

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

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

Appellants

- and -

CITY OF HAMILTON

Respondent

- and -

ATTORNEY GENERAL OF ONTARIO

Intervener

FACTUM OF THE APPELLANTS

August 29, 2025

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PART I – OVERVIEW

1. Does the *Charter* protect people who cannot afford homes, and cannot access shelters, against eviction from tents on public property which shield against the elements and secure a modicum of privacy?
2. The 14 Appellants are, or have been, unhoused in Hamilton for a variety of reasons, including unaffordability, mental health, and domestic violence. Seven are Indigenous women; one is an Indigenous man; two are Black; one is a transgender woman. They could not access shelter because demand chronically exceeded supply, or shelters were inaccessible to them. Left with no choice, they lived in tents in public parks, violating Hamilton's *Parks By-Law* [**"By-Law"**]. They were repeatedly evicted. For two years, the Appellants had to "live rough" at various times, sometimes 24/7 – without a tent, exposed to the elements, both overnight and during daytime. The sheltering restrictions and evictions caused the Appellants psychological and physical harm, including sexual assault, frostbite, a gunshot wound, and the amputation of a limb. This is not how they wanted to live. They would all have preferred permanent housing.
3. In 2021, the Appellants challenged the By-Law's prohibition on tents in parks under the *Canadian Charter of Rights and Freedoms* [**"Charter"**]. In August 2023, Hamilton City Council [**"Council"**] enacted an encampment protocol, the *2023 Protocol*. The case became a retroactive challenge to sheltering restrictions and evictions between August 2021 (when Council repealed an earlier encampment protocol, the *2020 Protocol*) and August 2023. This is the first case on the constitutionality of sheltering restrictions and evictions to reach this Court, and raises novel issues not yet addressed by **any** appellate court.

4. The overnight sheltering restrictions and evictions between August 2021 and August 2023 violated s. 7 because demand for shelter spaces exceeded supply, or spaces were in theory available but often inaccessible to individuals with disabilities, couples, and people with pets. Sleeping rough caused increased health risks that tents would have mitigated, thereby depriving the Appellants of their security of the person and life. Sleeping rough also deprived them of their liberty, as privacy is critical to any individual's dignity and independence.

5. The daytime restriction and evictions violated s. 7 by denying them the benefits of 24/7 shelter: reduced health risks; easier access to medical care and access to essential items; the ability to form communities to enhance their safety; and privacy.

6. These deprivations did not accord with the principles of fundamental justice because the blanket ban was overbroad, by interfering with conduct that did not necessarily conflict with public use of parks, and grossly disproportionate, since its negative effects outweighed Hamilton's interests.

7. The sheltering restrictions and evictions violated s. 15 by discriminating based on sex, because of their disproportionate impact on women, who are approximately half of Hamilton's unhoused but receive a much lower proportion of shelter beds. Being unable to sleep in encampments also increased their risk for sexual assault. They also discriminated based on race, since Indigenous persons are unhoused at 10 times their rate in Hamilton's population; and on the combination of race and sex, because they have a particularly severe impact on Indigenous women. The sheltering restrictions and evictions also discriminated based on disability against individuals with mental health and substance use disabilities, who may exhibit behaviour that leads to service

restrictions; physical disabilities, including mobility issues, who may find it physically taxing to enter and leave shelters or move their belongings daily; and who cannot use substances in shelter.

8. These violations were not justified under s. 1. The order requested in the Notice of Application, and the provisions of the *2020 Protocol* and *2023 Protocol*, both now repealed, were minimally impairing alternatives that would have allowed encampments while permitting public use of parks.

9. The Appellants sought \$445,000 in damages under s. 24(1) of the *Charter*, for the psychological and physical harms caused by the evictions. They also sought declarations that the sheltering restrictions and evictions were unconstitutional to provide guidance to Hamilton. The declarations are now pressing because Council repealed the *2023 Protocol* in March 2025.

