I am homeless.
4. I am a volunteer peer support worker with Keeping Six, a local harm reduction agency.
5. My medical conditions include PTSD, anxiety and depression, and a substance use disorder.
6. I have been homeless on and off for about three years.
7. Most recently, I was housed through the YWCA Transitional Living Program for about two years. I was evicted from the program into homelessness in November 2021 and have been homeless ever since. I had been homeless for a few months before going to the YWCA.
8. Since becoming homeless, I have stayed in many locations, including shelters, a temporary hotel program, drop in centres, on the streets, overflow shelters, and in tents.

9. After being evicted from the YWCA, I was sent to the Four Points Hotel, which was a temporary hotel program run by Mission Services. I stayed there for about a month. I was kicked out after missing curfew.
10. I then went to the Admiral Hotel, another temporary hotel program, for about a month. The program moved locations to a new shelter at Cathedral.
11. I then went to the Cathedral women's shelter at the end of February 2022. I stayed about a week or so. I did not do well in the shared living set up. Theft is rampant in shelters, I feel anxious around large groups of strangers, and I have trouble sleeping. I got into an argument with staff and they wanted to Form me under the *Mental Health Act*. I left to avoid being involuntarily hospitalized.
12. After Cathedral, I went to Willow's Place, which is a drop in centre for women that occasionally stays open overnight.
13. I then went to Carol Anne's Place. Carol Anne's Place is an overnight drop in centre for women that acts as an overflow shelter when the other women's shelters are full. They open at 10 p.m. Women line up for hours before they open. I have tried to get into Carol Anne's Place. Sometimes they are full and sometimes I can get in.
14. Carol Anne's Place has also had to limit the number of women permitted inside at various times during Covid.
15. My ability to access a shelter bed is always hanging in the balance. If you miss curfew, or step out for a smoke, the shelter can suddenly be at capacity. You can unknowingly break and rule or have a disagreement with staff and get kicked out.
16. I believe many shelter staff lack de-escalation skills. Shelter policies don't seem to have an end game of how to help people. You are treated like everything is a sacred privilege and have no control of your surroundings.
17. As a Transgender woman, I have stayed in both men's and women's shelters. I will sometimes stay in men's shelters if the women's shelters are full. When I stay in the men's shelters, I change my appearance to "pass" as a man. This is difficult for me – I can't express myself and everything feels muted and grey.
18. I have been service restricted – or banned - from shelters several times. The period of the ban ranges from a day to a week.

19. I have stayed in a tent in several different locations. The following is a breakdown of the locations, timeframes and outcomes.

20. Location	Timeframe	Duration of stay	Outcome
Urban Core	Sometime in 2019	unknown	Police evicted me
Beasley Park	Few times (about 4) during period of homelessness	Unknown – sometimes not even a day	Police evicted me
Outside new Hamilton Urban Core	Few times (about 4) during period of homelessness	Unknown – sometimes	Police evicted me

21. It feels like any time I plant my feet, the police are there to evict me. I have asked where I am supposed to go, but I don't really get a response.
22. I feel safer in a tent because I have more control over who is around me. I can smoke marijauna without being kicked out. Shelters are chaotic and chaos tends to breed more chaos.
23. I have been ticketed repeatedly while homeless.
24. I have not put up a tent or stayed in a tent much in 2022 because the City has ramped up enforcement. People aren't bothering with it anymore because we know that you will just be told to move.
25. Not having a stable and secure place to stay overnight means that I almost never get a decent night's sleep. On average, I sleep one or maybe two hours at a time. Sometimes I don't sleep at all.

26. When I wander the streets in search of somewhere to stay, I am at risk of *being* *ticked, robbed and assaulted.*

SWORN BEFORE ME in the City
of Hamilton, this 7 day of June, 2022

Sharon Crowe
Commissioner
Sharon Crowe
Barrister & Solicitor

Jamhel LoPierre
JAMHEL LOPIERRE

Court File No. CV-21-00077817-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

KRISTEN HEEGSMA, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO, AND
SHAWN ARNOLD, ET AL.

Applicants

-and-

CITY OF HAMILTON

Respondent

AFFIDAVIT OF *Jahmal Pierre*

(sworn April *27*, 2023)

I *Jahmal Pierre*, of the City of Hamilton in the Province of Ontario,
AFFIRM AND STATE:

1. Since June 2022, I have stayed in various locations, including Carol Anne's Place, Airbnbs, with friends, and in a tent outside of Carol Anne's Place. Carol Anne's Place continues to be full on a regular basis, which you don't learn until 10:30 or 11:00 p.m. That means that I have to make my plans for the night at that point.

S.P. 22

2. I have had my belongings repeatedly stolen while staying at Carol Anne's Place, including laptops, tablets, phones, and identification.

SWORN THIS day of April, 2023
in the City of Hamilton, Province of
of Ontario

J. Shangle
A Commissioner, etc.

Sharon Crowe
Barrister & Solicitor

)
)
)
)
)

J. Shangle

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or p

<p>1</p> <p>Court File No. CV-21-77187</p> <p>ONTARIO SUPERIOR COURT OF JUSTICE</p> <p>BETWEEN:</p> <p>KRISTEN HEEGSMa, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO, SHAWN ARNOLD, BRADLEY CALDWELL, CHRISTINE DELOREY, GLEN GNATUK, TAYLOR GOGO-HORNER, CASSANDRA JORDAN, JULIA LAUZON, AMMY LEWIS, ASHLEY MACDONALD, COREY MONAHAN, MISTY MARSHALL, SHERRI OGDEN, JAHMAL PIERRE, LINSLEY GREAVES and PATRICK WARD</p> <p>- and -</p> <p>CITY OF HAMILTON</p> <p>CROSS-EXAMINATION OF JAHMAL (JAMMY) PIERRE, Applicant, on her affidavits dated June 7, 2022, and April 27, 2023, held via Zoom Videoconference hosted by the offices of Nimigan Mihailovich Reporting Inc., Hamilton, Ontario, on Friday, August 16, 2024, at 2:48 p.m. EDT</p> <p>APPEARANCES:</p> <p>Sujit Choudhry for the Applicants Sharon Crowe Curtis Sell</p> <p>Bevin Shores for the Respondent Jordan Diacur</p> <p>ALSO PRESENT:</p> <p>Jojo Johnson Articling Student</p> <p>NIMIGAN MIHAILOVICH REPORTING INC.</p>	<p>3</p> <p>Zoom Videoconference</p> <p>--- Upon commencing on Friday, August 16, 2024, at 2:48 p.m. EDT</p> <p>AFFIRMED: JAHMAL (JAMMY) PIERRE</p> <p>CROSS-EXAMINATION BY MS. SHORES:</p> <p>1 Q. Good afternoon, Ms. Pierre.</p> <p>2 Can you please state your full name for the</p> <p>3 record.</p> <p>4 A. Jahmal Alexander Pierre.</p> <p>5 Q. Okay. I'm sorry, can you just</p> <p>6 speak up? I didn't quite catch that.</p> <p>7 A. Jahmal Alexander Pierre is my</p> <p>8 birth name.</p> <p>9 Q. All right. And as we -- as</p> <p>10 indicated just now when we spoke off record, you</p> <p>11 go by Jammy?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And do you have any</p> <p>14 pronouns that you wish to share?</p> <p>15 A. She / they.</p> <p>16 Q. And, sorry, that was he / they?</p> <p>17 A. She / they.</p> <p>18 Q. She / they. My apologies.</p> <p>19 As I introduced off record, my name</p> <p>20 is Bevin Shores. My pronouns are she / her, and</p> <p>21</p> <p>NIMIGAN MIHAILOVICH REPORTING INC.</p>
<p>2</p> <p>INDEX</p> <p>PAGE</p> <p>1 AFFIRMED: JAHMAL (JAMMY) PIERRE 3</p> <p>2 CROSS-EXAMINATION BY MS. SHORES 3</p> <p>3 REEXAMINATION BY MS. CROWE 65</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9 LIST OF UNDERTAKINGS, REFUSALS, &</p> <p>10 UNDER ADVISEMENTS</p> <p>11</p> <p>12 Undertakings (U / T) found at pages:</p> <p>13 NONE</p> <p>14</p> <p>15 Refusals (REF) found at pages:</p> <p>16 NONE</p> <p>17</p> <p>18 Under Advisements (U / A) found at pages:</p> <p>19 31</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>NIMIGAN MIHAILOVICH REPORTING INC.</p>	<p>4</p> <p>1 I'll be asking you questions today about two</p> <p>2 affidavits that you've affirmed in this</p> <p>3 litigation. One of them is an affidavit dated</p> <p>4 June 7, 2022, and one is an affidavit dated April</p> <p>5 27, 2023.</p> <p>6 Before we get to those affidavits,</p> <p>7 if during this cross-examination, Ms. Pierre, you</p> <p>8 don't understand a question, please just let me</p> <p>9 know. I can repeat or rephrase it. Is that</p> <p>10 understood?</p> <p>11 A. Yes.</p> <p>12 7 Q. Okay. And please just make</p> <p>13 sure that you're giving verbal responses as</p> <p>14 opposed to nodding or shaking your head or using</p> <p>15 gestures so that we can ensure your answers are</p> <p>16 accurately recorded on the transcript. Is that</p> <p>17 also understood?</p> <p>18 A. Yes, it is.</p> <p>19 8 Q. Excellent.</p> <p>20 Okay. I'll start with your June 7,</p> <p>21 2022, affidavit. I'll put it on the screen. You</p> <p>22 may also have a copy in front of you.</p> <p>23 Are you able to see your June 7,</p> <p>24 2022, affidavit?</p> <p>25 A. Yes, I am.</p> <p>NIMIGAN MIHAILOVICH REPORTING INC.</p>

1 **9** Q. Okay. Can you confirm that
 2 you swore this affidavit?
 3 **A. Yes.**
 4 **10** Q. Have you reviewed it?
 5 **A. Yes.**
 6 **11** Q. And you confirm that
 7 everything in it is accurate?
 8 **A. Yes.**
 9 **12** Q. Okay. And your June -- I'm
 10 sorry, your April 27, 2023, affidavit, you swore
 11 that affidavit as well?
 12 **A. Yes, I did.**
 13 **13** Q. You've reviewed it?
 14 **A. Yes.**
 15 **14** Q. And you can confirm that
 16 everything in that affidavit is accurate?
 17 **A. Yes.**
 18 **15** Q. Okay. And in fairness to you,
 19 I think there's just maybe a typo with respect to
 20 your name in the June 7, 2022, affidavit. They
 21 have your name spelled as J-A-M-H-E-L and then
 22 your last name as L-O-P-I-E-R-R-E. That's just an
 23 error?
 24 **A. Yep.**
 25 **16** Q. Okay. All right. Just making
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1 sure we're calling you by the right name.
 2 **A. Not a problem.**
 3 **17** Q. You currently live in
 4 Hamilton?
 5 **A. Yes.**
 6 **18** Q. How long have you lived in
 7 Hamilton?
 8 **A. Since I was in grade 3.**
 9 **19** Q. Okay. Are you currently
 10 housed?
 11 **A. Yes.**
 12 **20** Q. Okay. And how long have you
 13 been housed?
 14 **A. Since June 1, 2023.**
 15 **21** Q. June 1, 2023. Excellent.
 16 And in your June 7, 2022, affidavit
 17 at paragraph 6, it's stated:
 18 "I have been homeless on and off
 19 for about three years."
 20 So if I am doing the math
 21 correctly, you started to experience homelessness
 22 sometime around 2019?
 23 **A. Yeah.**
 24 **22** Q. Do you remember any more
 25 precisely than 2019 when you became unhoused?
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1 **A. I believe sometime in the**
 2 **summer. I was experiencing issues with the**
 3 **roommates I had, and when I would leave town to go**
 4 **be with my partner, they would have other people**
 5 **staying in my room. So that was not something**
 6 **that I was comfortable with. So I moved out to**
 7 **Brantford for a little bit, but eventually the**
 8 **relationship dissolved and I came back to nothing.**
 9 **23** Q. Okay. Before we get into some
 10 of the timeline of your experience of
 11 homelessness, I want to find out a little bit more
 12 about times in which you've been housed.
 13 So at paragraph 7 of your June 7,
 14 2022, affidavit, you state that you had been
 15 housed through the YWCA Transitional Living
 16 Program for about two years. You state you were
 17 evicted from the program into homelessness in
 18 November 2021.
 19 So if I'm again understanding
 20 correctly, sometime in 2019 you were housed
 21 through the YWCA program, and that spanned until
 22 November 2021?
 23 **A. That's correct.**
 24 **24** Q. Okay. And up until May 1st of
 25 2023, have you had any other time periods of being
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1 housed?
 2 **A. Prior to that, it would have**
 3 **been when I was living at 881 King Street East.**
 4 **It was only, like, January to March of I think**
 5 **twenty -- maybe 2019 or 2018. I can't recall.**
 6 **25** Q. Sorry, you trailed off there a
 7 little bit and I didn't catch --
 8 **A. My apologies.**
 9 **I was living at 881 King Street**
 10 **prior to the Y, and I think that was around 2019**
 11 **or 2018. I don't exactly recall. It was, like,**
 12 **January to March.**
 13 **26** Q. Okay. One of the witnesses
 14 for the City, who I don't think you've ever met --
 15 his name is Rob Mastroianni. He works for the
 16 City and has access to, among other things,
 17 housing records.
 18 He's indicated that there's at
 19 least some indication in the records that you were
 20 moved to housing or obtained housing in 2022. Is
 21 that accurate, or do you have any recollection of
 22 a period in 2022 in which you were housed?
 23 **A. I had been staying at, like,**
 24 **hotels, like, the Four Points and the Admiral Inn.**
 25 **27** Q. Okay. We'll talk about that
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1 because you've set that out in your affidavit as
2 well. But no housing, nothing like the YWCA
3 program or an apartment, anything like that?

4 **A. No.**

5 **28 Q.** Okay. Staying with paragraph
6 7 of your June 2022 affidavit, you stated you were
7 evicted from the program into homelessness. What
8 do you mean when you say "evicted"? What
9 happened?

10 **A. It is a transitional living**
11 **program. So it is supposed to last approximately**
12 **11 months, is the time frame that's set out for**
13 **each individual. After that, they kind of send**
14 **you on your way. I was sent to the Four Points**
15 **after my, like, dismissal from the Y.**

16 **29 Q.** Okay. So you transitioned out
17 of that program at the Y and then went to the Four
18 Points through the hotel program there?

19 **A. Yeah.**

20 **30 Q.** Okay, which you state at
21 paragraph 9 of your affidavit.

22 **A. Yeah.**

23 **31 Q.** So as you explain in your
24 affidavit, that was a temporary hotel program run
25 by Mission Services?

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1 **A. Yeah. Yes.**

2 **32 Q.** Okay. Thank you.

3 And as you indicate, you say you
4 stayed there for about a month and you were kicked
5 out after missing curfew?

6 **A. Yes.**

7 **33 Q.** Okay. So tell me what
8 happened when you were kicked out after missing
9 curfew.

10 **A. Basically, it was frustrating**
11 **because it was much farther east than most of --**
12 **like, the majority of my network. So it was a**
13 **little bit difficult to get to, and being a social**
14 **person, obviously, it was a difficult time for me.**
15 **I wanted to see my friends, and there were a**
16 **couple times I came back late and then they said**
17 **-- after three times, I think, then they say**
18 **goodbye and send you on your way.**

19 **I don't really remember exactly,**
20 **like, where I went. I probably went back**
21 **downtown, probably, staying closer to, like, the Y**
22 **area 'cause there's a lot -- like, there's a large**
23 **community of people that stay around there,**
24 **outside on the streets. I'm not -- I don't fully,**
25 **like, recall how it -- how it exactly transpired**

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1 **that night, but I just remember coming back and**
2 **being told that it was time for me to go.** A4966

3 **34 Q.** Okay. And recognizing that
4 you said you don't remember exactly what
5 transpired, did they give you any notice?

6 **A. Not too much.**

7 **35 Q.** Do you remember --

8 **A. Like -- like, I think -- I'm**
9 **pretty sure it was a "three strikes and you're**
10 **out" kind of thing. I wasn't necessarily keeping**
11 **-- I wasn't necessarily keeping track, but I don't**
12 **think -- it wasn't -- it wasn't completely abrupt,**
13 **but it wasn't necessarily planned out either.**

14 **36 Q.** Understood.

15 And at paragraph 10 of your
16 affidavit, you state you then went to the Admiral
17 Hotel, another temporary hotel program. So would
18 I understand correctly that you went from the Four
19 Points to the Admiral Hotel?

20 **A. Not direct -- like, not**
21 **directly. There was obviously some time spent in**
22 **lieu -- in between those -- those spots. You kind**
23 **of had to, like, call and keep checking in to see**
24 **if they have a spot available. But eventually a**
25 **spot opened up and I was welcomed to the Admiral,**

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1 **and I enjoyed it there.**

2 **37 Q.** Do you remember how much time
3 between when you left the Four Points and when you
4 began to stay at the Admiral?

5 **A. I don't recall. I want to say**
6 **maybe a month in between, or maybe -- maybe a**
7 **couple weeks.**

8 **38 Q.** Okay. And just to orient us
9 in terms of time, so you left -- or, sorry, you
10 ceased to be in the YWCA Transitional Housing
11 Program around November 2021. You were at the
12 Four Points, and in your affidavit you say you
13 stayed there for about a month. So would that
14 take us into about December 2021? Does that sound
15 about right?

16 **A. Yeah.**

17 **39 Q.** Okay. And then at some point
18 you were at the Admiral Hotel. So would that have
19 been around sometime in about January of 2022?

20 **A. I believe so.**

21 **40 Q.** Okay. And in between the Four
22 Points and the Admiral, where were you staying?

23 **A. It probably would have been**
24 **Carole Anne's Place, which is the shelter division**
25 **of the YWCA. It's the drop-in shelter. It's not** A682

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1 **guaranteed and depends on how many people they**
 2 **have lined up that night and what capacity they**
 3 **can handle. So that's probably where I would have**
 4 **stayed for the most part.**

5 **41** Q. Okay. And recognizing what
 6 you said about how Carole Anne's Place operates,
 7 you were able to get a place to stay at Carole
 8 Anne's Place between the Four Points and the
 9 Admiral?

10 **A. At times, yes.**

11 **42** Q. Okay.

12 **A. Not all the time.**

13 **43** Q. Okay. If you didn't get a
 14 place to stay at Carole Anne's Place, where did
 15 you stay?

16 **A. I might have been lucky to**
 17 **stay at a friend's or I might have stayed close by**
 18 **in a tent or with some other people.**

19 **44** Q. When you say "with some other
 20 people," do you mean other people in a tent or
 21 other people -- sorry, where were those other
 22 people?

23 **A. Either in a tent or outside.**

24 **45** Q. Are you certain that you spent
 25 any nights outside between leaving the Four Points

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1 and going to the Admiral?

2 **A. I'm pretty sure -- I'm sure I**
 3 **may have. It would have been minimal.**

4 **46** Q. Okay. And on those nights you
 5 were spending outside, did you speak to anyone
 6 about getting into a different shelter, such as
 7 Mary's Place or one of the other shelters?

8 **A. In trying to access some of**
 9 **the other shelters, I experienced some difficulty**
 10 **with the communication. Like, I would try to call**
 11 **and a lot of times they were full. I tried to go**
 12 **to the Salvation Army and was turned away at one**
 13 **point due to my gender expression.**

14 **So I did try to access some other**
 15 **shelters, which -- I had access to Good Shepherd.**
 16 **I believe they were usually full. And yeah, I**
 17 **don't think -- I don't believe Mary's Place had**
 18 **room at the time.**

19 **47** Q. Okay. And on the nights --
 20 let me just go a step back.

21 **A. Yep.**

22 **48** Q. So if I understand correctly,
 23 you think there would have been at least some
 24 nights that you spent unsheltered between the Four
 25 Points and the Admiral. You weren't quite sure.

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1 If you spent those nights unsheltered, why not go
 2 in a tent for those nights? **A4967**

3 **A. If that option was available,**
 4 **then I definitely would have utilized it.**

5 **49** Q. And can you help me with why
 6 that option might not have been available to you?

7 **A. 'Cause they might have been**
 8 **taking tents down at the time.**

9 **50** Q. Do you know for certain
 10 whether that was the case?

11 **A. I can't say for sure given the**
 12 **time frame and the time that's passed.**

13 **51** Q. You mentioned something just
 14 now about being turned away due to your gender
 15 expression. Where were you turned away from due
 16 to your gender expression?

17 **A. The Salvation Army.**

18 **52** Q. The Salvation Army.
 19 And when did that happen?

20 **A. I don't recall the exact date,**
 21 **but I believe it was during that time frame**
 22 **between the Four Points and the Admiral.**

23 **53** Q. Okay. And what specifically
 24 happened?

25 **A. I went to stay and the worker**
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1 **had suggested that I go to a place more suited to**
 2 **my lifestyle and look and basically turned me**
 3 **away.**

4 **54** Q. And can you describe this
 5 worker?

6 **A. I believe he was a middle-aged**
 7 **Caucasian male. I'm not sure of the name. But**
 8 **average, Caucasian, middle-aged male is all I can**
 9 **really describe him as.**

10 **55** Q. When you say "Salvation Army,"
 11 do you mean the Booth Centre?

12 **A. Yes.**

13 **56** Q. Okay. And was someone that
 14 you've ever seen at the Booth Centre before or
 15 since?

16 **A. They weren't particularly**
 17 **familiar to me, no.**

18 **57** Q. Okay. So a middle-aged
 19 Caucasian male. Do you remember their height,
 20 hair colour, if they had hair?

21 **A. Grey, I believe. I would**
 22 **think that he was around five-six.**

23 **58** Q. And this person at the Booth
 24 Centre who told you to go somewhere else, did they
 25 actually say you couldn't stay at the Booth **A683**

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1 Centre?

2 **A. Those words weren't used**
 3 **exactly, but the suggestion was heavily implied,**
 4 **and I could tell that he wasn't going to be of**
 5 **assistance. He made it seem like -- I don't want**
 6 **to say that he made it seem like my staying there**
 7 **would be an issue, but that's what I feel he was**
 8 **afraid of.**

9 **59 Q.** Afraid of -- do you get the --
 10 did this person give any indication that there
 11 were concerns about your safety in light of your
 12 gender expression?

13 **A. No.**

14 **60 Q.** Did this person suggest
 15 another shelter for you to go to?

16 **A. No, not by name.**

17 **61 Q.** Did they give you any sort of
 18 suggestion? You said "not by name," but did they
 19 give you any sort of other direction?

20 **A. Not really, no.**

21 **62 Q.** And where did you end up
 22 staying on that occasion?

23 **A. That occasion, I probably**
 24 **would have been -- probably would have been back**
 25 **to Carole Anne's Place.**

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1 **63 Q.** I do want to take you to
 2 paragraph 17 of your June 2022 affidavit, which
 3 reads:

4 "As a transgender woman, I have
 5 stayed in both men's and women's
 6 shelters. I will sometimes stay in
 7 men's shelters if the women's
 8 shelters are full. When I stay in
 9 the men's shelters, I change my
 10 appearance to 'pass' as a man.
 11 This is difficult for me. I can't
 12 express myself and everything feels
 13 muted and grey." (As read.)

14 You wrote that in your affidavit?

15 **A. Yeah.**

16 **64 Q.** So you have accessed men's
 17 shelters?

18 **A. Yes.**

19 **65 Q.** And you didn't say in this
 20 affidavit that you'd been turned away for your
 21 gender expression?

22 **A. I've experienced a lot of**
 23 **things that have happened to me at the time and I**
 24 **guess that experience didn't ring too heavy in my**
 25 **head at that point in time, but it is something**

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1 **that happened.**

2 **66 Q.** So going back up -- we took a **A4968**
 3 little bit of a segue to speak about that
 4 experience, but I want to go back to establishing
 5 the timeline of where you've been staying. So we
 6 talked about the timeline between the Four Points
 7 and the Admiral Hotel.

8 Let's talk about the Admiral Hotel.
 9 That's closer to downtown; correct?

10 **A. Yeah, it's much closer to**
 11 **downtown.**

12 **67 Q.** You state you stayed there for
 13 about a month?

14 **A. Yeah.**

15 **68 Q.** And you state the program
 16 moved locations to a new shelter at Cathedral?

17 **A. Yes.**

18 **69 Q.** At paragraph 11, you describe
 19 you went to the Cathedral shelter at the end of
 20 February '22 -- February 2022. So, again, just
 21 confirming with the timeline, so you went from the
 22 Admiral Hotel to Cathedral, and that takes us to
 23 February 2022; correct?

24 **A. Yes.**

25 **70 Q.** Okay. And you stayed at

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1 Cathedral for a week or so?

2 **A. Yeah, that's correct.**

3 **71 Q.** All right. And you state that
 4 you -- at the very end of that paragraph, you left
 5 to be -- to avoid being involuntarily
 6 hospitalized, and in the sentence immediately
 7 before that, you say:

8 "I got into an argument with staff
 9 and they wanted to Form me under
 10 the Mental Health Act." (As read.)

11 That's correct?

12 **A. Yes.**

13 **72 Q.** Okay. In the incident that
 14 led the staff to say that they wanted to Form you
 15 under the Mental Health Act, let's just talk about
 16 what "Form" means. Does that mean they wanted to
 17 admit you for treatment under the Mental Health
 18 Act?

19 **A. Yeah. Basically, they said**
 20 **without -- without going -- without going to the**
 21 **hospital, I would not be able to stay there any**
 22 **longer. I had overdosed, and at the time I just**
 23 **wanted to -- like, in recovery mode, just wanted**
 24 **to sleep and get my strength back. But they were**
 25 **adamant, so much so that they had called -- they**

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1 had called the police.

2 They had general -- most of the
3 times, to get me out of -- like, they had a couple
4 different tactics, but the police had came and
5 they had tried to get them to, like, advise or
6 take me. But the police basically said that it
7 was my choice and that they couldn't necessarily,
8 like, force me to do that. So they threatened my
9 stay there.

10 73 Q. If you had overdosed, why not
11 just go to the hospital and get checked out?

12 A. Sometimes it's temporary and,
13 like, you can be brought back and recover at home.
14 I've experienced a couple of them over the times.
15 So I'm a little bit used to it.

16 So I know how to kind of bounce
17 back from that, in a sense, without getting to the
18 hospital because what that does is just creates --
19 what usually happens is that your stuff gets
20 stolen, and that just keeps you, like, locked away
21 from your stuff for longer. So you have less of a
22 chance of getting your things back.

23 74 Q. So you were concerned about
24 leaving your things behind while you were in
25 hospital because you were concerned that they

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1 would get stolen and not be there when you came
2 back for them?

3 A. 'Cause that's what has
4 happened to me many times before.

5 75 Q. Did you inquire at Cathedral
6 about whether there was a place to lock away your
7 things?

8 A. In terms of that, the -- their
9 version of storing things was not the most
10 comprehensive or streamlined. When I'd gone back
11 after leaving the Cathedral to get some of my
12 things back, it took them quite some time to get
13 my things, and most of the times it was wrong, and
14 I lost a lot of faith in them.

15 76 Q. So after Cathedral, at
16 paragraph 12 of your affidavit, you describe that
17 you went to Willow's Place, which is a drop-in
18 centre for women that occasionally stays open
19 overnight.

20 Were you able to stay at Willow's
21 Place?

22 A. Yes.

23 77 Q. How long did you stay at
24 Willow's Place?

25 A. I don't fully recall. It

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1 could have been a couple of nights to, like, a **A4969**
2 week or so.

3 78 Q. And then you --

4 A. Willow's --

5 79 Q. Sorry, I didn't mean to
6 interrupt you. Go ahead.

7 A. No, go ahead.

8 80 Q. Well, tell me if you want to
9 say anything more about Willow's Place because I
10 was next going to ask you about paragraph 13,
11 where you describe that you went to Carole Anne's
12 Place.

13 A. Go ahead for paragraph 13.

14 81 Q. So after Willow's Place, you
15 say, "I then went to Carole Anne's Place,"
16 described that as "an overnight drop-in shelter
17 for women that acts as an overflow shelter when
18 other women's shelters are full," and you go on to
19 describe the procedure for getting into Carole
20 Anne's Place, which you took us through earlier
21 this afternoon.

22 Were you able to stay overnight at
23 Carole Anne's Place?

24 A. Yes.

25 82 Q. Okay. Do you remember how

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1 long you were at Carole Anne's Place?

2 A. Carole Anne's Place has been
3 kind of a saving grace in this story because
4 that's where I now work, in the Safer Use Space.
5 So I had been building a relationship with the
6 staff and the community of people there, and now
7 my colleagues and coworkers. So there were
8 oftentimes where they could make a little bit of
9 -- a bit of an exception for me. So Carole Anne's
10 has kind of been, like, the safest spot for me.

11 83 Q. Okay. How long have you been
12 working at Carole Anne's Place?

13 A. Almost two, three years maybe.

14 84 Q. And can you just describe for
15 me briefly what you -- you said you work in the
16 Safer Use Space. Can you describe for me briefly
17 what you do?

18 A. I'm a peer support worker. So
19 I watch over people while they're using, making
20 sure that they don't overdose, and if they do, we
21 can respond to it, either with Narcan or oxygen,
22 whatever type of assistance they might need. We
23 talk to the girls, give them hygiene products,
24 anything they might need --

25 85 Q. Do you have a -- **A685**

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1 A. -- baby --
 2 86 Q. Oh, sorry. Go on.
 3 A. **Baby wipes and such.**
 4 87 Q. Do you have a regular schedule
 5 at Carole Anne's Place?
 6 A. **Yeah.**
 7 88 Q. What hours do you work?
 8 A. **Typically, I work Monday**
 9 **mornings and then, depending on how staffing is**
 10 **throughout the week, I may cover some evening**
 11 **shifts as well. They're open from 10:00 to 5:00**
 12 **in the -- 10:00 to 5:00 at nighttime and 10:00 to**
 13 **1:00 in the morning.**
 14 89 Q. So 10:00 p.m. to 5:00 a.m. or
 15 10:00 p.m. to 1:00 a.m.?
 16 A. **Yeah.**
 17 90 Q. Got it.
 18 A. **1:00 p.m.**
 19 91 Q. Oh, 10:00 a.m. to 1:00 p.m.?
 20 A. **Yeah.**
 21 92 Q. Okay. Is that a volunteer
 22 position or a paid position?
 23 A. **It's a paid position.**
 24 93 Q. Okay. I'm asking because in
 25 your June 2022 affidavit you describe also working
NIMIGAN MIHAIOVICH REPORTING INC.

1 as a volunteer peer support worker for Keeping
 2 Six. So let me just ask about that for a moment.
 3 Are you still a volunteer support worker with
 4 Keeping Six as well?
 5 A. **I'm a peer events coordinator**
 6 **with Keeping Six now.**
 7 94 Q. Okay. And that's still a
 8 volunteer position?
 9 A. **No.**
 10 95 Q. No. Okay.
 11 So that's a paid position as well?
 12 A. **Yeah.**
 13 96 Q. Okay. How long have you been
 14 in a paid role with Keeping Six?
 15 A. **I started to get paid probably**
 16 **-- probably 2020, 2021.**
 17 97 Q. Okay. And so those two jobs,
 18 so Keeping Six and Carole Anne's Place -- do you
 19 have any other jobs that you're working?
 20 A. **I'm doing some stuff with**
 21 **McMaster as a research assistant. That's only**
 22 **four hours a month.**
 23 98 Q. Okay. And are you in any sort
 24 of program at McMaster, a degree program or
 25 anything like that?
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1 A. **Not as of yet, no.** A4970
 2 99 Q. Okay. You said "Not as of
 3 yet." Do you have any intentions of pursuing any
 4 such program?
 5 A. **It's a possibility. I mean,**
 6 **in -- the -- there's been a lot of opportunity,**
 7 **and if something opens up that I think I can**
 8 **navigate and handle, then I might pursue it, yeah.**
 9 100 Q. Okay. And so just between
 10 your -- so you indicated McMaster was about four
 11 hours a month. So just focusing on Keeping Six
 12 and Carole Anne's Place, between those two jobs,
 13 roughly how many hours a week are you working?
 14 A. **15 to 25.**
 15 101 Q. Okay. So that's been -- if
 16 I'm remembering correctly your evidence, that
 17 would have been the case for about the past two or
 18 three years that you've had both those jobs?
 19 A. **The peer position is through**
 20 **Keeping Six. It's a partnership through Keeping**
 21 **Six and the Y.**
 22 102 Q. I see.
 23 A. **Yeah.**
 24 103 Q. Okay. So it's one job, but
 25 it's through those two organizations in
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1 partnership?
 2 A. **Mm-hmm.**
 3 104 Q. I see. Okay. Thanks for
 4 clarifying.
 5 So for the past two or three years,
 6 you've been working about 15 to 20 hours a week in
 7 that role as a peer support worker?
 8 A. **Mm-hmm.**
 9 105 Q. That's a "Yes"?
 10 A. **Yes.**
 11 106 Q. Okay. I'm taking you next to
 12 paragraph 18 of your affidavit where you discuss
 13 service restrictions, and you state that you've
 14 been service-restricted or banned from shelters
 15 several times. How many times have you been
 16 service-restricted from shelter?
 17 A. **I think I can recall at least**
 18 **about five particular times.**
 19 107 Q. Okay. And from which shelters
 20 were you service-restricted?
 21 A. **Through, like, the Mission**
 22 **Services, probably the Sally -- I think Mission**
 23 **Services and the Sally.**
 24 108 Q. Okay. And by "Sally," you
 25 mean Salvation Army Booth Centre? A686
NIMIGAN MIHAIOVICH REPORTING INC.

1 **A. Yeah. Yes. My apologies.**

2 **109 Q.** No, that's not -- just
3 clarifying for those who might read your
4 transcript and not be familiar with the
5 terminology.

6 Okay. So do you remember what the
7 reasons given were for each of these service
8 restrictions?

9 **A. Probably -- probably drug use.**

10 **110 Q.** Okay. You said "probably."
11 Do you remember, or is that a guess?

12 **A. It's a guess.**

13 **111 Q.** Okay. Do you remember when
14 these service restrictions would have happened?

15 **A. No.**

16 **112 Q.** Okay. And do you remember
17 even what year they might have been in?

18 **A. No, I don't, to be honest.**

19 **113 Q.** Okay. Do you remember how
20 long the service restrictions would have been for?

21 **A. They can go from -- it can be**
22 **from a day to a week to a month, depending on the**
23 **severity of the -- the indiscretion.**

24 **114 Q.** Okay. But the service
25 restrictions that you actually had, do you

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1 remember how long they were for?

2 **A. I don't recall at this time,**
3 **but I believe they would be in and around a couple**
4 **of weeks.**

5 **115 Q.** I'm very sorry, I didn't hear
6 the last part of your answer.

7 **A. I believe they would have been**
8 **in and around a couple of weeks.**

9 **116 Q.** A couple of weeks. Okay.

10 Now, I have to ask: Have you ever
11 gotten into an altercation with anyone at a
12 shelter?

13 **A. A physical altercation, no.**
14 **Verbal, a little bit, but not too -- not too --**
15 **not too explosive.**

16 **117 Q.** Okay. And were you ever
17 service-restricted for a verbal altercation, to
18 your recollection?

19 **A. No.**

20 **118 Q.** So your best recollection is
21 that you would have been service-restricted for
22 multiple weeks for drug use?

23 **A. I'm saying most likely, yes.**

24 **119 Q.** The City of Hamilton keeps
25 records of attempts to get shelter, including

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1 service restrictions, shelter stays and other **A4971**
2 access to homeless assistance. Would you provide
3 an authorization to the City in order to have
4 those records disclosed in this litigation?

5 **A. Yes, I would.**

6 **120 Q.** Okay. Thank you.

7 U/A MS. CROWE: We'll take that under
8 advisement.

9 MS. SHORES: What's the reason for
10 taking that under advisement, Counsel?

11 MR. CHOUDHRY: We need to discuss
12 with our client.

13 MS. CROWE: We need to discuss the
14 content with our client.

15 MS. SHORES: I'm sorry, someone
16 said something off camera.

17 MS. CROWE: We need to discuss with
18 our client. We'll take it under advisement.

19 MS. SHORES:

20 **121 Q.** At paragraph 15 of your
21 affidavit, Ms. Pierre, you say:

22 "My ability to access a shelter bed
23 is always hanging in the balance.

24 If you miss curfew, or step out for
25 a smoke, the shelter can suddenly

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1 be at capacity." (As read.)

2 Has that happened to you where you stepped out for
3 a smoke and the shelter was at capacity?

4 **A. I would say where that would**
5 **have happened would probably be at Willow's Place.**
6 **I would have experienced that type of treatment.**

7 **122 Q.** Okay. And when you say "step
8 out for a smoke," how long were you gone?

9 **A. Five, ten minutes.**

10 **123 Q.** When did that happen?

11 **A. I'm not sure of the exact**
12 **dates, but it would have been in and around the**
13 **times that I was staying at Willow's Place.**

14 **124 Q.** And had you previously missed
15 a bed check or not been present for curfew during
16 that stay at Willow's Place?

17 **A. No. No.**

18 **125 Q.** My understanding is that, at
19 the shelters, they want to make sure that the beds
20 are being used. And so if people aren't there,
21 then they will give away the beds so someone else
22 can use that. Is that also your understanding?

23 **A. Yes.**

24 **126 Q.** Okay. But your evidence is
25 that you stepped out for five to ten minutes and **A687**

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1 they gave away your bed?

2 **A. Yes.**

3 **127 Q.** Now, when we were talking
4 about your timeline, we went up to the point where
5 you were staying at Carole Anne's Place after
6 Cathedral, which, if I'm doing the math, takes us
7 to somewhere around or after March of 2022. Would
8 that be roughly accurate?

9 **A. I believe so, yes.**

10 **128 Q.** Okay. So after Carole Anne's
11 Place in March of 2022, where have you been
12 staying?

13 **A. I probably continued to stay**
14 **at, like, Carole Anne's. It would have been -- it**
15 **would have been a variety between -- a mix between**
16 **friends' houses, Carole Anne's Place and tents or**
17 **wherever I could find.**

18 **129 Q.** Okay. I'm just going to
19 briefly skip ahead to your April 27, 2023,
20 affidavit because you pick up with the timeline in
21 June 2022 and state:

22 "Since June 2022, I have stayed in
23 various locations, including Carole
24 Anne's Place, Airbnbs, with friends
25 and in a tent outside of Carole

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1 Anne's Place." (As read.)

2 So would I be correct in understanding that that
3 was roughly the state of things through about
4 March --

5 **A. Yeah.**

6 **130 Q.** Okay, until at least the time
7 that this affidavit was sworn in April of 2023?

8 **A. Yeah.**

9 **131 Q.** Okay. All right. I am going
10 to go back to your June 2022 affidavit at
11 paragraph 19 where you describe times in which
12 you've stayed in a tent.

13 So at paragraph 19, just starting
14 at the top of the chart, you list a location,
15 Urban Core. Sometime in 2019 was the time frame.
16 Duration of stay, "Unknown," and outcome, "Police
17 evicted me"; is that correct?

18 **A. That is correct.**

19 **132 Q.** Okay. When you say "Urban
20 Core" for the location, that would have been the
21 old --

22 **A. 74 Rebecca.**

23 **133 Q.** Yeah. Okay. The old Urban
24 Core location.

25 And when you say "Police evicted

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1 me," you mean the police came by and told you to
2 leave? **A4972**

3 **A. Yeah, or threw out my tent.**

4 **134 Q.** I'm sorry?

5 **A. They would often come and**
6 **throw everyone's stuff out. They would bulldoze**
7 **it.**

8 **135 Q.** Okay. So let's -- when you
9 say they would often come and bulldoze it, did
10 that ever happen to you?

11 **A. Yes.**

12 **136 Q.** Okay. When did that happen to
13 you?

14 **A. The date? Not so long after I**
15 **was moved from 881. So I'm thinking maybe April,**
16 **May-ish 2019, probably around the time they threw**
17 **all my -- yeah. Not just me, many other people**
18 **too.**

19 **137 Q.** And did the police give you
20 any notice before coming and, as you say,
21 bulldozing your tent?

22 **A. Yes and no. It was always**
23 **kind of like a bit of a guessing game. They'd say**
24 **that they'd come one day -- they'd say that they**
25 **were coming one day and then they'd either not**

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1 **come that day or come the day before. So it was**
2 **very tricky.**

3 **138 Q.** Okay. So with that particular
4 occasion, wherein sometime around -- I think you
5 said after you left 881, when the police bulldozed
6 your tent, how much time passed between when they
7 first approached you and when the actual
8 bulldozing happened?