10. Ramsay J. dismissed the Application. His decision is replete with errors. He excluded and ignored relevant evidence from the Appellants' treating physicians regarding the impact of sheltering restrictions, and from Hamilton's official documents and witnesses regarding inadequate shelter supply. He disregarded the Appellants' evidence of overnight evictions based on stereotypes regarding persons with mental health and addiction disabilities. On his own motion and without notice, he accused the Appellants of providing evidence that was "boilerplate" and reflected "what they were told". He failed to apply the established legal tests for ss. 7 and 15. He found that any harms were caused by homelessness, not sheltering restrictions and evictions – contradicting binding Supreme Court authority on causation and the *Charter*.

11. The Appellants ask the Court to overturn Ramsay J.'s decision and enter judgment in their favour.

PART II – FACTS

The By-Law

12. The *By-Law* imposes sheltering restrictions both overnight and in daytime. Section 18 prohibits the erection of a tent in a public park without a permit. Section 17 prohibits living in a park without a permit. Section 12(a) prohibits encroaching or taking possession of a park. Section 3 prohibits entering a park except during opening hours (6 AM to 11 PM).¹

The 2020 Protocol

13. On July 29, 2020, unhoused individuals sought an injunction prohibiting Hamilton from dismantling encampments during the COVID-19 pandemic. On July 30, 2020, the Court issued a 10-day interim injunction, which was extended to August 7, 2020.²

14. On September 30, 2020, the parties entered into a settlement agreement that created the *2020 Protocol* – the “Bylaw Enforcement Protocol” – which required Hamilton to assess and accommodate individual needs before evicting encampment residents. In some cases, residents were able to remain encamped indefinitely. The *2020 Protocol* established rules around the permissible size and locations of encampments.³

¹ City of Hamilton *By-Law 01-219* [Appeal Book and Compendium [ABC], Vol-2, Tab-22, p.12]

² Information Report (September 9, 2021) [“**2021 Process**”], pp.2-3 [ABC, Vol-2, Tab-26, pp.157-8]; *Bailey v. Hamilton* (Court File No. CV-20-73435).

³ By-Law Enforcement Protocol [ABC, Vol-2, Tab-25, pp.153-154].

The 2021 Process

15. On August 9, 2021, Council repealed the *2020 Protocol* and adopted the “Encampment Process” for responding to encampments [**“2021 Process”**], which it described as a return to the “pre-protocol enforcement of City by-laws that prohibit camping on City property, including park areas”.⁴

16. Under the *2021 Process*, Hamilton would first issue trespass notices, which the Hamilton Police Service [**“HPS”**] would then enforce.⁵ Evictions by HPS could not occur without a City-issued trespass notice.

Superior Court and the 2023 Protocol

17. On October 4, 2021, five of the Appellants issued a Notice of Application and brought a motion for an injunction prohibiting the City from evicting encampment residents. On November 2, 2021, the Superior Court dismissed the motion.⁶

18. On November 8, 2022, the Court granted the Appellants leave to file a Fresh as Amended Notice of Application, which sought, *inter alia*, a declaration under s. 52(1) of the *Constitution Act, 1982* that the By-Law’s restrictions on sheltering were of no force and effect, and damages under s. 24(1) of the *Charter*.

19. Ramsay J. was appointed as the case management judge that same day.

⁴ *2021 Process*, p.1 [**ABC, Vol-2**, Tab-26, p.156].

⁵ *2021 Process*, pp.2-3 [**ABC, Vol-2**, Tab-26, pp.157-158].

⁶ *Poff v. Hamilton*, [2021 ONSC 7224](#) [**Poff**].

20. In August 2023, Council adopted the *2023 Protocol*, which allowed unhoused persons to erect tents in public parks, subject to various restrictions on size, clustering, and setbacks. It was revised in June 2024.⁷

21. The Appellants adduced detailed evidence regarding their experiences with homelessness, shelter access, encampment stays, precarious housing and/or sleeping rough, as well as the impact of encampment evictions (see **Appendix**). All the Appellants described having been evicted from outdoor sheltering locations, requiring that they sleep rough. Four Appellants gave specific evidence that they had been evicted during overnight hours.⁸

22. The Appellants also adduced evidence from other fact witnesses (including their treating physicians) and eight experts. The Respondent adduced evidence from fact witnesses and one expert.