9 **A. I'm honestly not sure because**
10 **they would come to the Core for a variety of**
11 **different reasons. They are down the street.**
12 **There weren't many people staying there. So it**
13 **was just kind of a -- I couldn't tell you.**

14 **139 Q.** And so --

15 **A. It's not like I was -- I**
16 **wasn't given, like, a time frame to be like,**
17 **"Okay, you have this long before we're coming to**
18 **throw everybody's tents out, so you guys better**
19 **leave" kind of thing.**

20 **140 Q.** Well, then what was it?

21 **A. Shock and surprise.**

22 **141 Q.** What specifically did the
23 police say about coming back to, as you said,
24 bulldoze your tent?

25 **A. They didn't. They just did.** **A688**

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1 **I went and took my dog for a walk and then came**
2 **back and our tent was thrown out.**

3 **142 Q.** Okay. So your evidence is
4 that you took your dog for a walk and that,
5 without any sort of warning, the police came,
6 bulldozed your tent and gave you no warning of
7 doing so?

8 **A. (No verbal response.)**

9 MR. CHOUDHRY: Excuse me, Counsel
10 -- Jammy, I'm sorry, sir, but -- ma'am -- ma'am,
11 excuse me. When you nod, it doesn't turn up on
12 the record. So you have to say "Yes" or "No."

13 THE WITNESS: Yeah, no, I don't
14 believe I was given a fair enough -- fair -- I
15 don't believe I was given a fair warning. I don't
16 believe I was given a time frame, and I didn't
17 think that that was going to happen.

18 MS. SHORES:

19 **143 Q.** Okay. Well, fair warning and
20 no warning are two different things. So did they
21 give you warning but you felt it wasn't adequate?

22 **A. I don't think so.**

23 **144 Q.** I'm still -- I've listened to
24 your answers, Ms. Pierre, but I'm still not sure
25 that I understand what happened. So let's recap.

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1 So you were camped at the Urban
2 Core. Police would come by. You're saying that
3 the police didn't give you any warning that they
4 were going to bulldoze your tent, and you left and
5 then suddenly they bulldozed your tent?

6 **A. Yes.**

7 **145 Q.** No warning whatsoever?

8 **A. I mean, they didn't say they**
9 **were going to bulldoze my tent, no. They didn't**
10 **make me feel like I needed to leave. I felt safe**
11 **there. Many people felt safe there. It was a**
12 **gathering point for many people in the community,**
13 **and many people's things were thrown out.**

14 **And many community members would**
15 **come there to bring us food, clothing and**
16 **toiletries, things that we needed. So it was a**
17 **very bizarre time frame, and understanding how to**
18 **manoeuvre and navigate that type of -- that type**
19 **of stay was difficult.**

20 **146 Q.** When was the last time that
21 you were at your tent before it was, as you say,
22 bulldozed?

23 **A. Like, an hour or so before.**

24 **147 Q.** You said you were out walking
25 your dog at the time?

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1 **A. Yeah.**

2 **148 Q.** Did you actually witness a
3 bulldozer being taken to your tent?

4 **A. I didn't, no.**

5 **149 Q.** How do you know that they
6 bulldozed your tent?

7 **A. That's what I was told and**
8 **what I've seen them do multiple times, and this**
9 **was throw things out.**

10 **150 Q.** Ms. Pierre, this is a very
11 serious allegation, that the police came without
12 warning and bulldozed your tent while you were
13 still using it. So I want to make sure that we
14 get these details. When you came back to --

15 MS. CROWE: Ms. Shores, I think
16 that the question has been asked a few times and
17 answered.

18 MS. SHORES: Well, it's been asked.
19 I don't believe that I've gotten a clear answer.
20 So I'm trying to make sure with this very serious
21 allegation --

22 MS. CROWE: You're approaching it
23 in a way that's suggesting that she's not being
24 transparent with her answer, and she's told you
25 what she remembers about the experience.

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1 MS. SHORES:

2 **151 Q.** There's no indication,
3 Ms. Pierre, in either of your affidavits that your
4 tent has ever been bulldozed, is there?

5 **A. I probably didn't bring that**
6 **up at the time because it's a very traumatic**
7 **experience in which I lost my dog and probably**
8 **didn't want to speak about it because I was very**
9 **angry about it and didn't know how to go about it**
10 **in a way that would be cohesive in how the**
11 **community would want me to behave.**

12 **152 Q.** You said you lost your dog,
13 but you also told me just now that you were out
14 walking your dog when this happened. How did you
15 lose your dog?

16 **A. After I came back to our home**
17 **being destroyed and gone, I was very upset, and in**
18 **a spur of anger, politely placed some things**
19 **around the police station. So they came to talk**
20 **to me and have a discussion, and during that time,**
21 **doggy got away.**

22 **153 Q.** You said "politely placed some
23 things around the police station"?

24 **A. Mm-hmm.**

25 **154 Q.** What do you mean by that?

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1 **A. I politely set down...**

2 MS. CROWE: Are you hearing the
3 responses?

4 MS. SHORES: No. I didn't even
5 hear that there was a response.

6 **155 Q.** Ms. Pierre, if you could keep
7 your voice up, please.

8 **A. Yeah. At that point in time**
9 **-- I'm not saying that this was the correct type**
10 **of behaviour, but I was responding in --**
11 **responding to a moment of anger the best way I**
12 **could.**

13 **So yes, I politely set down a bunch**
14 **of -- a bunch of needles. They were still in**
15 **their casing. They weren't uncapped. They**
16 **weren't a danger to anybody. They were still in**
17 **their wrapping, and just set it down in and around**
18 **the station.**

19 **156 Q.** And in the course of doing
20 that, you said your dog ran away?

21 **A. During the time the police**
22 **were speaking to me, yes.**

23 **157 Q.** During the time -- I'm sorry,
24 I didn't catch that.

25 **A. During the time the police**
NIMIGAN MIHAIOVICH REPORTING INC.

1 **were speaking to me, yes.**

2 **158 Q.** During the time that you were
3 speaking with the police?

4 **A. Yes.**

5 **159 Q.** Did you ever get your dog
6 back?

7 **A. He's staying in Dundas right**
8 **now. Unfortunately, my living situation hasn't**
9 **presented the opportunity for me to have him back.**

10 **160 Q.** But you know your dog's
11 whereabouts?

12 **A. Yes.**

13 **161 Q.** Okay. How did you come to be
14 aware of your dog's whereabouts after your dog ran
15 away?

16 **A. A text message.**

17 **162 Q.** A text message?

18 **A. From the sitter.**

19 **163 Q.** From the sitter?

20 **A. Yes.**

21 **164 Q.** So how did your dog get to the
22 dog sitter?

23 **A. I don't know.**

24 **165 Q.** Okay. So your dog ran away,
25 and somehow it ended up -- you said he? Your dog

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1 ended up with a dog sitter, and they texted you to
2 say "We have your dog"? **A4974**

3 **A. Yes.**

4 **166 Q.** And your dog's been there ever
5 since?

6 **A. Yes.**

7 **167 Q.** Continuing at paragraph 19 of
8 your affidavit, you next describe a location where
9 you stayed in a tent at Beasley Park. For the
10 time frame, it says "Few times -- about four --
11 during period of homelessness." Duration of stay,
12 "Unknown." Outcome, "Police evicted me."

13 Do you recall at all at what point
14 during your period of homelessness you would have
15 been staying at Beasley Park?

16 **A. About right after -- right**
17 **after leaving 881.**

18 **168 Q.** And, again, when you say
19 "Police evicted me," they come by and tell you,
20 "You have to leave"?

21 **A. Yeah.**

22 **169 Q.** Okay. And did you leave?

23 **A. Yeah.**

24 **170 Q.** You took your things with you
25 when you left?

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1 **A. Yeah. Yes.**

2 **171 Q.** Thank you.

3 They came to you in the daytime and
4 said, "You have to go"?

5 **A. Yes.**

6 **172 Q.** The next location you've
7 listed is "Outside new Hamilton Urban Core," and
8 again it says "A few times during period of
9 homelessness." Duration of stay, "Unknown," and
10 outcome, "Police evicted me."

11 Again, do you recall when you would
12 have been staying outside of the new Hamilton Core
13 -- or, sorry, Hamilton Urban Core?

14 **A. Um...**

15 **173 Q.** Sorry, if you gave an answer,
16 I didn't catch it.

17 **A. I did not give an answer.**

18 **I don't recall the time frame.**

19 **174 Q.** And, again, when the police
20 evicted you, they came by and said, "You have to
21 go"?

22 **A. Yes.**

23 **175 Q.** Okay. And you abided by that
24 direction? You left?

25 **A. Yes.**

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A690

1 **176** Q. You took your things?
 2 **A. Yes.**
 3 **177** Q. Okay. And, again, they came
 4 by during the day and said, "You have to go"?
 5 **A. Yes.**
 6 **178** Q. At paragraph 26 of your June
 7 2022 affidavit, you state, "When I wander the
 8 streets in search of somewhere to stay, I am at
 9 risk of," and then it's handwritten, "being," and
 10 then there's a word there. It looks like it says
 11 "ticked," but I'm not sure that that's what's
 12 intended. Do you know what the first word is?
 13 **A. I'm not sure if it's supposed**
 14 **to be "ticketed" or "tricked" or -- I'm not fully**
 15 **sure.**
 16 **179** Q. Okay. Do you remember what
 17 you intended to say when you were giving this
 18 affidavit?
 19 **A. Yeah, that it's dangerous,**
 20 **that you don't have, like -- your -- your things**
 21 **aren't safe. You're at the risk of being robbed,**
 22 **like, stolen from. You're at the risk of being**
 23 **assaulted. Lots of things can happen. I've seen**
 24 **many --**
 25 **180** Q. You -- oh, sorry, go on.
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1 **A. I was just trying to explore**
 2 **the dangers of -- the dangers and vulnerability of**
 3 **being on the street in that statement.**
 4 **181** Q. You'd agree that people can
 5 steal things from you when you're in an encampment
 6 too; right?
 7 **A. Oh, yeah.**
 8 **182** Q. And there's a risk of being
 9 assaulted if you're in an encampment?
 10 **A. Yeah.**
 11 **183** Q. I'm going to turn next to your
 12 April 27, 2023, affidavit. We've talked about
 13 that a little bit. At paragraph 2 you state:
 14 "I have had my belongings
 15 repeatedly stolen while staying at
 16 Carole Anne's Place, including
 17 laptops, tablets, phones, and
 18 identification." (As read.)
 19 **A. Yeah.**
 20 **184** Q. Again, have you asked for a
 21 place to secure your things at Carole Anne's
 22 Place?
 23 **A. They don't really have a**
 24 **locker system at Carole Anne's Place. The system**
 25 **is different now where the girls have their own**
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1 **rooms. But at the time, it was in a different**
 2 **space where they didn't have lockers or a private**
 3 **spot to really put your things.**
 4 **185** Q. Okay. And those weren't
 5 things that you could keep on you, especially like
 6 your phone? You didn't keep that with you?
 7 **A. If you kept it on you, it**
 8 **could just be stolen from you while you were**
 9 **sleeping.**
 10 **186** Q. I don't believe I asked
 11 before. Just returning to paragraph 3 of your
 12 June 7, 2022, affidavit, so paragraph 3 states
 13 that, at least as of that day, you were on Ontario
 14 Works receiving \$343 per month. I take it -- is
 15 that no longer correct?
 16 **A. No. That's not the same as my**
 17 **income now, no.**
 18 **187** Q. Okay. And how much do you
 19 earn through your job, through Keeping Six and
 20 Carole Anne's Place?
 21 **A. Approximately a thousand a**
 22 **month.**
 23 **188** Q. A month? Okay.
 24 Is that hourly, or is that like a
 25 stipend or something?
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1 **A. No, that's an estimate of my**
 2 **monthly income.**
 3 **189** Q. Okay. Is your rate of pay an
 4 hourly wage?
 5 **A. Yes.**
 6 **190** Q. How much do you earn per hour?
 7 **A. Twenty-something.**
 8 **191** Q. Twenty-something dollars per
 9 hour?
 10 **A. Yes.**
 11 **192** Q. Okay. Are you familiar with a
 12 doctor by the name of Dr. Gillian Wiwcharuk?
 13 **A. Yes.**
 14 **193** Q. Dr. Wiwcharuk wrote a letter
 15 on your behalf, which she has provided in this
 16 proceeding. The letter is dated June 8, 2022.
 17 I've got it up on the screen here.
 18 Do you see that, or do you see a copy in front of
 19 you?
 20 **A. Yep.**
 21 **194** Q. Okay. Dr. Wiwcharuk, at the
 22 second paragraph of this letter, states:
 23 "Ms. Pierre is a trans woman who
 24 suffers from stimulant use disorder
 25 and opiate use disorder." (As
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1 read.)
 2 Do you agree that's correct?
 3 **A. Yes.**
 4 **195 Q.** Okay. Which substances --
 5 well, let me ask: Do you still suffer from
 6 stimulant use disorder or opiate use disorder?
 7 **A. It is a work in progress, but**
 8 **it's getting better.**
 9 **196 Q.** Okay. And when did you begin
 10 suffering from stimulant use disorder and opiate
 11 use disorder?
 12 **A. Probably around the time I**
 13 **became homeless.**
 14 **197 Q.** Okay. And you said it's
 15 improving. So I take it that your usage is
 16 decreasing?
 17 **A. Yes.**
 18 **198 Q.** Okay. Are you in treatment
 19 for those disorders?
 20 **A. I was on a program where I was**
 21 **prescribed Kadian and Dilaudid, but I have since**
 22 **gotten off the program. But I was -- I was doing**
 23 **that pretty recently.**
 24 **199 Q.** Pretty recently. Okay.
 25 And which doctor or treatment
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1 provider oversaw that program?
 2 **A. The Urban Core.**
 3 **200 Q.** The Urban Core.
 4 Do you remember which doctor --
 5 **A. And Samy's Drug -- Samy's --**
 6 **and Samy's pharmacy.**
 7 **201 Q.** Okay. Do you remember -- was
 8 there a doctor that you saw?
 9 **A. Dr. Jill Sheppard.**
 10 **202 Q.** I'm sorry, I didn't catch
 11 that.
 12 **A. Dr. Jill Sheppard.**
 13 **203 Q.** Jill Sheppard. Okay.
 14 Going back to Dr. Jill Wiwcharuk's
 15 letter of June 8, 2022, she describes the
 16 occasions on which you sought help through the
 17 Shelter Health Network, and she states that you
 18 had only been seen on three occasions and all of
 19 them were related to opiate overdoses in 2020. Is
 20 that accurate?
 21 **A. Yeah.**
 22 **204 Q.** Okay. You mentioned
 23 previously at Cathedral that there was an overdose
 24 that precipitated your decision to leave because
 25 you didn't want to go to hospital. Would that
NIMIGAN MIHAILOVICH REPORTING INC.

1 have been one of those overdoses? **A4976**
 2 **A. Most likely, yes.**
 3 **205 Q.** I see. Dr. Wiwcharuk also
 4 writes:
 5 "Ms. Pierre described this overdose
 6 as entirely unintentional."
 7 You'd agree with that?
 8 **A. Yeah. It's never my intention**
 9 **to overdose.**
 10 **206 Q.** Well, to point a finer point
 11 on it, Dr. Wiwcharuk says:
 12 "She has used a contaminated supply
 13 of methamphetamine and did not know
 14 that there was street fentanyl in
 15 the supply that she had received."
 16 (As read.)
 17 So according to the doctor, Dr. Wiwcharuk, not
 18 only did you not intend to overdose, you didn't
 19 intend to consume the substance that eventually
 20 caused you to overdose; correct?
 21 **A. Yeah. Yes.**
 22 **207 Q.** Okay. In the next paragraph,
 23 Dr. Wiwcharuk goes on to describe that in November
 24 of 2020, she was doing outreach work and saw you
 25 slumped over on the sidewalk and administered
NIMIGAN MIHAILOVICH REPORTING INC.

1 naloxone after she concluded that you had suffered
 2 an opiate overdose. Do you agree with that?
 3 **A. Yeah. Yes.**
 4 **208 Q.** Do you remember that incident
 5 at all?
 6 **A. Yeah.**
 7 **209 Q.** In the second-last sentence of
 8 this paragraph, Dr. Wiwcharuk writes:
 9 "Unfortunately she --"
 10 referring to you
 11 "-- was not at a point where she
 12 was ready to engage with treatment
 13 for her substance use disorders.
 14 Given this, she continues to be at
 15 an extremely high risk of overdose
 16 in the future." (As read.)
 17 Given the evidence that you just gave me, I take
 18 it that it's no longer the case that you're
 19 unready to engage in treatment for substance use
 20 disorder?
 21 **A. Yeah.**
 22 **210 Q.** I worded that question in a
 23 very confusing way. So let me clarify, and I
 24 apologize.
 25 You're now at a place where you're
NIMIGAN MIHAILOVICH REPORTING INC.

1 ready to engage with treatment for substance use
2 disorders; correct?

3 **A. In terms -- I'm definitely**
4 **open to that, yes.**

5 **211 Q.** Just to take that segue, are
6 you exploring treatment, or do you have any plans
7 to obtain treatment for substance use disorders?

8 **A. Like I said, I was -- I was on**
9 **a program recently with a -- a Kadian-Dilaudid**
10 **program. I've since stopped that for the time**
11 **being, and I'm just examining my options and**
12 **trying to take it day by day. But I know I have**
13 **the resources and I have a great network of people**
14 **that I can reach out to and that I can speak with.**
15 **I just need to access it.**

16 **212 Q.** Okay. Another doctor has
17 written a letter on your behalf, Dr. Rachel
18 Lamont. She's written a letter dated May 11,
19 2023. I'll place it up on the screen here. So at
20 the second paragraph of this letter, Dr. Lamont
21 states:

22 "I have known Ms. Pierre since fall
23 2021."

24 Is that correct?

25 **A. Yep.**

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1 **213 Q.** How many times have you -- or,
2 sorry, do you still see Dr. Lamont?

3 **A. Yeah. I just saw her the**
4 **other day.**

5 **214 Q.** How many times have you seen
6 her?

7 **A. We -- I see her -- for care,**
8 **I've seen her probably three or four times. I do**
9 **see her when she works at -- within HAMSMaRT,**
10 **which Keeping Six is kind of a part of. So there**
11 **are times where we see each other at work. But**
12 **when I was seeking her assistance and guidance as**
13 **a doctor, it would have been about three or four**
14 **times.**

15 **215 Q.** Okay. And when you saw her
16 for care or for treatment, what was she treating
17 you for?

18 **A. She was basically there to,**
19 **like, hear my -- like, hear my story and**
20 **understand what was going on with me.**

21 **216 Q.** Okay. And to continue the
22 paragraph, Dr. Lamont states that you have
23 diagnoses of post-traumatic stress disorder,
24 generalized anxiety disorder, depression, and
25 opioid and stimulant use disorders, severe.

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1 I'm just going to ask you about **A4977**
2 each of those. So post-traumatic stress disorder,
3 do you agree that you have that diagnosis?

4 **A. Yes.**

5 **217 Q.** Who diagnosed you?

6 **A. I'm not sure which doctor was**
7 **the first one to diagnose me with that.**

8 **218 Q.** Okay. Do you remember when
9 you would have been diagnosed with PTSD?

10 **A. I'm not exactly sure when, but**
11 **it was probably after an assault that I**
12 **experienced. It was pretty severe. So that's**
13 **probably where that stems from.**

14 **219 Q.** And when was that assault?

15 **A. 2012, 2013, maybe.**

16 **220 Q.** With generalized anxiety
17 disorder, do you remember when you were diagnosed
18 with that?

19 **A. No.**

20 **221 Q.** Do you remember who diagnosed
21 you?

22 **A. No.**

23 **222 Q.** Okay. And suppose I should
24 ask: Do you agree that's a diagnosis that you've
25 been given?

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1 **A. Yeah.**

2 **223 Q.** How about depression? Do you
3 remember when you were -- or do you agree that's a
4 diagnosis you've been given?

5 **A. I agree, yes.**

6 **224 Q.** Okay. Do you remember when
7 you were diagnosed with depression?

8 **A. Sometime in 2018 -- 2018,**
9 **2019, around there.**

10 **225 Q.** And you don't recall who
11 diagnosed you?

12 **A. I've seen a multitude of**
13 **doctors, and I haven't seen my family doctor in**
14 **quite some time. So I've had visits to the EMS,**
15 **and I've talked to a couple different ones. So --**
16 **but seeing one continuously, not necessarily,**
17 **aside from this and that, but...**

18 **226 Q.** Okay. And you mentioned that
19 you have a family doctor. Who is your family
20 doctor?

21 **A. Dr. Holmes.**

22 **227 Q.** Dr. Holmes.

23 Do you remember Dr. Holmes' first
24 name?

25 **A. No. I just know he's based **A693****

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1 out of Burlington.

2 228 Q. Sorry, Dr. Holmes is in
3 Burlington?

4 A. Yes.

5 229 Q. When was the last time you saw
6 Dr. Holmes, roughly?

7 A. Quite some time ago. I don't
8 recall the date.

9 230 Q. Would it have been within the
10 past year?

11 A. No.

12 231 Q. Okay. Have you seen
13 Dr. Holmes since you began to experience
14 homelessness?

15 A. No.

16 232 Q. Okay. In Dr. Lamont's letter,
17 at the end of the third paragraph, she states:

18 "At one point, several months into
19 living outside, her tent --"

20 referring to your tent

21 "-- was taken down and thrown out
22 as part of a City-led encampment
23 eviction while she was away at a
24 store. She had left her dog in the
25 tent and her dog was gone which she

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1 returned." (As read.)

2 I take it that's the incident that you described
3 to me before?

4 A. Yes. Obviously not exactly in
5 the -- that -- not exactly in that, like, manner,
6 but yes.

7 233 Q. Okay. So Dr. Lamont may have
8 gotten a couple of details wrong, namely that you
9 didn't leave your dog in the tent when this
10 occurred?

11 A. Yeah. Yes.

12 234 Q. Okay. Just going back to that
13 incident with the police at the time that your
14 tent was bulldozed, or at least you believed it
15 was bulldozed, did you make any complaints to the
16 police about that conduct or about that incident
17 other than the sort of --

18 A. Retaliation?

19 235 Q. -- discussion with --

20 A. Um...

21 236 Q. Did you ever submit a formal
22 complaint?

23 A. I had thought about pursuing
24 such but decided against it.

25 237 Q. And when the police were

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1 speaking with you after you went to the police
2 station with the needles, what did they actually
3 say to you in that conversation?

4 A. I don't really recall. I
5 think they were just asking me questions, and I
6 was just really frustrated and upset from the tent
7 incident.

8 So I wasn't as cognizant as I would
9 have liked to be, just because I'd experienced so
10 much being taken away from me at that time that it
11 was very hard for me to hold on to, like, reality
12 and have people in view or assert authority over
13 me when so much has been taken away and I felt so
14 violated.

15 238 Q. Returning to Dr. Lamont's
16 letter of May 11, 2023, in the last -- hang on one
17 moment, sorry. I've lost my place.

18 Okay. The first full sentence on
19 page 2, Dr. Lamont says that you've had brief
20 times in the shelter and in the YMCA -- or YWCA,
21 "but has also been asked to leave those spaces due
22 to her complex health needs and those services
23 being unable to offer the required level of
24 support."

25 You didn't describe to me before

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1 when we talked about service restrictions or it
2 being suggested that you go elsewhere from the
3 Booth Centre -- have you ever been told that you
4 should leave a shelter due to your complex health
5 needs?

6 A. I don't know if I've been told
7 that directly, no.

8 239 Q. In the preceding paragraph,
9 Dr. Lamont writes:

10 "Given ongoing severe mental health
11 symptoms, high levels of substance
12 use, and lack of appropriate
13 housing options for Ms. Pierre --"
14 (As read.)

15 Just before we go on, on May 11 of 2023, would you
16 agree that you were exhibiting high levels of
17 substance use?

18 A. Yeah.

19 240 Q. And this is about two weeks,
20 if I understand it, before you became housed on
21 June 1st of 2023; is that accurate?

22 A. Yeah.

23 241 Q. And Dr. Lamont says:

24 "-- and lack of appropriate housing
25 options for Ms. Pierre..."

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1 But, again, approximately two weeks
2 later, you did become housed, and you remain
3 housed to this day; right?

4 **A. Yeah.**

5 **242 Q.** Sorry, that was "Yes"?

6 **A. Yes. Yes, that's correct.**

7 **243 Q.** All right. Dr. Lamont says
8 that you had largely given up on trying to set up
9 a tent because of the trauma that repeated
10 evictions caused. Is that accurate as of May 11,
11 2023?

12 **A. I would say yeah.**

13 **244 Q.** But I do put it to you,
14 Ms. Pierre, that you also hadn't set up tents
15 because you were able to get a spot at Carole
16 Anne's Place or stay in Airbnbs or stay with other
17 people, as you described to me previously; is that
18 correct?

19 **A. Yes. But there have been many**
20 **times where even if momentarily people were to set**
21 **up a tent, that the police were immediately**
22 **called, times at, like, Ferguson Station where a**
23 **friend had -- even just in the sense of, like,**
24 **having that little bit of privacy, it just feels**
25 **so invasive and so -- so -- so surveilled, so**

NIMIGAN MIHAIOVICH REPORTING INC.

1 **observed, and so just -- it just feels like an**
2 **obstruction of privacy and it feels like we're not**
3 **meant to have any.**

4 **245 Q.** And you mentioned Ferguson
5 Station in particular. Is that a time that the
6 police were called on you, I think you said?

7 **A. Yeah. A friend had put up a**
8 **tent and I feel like within, like, half an hour,**
9 **police were coming to tell us to take it down.**

10 **246 Q.** Where -- sorry, when did this
11 happen?

12 **A. I -- I don't recall. I**
13 **believe it was in the springtime, maybe of 2023.**
14 **It was a rainy day. We were just down at Ferguson**
15 **Station, and there was, like, a group of us, and**
16 **one of the girls was tired. So my friend figured**
17 **she'd put up a tent and let her sleep, and then we**
18 **were going to watch a movie, but those plans were**
19 **quickly shut down.**

20 **247 Q.** And Ferguson Station, can you
21 just describe that location?

22 **A. Yeah. Ferguson Station, right**
23 **-- not too far from the police station, in between**
24 **King and Main, with -- they do -- every Wednesday**
25 **they have, like, a barbecue there. There's, like,**

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1 **what seems to be, like, a big shelter light area**
2 **but, like, nobody can enter or -- nobody can enter**
3 **it, right by the Salvation Army Thrift Store. I**
4 **think it's a community meeting spot, and yeah.**

5 **248 Q.** So it's the sort of like --
6 there's, like, a pavilion there?

7 **A. Yeah.**

8 **249 Q.** And where was the tent that
9 your friend had set up?

10 **A. Probably on the west --**
11 **northwest most side towards King Street, going**
12 **towards the west end of that area.**

13 **250 Q.** Okay. How close to the street
14 was your friend's tent? Do you recall?

15 **A. Not -- not too close. Four or**
16 **five feet, maybe, I guess. Like, it was almost in**
17 **line with the -- the shelter structure that they**
18 **have there.**

19 **251 Q.** Okay. And the sort of shelter
20 structure is -- it takes up most of the footprint
21 of that little park there; right?

22 **A. Yes.**

23 **252 Q.** So there's, like, the shelter
24 structure and then it's paved all around and then
25 you've got the actual sidewalk for the city?

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1 **A. Yeah.**

2 **253 Q.** And so the shelter -- I'm
3 sorry, the tent that your friend had set up, it
4 would have been on the paved portion?

5 **A. Yeah, on the north --**
6 **northwest corner.**

7 **254 Q.** The police -- you said it was
8 the daytime that the police came by?

9 **A. Yeah.**

10 **255 Q.** And the police told you and
11 your friend to leave?

12 **A. To get out of there, yeah.**

13 **256 Q.** And that's what your friend
14 did?

15 **A. Yeah.**

16 **257 Q.** Okay. Have you understood all
17 of the questions that I've asked you today,
18 Ms. Pierre?

19 **A. Yes, I have.**

20 **258 Q.** Okay. Do you wish to change
21 any of your evidence?

22 **A. Not at this point.**

23 MS. SHORES: Okay. Thank you,

24 Ms. Pierre. Those are my questions.

25 MS. CROWE: Thank you.

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1 So we'd like to take another
2 ten-minute break to confer with cocounsel. We'll
3 ensure it's done separately, away from Ms. Pierre.

4 And, Ms. Pierre, during this time,
5 you can't speak to anyone about your testimony;
6 okay? Is that all right?

7 THE WITNESS: Understood.

8 MS. CROWE: Ms. Shores, is that all
9 right?

10 MS. SHORES: Yes. It's a bit
11 unusual, Counsel, but that's all right.

12 MS. CROWE: We will be leaving the
13 room.

14 MS. SHORES: Okay.

15 MS. CROWE: Okay. Ten minutes.

16 Thank you.

17 MS. SHORES: Off record.

18 --- Recess taken at 4:05 p.m.

19 --- Upon resuming at 4:16 p.m.

20 REEXAMINATION BY MS. CROWE:

21 **259** Q. Is it okay if I call you
22 Jammy?

23 **A. Yeah.**

24 **260** Q. Okay, Jammy, just a few
25 questions. I just want to clarify some timelines.

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1 So you said that you -- so when you
2 score your affidavit back in June 2022, you were
3 working as a volunteer peer support worker with
4 Keeping Six. Can you tell us: When did you
5 transition to employment?

6 **A. We -- probably -- I'm not sure**
7 **of the exact date. Like, it was -- I started off**
8 **volunteering, and it was, like, peer led, and then**
9 **eventually, obviously, like, the group grew and we**
10 **ended up getting more government, like, funding**
11 **and such, and so it was probably around that time**
12 **when we started to get, like, cohesive funding to**
13 **actually pay peers who were working at the time.**

14 **261** Q. Okay. Do you remember when
15 that funding came in?

16 --- (Reporter interjection.)

17 --- (Off-the-record discussion.)

18 THE WITNESS: I'm not fully sure
19 when we started to get the funding, but -- yeah,
20 no, I don't recall. I'm sorry.

21 MS. CROWE:

22 **262** Q. That's okay.

23 Do you know what year?

24 **A. '22 or '23, I'm pretty sure.**

25 **263** Q. Okay. And then you've

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1 mentioned that the position with Keeping Six is
2 also a partnership with Carole Anne's Place? **A4980**

3 **A. Yeah, the Safer Use Space.**

4 **264** Q. The Safer Use Space.

5 And so when did your employment at
6 Carole Anne's Place start?

7 **A. I would work the Safer Use**
8 **Space probably -- probably 2022.**

9 **265** Q. Okay. Do you have any idea
10 what time of year?

11 **A. March or May, I'm pretty sure.**

12 **266** Q. Okay. And how much is your
13 rent?

14 **A. 522.**

15 **267** Q. And so we talked about the
16 number of times that you've been
17 service-restricted from shelters, but then in your
18 affidavit you also talk about times where you were
19 kicked out of shelter. How many times do you
20 think you were kicked out of shelter?

21 **A. Three or four.**

22 **268** Q. Sorry, can we just go back to
23 your rent for a second. Who is your landlord?

24 **A. Good Shepherd.**

25 **269** Q. So is this a private-market

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1 unit, or it's subsidized?

2 **A. I believe -- I'm not sure if**
3 **it's subsidized, but I would say that it's geared**
4 **towards a graduated shelter community.**

5 **270** Q. Sorry, what do you mean by
6 that?

7 **A. Most of the residents have**
8 **previously been unhoused in the shelter system.**

9 **271** Q. Okay. Thank you.

10 And then one last question. So
11 Ms. Shores asked you about a statement that was in
12 Dr. Lamont's report, and I'll just refer you to
13 it. The report states that you have had brief
14 times of shelter at the YWCA and have also been
15 asked to leave those spaces due to your complex
16 health needs and those services being unable to
17 offer the required levels of support.

18 Ms. Shores asked you if you were
19 ever given this as a reason for being asked to
20 leave, and you answered, "No, not told directly."
21 What did you mean?

22 **A. I mean nobody has ever said**
23 **that to me.**

24 **272** Q. What was your understanding?

25 **A. My understanding was -- my** **A696**

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1 understanding was that the time period was up --
 2 the 11 months was up -- that there were people who
 3 had outstayed the 11 months at the transitional
 4 living program.

5 273 Q. Okay. So, yes, you're talking
 6 about the transitional living program at the YWCA,
 7 but what about times when you've been asked to
 8 leave shelters?

9 A. The -- I probably blocked -- I
 10 don't recall those times as much, probably because
 11 they weren't the best memories, and I probably try
 12 to glaze over them a little bit. So my
 13 recollection of them isn't too keen. So I do
 14 apologize.

15 And I can be -- not -- I don't want
 16 to say abrasive, but I can be very dismissive,
 17 like, in the sense of not wanting to be
 18 confrontational or continue an unnecessary
 19 argument. I can be very quick to try to keep my
 20 exposure and exit the situation so not to prolong
 21 any, like, argumentation or anything like that.
 22 So I don't -- I don't have too much memory of it.

23 274 Q. Okay. Thank you.

24 A. They were isolated incidents.

25 275 Q. Sorry?

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1 A. They were -- it was an
 2 isolated incident.

3 MS. CROWE: Okay. Thank you.

4 Those are my questions.

5 --- Whereupon the proceedings adjourned at
 6 4:23 p.m.

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NIMIGAN MIHAILOVICH REPORTING INC.

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* * * * *

This is to hereby certify that the foregoing is a
 true and accurate transcript of JAHMAL (JAMMY)
 PIERRE to the best of my skill and ability.



Kristy Fulton
 Court Reporter

NIMIGAN MIHAILOVICH REPORTING INC.

A697

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN


Applicants

-and-

CITY OF HAMILTON

Respondent

AFFIDAVIT OF GORD SMYTHE 
(affirmed September 29, 2021)

 I, Gord Smythe, of the City of Hamilton, in the Province of Ontario, AFFIRM AND SAY:

1. I have personal knowledge with respect to the facts set out below, except where stated otherwise. Where the information is not based on my personal knowledge, it is based upon information provided by others which I believe to be credible and true.
2. My date of birth is December 23, 1966.
3. I am a person living in an encampment. I became homeless in June of 2021. Prior to this I had not been homeless for 30 years.
4. I was evicted from my rental unit because my landlord filed a notice of termination based on extensive renovations. In other words I was "reno-victed." This is a theme in Hamilton with the skyrocketing rents. Landlords are incentivized to renovate units evicting their longstanding tenants in favour of re-renting the unit, entering into a new lease with a new tenant where they can raise the rent to the current market going rates, that of which I cannot afford with my modest, low income as an ODSP recipient.
5. As an Ontario Disability Support Program ("ODSP") recipient, I am entitled to \$497.00 in shelter allowance from ODSP but since becoming homeless I am only entitled to \$672.00 of the "basic needs" portion of ODSP entitlements.

6. I live with chronic depression and a personality disorder that is managed by medication. As a result of these conditions I have a very difficult time behaving appropriately in congregate settings because I have difficulty managing my anger and reactions when people trigger me. I recognize my limited capacity this way and maintain a good relationship with my doctor and follow my treatment. That being said, even with medication and behaviour management, it is very triggering for me to be in groups and so I am worried about my reactions if I were to be in a congregate setting such as a shelter. Additionally, I am fiercely independent and self-sufficient and have lived independently in my own housing for 30 years, I ~~do~~ ^{did} not need supportive housing.
7. In addition to the above mentioned disabilities I have COPD, diabetes, heart disease and osteo-degeneration in my spine. Since becoming homeless, sleeping rough in a tent on the ground has exacerbated my symptoms and I have lost weight because of stress and a lack of food.
8. As soon as the new landlord assumed my tenancy I anticipated that they would be issuing an eviction. I promptly applied to the City of Hamilton's Access to Housing to be placed on a waitlist for affordable housing or a rent supplement. I was told that the waitlist was 7-10 years long.
9. I could not find an alternative rental unit that I could afford. The average 1 bedroom rental unit in Hamilton is \$1468.00.¹

Encampment history of movement:

10. When it became clear to me that I could not find alternative housing I prepared to live in an encampment, salvaging the personal possessions that I could including my beloved dog. I spent roughly \$2000.00 in supplies to prepare to live outside: additional blankets, a tent, tarps, a generator to charge my phone so that I can have access to services, bottles of water, outside bathroom supplies and supplies to keep waste and garbage organized and clean.
11. I first re-located from my rental unit in mid-June 2021 to the intersection of Strachan and Bay Street but after 7 days I was verbally told to move by a by-law officer. At that time the "protocol" was in place. Prior to by-law enforcement I expected that I had 14 days there and that a housing plan would be in place for me including an assessment through the VISPD tool to assess my "acuity" and housing needs. I was told that the 14 day timelines started ticking with the first tent in the location, not to an individual.
12. I then relocated per the by-law officer's verbal notice to "camp" at Pier 4 in Hamilton and there I was again was told by by-law to vacate. This was done without an assessment and without offering a housing plan.


¹ <https://rentals.ca/national-rent-report>, accessed September 29, 2021

13. Following this eviction I moved to Central Park along Bay Street, in a grassy open space away from a park and the street. After only being there for 3 hours, I was evicted again because there were already tents and their 14 days were up.
14. I then moved to Barton and Caroline Street. Hamilton Police Services did not confront me for being there but after three weeks of staying there, the City of Hamilton By-law advised me that I had to move.
15. I moved back to Central Park along Bay Street, as there were no tents previously there. After being in this new location for roughly 8 hours, I was given 14 days' notice to move by City of Hamilton By-law. The City of Hamilton "Encampment Task Force" attended and gave me 14 days to move even though a VISPDt assessment had not taken place. The following day, Gord, a paramedic, attended and completed the VISPDt acuity assessment tool and told me that I scored a 13. Based on the Protocol I understood that I could now remain encamped indefinitely. My goal though was to secure a new rental because I do not want to be living in a tent.
16. That following Monday I was advised by the City Encampment Task Force that they did not accept the VISPDt administered by Gord and they completed a new one with me which was shorter and had different questions. I was advised that their assessment yielded a score of 11 and accordingly I had to accept shelter or move.
17. I told the Task Force that I would not be moving again and that I will if they return with keys to an apartment.
18. Until I secure a rental unit I prefer to stay at my encampment at Central for several reasons:
 - a) I am in a safe area;
 - b) I am geographically close to medical care such as my family doctor, my cardiologist, my stomach doctor, the doctor that prescribes my anti-psychotic medication and the nurse practitioner I meet with at Urban Core; and,
 - c) I am close to other bathrooms and services.
19. As well, when the Task Force attended, I was advised that Access to Housing did not process my subsidized housing application. I was upset about this and completed a new one and submitted it.
20. I have advocated with City Counsellors to show them how difficult surviving out here is and that I am only here because of gentrification and a lack of affordable housing. I am trying to keep my head above water and ensure that I am safe and do not establish a criminal record. I am living peacefully and respectfully. I am scared that a shelter environment will ruin my mental health and stability because I cannot take all of my possession to shelter, I will be emotionally distraught if I lose my dog, and the congregate setting with other people with mental health issues will trigger my personality disorder

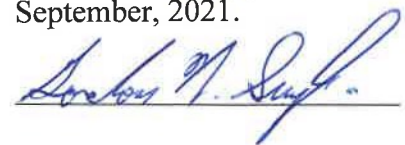
and I do not want that to happen as I know it could trigger police involvement or eviction from the shelter.

21. Moving from one encampment to another was draining and demoralizing as I always had to start over. This was emotionally and physically draining. Staying at Central for several weeks has been the stability I need to meet my most basic needs and attempt to connect to alternative housing.
22. I was offered a lease which was arranged by a social navigator and this likely would not have happened if I was constantly moving because they would ^{not} have been able to find me to reconnect over signing and coordinating. Unfortunately after an article featuring my in the paper was released, the landlord no longer agreed to rent to me. I thought I had housing for October 1, 2021. It was a punch to the gut to have that landlord cancel my lease. I am at a loss as this type of discrimination against recipients of ODSP is frequent and adds to the difficulty of securing a lease.
23. Having to move again with no alternative appropriate shelter options will continually displace me to other parks and eventually into hiding in the margins. I emotionally and physically cannot manage this. Staying where I am without being moved allows me some piece of mind, continuity and an ability to engage routinely with services without disconnecting from them.
24. The City of Hamilton has not offered me shelter or housing prior to evicting me from encampments.

AFFIRMED BEFOR ME in the
City of Hamilton, this 29 day of
September, 2021


A Commissioner etc.
LSUC 05404 F

AFIRMED at the City of
Hamilton, in the Province of
Ontario, this 29 day of
September, 2021.



Court File No: CV-21-00077187-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

ASHLEY POFF, DARRIN MARCHAND, GORD SMYTH, MARIO
MUSCATO and SHAWN ARNOLD

Applicants

and

CITY OF HAMILTON

Respondent

Teleconference (Zoom) Cross-examination on affidavit
of

GORDON SMYTH
affirmed on September 29th, 2021,
taken by Nimigan Mihailovich Reporting Inc.,
One James St. S., Suite 701, Hamilton, Ontario,
Canada L8P 4R5,
on OCTOBER 13, 2021

APPEARANCES:

for Plaintiff: MS. STEPHANIE COX
Hamilton Community Legal Clinic

For Defendant: MR. MICHAEL BORDIN
GOWLING

1 INDEX

2 Examination of GORD SMYTH, affirmed 3

3 Examination by MR. MICHAEL BORDIN 3

4 EXHIBITS

5 No exhibits entered.
6

7 GUIDE TO UNDERTAKINGS

8
9 This should be regarded as merely a guide
10 and does not necessarily constitute a full
11 and complete list.
1213
14 UNDERTAKINGS ARE FOUND ON THE FOLLOWING PAGES:15 n/a
16
17

18 Under advisements are found on the following pages:

19 n/a
20
21

22 Refusals are found on the following pages:

23 21.
24
25

1 -- Upon commencing at 2:27 p.m.

2 GORD SMYTH, affirmed.

3 EXAMINATION BY MR. BRODIN:

4 BY MR. BORDIN:

5 1 Q. Good afternoon, Mr. Smyth.

6 A. Good afternoon.

7 2 Q. Thank you. I'm the lawyer for the
8 City of Hamilton and I have some questions for you
9 today. I'm just going to ask you though, because
10 it's hard to hear, to keep your voice up when you
11 answer questions.

12 A. Okay. Sure.

13 3 Q. And I understand you swore an
14 affidavit on September 29th, 2021, in your
15 application against the City of Hamilton for an
16 injunction preventing the removal of encampments;
17 correct?

18 A. That is correct.

19 4 Q. And you have a copy of that
20 affidavit in front of you?

21 A. I do, sir.

22 5 Q. Now, I understand that
23 unfortunately in June of 2021 you were evicted or
24 'renovicted', you've indicated by your landlord;
25 correct?

1 A. Yes. It was a 'demeviction'; we
2 were served our notices on March the 2nd.

3 6 Q. Right. But is it as of June 2021
4 that you left and from that point on you became
5 unhoused; correct?

6 A. That's correct.

7 7 Q. Okay. And I just, your affidavit
8 sets it out but I just want to make sure I follow the
9 chronology of where you went after that, okay, sir?

10 A. Sure.

11 8 Q. So I understand from paragraph 11
12 that after you left your rental unit you set up at
13 Strachan and Bay Street; correct?

14 A. Correct.

15 9 Q. And you were there for about seven
16 days before you were asked to move on; correct?

17 A. It was approximately seven days,
18 yeah. We were informed by bylaw that it was a first
19 tent appearance, whoever was on the site first,
20 regardless of who showed up afterwards, the first
21 tent had 14 days.

22 10 Q. How many tents were at that
23 location?

24 A. We had five at that time. It was
25 very strict that there were to be no more than five

1 tents.

2 We were informed by bylaw, like, if we
3 put two or more tents under one tarp, it would be
4 considered one tent, but we barely had more than
5 one.

6 11 Q. Right. And then after you
7 relocated from that location, do I understand
8 correctly from paragraph 12 that you then moved to
9 the Pier 4 location in Hamilton?

10 A. That is correct.

11 12 Q. Where is the Pier 4 location?

12 A. Well, it's actually more closer to
13 Bayfront, I just, I recognize it as Pier 4; it's
14 along the rail trail.

15 13 Q. How long were you there?

16 A. So Pier 4 -- probably about
17 another week or so. There were other people already
18 there as well.

19 14 Q. How many tents were there during
20 the time you were there?

21 A. (INAUDIBLE)

22 COURT REPORTER: I didn't hear. I
23 didn't hear that. I'm sorry, I didn't hear that.
24 How many more tents?

25 A. There were -- sorry, there were

1 about two or three tents there, but we weren't as a
2 community, we were individuals at that time, so --
3 BY MR. BORDIN:

4 15 Q. Okay. And then after that, I
5 understand from paragraph 13 that you moved to
6 Central Park along Bay Street but there, but just for
7 a couple of hours; correct?

8 A. It was for a few hours. After we
9 had left there, I mean obviously it's a park, you're
10 not allowed to be in there after 11:00 o'clock, so
11 we moved to the -- (INAUDIBLE)

12 COURT REPORTER: You're breaking up.
13 So "We moved to the" what?

14 A. Okay. Okay, perfect. When we got
15 back to Central Park, we were setting up behind
16 mechanical station number 13 for the Hamilton Fire
17 Service; we finally got set up and went to bed about
18 4:00 o'clock in the morning. A gentleman by the
19 name of Brian that represented the City of Hamilton
20 came down and said -- this was at 7:00 o'clock in
21 the morning; he gave us until noon to move, so we
22 had to start packing immediately again and move.

23 BY MR. BORDIN:

24 16 Q. Okay. Sorry. So that's the, just
25 so I understand because it was a little choppy, so

1 not your fault, sir, but I was asking about when you
2 moved for a brief period to Central Park along Bay,
3 when you first moved there. And do I understand
4 correctly that this is what you were describing when
5 you say you were at the number 13 location --

6 A. Yes.

7 17 Q. -- of the fire department at --

8 A. That's correct.

9 18 Q. Okay.

10 A. It's in Central Park but it's
11 located behind the tennis courts.

12 19 Q. Okay. And that's the same, you
13 were describing this gentleman, you say his name is
14 Brian, who came from the city at 7:00 in the morning
15 and gave you notice that you had till noon to leave;
16 correct?

17 A. That's correct. And he
18 identified -- he instructed us that it was based on
19 the first tent arrival again.

20 20 Q. Okay?

21 A. And one of the tents that was at
22 that other side of the park had been there 14 days.
23 This was their cleaning day, the day that we
24 arrived.

25 21 Q. Okay. So then at, the next thing

1 that happened is you picked up that day and you
2 moved, and according to paragraph 14, you moved to
3 Barton and Caroline Street where you were there for
4 about three weeks; correct?

5 A. That's correct. 2 Caroline Street
6 North.

7 22 Q. Now, how many tents were in that
8 location during the three weeks?

9 A. One, two, three, four -- five.

10 23 Q. How many individuals in total?

11 A. There was a family with a child,
12 so that would be three; four, five, seven, eight;
13 there would have been eight people there.

14 24 Q. And do you know roughly the dates
15 we're talking about now, when you were at Barton and
16 Caroline Street North?

17 A. It would be prior to August, just
18 prior to August when we were caught by bylaw and
19 told we were on private property, we had to move
20 immediately.

21 25 Q. Okay. And was that during the day?

22 A. Yes, it was; it was in the
23 afternoon.

24 26 Q. All right. And then from there, if
25 I understand correctly from paragraph 15, you moved

1 back to Central Park area along Bay Street; correct?

2 A. Yes, that's correct.

3 27 Q. You say you were there for about
4 eight hours, and then you were given 14 days notice
5 to move from that location; correct?

6 A. That's correct. It was within
7 eight hours. It was, we got set up about 4:00
8 o'clock, I believe; bylaw showed up around noon and
9 gave us our 14-day notice.

10 28 Q. Okay. But just so I understand,
11 you weren't being asked to move that day, you were
12 told you had 14 days within which to move; correct?

13 A. Yeah. Exactly.

14 29 Q. And then at paragraph 16, they,
15 someone attended from the City Encampment Task Force,
16 and there was an issue with the --

17 COURT REPORTER: And what? From the
18 City Encampment --

19 A. Yes, I believe they're navigators.

20 30 Q. Okay.

21 A. I'm sorry.

22 MR. BORDIN: Sorry, Mr. Reporter, I
23 had said City Encampment Task Force.

24 COURT REPORTER: Thank you.

25

1 BY MR. BORDIN:

2 31 Q. And, sir. You've just clarified
3 that you think they were from the social navigators;
4 correct?

5 A. Yes, if it's with regards to the
6 BI's for that, that was Gordon Ramsey, he's a
7 paramedic working on the Social Navigating Network.
8 I guess they are the Encampment Task Force.

9 32 Q. And --

10 A. If you're referring to -- if
11 you're referring to the Hamilton Encampment Support
12 Network, that's another entity altogether.

13 33 Q. Okay. I'm referring to
14 paragraph 16 of your affidavit, but what I really
15 want to ask you is, you were told at some point
16 during those, the 14 days notice you'd received, you
17 were told that you had to accept shelter or move;
18 correct?

19 A. Well, initially they offered me
20 housing in a shelter, and then they recommended
21 putting my dog into, like a care centre while I was
22 trying to transition into housing, and that was also
23 unacceptable.

24 34 Q. Okay. So let me just confirm a
25 couple of things then before we go forward. So --

1 A. Sure.

2 35 Q. -- you were offered some kind of
3 housing; correct?

4 MS. CROWE: Sorry, Michael, that
5 question was broken up.

6 MR. BORDIN: Sorry, counsel, I didn't
7 hear what you said.

8 MS. CROWE: What I said is that I
9 didn't hear what you said because the question was
10 just broken up.

11 MR. BORDIN: Okay.

12 36 Q. So I wanted to ask for some
13 clarification of what Mr. Smyth has just said.

14 So I asked, based on paragraph 16, if
15 he was told to accept shelter or move, and I believe
16 Mr. Smyth said that you were offered housing first;
17 correct?

18 A. No, that's not correct.

19 37 Q. Okay. Well, then, maybe I misheard
20 you. I thought you said something about housing, and
21 they were going to shelter your dog somewhere else;
22 is that not what I heard?

23 A. No. It was for me to go to a
24 shelter and to put the dog -- at first it was to go
25 to a shelter, and it was because of my dog that that

1 wasn't possible; and then they offered for me to go
2 to a shelter and put my dog into some kind of
3 supportive care until such time as housing was
4 found; that was before I was offered any housing.

5 38 Q. Okay. And you declined that;
6 correct?

7 A. Absolutely. Yes, I did.

8 39 Q. Okay. Now --

9 A. -- (inaudible) that would prevent
10 me from going there in the first place; it just
11 wouldn't be an option.

12 40 Q. Okay. And then in paragraph 17 you
13 say that you told them if they return with keys to an
14 apartment, you would not be moving again but would if
15 they returned with keys to an apartment; is that
16 correct?

17 A. I told, after a period of time
18 that the housing workers had come several times with
19 offers that were above and beyond affordable, and I
20 continued to tell them no, it's, the way it was
21 happening, I was getting very excited for them to
22 show up and thinking "Good, we have a place, we have
23 a place, we're going to get housed, we're going to
24 get housed," and then they tell us nothing's
25 available; and when they did more work, that if any

1 of the apartments that they came to, I believe there
2 were two at the point where, were unacceptable as
3 far as the rent was concerned, it certainly wasn't
4 affordable, they were refused. And I said, "Yes, if
5 you can't come across here with affordable housing
6 for me or a set of keys to my new place, then please
7 stop coming here and giving us bad information. I
8 suffer from depression as bad as it is."

9 Prior to that, Sergeant Pete Wiesner
10 from the Hamilton Police Services had found me an
11 apartment at 123 Bold Street, and we had agreed to
12 go there. We had our 350 subsidy, which was
13 approved. Still with that, plus my \$497 of basic
14 shelter, would bring me to \$847. Originally the
15 rent was 950 plus Hydro, which put me into the
16 unaffordable state.

17 Mr. Weisner, and I believe Liz Prong
18 (phon.) and Kiara worked out that the Hydro would be
19 covered by the city as well due to some 30 percent
20 grant for disability or what have you. So we agreed
21 that the 950 would be suitable; I would have to pay
22 the extra above and beyond my support, but we were
23 willing to do that to get off the Street.

24 I met with the superintendent who
25 filled out all the forms, did all the applications

1 between Liz and Kiara. Sergeant Pete Weisner came
2 back, I believe, two days after that and he says
3 "You're in, buddy, guaranteed." He says "You move
4 in October 1st, if not sooner."

5 A day after the elections, he came to
6 the park with Liz and Kiera and he says, "I'm sorry,
7 Gord," he says, "We didn't get the apartment." The
8 owner, or the landlord, did an internet search and
9 didn't like what I was fighting for, which was
10 homelessness, and didn't want me in the building.
11 He said either that or they found something with
12 cash.

13 He apologized for giving me the
14 guarantee, which I didn't find acceptable, given
15 that it was a guarantee, and we haven't seen him
16 since.

17 Since then, again Liz and Kiera came
18 back a couple of times, offered me -- (inaudible)

19 COURT REPORTER: I didn't hear that.
20 I didn't hear that. "Offered me" what?

21 A. They offered a couple of places;
22 one was, I forget the name of the street, but they
23 offered us an apartment; they said, "You have to pay
24 750," and I said, "Well --" or 797, something like
25 that, and I said, "Well, does the 497 plus my 350

1 cover the rent?" And they said, "You have to pay
2 seven hundred and some odd dollars."

3 So basically what they had done in
4 both cases was found market rent, but even after the
5 subsidy, it is far above and beyond affordable, and
6 with my current health, I can't accept that.

7 41 Q. Okay. So do I understand correctly
8 then, that you have, you're still at the Central Park
9 location?

10 A. Yes, sir.

11 42 Q. So effectively you were not --

12 A. They put me out October 1st.
13 Well, there's no place to go.

14 43 Q. Right. Okay. And from this
15 chronology, do I take it you have never stayed in a
16 shelter?

17 A. I have never, I have been totally
18 supportive and independent my entire life, even
19 after my disability came in and I was in affordable
20 housing at \$525 a month, even before the subsidies
21 and the special diets, it was still very difficult
22 to survive, but I managed, knowing that the rent,
23 and it wasn't the case, in the city that the average
24 was \$1,400 a month, I knew I had better start
25 preparing to be homeless.

1 44 Q. So, sir, my question to you was:
2 Do I understand from this chronology you have never
3 stayed at a shelter; is that correct?

4 A. I have never stayed in a shelter
5 at all, no.

6 45 Q. Are you vaccinated?

7 A. I am, sir, fully.

8 46 Q. At the Central Park encampment
9 where you are now, how many tents are there?

10 A. There are currently one, two,
11 three, four, five, six, seven, eight, I believe,
12 eight or nine. There's one being removed today.
13 There's actually been two removed over the last
14 week.

15 47 Q. So you described a number of
16 encampments where you've stayed; when you're staying
17 at these encampments, do, whether it's you or others,
18 do -- and I'm not talking about staff or housing
19 outreach or anything, but people come by the
20 encampments to visit, to socialize?

21 A. Oh, absolutely, all the time. We
22 have, we have a lot of the churches come by to visit
23 with us; we have a lot of neighbours that come by,
24 drop things off, sit and visit with us. The sister
25 of the gentleman, whom I unfortunately found

1 deceased in the park, comes to visit us quite often
2 now as well.

3 48 Q. Sorry, did you, you found somebody
4 who had, someone who had died in the park?

5 A. Yeah, it was a friend of ours from
6 downtown; I had known him for about two, three
7 years.

8 49 Q. What park was that?

9 A. Central Park.

10 50 Q. Central Park?

11 A. That's correct.

12 51 Q. Had he been living in the
13 encampment?

14 A. No, he was visiting with friends
15 at another camp on the opposite side of the park,
16 and Dale, whom we call the preacher, him and I would
17 go around every morning or every other day, check on
18 the different tents and see if they needed anything,
19 because we were equipped to cook, and we had lots of
20 food coming in from the movie industry, again from
21 neighbours, from churches, and just basic people
22 that have seen the news and just wanted to come down
23 and help.

24 52 Q. Do you know how this gentleman
25 died?

1 A. Not to my knowledge. It was my
2 understanding that he self-asphyxiated during the
3 night on this own vomit, but I don't have the
4 reports. We just called 911; they came, they
5 identified him, and it turned out we knew who he
6 was, and the rest is history.

7 53 Q. What is the name and address of
8 your family doctor?

9 A. It's Jos. Civelì (phon.); she's a
10 nurse practitioner. She's at the Urban Core Health
11 Centre on Rebecca Street; I'm not sure of the exact
12 address.

13 54 Q. And where is your cardiologist
14 located?

15 A. My cardiologist is Hugh Sullivan,
16 from Sullivan Cardiology.

17 55 Q. Where is she located?

18 Sorry, I think -- maybe you didn't
19 hear my question. Where is your cardiologist
20 located?

21 A. On Ferguson Street in Hamilton.

22 56 Q. And you have a stomach doctor?
23 Sorry, you have a stomach doctor? Do you have a
24 stomach doctor?

25 A. (inaudible)

1 COURT REPORTER: Excuse me, I missed
2 the start of that answer. "Do you have a stomach
3 doctor?"

4 A. Yes, at the Juravinsky Health
5 Centre at Stephenson -- or at St. Joseph's Hospital
6 on James Street South. I don't remember his name.

7 57 Q. And who prescribes you, what's the
8 name of your doctor who prescribes the antipsychotic
9 medication?

10 A. I'm sorry, you're cutting out.

11 58 Q. What is the name of the doctor who
12 prescribes you your antipsychotic medication?

13 MS. CROWE: Sorry, counsel, you've
14 broken up again.

15 MR. BORDIN: All right. I'll try one
16 more time.

17 59 Q. Can you provide the name of the
18 doctor who prescribed your antipsychotic medication?

19 A. Oh, who prescribes the medication?
20 That is also Dr. Jos. Civeli.

21 60 Q. And Dr. Civeli is located where?
22 In the Urban Core, is that what you said?

23 A. That's correct, Urban Core Health
24 Centre. He prescribes antidepressants. She's aware
25 of my anger issues and anxiety issues with being

1 around other people. And she strengthened that
2 medication saying it was to calm me down as well;
3 and it was confirmed by another doctor that, yes, it
4 should calm me down. And it has; it's worked for
5 the last five years.

6 61 Q. Now, you described that until about
7 a week ago there was eight to nine tents at the
8 Central Park location where you are now; how many
9 people --

10 A. Yes.

11 62 Q. -- were staying, how many people
12 were staying in those tents?

13 A. Two, three, five, seven, nine, 11,
14 probably about 15 people.

15 MR. BORDIN: Thank you. Those are all
16 my questions.

17 WITNESS: Thank you.

18 MR. BORDIN: Thank you, sir.

19 MS. CROWE: I just have a couple of
20 redirect.

21 MR. BORDIN: Sorry, I'd like to hear
22 the question, I guess, before I agree that it's an
23 appropriate question for re-direct.

24 MS. CROWE: Okay. I wanted Gord to
25 provide particulars as to why he did not accept

1 shelter --

2 COURT REPORTER: I'm sorry, I'm sorry,
3 you're breaking up. Could you repeat that?

4 (OFF RECORD)

5 MS. COX: Okay. I wanted to know more
6 about the reasons related to Gord, why he refused
7 shelter -- (inaudible)

8 COURT REPORTER: No, I can't hear you.

9 MR. BORDIN: I think what you're
10 asking, counsel, do you want hear more reasons about
11 why Gord declined housing, and maybe about his dog?

12 My position is that's not a proper
13 question for re-examination. I let him go on and
14 answer the question however he wanted, I didn't cut
15 him off, and it's not appropriate to go back and try
16 to supplement his evidence. I didn't, I didn't
17 prompt those questions, he answered them on his own
18 accord.

19 R/F

20 MS. CROWE: Okay. Nothing further.

21 MR. BORDIN: Thank you, sir.

22 -- Adjourned at 2:51 p.m.

1
2 I HEREBY CERTIFY THE FOREGOING
3 to be a true and accurate
4 transcription of my shorthand notes
5 to the best of my skill and ability.
6

7 -----

8 MARC BEEBE, O.C.R.
9 Computer-Aided Transcription
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Court File No. CV-21-00077817-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**KRISTEN HEEGSMAN, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO,
SHAWN ARNOLD, ET AL.**

Applicants

-and-

CITY OF HAMILTON

Respondent

**AFFIDAVIT OF GORD SMYTH
(Sworn March 9, 2023)**

1. I, GORD SMYTH of the City of Hamilton in the Province of Ontario, AFFIRM AND STATE:
2. My date of birth is December 23, 1966.
3. I am in receipt of benefits from the Ontario Disability Support Program. In June 2021, I was entitled to \$497.00 in shelter allowance from ODSP, but when I was homeless I was without shelter costs which disentitled me from this portion of the benefit. Without shelter costs, I was only entitled to basic needs benefits in the amount of \$672.00 per month from the period of June 2021 to November 27, 2021.
4. I became homeless for the first time in 30 years in the month of June of 2021.
5. I have the following medical conditions: depression and a personality disorder, COPD, heart condition, diabetic, high blood pressure and osteo degenerative disease.
6. I was evicted from my rental unit because the landlord issued an N13 Notice of Termination, for demolition of the building, in the prescribed form issued by the Landlord and Tenant Board.
7. As soon as I received this N13 Notice of Termination, I began looking for alternative rental units and submitted my application for subsidized housing to Access to Housing. By the time I was required to move, I had not secured alternative housing. I had not received an

offer for subsidized housing from Access to Housing, nor could I find a rental unit that was within my budget.

8. During my search for alternative housing, I was unable to find rental units that I could afford. At that time, in spring of 2021, the average 1 bedroom rental unit in Hamilton was \$1468.00.¹ My total income on ODSP is \$1,169.00, which is an amount well below average rents.
9. Knowing that my termination date was approaching and I had nowhere to go, I began weighing my options. I considered going to a shelter but that would have required me to get rid of my life's possessions. Also, I was wary of what I could afford to spend on a storage unit with my limited income. In weighing my options, I also considered that the men's shelter is a congregate style living with people that I do not know, with users presenting with mental health issues that can result in behaviours that end up triggering my own personality disorder.
10. My personality disorder makes it difficult for me to interact well with others and when I am triggered I have sometimes reacted with violence. I am able to manage my personality disorder on medication for the most part, but it can still be triggered and when it does, I get concerned about my propensity to react violently. Considering the risk that I could become triggered in a congregate setting it was in my best interest to tent outside with my possessions and avoid the risk of altercations in a congregate shelter setting. I was also told by the Encampment Response Task Force that I would not be able to move into a men's hotel shelter with my dog even though I have a medical note stating that they act as a service dog.

Encampment history

11. When it became clear to me that I could not find alternative housing I prepared to live in an encampment, salvaging the personal possessions that I could including my beloved dog who acts as a service dog. I spent roughly \$3000.00 in supplies to prepare to live outside. I purchased additional blankets, a tent, tarps, a generator to charge my phone to remain connected to services, a latrine, bottles of water, and supplies to keep waste and garbage organized and clean.
12. When I became homeless I erected my encampment at the intersection of Strachan and Bay Street, but after 7 days I was verbally by by-law that I had to move. At that time, the "Encampment Protocol" was in place. I expected that I had 14 days to remain at this encampment and that a housing and shelter plan would be in place for me after an individualized needs assessment through the VISPD tool; in compliance with the Encampment Protocol. I was told however that the 14 day timelines started ticking with the first tent in the location, not to an individual. At no point prior to my eviction was an individual assessment administered. I complied with by-law's direction to move because I

¹ <https://rentals.ca/national-rent-report>, accessed September 29, 2021

did not want to risk having my tent torn down by by-law as I had witnessed this at other encampments. I also did not want to risk disposal of my belongings and I did not want non-compliance to result in a ticket that I could not afford to pay, or police involvement that could lead to criminal charges.

13. I relocated per the by-law officer's verbal notice to "camp" at Pier 4 in Hamilton. I vacated this location as well after a deadline was issued by by-law. Again, my eviction notice was given without first having completed an assessment of my individual shelter needs.
14. Following the eviction from Pier 4, I moved to Central Park along Bay Street, in a grassy open space away from a park and the street. After only being there for 3 hours, I was evicted again by by-law because there were already tents and their 14 days were up. My eviction notice was issued without an assessment of my individual shelter needs.
15. From Central Park, I moved to Barton and Caroline Street and remained there encamped for three weeks before by-law gave me verbal notice to move. I complied and moved back to Central Park along Bay Street, as there were no tents previously there. After being in this new location for roughly 8 hours, I was given 14 days' notice to move by the City of Hamilton "Encampment Task Force" attended and gave me 14 days to move even though a VISPD assessment had not taken place. The following day, a paramedic attended and completed the VISPD acuity assessment tool and told me that I scored a 13. Based on the Encampment Protocol that was in place at that time, understood that I could now remain encamped indefinitely as a result of my score.
16. That following Monday I was advised by the Encampment Task Force that they did not accept the VISPD administered by the paramedic. They administered a new one with me which was shorter and had different questions. I was advised that I scored an 11 on their assessment and that as a result I was not entitled to encamp. I finally protested with greater conviction than I had before, telling the Encampment Task Force that I would not be moving again and that if they demand that I move, they should be bringing me keys to an apartment to move into.
17. To my surprise, the Encampment Task Force also advised me that my application to Access to Housing was not processed and in response I completed a new application.
18. While I resided in my encampment at Central Park, I advocated for my needs with City Councillors to show them how difficult surviving without a roof over your head is and to explain the hardships associated with being evicted and having to pack up and move from park to park.
19. On July 29, 2021, I provided an interview for the Hamilton Encampment Support Network's Instagram account while I was experiencing homelessness. The interview is attached hereto as **Exhibit "A"** and I endorse the contents therein. This interview sheds light on the challenges faced by me while also struggling with disabilities. I stated that the combination of being disabled and homeless is incredibly difficult. It is challenging to

access basic necessities, such as food, water and shelter, when I am unable to work due to my disabilities.

20. I remained in my tent throughout my duration of homelessness. Despite having extreme hardships in a tent, I knew that a shelter environment was worse. I was scared that a shelter environment would ruin my mental health and stability, which took me time to achieve and that if I were triggered, I would engage in behaviours that would result in me being kicked out and restricted. I also did not want to have to get rid of all of my belongings and start over purchasing them all again on a limited income, had I secured housing, which was my ultimate goal. Going to shelter would have also required getting rid of my dog, the idea of such made me extremely emotionally distraught. The congregate style setting of a shelter would have a significant adverse impact on my mental health.
21. Moving from one encampment to another was emotionally and physically stressful. Staying at Central for several weeks after being pushed along between parks was less exhausting and gave me some stability because I had been evicted from other encampments after hours or only a couple of days after all the work it took to set myself up.
22. Constant displacement was difficult because it occurred when I was sleep deprived, during inclement weather such as rain, wind and the cold, and it was hard to physically manage moving all of my belongings including my mobility scooter and wagon. Every day I was anxiously awaiting an eviction and being displaced again or returning to my temporary tent home to find that it was torn down and thrown out by by-law.
23. Although some housing navigators approach my encampment at the Central Park location to offer me private market rentals, I could not afford to pay the rent for those that were presented to me. Even when I was told a rent subsidy could apply to them, they still well exceeded what I could pay with my income. Prior to this engagement, no social workers or social supports attended my other encampment locations to offer me assistance.
24. During my stay at Central Park, a social navigator with Hamilton Police Services verbally advised me that they found a rental unit for me to move into. I agreed to it, as it was the only one offered that I could afford. Unfortunately the offer was withdrawn by the landlord. After getting my hopes up to move into a rental unit, the news of the withdrawal was a punch in the gut and I felt mentally abused.
25. Staying encamped in one park without having to be displaced into other parks on a routine basis, gave me some piece of mind, continuity and an ability to engage routinely with services without disconnecting from them.
26. Being homeless and residing in a tent was devastating.
27. I lost 50 pounds while I was homeless because of a lack of food and stress.
28. In the first week of November of 2021, housing workers re-attended my encampment and offered me a unit in a City Housing Hamilton owned building. I could afford this because

it is completely subsidized rent. On November 27, 2021, I moved out of the encampment and into my unit where I currently reside.

29. On November 25, 2021, I provided an interview for CBC. A copy of the article is attached hereto as **Exhibit “B”** and I endorse the contents therein. Finding housing after experiencing homelessness is a huge relief, but the trauma and fear of being homeless again will have a lasting impact on my mental and emotional well-being. The constant worry about losing my home led to anxiety, depression, and other mental health issues. Even after securing a stable living situation, the fear and stress that lingers makes it difficult to trust in the stability of my housing situation. The experience of homelessness has also changed my perspective on life and my sense of security in the world, altering my priorities and values. These changes were profound, but they are likely to be permanent, shaping my life and outlook in ways I never expected.
30. Still to this day, I live in constant fear of the possibility of being homeless again.
31. I am happy with my choice to remain encamped because had I not, I would have moved into my new apartment without any of my belongings and I would have suffered the emotional toll of getting rid of my dog for no reason. I believe that by challenging the Encampment Task Force’s demand that I move and protesting bought me more time at Central Park and this continuity of location allowed me to connect with social supports which ultimately led to my current housing. Had eviction been enforced at my last location, I would have moved to hidden areas to avoid displacement and this would have decreased my odds of getting housed because of a loss of connection to supports.
32. Trying to get “survival mode,” out of my head has been very difficult.
33. On December 20, 2022, I provided an interview for the Hamilton Spectator. A copy of the article is attached hereto as **Exhibit “C”** and I endorse the contents therein. As someone who has experienced homelessness and now secured housing, I am acutely aware of the flaws in the way that our country treats its most vulnerable citizens. Prior to my own experience of homelessness, I could not have imagined that anyone living in Canada could be left without safe and secure housing, but I now know that this is sadly not the case. Even with the stress of finding housing removed, the memories and fears of that time will stay with me forever. The constant worry about lack of support, safety, and security, and the fear of becoming homeless again keep me awake at night. I know that I am not alone in feeling this way, and that countless others who have experienced homelessness carry this same burden.
34. This experience has changed me in ways that I never could have predicted. The person I was before homelessness seems distant and unrecognizable to me now. The experience has opened my eyes to the deep injustices in our society, and has shown me that we must do better to support those who are struggling. It is simply not enough to provide emergency shelters or temporary housing solutions; we must work towards a more equitable and just society where everyone has access to safe and secure housing.

35. It is more important than ever that we work towards real solutions that address the root causes of homelessness and provide ongoing support for those who have experienced it. It is my hope that by sharing my own experience, I can raise awareness of this pressing issue and inspire others to take action to make a difference in the lives of those who are struggling.
36. My faith in the government system with regards to having a social net has been greatly diminished. I still find it hard to believe that government officials can treat human beings this way.

Sworn remotely by Gordon Smyth at the City of Hamilton in the Province of Ontario, before me on March 9, 2023 by "Zoom" videoconference in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Emily O'Keefe

Commissioner for Taking Affidavits

Emily O'Keefe LSO#84504L

Gordon Smyth
Gordon Smyth

THIS IS EXHIBIT "A" TO THE
AFFIDAVIT OF GORDON SMYTH
AFFIRMED REMOTELY BEFORE ME AT
THE CITY OF HAMILTON DURING A "ZOOM" VIDEOCONFERENCE
IN ACCORDANCE WITH O.REG. 431/20,
ADMINISTERING OATH OR DECLARATION REMOTELY
THIS 9th DAY of MARCH, 2023
Emily O'Keefe
Emily O'Keefe
LSO NO. 84504L
Commissioner for Taking Affidavits, etc

THIS IS EXHIBIT "B" TO THE
AFFIDAVIT OF GORDON SMYTH
AFFIRMED REMOTELY BEFORE ME AT
THE CITY OF HAMILTON DURING A "ZOOM" VIDEOCONFERENCE
IN ACCORDANCE WITH O.REG. 431/20,
ADMINISTERING OATH OR DECLARATION REMOTELY
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LSO NO. 84504L
Commissioner for Taking Affidavits, etc

Hamilton

'Utter relief': Hamilton encampment resident Gord Smyth finds apartment after months in a tent

'I've never seen the situation as desperate as it is right now,' says doctor who visits encampments

[Dan Taekema](#) · CBC News · Posted: Nov 25, 2021 3:42 PM EST | Last Updated: November 26, 2021



Gord Smyth, 54, pauses for a moment on Nov. 24, 2021 while packing up the encampment he'd been staying at in Hamilton's Central Park for months. (Dan Taekema/CBC)

A732



Gord Smyth spent Wednesday taking down tarps and packing up tents, preparing for what he hopes is his last move for a long time.

As he cleared up the encampment he's called home for the past few months, the 54-year-old had one thing on his mind — the CityHousing Hamilton apartment he's finally secured, or, more specifically, the hot shower it comes with.

"I haven't even been thinking of it as a new place to live. I've been thinking of it as a shower and a bathroom," he said.

"We're gonna be in there for a couple of days scrubbing off six months worth of dirt."

Smyth said he began living on the street in June after he was evicted from his longtime apartment when the property owner decided to demolish it to make way for condominiums.

- [**'Back to sleepless nights': Encampment resident fears for future as Hamilton resumes enforcement**](#)
- [**15% of encampment residents city interacted with have been housed, Hamilton data shows**](#)

He set up camp at various sites around the city but said he was moved along every few days or weeks — and in one case after just a few hours — under the city's bylaw barring tents in public spaces.

"It's definitely not camping, it's surviving," Smyth said.

"It's a really hard life. You've got to look after food, you've got to look after your hygiene and a lot of that is impossible."

Looking forward to a comfortable bed

Central Park was where he decided to stand his ground after arriving in August.

Smyth was one of five people who had lived in encampments and was named in an application to Superior Court seeking an injunction to stop the City of Hamilton from tearing them down. A5018

"Moving every two weeks, or moving every day or moving every time you have to move wasn't acceptable," he said on Wednesday.

The attempt for an injunction ultimately failed.

- **Judge rules city can enforce encampment bylaw, attempt for an injunction fails**

But Smyth said advocates and agencies, including police, pushed for him to be allowed to stay in the park while he continued to fight for housing.

On Wednesday he signed a lease for an apartment and collected the keys.

"Relief, utter relief," he said, describing how it felt.

"[I'm] looking forward to sleeping in a comfortable bed, looking forward to not having to run the generator or pay for fuel to stay warm, sleeping in clothes under so many sleeping bags."

City to share plans on Dec. 9

Dr. Jill Wiwcharuk said she believes Smyth's process to find housing was likely sped up by the fact he was allowed to stay in one place. Others haven't been so fortunate.

As a member of the Hamilton Social Medicine Response Team (Hamsmart), the doctor said she visits multiple encampments each week and is struck by the desperation she sees there.

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Dr. Jill Wiwcharuk is an inner city doctor who works primarily with people who are homeless and struggling with addictions. (Shelter Health Network)

"Every time I'm at an encampment I'm having people tell me how much they want to get inside," said Wiwcharuk.

"Time and time again people are coming to me asking for help getting inside and there is simply not enough space."

That's especially true for women and couples, she said, adding she's "disgusted" it took until October for city staff to acknowledge [there aren't enough shelter beds](#), particularly for women.

In a statement to CBC the city said it appreciates the situation is "difficult for all involved — those experiencing homelessness, concerned residents, and staff on the front lines."

A736

Spokesperson Aisling Higgins said 166 shelter spaces have been added to the system during the pandemic, but did recognize that even with the increased capacity, there are "some occasions" where there's more need than there are beds. A5021

Staff will provide a "snapshot of housing and homelessness in Hamilton," including plans for winter and changes to the shelter system, which would be shared during a [Dec. 9 meeting](#), she said.

A 'desperate' situation

Wiwcharuk said the impact of shelter and housing shortages can already been seen in "horrific" outcomes, including two suspected overdose deaths this week alone.

"I've never seen the situation as desperate as it is right now," she said. "It's awful."

Smyth said securing an apartment was a big weight off his shoulders.

But despite finding a permanent place to live, "it's not over."

He pointed to other encampments across the city, including at [J.C. Beemer Park](#) where a fire destroyed several tents and people's belongings on Wednesday morning.

A737



Smyth smiles while take a break from packing up his tents and tarps. Despite finding an apartment, he said encampment residents across the city continue to face struggles. (Dan Taekema/CBC)

"It's devastating. It's not going to go away," said Smyth.

"It can happen to anybody and if you're not prepared best find a tent and some place to hide because that's the only option the city has right now."

Smyth still counts himself among those at risk and said the fear that a knock on the door could send him right back to an encampment is there, at the back of his mind.

"The fear never goes away," he said. "It's always going to be present."

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A738

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HAMILTON REGION

Evicted and homeless, Gord Smyth squatted in a downtown park. Now he's housed but forever scarred

Hamilton man who lost his apartment to demolition, is calling for strong tenant policies

By **Teviah Moro** Spectator Reporter

Tue., Dec. 20, 2022 |  5 min. read

JOIN THE CONVERSATION

A hot shower. A freshly baked cake. A locked door. A roof over his head.

The simple things have made the difference for [Gord Smyth](#) after a period of homelessness in a downtown Hamilton park.

"I wake up. I see what the weather's going to be like, and, just one day at a time, plan my day," Smyth says.

But the spectre of somehow again landing on the street still haunts him more than a year after moving into a CityHousing highrise.

"You always have that fear that it can happen again. I don't think that will ever leave me."

Smyth [became homeless](#) in June 2021 after his landlord told him and others to clear out their James Street North apartments ahead of demolition plans.

The 55-year-old, whose ordeal lasted until late November that year, sees the same scenario leaving others in the lurch without strong policies to protect renters when homes are knocked down for redevelopment.

If city regulations had forced his former landlord to set up him with another apartment at roughly the same rent, he wouldn't have wound up pitching a tent in a downtown park, Smyth says.

"It would have made a difference — 100 per cent."

The city is working on such rental-replacement regulations to set conditions for demolitions and condo conversions aimed at retaining affordable units and casting a safety net for displaced tenants.

But tenant advocates — including [Hamilton ACORN](#), which Smyth has joined — are concerned recently passed provincial housing legislation could derail that effort. They are holding a news conference at Smyth's former apartment building Tuesday to draw attention to the issue.

A provision in [Bill 23](#) — the More Homes Built Faster Act — allows the minister of Municipal Affairs and Housing to impose "limits and conditions" on local powers to regulate demolitions and conversions.

What that will mean for Hamilton's ongoing efforts remains unclear.

A739

The ministry says the legislative clause doesn't wipe out such municipal bylaws, in Toronto and Mississauga, for instance, but opens the door for analysis. **A5024**

"While the goal of those rental replacement bylaws may be to preserve affordable rental units, it may also be limiting the supply of new rental units and leading to deteriorating housing stock," a ministry spokesperson wrote in an email.

"That is why we are seeking feedback on what measures, if any, are needed to ensure best practices are in place to help promote additional supply of revitalized rental housing stock while also continuing to protect tenants."

City planning director Steve Robichaud figures the minister, through Bill 23, may want to evaluate to what degree demolished buildings should be replaced "like for like."

For example, if a tenant loses a one-bedroom apartment in Stoney Creek for \$800 a month with free parking, should those very conditions be replicated?

"Is it exactly the same, or can it just be a unit at the same rent price adjusted for inflation?" Robichaud asks.

Generally, the city's goal "at the very least" is to ensure demolished units are replaced and displaced tenants land in affordable homes, he says.

A staff report into the initiative notes there "have not been a large number of rental units" demolished in Hamilton in past years, but with planning policy emphasizing building density in urban areas, "redevelopment pressures have been increasing."

On that front — the gentrification of affordable, older apartments into more expensive rentals — Bill 23 won't help, Smyth argues.

"It's just all around bad," he says of the wide-reaching legislation that also affects conservation authorities, local planning and development charges, sparking protests and [pushback from municipalities](#).

Before he became homeless, the former systems analyst who'd fallen on hard times after a car accident years earlier, lived in a modest bachelor pad in a small, older building on James Street North at Ferrie Street.

At around \$500 a month, Smyth could afford the rent on his meagre disability pension.

"I was happy. I was comfortable. That was home," he says, noting there were 13 units between two neighbouring buildings.

But as the property changed hands, from one corporation and [would-be developer](#) to another, Smyth saw the writing on the wall:

He was about to lose his home of about five years and wouldn't be able to afford the escalated market rates.

Moreover, downtown demolition regulations (which Robichaud said the city aims to build upon and expand across urban Hamilton) didn't extend to his North End address.

So Smyth braced for life on the streets, spending time with homeless people to learn how to survive.

"So in some sense, I was lucky. I had years to prepare, whereas some people, they don't."

He pitched a tent and set up camping gear — cooking appliances, heaters, a generator, an outdoor showering kit — in Central Park off Bay Street North, hunkering down with Daisy, his pint-sized pooch.

Smyth, who, like others, was reluctant to stay in shelters, found himself on the front lines of the city's [homelessness crisis](#) and the overlapping tribulations of addiction, [overdoses](#), theft and violence.

He witnessed tragic death that summer, coming across a [man deceased in a tent](#) on the other side of the park.

"The survival skills that I picked up during that time, I don't think will ever leave me."

His stay in the park, in defiance of a city bylaw, also sparked testy exchanges with authorities in a [political climate](#) that called for encampment clearings.

To make matters worse, some passersby would hurl obscenities at him, Smyth recalls.

"You know, they had no idea who I was, but they would scream, 'Go out a get a job, you bum!'"

As summer turned to fall, he watched his physical and mental health deteriorate, while he held out hope for an affordable apartment.

Now, more than a year later, he's better, seeing a dietician for his diabetes. He's also picking up hobbies again, revisiting his passion for photography.

"I never in a million years thought anything like that would happen to me, and now I know it can happen to anyone." **A740**

But what's just as unbelievable to him — galling, in fact — is that nothing has yet materialized on the empty parcel of land where his home was knocked down over a year ago.

A5025

“Which is a year that we could still be there.”



Teviah Moro is a reporter at *The Spectator*. tmoro@thespec.com

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A741

COURT FILE NO. CV-21-77187

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

KRISTEN HEEGSMAS, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO, SHAWN ARNOLD, BRADLEY CALDWELL CHRISTINE DELOREY, GLEN GNATUK, TAYLOR GOGO-HORNER, CASSANDRA JORDAN, JULIA LAUZON, AMMY LEWIS, ASHLEY MACDONALD, COREY MONAHAN, MISTY MARSHALL, SHERRI OGDEN, JAHMAL PIERRE, LINSLEY GREAVES and PATRICK WARD

Applicants

-AND-

CITY OF HAMILTON

Respondent

The Cross-Examination of Gord Smyth, on an Affidavit dated March 9, 2023 taken upon affirmation in the above action this, 28th of August, 2024, , conducted via videoconference hosted by the offices of Nimigan Mihailovich Reporting Inc.

A5026

APPEARANCES:

For the Applicants:

SHARON CROWE

CURTIS SELL

MICHELLE SUTHERLAND

For the City of Hamilton:

JORDAN DIACUR

JOJO JOHNSON

Gowling WLG (Canada) LLP

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4

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EXHIBITS

GUIDE TO UNDERTAKINGS, ADVISEMENTS, and REFUSALS:

This should be regarded as a guide and does not necessarily constitute a complete list:

UNDERTAKINGS:

(None noted.)

UNDER ADVISEMENTS:

(None noted.)

REFUSALS:

(None noted.)

--- Commencing at 1:00 p.m.

GORD SMYTH,

THE WITNESS HEREINBEFORE NAMED,

Having been duly sworn by me to testify to the truth,

testified on their oath as follows, to wit:

CROSS-EXAMINATION BY MR. DIACUR:

1 Q. Sir, could you confirm that your date of birth is December 23rd, 1966.

A. That is correct.

2 Q. And your last name is spelled S-M-Y-T-H?

A. Correct.

3 Q. Okay, thank you.

A. You're welcome.

4 Q. Just in terms of that date of birth, that would make you not quite 58 years old; is that right?

A. A few more months to go yet.

5 Q. Okay. So 57 currently?

A. Yes.

6 Q. And so, sir, I have questions for you today about an affidavit provided in this matter. The date on it is March 9, 2023. I understand you also provided a previous affidavit on which you were already cross-examined in September of 2021.

A. That's correct.

7 Q. The questions today are simply about the

March 9, 2023, affidavit so I want to confirm whether or not you have a copy of that available to you?

A. I do.

8 Q. Okay. I also have a copy and my plan would be to put a copy on the screen so that everybody can see, but I'm going to take you to certain parts of that affidavit and I'll have certain questions for you about it and you're free to look at the screen or look at the hardcopy. No issues there.

Can you confirm for me where you are checking in from today?

A. 181 Jackson Street West, City Housing Hamilton.

9 Q. And is that your residence?

A. My apartment.

10 Q. Okay. And is that your residence?

A. That's my apartment, yes.

11 Q. That's great, thank you. And how long have you lived in Hamilton?

A. Well, I moved back to Hamilton in 2014. Prior to that, it was probably 20 years prior, if not more.

12 Q. Okay. But are you from Hamilton originally?

A. No.

become an English teacher.

20 Q. Okay. So in or about 2008, you move to Spain for a period of time?

A. That's correct.

21 Q. Okay. And where did you work as a systems analyst?

A. For myself.

22 Q. Okay. So you were like a consultant or freelance?

A. Yes, freelance.

23 Q. Okay. And how long did you work as an English teacher in Spain?

A. About five years.

24 Q. So that would be until about 2013?

A. That's correct.

25 Q. Okay. And at that point what happened?

A. Termination of employment. Not enough students for classes and cost of living. So that sent me back to Canada.

26 Q. Okay. You move back to Canada in 2013. Did you move back directly to Canada Hamilton at that time?

A. Correct.

27 Q. Okay.

A. I was back in 2014.

A5027

13 Q. No. So you move to Hamilton previously; moved away; moved back?

A. Correct.

14 Q. Okay, Understood. And you've been living in Hamilton since 2014?

A. That's correct.

15 Q. So the last 10 years consistently Hamilton?

A. Yes.

16 Q. Okay. And I understand from having reviewed your affidavit there's a couple of pieces of information about your personal history, particularly in the newspaper article that's attached as Exhibit C to your affidavit?

A. Mm-hmm.

17 Q. It indicates that formally you were a systems analyst; is that correct?

A. That's correct.

18 Q. And for what period of time did you work as a systems analyst?

A. From, I believe, 2004 to 2008.

19 Q. Okay. And what happened in 2008 to end that employment?

A. They found out that I was lying on a lot of stuff which was pretty much most of my life as far as jobs were concerned. So I left there and went to Spain to

28 Q. Okay. Understood. So in terms of the timeline I think I've got it straight and that all lines up. Thank you.

A. Okay.

29 Q. So that clarifies that issue.

I understand that you've been in receipt of ODSP monthly since November of 2018; is that right?

A. That's correct.

30 Q. There's also a reference in that same article at Exhibit C to your affidavit to a disability pension. So do you receive a disability pension in addition to ODSP?

A. No.

31 Q. Okay. Because I'm going to put up on the screen.

A. That would be referring to the same thing, ODSP.

32 Q. Okay. That is really what I want to get at. So I'm going to put it up on the screen now. This is your affidavit sworn March 9, 2023. Can you see that all right?

A. Mm-hmm.

33 Q. I'm going to jump to that article. It is, as I said, it Exhibit C to your affidavit and I will scroll up to the top just so that you can see that is what

A743

I am referencing.

A. Mm-hmm.

34 Q. There are a couple of articles attached to your affidavit. But there at Exhibit C is an article of the Hamilton Spectator dated December 20th, 2022. And it is entitled:

"Evicted and homeless, Gord Smyth
squatted in a downtown park. Now he's
housed but forever scarred[...]"
And you can see that?

A. Yes.

35 Q. Okay. And if I scroll down to the second page of this, there's a reference here:

"At around \$500 a month, Smyth could
afford the rent on his meagre disability
pension."

A. Yes, it's ODSP.

36 Q. Okay. And is it true that at that time the ODSP allowance was around \$500 a-month?

A. No. It was less. It was about \$468 a-month, if I'm not mistaken.

37 Q. And is that simply the shelter portion of the ODSP or that is all the ODSP you were receiving?

A. That is the shelter portion.

38 Q. Okay. But you were in receipt of what we

A5028

would sort of the principal or main portion of the ODSP as well?

A. Is this prior to or after being homeless?

39 Q. Well, I'd suppose my question does go to both but I appreciate the distinction you are drawing. So from November 21st, 2018, when you first began receiving ODSP --

A. Mm-hmm.

40 Q. -- did you receive both the shelter portion and the main and principal portion?

A. Yes.

41 Q. Okay. And so when there's a reference in this article to around \$500 a-month that simply the shelter portion of the ODSP?

A. That's the shelter portion of the ODSP, correct.

42 Q. Understood. And so when -- and, again, I should show you but the journalist who wrote this article is Teviah Moro. When he references a pension, that is just an error. It is actually social assistance from the province?

A. That's correct, yes.

43 Q. Okay.

A. And the 500 a-month is what I was actually paying there. It was actually 525 a month, I believe,

there.

44 Q. Understood.

A. Yeah.

45 Q. Was that rent controlled and geared to income --

A. No.

46 Q. -- and that ODSP portion was considered to be sufficient for it?

A. No, that was their market rent, correct.

47 Q. So it was market rent. Okay.
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 --

A. Mm-hmm.

48 Q. -- until November of 2021; do I have that correct?

A. It would have been. Yes, that's correct.

It would have been the 30th of June.

49 Q. Yeah, so June 30th to be more precise. June 30th of 2021 until I understand November 27th, 2021; is that correct?

A. Correct. That is correct.

50 Q. Okay. And there's a reference here in paragraph 4 of your affidavit. You indicated you became homeless for the first time 30 years in the month of June

2021.

Were you previously homeless before this in the prior 30 years?

A. No. Prior to that I was still living with family.

51 Q. So when you say that you are referencing prior to --

A. Yes, I'd spent 30 years of my life being self-sufficient to that point, yes.

52 Q. Okay, that clarifies that. I just wanted to understand what you meant by that statement.

I understand, sir, that you have used a mobility scooter in the past; is that right?

A. I have, yes. I now have an electric wheelchair.

53 Q. Yes. That was my next question. I also saw a reference to a wheelchair. It's an electric wheelchair?

A. It is, yes.

54 Q. And do you use that for mobility purposes?

A. Yes, I do.

55 Q. And do you always use that for mobility purposes or do you have limited mobility?

A. Outside of the apartment. It being a small apartment, I can move around not too bad. But, yes, any

A744

time, I'm out I'm in the chair.

56 Q. Okay. And in terms of the electric wheelchair that you have currently, where did you get that?

A. I purchased it. It's a self-purchase. It's the same with the scooter.

57 Q. So that was also purchased. It wasn't provided by any healthcare organization or any sort of charity? It was purchased?

A. No. At that time, I didn't qualify for it.

58 Q. Okay. Understood, okay. So the next paragraph in your affidavit, paragraph 5, you indicate a number of medical conditions?

A. Yes.

59 Q. And so I would like to go through these one at a time.

A. Okay.

60 Q. And the question in each case is going to be about when it was diagnosed. So first on the list is depression.

A. Mm-hmm.

61 Q. When was that condition diagnosed for you?

A. Shortly after I came back so it would have been in 2014.

62 Q. Okay.

A5029

A. Late 2014, early 2015.

63 Q. Do you recall which medical practitioner you saw and who diagnosed of that?

A. Jo Seveli.

64 Q. And is that a family physician?

A. She's a nurse practitioner. I don't have a family doctor.

65 Q. Okay.

A. She's with the Urban Core, Hamilton Urban, yeah.

66 Q. No. That's helpful. Thank you. And the next on the list is a personality disorder.

A. Mm-hmm.

67 Q. Are you able to be more specific? What personality disorder are you referencing?

A. I don't do well with crowds or with a lot of people. It really starts to bother me to the point where I would get aggressive or very angry --

68 Q. No. I'm not talking about the effects of it.

A. -- and I would lose --

69 Q. Do you know if it has a name medically?

A. No. I don't.

70 Q. Okay. And would it be the same nurse practitioner that diagnosed that?

A. Yes.

71 Q. And roughly the same time in 2014?

A. Correct.

72 Q. Had you ever had any mental issue diagnosed before that time?

A. No.

73 Q. Was it communicated to you whether it was something that you had been living with undiagnosed or whether it was something new that developed?

A. When I was talking with my -- I don't know what you would call him, I guess, a psychologist or -- he had mentioned that it was possible that I had lived with that my entire life based on the information I had given them and how I have always felt.

74 Q. Well, actually that's my next question.

A. Okay. To me what I assumed was normal, it turned out it wasn't.

75 Q. Okay. And had you been treated subsequent to diagnosis for the personality disorder?

A. Still under treatment, yes.

76 Q. And you referenced a psychiatrist or a psychologist.

A. Yes.

77 Q. Is that the same person who's been treating you throughout this period?

A. No, no. That was simply for, I guess, diagnostic purposes.

78 Q. Okay. And so you are currently receiving treatment. How long have you been receiving treatment?

A. Since 2015.

79 Q. Okay. So it has been consistent from the time of diagnosis?

A. Yes, it's a medication?

80 Q. And in terms of the depression that we were just discussing are you also receiving medication for that?

A. That is correct.

81 Q. Is it the same medication or different?

A. It's basically the same medication. One is for depression. The other is a mood stabilizer.

82 Q. Okay. All right. So I understand on this list there are a number of other conditions listed.

A. Yes.

83 Q. Some are, rather than being mental issues like depression and a personality disorder, they are physical issues.

A. Mm-hmm.

84 Q. And so COPD is next on the list. Can you tell me when that was diagnosed?

A. Again, 2015.

A745

85 Q. '15. And was that the nurse practitioner again?

A. Correct.

86 Q. And --

A. Plus other doctors at Stephenson Memorial and Hamilton General. I had to go there for a bunch of test and they were the ones that concluded it was COPD, but it was reported through the nurse practitioner.

87 Q. Okay. Understood. And Stephenson General? I'm not sure I'm familiar with that. Where is that?

A. No. Hamilton General.

88 Q. Stephenson Memorial you said.

A. Yeah.

89 Q. Where is Stephenson Memorial?

A. In Alliston.

90 Q. Okay.

A. And then St. Joseph -- sorry, I'm thinking Alliston. St. Joseph's Hospital here in Hamilton.

91 Q. Yes.

A. On James Street South.

92 Q. No. I'm familiar with St. Jo's in Hamilton. But Stephenson Memorial is in Alliston?

A. But that was a mistake on my part as far as naming goes.

93 Q. Oh, so you have not been there?

A5030

A. I was there many, many years ago as a teenager.

94 Q. Understood. That's fine, I just wanted to clarify.

A. It's the meds.

95 Q. Yes. Got it. And in terms of the next on the list here, the heart condition. Are you able to tell me what heart condition?

A. I had the onset of heart disease. Since that time, it's progressed to heart disease and I now have an internal cardio defibrillator installed.

96 Q. Okay.

A. My heart operates at about 52 per cent.

97 Q. Okay. And that's something that you've been told by a medical practitioner?

A. Told and gone through the operation.

98 Q. Right. So no understood. There would have been an operation involved.

A. Yes. That was the Cardiology Department at Hamilton General.

99 Q. And what was I diagnosed for you?

A. Almost two years ago I guess. I would have to check my card, but I've had the defibrillator now for almost two years.

100 Q. Okay. No. I think that sufficient to

establish the timeframe. Thank you.

A. Okay.

101 Q. Diabetes is next on the list. When was that diagnosed?

A. Again, the same time.

102 Q. So same time meaning two years ago or the same time meaning roughly 2015?

A. Roughly 2015, yes. I was feeling run down and out, and went to the doctors, and that's when all the tests began. And they found a lot. It's probably why I wasn't feeling too good.

103 Q. Understood. I can see there were a couple of diagnoses at that time.

A. Mm-hmm.

104 Q. High blood pressure.

A. Yes.

105 Q. Was that diagnosed at that same time in 2015?

A. Yes.

106 Q. And last on the list is osteo degenerative disease. And I understand you were involved in a car accident?

A. That's correct.

107 Q. Was this as a result of the car accident?

A. No.

108 Q. So this is unrelated this osteo degenerative disease?

A. Yes, this is all prior to.

109 Q. Okay. And when was that diagnosed, osteo degenerative disease?

A. Probably, I would say between 2016 and 2017 was when the pain really started to get worse.

110 Q. Okay. And it was diagnosed at time. You went and saw a physician because of the pain and they diagnosed that?

A. That's correct.

111 Q. And in terms of the car accident you were involved in, when did that happened?

A. I would have to say early 2014. Somewhere around there. It was prior to me going to the doctor's.

112 Q. That's helpful to know that. That clears up the timeline, thank you.

A. Mm-hmm.

113 Q. So turning to paragraph 6 of your affidavit.

A. Yes.

114 Q. You indicate that you were:

"Evicted from a rental unit[...]"

This is the rental unit on James Street North; is that right?

A746

A. That's correct.

115 Q. And that was referenced in your initial affidavit in 2021.

A. Yes.

116 Q. That building was being demolished and so the eviction related to the demolition?

A. Correct.

117 Q. How long had you been at that address on James North?

A. Since 2014. That's when I moved in.

118 Q. That's where you moved in when you came back to Hamilton?

A. Well, when I came back to Canada, I was looking around for an affordable place and as I had mentioned, that was affordable at that time. I was on unemployment when I first came back, and yeah, it was 525 a-month, I believe, it was or 500 a-month and that was the only place in the City.

That was the only place in multiple cities that I could find that was affordable, hence coming back to Hamilton.

119 Q. Understood. Actually that was my next question about the amount of rent at that place.

You mentioned that you qualified for unemployment when you returned to Canada. How long did

A5031

that continue?

A. For about six months and then during that time and going through my diagnosis at the hospitals and the doctors, they had transitioned me to social assistance. And then prior to that after diagnosis, it was determined that I should be on Disability.

120 Q. Okay, Understood. And as we said, that actually occurred in November of 2018?

A. Yes.

121 Q. Okay. All right. So the next paragraph in your affidavit, paragraph 7. I will put that on the screen now.

A. Yes.

122 Q. I indicate or I understand that it's indicated here you began looking for alternative rental units when you received the Notice of Termination from the landlord on James Street North?

A. Yes, that's when I upped my search. We had been notified by several purchasers starting three years prior to that that the building was sold, and we knew at that time based on the current growth of the City, that we were probably going to end up looking for another place to live because they would certainly raise the rents.

We were outside of the downtown Hamilton protected areas so there were 13 of us there in total.

There was four of us prior to the building coming down.

But I had been searching since then. Once we received the N13 Notices, it was a very intensive search. It was looking at all possibilities, shelters, hotels, what have you.

123 Q. Understood. No. That helps clarify. I understand that you submitted what is called an Access to Housing Application prior to this eviction; is that correct?

A. That is correct.

124 Q. Roughly March of 2021?

A. Yeah, but it was never filed.

125 Q. Yeah. I had a question for you about that and we will get to that when we get to that part of your affidavit.

A. Okay.

126 Q. So when we get to that, we can clarify that point.

A. Mm-hmm.

127 Q. I certainly will ask you about that.

But it is referenced in Exhibit C, that article that you had seen the writing on the wall. I think is the phrase that you had used --

A. Yes.

128 Q. -- with Mr. Moro. So that is what you mean

that you had some advance notice with the eviction and begin looking?

A. I knew I was in trouble, yes.

129 Q. So I'm going to scroll down to paragraph 8. So the next paragraph in your affidavit.

A. Mm-hmm.

130 Q. There is a footnote in this paragraph and it is a reference to a link at the bottom of the page, "rentals.ca".

You can see that?

A. Mm-hmm.

131 Q. Can you confirm for me you didn't create the website rentals.ca?

A. No.

132 Q. And you are not affiliated with rentals.ca?

A. No.

133 Q. And you're not aware of any data or methods that rentals.ca may use?

A. No.

134 Q. And you haven't produced a copy of the webpage as it existed, as you say here, it was accessed on September 29, 2021; is that right?

A. I believe so.

135 Q. This affidavit was sworn in 2023. You indicated you accessed the webpage --

A747

A. I did. I did access that page well as a lot of others just looking for rent.

136 Q. Yes. But, to be clear, a copy of that website as it existed on September 29, 2021, has not been produced?

A. Not to my knowledge, no.

137 Q. All right. So just scrolling back up and moving to the next paragraph, paragraph 9, you indicate that you considered going to a shelter?

A. Mm-hmm.

138 Q. But that would have required you to get rid of your life's possessions?

A. That's correct.

139 Q. Okay. Why is that the case?

A. Well, because you are only allowed to bring a bag of clothes to a shelter. You are not allowed to bring any personal items such as keepsakes or appliances. Necessities. Just the basics.

140 Q. Well, so I suppose the follow-up question to that is did you look into storing any of your life's possessions?

A. Yes. And unaffordable.

141 Q. Okay. So even given ODSP income, and the fact that shelter would be provided in an emergency shelter in any case for free, it was insufficient to rent

A5032

a storage unit?

A. The housing portion of the ODSP is removed.

142 Q. I understand. But if you don't have rent to pay for --

A. Yeah. If I have roughly \$125 a month to look for a place to live, I think that's pretty much evident that that wouldn't happen. And that was part of the difficulty of becoming homeless, losing that support and making less than a half or receiving less than half of what the market rent was at that time basically made it impossible for me to get housing.

143 Q. You also said --

A. And plus --

144 Q. Sorry, I didn't mean to cut you off. Continue, please.

A. Oh. Once I found out about the shelter system, because I hadn't explored any of that before, I realized that that coupled with my health conditions and my service dog, and at that time they weren't allowing them, it would have been far more detrimental for me to go there.

145 Q. But you also say that you might have found congregant living triggering; is that right?

A. Yes, absolutely. Again, I don't do well with groups.

146 Q. And so as I understand it, you never contacted a shelter at all or stayed in one; is that right?

A. I have contacted them. I never stayed in them.

147 Q. Okay. And so not having stayed in one, you don't know whether or not it would have triggered you or assisted you?

A. Oh, absolutely I did. Again, three years prior to, I started hanging around these shelters and communicating with the people that were there trying to get myself familiarized with that type of lifestyle because I knew it was coming.

And it was over those two and a half years that I realized I'm not going to do well there. It's going to... my opinion at that time was the government was trying to put me into a little small cell somewhere so that they wouldn't have to deal with me.

148 Q. I understand that that's your opinion. But I want to confirm.

A. You can confirm I did enough.

149 Q. No. I want to confirm this. The fact that you have never stayed in a shelter means you cannot say whether or not it would have triggered you or assisted you?

A. Oh, I can pretty much guarantee it would have.

150 Q. Based on conversations that you had with individuals.

A. Based on life experience. Based on life experience with groups. It would have been a community setting. A group setting. You eat together. You sleep together. You do your chores together. That's --

151 Q. That's an assumption you are making about emergency shelters.

A. No. That's a medical fact, sir.

152 Q. Well, no. To be clear, you never stayed in an emergency shelter at all; correct?

A. Thank God, no.

153 Q. Okay. Now at paragraph 10, you reference your dog.

A. Yes.

154 Q. You reference them as a service dog and you reference a medical note stating that they act as a service dog.

A. That's correct.

155 Q. You have not produced medical note stating that your dog is a service dog; correct?

A. No. That's incorrect. I do have a note.

156 Q. No. I understand that you have it. You

A748

state in your affidavit that you have one.

A. Yes.

157 Q. But it's not been produced in this litigation. I don't have a copy of it; is that correct?

A. I honestly can't answer that.

158 Q. Okay.

A. I thought I did but I can't be sure.

159 Q. Did you ask shelter staff about your dog and options for your dog?

A. Yes. That was provided to me by the encampment support workers I guess you could say.

160 Q. And what were the options that were presented?

A. I couldn't take the dog to the shelter. I couldn't take the dog to a hotel. And they only started that five months after I was homeless. I hadn't seen any housing workers prior to that.

161 Q. Were any options provided in terms of boarding or fostering the dog?

A. No.

162 Q. Did you look into options such as fostering or boarding the dog?

A. No. It's a service dog. It has to be with me 24/7.

163 Q. Now, is it the case, and you referenced

A5033

this in paragraph 10, that you will sometimes respond or react violently to certain stimuli?

A. Absolutely.

164 Q. Have you become violent in the past?

A. Yes.

165 Q. Has that led to any criminal issues or any actual violence that involved another person?

MS. CROWE: Sorry, what the relevance of that question?

MR. DIACUR: Well, he states that he reacts violently and I'm examining him on his statement. It's directly relevant to a statement in his affidavit.

MS. CROWE: What is the relevance of the details of any past criminal charges?

MR. DIACUR: He states that he has reacted violently in the past. I'm asking what the result of that was. It's directly relevant to a statement in the affidavit.

MS. CROWE: Okay.

THE WITNESS: Their relevancy is I have never been convicted of any criminal offense.

BY MR. DIACUR:

166 Q. Have you ever been violent to another person?

A. Absolutely.

167 Q. Now, you state here as well that you decided it was in your best interest not to go into a shelter?

A. Correct.

168 Q. That's correct?

A. That is correct.

169 Q. And that was a choice that you made?

A. Absolutely based on my -- what do you call it -- my mental condition.

170 Q. And you are not aware of shelter availability at that time in June 2021, as you didn't look into going into a shelter?

A. Oh, absolutely I did, and as reported before, there was no space.

171 Q. Okay. So you decided not to go into a shelter but you checked whether there was availability anyway?

A. Yes, that's correct.

172 Q. Okay.

A. Yes.

173 Q. You indicate as well that you spent a significant amount of money -- and this is at paragraph 11 of your affidavit.

A. Mm-hmm.

174 Q. Roughly \$3,000 for supplies to prepare to

live outside?

A. Yes.

175 Q. And was that all of your savings at that time?

A. That and some. I had prepared for a couple of years. Again, it was three years when we found out the building was sold. And at that time, that's when I started looking for another place to rent. And, again, rents being 30 to 40 per cent more than my total receipt from ODSP guaranteed that that was impossible so I had to start thinking about survival.

176 Q. Paragraph 12 of your affidavit, I have a couple of questions for you to establish the timeline that is expressed in this paragraph and the next few paragraphs.

A. Mm-hmm.

177 Q. You indicate that you first encamped at Strachan and Bay Street; is that right?

A. Yes. That's correct.

178 Q. You say when you became homeless that's where you first --

A. That's the very first place I went.

179 Q. So that day you went there in June of 2021?

A. Yes.

180 Q. Okay. And in terms of why you didn't

A749

remain there, you indicate that after seven days you were given verbal notice by Bylaw that you had to move?

A. That's correct.

181 Q. And upon receiving that notice, you did move; correct?

A. Oh, yes, yes.

182 Q. How long were you there at Strachan and Bay?

A. Seven days.

183 Q. Okay. So it was immediate upon your arrival seven days notice?

A. Immediately. It was always immediately.

184 Q. And so if we go through to paragraph 13, you say:

"I relocated per the bylaw officer's verbal notice[...]"

A. Mm-hmm.

185 Q. And you went to Pier 4 in Hamilton. That's up on the Bayfront?

A. Yes, that's correct.

186 Q. And I understand there was notice given to you and you moved from Pier 4; is that right?

A. Yes, that's correct.

187 Q. And, again, how long were you there at Pier 4?

You have got until noon to pack up and get out. I remember the day very clearly. It was windy and cold. It was raining.

194 Q. Do you remember the actual date?

A. No. I don't.

195 Q. Okay.

A. But I do remember the day very well.

196 Q. And then we have from that place, Central Park, a moved to Barton and Caroline Street?

A. Correct, yes.

197 Q. And was this a park area at Barton and Caroline Street?

A. No. An empty lot owned by the City. I went there to hide because I couldn't take moving anymore so I said I have to go some place where nobody will find me.

198 Q. And so you were there for three weeks?

A. Yes.

199 Q. And then, again, Bylaw gave verbal notice to move?

A. Bylaw came through and said you have to leave now. Not any length of time. You have to pack up and leave now. You are on private property. You're not allowed to be here. You have to leave now.

200 Q. Okay. And well, that is the question that

A5034

A. Only a few days.

188 Q. But was the notice given to you after a few days or again immediately?

A. Immediately. As soon as you put a tent up they are there immediately.

189 Q. So a few days at Pier 4. Paragraph 14 you indicate that you move from Pier 4 to Central Park along Bay Street?

A. Yes.

190 Q. In a grassy space?

A. Yes.

191 Q. Okay. And you indicate that after three hours you were evicted because there were already tense there and the 14-day period had expired?

A. That's correct.

192 Q. And so you indicate that you weren't able to remain there?

A. That's right, yes. I got there at about 3:00 o'clock in the morning after have finally packed up and moved out of the other place at noon. I had just got set up and went to bed and Bylaw was there at about 7:00 o'clock in the morning.

193 Q. So that morning, you know, the sun comes up, and Bylaw is there?

A. 14 days are up. You've got to pack up.

I have for you is how did you conclude that the property that you were encamped on was owned by the City?

A. Because it wasn't being used by anybody or anything. City trucks would come in once in a while dump loads and leave.

201 Q. And it's from that that you concluded that it was owned by the City of Hamilton?

A. Yes. I assumed the whole northend was owned by the City of Hamilton.

202 Q. So it was an assumption that it was owned by the City it may have been owned by a private property owner?

A. To my knowledge. I don't know. I just go by what the Bylaw said. They said I was on private property and that I needed to leave.

203 Q. And so the move from that Barton and Caroline Street property was back to Central Park; is that right?

A. It was back to Central Park, that's right.

204 Q. And so say after eight hours there was this further 14 days notice provided?

A. Not even. It was roughly about eight hours. It was the same day I set up after that day they had come and said you've got your 14 days.

205 Q. I want to clarify that. You are back to

A750

the place where this was this notice already given?

A. Yes.

206 Q. Central Park?

A. Yes.

207 Q. They didn't come in and say you can't be here at all?

A. No.

208 Q. There was 14 days period that was provided?

A. Correct.

209 Q. Okay. And I see in this paragraph, paragraph 15 there is a reference to what I pronounce as VI-SPDAT assessment?

A. Yes.

210 Q. And I understand it's indicated here that you had not done one?

A. No.

211 Q. And that a paramedic gave you an assessment tool and there was a score given of 13; is that right?

A. He came down and did the assessment himself, yes.

212 Q. I understand that subsequently another VI-SPDAT was taken by you?

A. Yes.

213 Q. But that it had different questions?

A. Yes. The City has approached me. The

A5035

housing support workers had approached me and said there was a decision that they're not going to accept the VI-SPDATs from the paramedics; that they were to conduct themselves.

214 Q. Okay. Is it possible that the assessment tool that the paramedic was using was not actually a VI-SPDAT, but some other tool?

A. To my knowledge, it was the City that was using another form aside from the actual tool as it had no medical information. It had no medical questions? Nothing like that. It eliminated everything that originally gave me the 13 score.

215 Q. But the two test were different?

A. Completely different.

216 Q. And were you given a copy of this other VI-SPDAT that the paramedic submitted?

A. I was not.

217 Q. All right. So paragraph 16 -- and this is where we come to the VI-SPDAT that was administered subsequently?

A. Yes.

218 Q. This is administered by the Encampment Task Force?

A. That's correct.

219 Q. And the Encampment Task Force go through

the VI-SPDAT questions with you and you scored 11; is that right?

A. That is correct.

220 Q. And I understand that it was at this point that you said you would not be moving again unless you were brought keys to an apartment?

A. That's very accurate.

221 Q. And who did you envision had these keys and would be bringing them to you?

A. The housing workers that continually showed up every day to say, Hey, we might have something for you. Hey, we are working on this.

And every time they came back it was well above and beyond what I could afford.

222 Q. Were you envisioning that this apartment, that keys would be provided? Would be free or were you expecting to be paying for it?

A. I was expecting to be paying for it. I wanted it to be in my housing support. My housing support needed to cover it. If it didn't, then I had conditions that it would be unaffordable should I have to pay above and beyond that.

223 Q. Okay. And paragraph 17 is where we come to what we were discussing earlier. The Encampment Task Force indicated earlier that your

application, your Access to Housing Application was not processed?

A. It was not processed, that's correct. That was five months after being homeless?

224 Q. Were you told why?

A. No.

225 Q. Was there some error in the application itself?

A. No.

226 Q. There may have been?

A. To my knowledge, no, I was never informed otherwise.

227 Q. Okay. And I understand that a new Access to Housing Application was completed at that time?

A. That's correct.

228 Q. Do you recall what timeline we are when the Encampment Task Force told you, you needed to file a new Access to Housing Application?

A. It would have been late September or early October of '21.

229 Q. Okay. And I'm going to scroll down to paragraph 20 of your affidavit you indicate in this paragraph that[...]"

Despite having extreme hardships in a tent[...]"

A751

A. Yes.

230 Q. "I know living in a shelter environment was worse?"

A. Yes.

231 Q. And we have established that you have never resided in a shelter.

A. Correct.

232 Q. And I will put it to you that you can't know that it was worse.

A. Again, based on medical evidence and personal experience being in a crowd situation, I can guarantee you, sir, it would have been much worse.

233 Q. So you were worried that you would behave badly but you can't be sure of that.

A. I'm pretty sure it would have happened. That's why I was worried. I thought if I went there and I go off, I'm going to be in a heap of shit. So, no.

234 Q. I hear what you are saying but you were not sure.

A. Yeah. I would rather be safe than sorry.

235 Q. You would agree that pretty sure is not sure.

MS. CROWE: Mr. Jordan --

MR. DIACUR: That's not --

THE WITNESS: A hundred --

A5036

MS. CROWE: Asked and answered.

THE WITNESS: -- sir, that I would have been fucked there.

MR. DIACUR: No. I'm clarifying what the witness just stated.

MS. CROWE: You've repeatedly asked the same question and he has given the same answer.

MR. DIACUR: No, I have not.

MS. CROWE: He has given the same answer.

THE WITNESS: Sir, you have several times.

BY MR. DIACUR:

236 Q. He has said that he's pretty sure and it's important.

A. Okay. I will rephrase. I guarantee.

237 Q. Pretty sure is not sure.

A. I guarantee.

238 Q. Now, you are saying you guarantee.

A. I've explained this to you several times. You've asked me the question several times.

239 Q. Well, no.

A. Now you are getting an example. This is an example of how I get.

MS. CROWE: Mr. Diacur, that's a refusal for any further questions along this line. I do believe that it's been asked and answered.

MR. DIACUR: For the record, the witness is screaming at me.

MS. CROWE: Well, for the record, you have refused to listen to --

THE WITNESS: I've explained my health condition and my mental condition. What part of that do you not understand?

MR. DIACUR: The witness is continuing to scream.

THE WITNESS: Sir.

MR. DIACUR: This is a completely separate area of the affidavit.

MS. CROWE: Okay.

MR. DIACUR: The statements are different and I'm asking clarifying questions.

MS. CROWE: I believe, with respect, that the questions that are being asked.

MR. DIACUR: I understand your refusal counsel.

MS. CROWE: Thank you.

MR. DIACUR: And I will move on.

MS. CROWE: Thank you.

BY MR. DIACUR:

240 Q. For the record, these are relevant and important questions that are being refused.

A. That have been answered several times, sir.

241 Q. So, sir, you state here that you were concerned about losing possessions --

A. Yes.

242 Q. -- if you moved into a shelter?

A. Yes.

243 Q. And, again, you can't be sure that possessions would have been lost if you had moved into a shelter.

A. I guarantee they would have. I wasn't allowed to take them with me.

244 Q. Would you agree that it would have been better for your dog not to go through extreme hardships in a tent?

A. Absolutely not. It would have been worse for me. It is a service dog.

245 Q. Okay. Well, I'm not talking about you. I'm talking about the dog.

A. So am I, sir.

246 Q. Would it not have been better for your dog not to go through what you refer to as extreme hardships in a tent?

A. No.

247 Q. If I move on to paragraph 23 you state that apartments were offered to you as you were demanding; is

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that right?

A. That is correct.

248 Q. You say that you could not afford them?

A. That's correct.

249 Q. Did you look into rent subsidies available from the City Hamilton?

A. They had said that there were rent subsidies in there and they were over 60 per cent of my income. I was only given three choices. The first two exceeded far of what I could afford. The third one was City Housing; and if I had refused City Housing they would stop their support and not offer help anymore.

250 Q. So you consider that 65 per cent of your income was too much?

A. That's correct.

MS. CROWE: I'm sorry, can I just clarify was it 65 or 60 per cent was the answer?

BY MR. DIACUR:

251 Q. I believe he said 65 per cent.

A. It was about 65 per cent.

MS. CROWE: Thank you.

BY MR. DIACUR:

252 Q. And I understand the answer to that question.

So at paragraph 27 you indicate:

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"I lost 50 pounds while I was homeless because of a lack of food and stress."

What was your weight before and after your period of homelessness?

A. I was about 280 when I became homeless and about 225-230 when I got housing.

253 Q. Paragraph 28 of your affidavit, you indicate that you were housed in November of 2021; is that right?

A. That's correct, yes. November 27th, 2021.

254 Q. We establish that date earlier, thank you. Is that subsidized rent or is it --

A. No.

255 Q. -- an apartment that is free?

A. Market rent.

256 Q. So it's market rent, again, now.

Okay. And you remain and that same apartment today?

A. That's correct.

257 Q. And you can afford that with supports?

A. Yes.

258 Q. So as I understand it, your episode of homelessness was roughly five months from beginning to end?

A. Six months, yes.

259 Q. The end of June to the end of November is five months, is it not?

A. Okay. Yes.

260 Q. All right. So moving on to paragraph 31 you indicate that you believe the protesting and refusing to move expedited your housing being obtained. That's your belief?

A. Yes, it is.

261 Q. You were put on and access to housing list and you received access to housing. That's not surprising; right?

A. It is considering it is a 10 to 12-year waiting period. I know several people that are still homeless that are still on that list that haven't received any support.

262 Q. Right. Well, the waitlist in your case was about two months after you submitted your new Access to Housing Application in September; right?

A. Correct, I assume it was because of all of the media.

263 Q. That's an assumption --

A. That's an assumption, yes.

264 Q. And the individuals that have waited longer, you don't know what their personal circumstances are? The reasoning --

A. Aside from living with them for five months, no.

265 Q. Okay. And you indicate in paragraph 31 that you would have moved to hidden areas to avoid displacement?

A. Absolutely.

266 Q. And not obtained housing?

A. That's correct.

267 Q. And that is what you were referring to earlier? Moving to the empty lot that you were told you couldn't remain in?

A. Yes.

268 Q. But you would agree with me that at this point it's hypothetical because you obtained housing?

A. Yes. However, based on survival and the fact I was being asked to move constantly, hiding would have been my best option.

269 Q. You indicate that doing that would have decreased your chances of getting housed?

A. Guaranteed.

270 Q. Is that the same assumption on the flipside of it your belief is that making a protest led to your housing being obtained in the first place?

A. If they don't know where I am, they can't find me.

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271 Q. Okay. Well, sir, thank you for attending and answering my questions. Those are all my questions for you.

A. Thank you, sir. And I apologize for losing control. But, again, that's what happens when I get confronted or shelter would not have been successful guaranteed.

272 Q. Okay. I appreciate you attending and answering, sir.

A. Thank you.

RE-EXAMINATION BY MS. CROWE:

273 Q. I was muted, sorry.
Thank you, Mr. Smyth, I just have a couple of questions for you for redirect. Okay?

So paragraph 23 is when you referenced some potential rental or options that you thought were unaffordable because it was roughly about 65 per cent of your income?

A. Yes.

274 Q. When those properties were presented to you do you remember if utilities were included in the rent?

A. No. They were not.

275 Q. Okay. When you were living at James Street North what percentage of your income was your rent?

A. About 33 per cent. It was about a third of my total income.

276 Q. Thank you. Those are my questions.

---Concluded at 1:48 p.m.

I hereby certify the foregoing is a full, true, and correct transcription of all of my oral stenographic notes to the best of my ability so taken at the Cross-Examination of GORD SMYTH, given under oath before me on the 28th of August, 2024.

Amy Armstrong, CVR-RVR

Certified Realtime Verbatim Reporter #7305

Certified Commissioner of Oaths

Certified this 30th of August, 2024

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Heegsma et al
Applicants

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CITY of HAMILTON
Respondents

Court File No. CV-21-00077187-0000

Ontario
Superior Court of Justice

PROCEEDING COMMENCED AT HAMILTON

APPLICANT'S APPLICATION RECORD VOLUME 3
TABS 43-63

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