23. On November 5, 2024, the Appellants brought a motion for leave to adduce evidence from their treating physicians' affidavits with strikethroughs of opinion evidence but did not seek to amend them to add new evidence. On November 12, 2024, Ramsay J. granted leave to adduce the physicians' affidavits, subject to different

⁷ Danielle Blake Affidavit (July 30, 2024) [**Blake Affidavit**], pp.654-657, paras.20-26 [**ABC, Vol-9**, Tab-121]; 2023 Encampment Protocol [**ABC, Vol-2**, Tab-27, pp.165-174]; 2023 Encampment Protocol Revised June 2024 [**ABC, Vol-2**, Tab-28, pp.176-187].

⁸ Misty Marshall Affidavit (May 12, 2022) [**Marshall Affidavit**], p.107, para.28 [**ABC, Vol-4**, Tab-53]; Misty Marshall XE Transcript (August 15, 2024) [**Marshall XE**], pp.121-122, Q187-196 [**ABC, Vol-4**, Tab-55]; Lindsay Greaves XE Transcript (August 15, 2024) [**Greaves XE**], pp.42-43, Q101-110 [**ABC, Vol-3**, Tab-34]; Sherry Ogden XE Transcript (August 24, 2024) [**Ogden XE**], pp.58-59, Q133-167 [**ABC, Vol-5**, Tab-66]; Corey Monahan XE Transcript (August 15, 2024) [**Monahan XE**], p.144, Q206; p.153, Q411, 418 [**ABC, Vol-4**, Tab 58]; Corey Monahan Continued XE Transcript (August 30, 2024) [**Monahan Continued XE**], pp.157-158, Q466-468 [**ABC, Vol-4**, Tab 59].

strikethroughs on the basis that the physicians were “participant experts”, as opposed to fact witnesses.⁹

24. On December 4, 2024, Ramsay J. granted Hamilton’s motion to exclude various City documents whose authenticity the City had admitted before the close of cross-examinations in October 2024, in responses to Requests to Admit.¹⁰

25. Ramsay J. heard the Application from December 16 to 18, 2024 and dismissed it on December 23, 2024.¹¹

26. He held there was no s. 7 violation because: (a) there had in fact been no overnight evictions; and (b) daytime evictions did not violate s. 7.¹² Ramsay J. rejected the Superior Court’s decision in *Waterloo*, which held that s. 7 was violated by inaccessible shelter beds and daytime sheltering restrictions and evictions.¹³ He neither distinguished *Waterloo* nor explained why horizontal *stare decisis* was inapplicable. He dismissed *Waterloo*’s analysis on inaccessibility as “arbitrary” and held:¹⁴

[78] Finally, extending the freedom from enforcement to daytime or indefinite encampment would amount to expropriating property, or at least severely limiting property rights. City officials have noticed that since the implementation of the new protocol some occupants have become more territorial, or possessive of “their” camps. Extension of freedom from enforcement would have the effect of depriving the City of the use and enjoyment of its property.

27. He also dismissed the s. 7 claim based on causation:¹⁵

[75] [...]There is no logical connection between availability of shelter space and

⁹ Endorsement (November 12, 2024) [**ABC**, Vol-1, Tab-11, pp.119-150].

¹⁰ Endorsement (December 4, 2024) [**ABC**, Vol-1, Tab-12A, p.154].

¹¹ *Heegsma v. Hamilton*, [2024 ONSC 7154](#) [*Heegsma*].

¹² *Heegsma*, paras.[9](#), [12](#), [69](#).

¹³ *Waterloo v. Persons Unknown*, [2023 ONSC 670](#) [*Waterloo*].

¹⁴ *Heegsma*, paras.[73](#), [78](#).

¹⁵ *Heegsma*, paras.[75-76](#).

harm caused by eviction from encampments. The presence of adequate shelter space is a red herring.

[76] Second, the life, liberty and security of the applicants are not put at risk by enforcement of the by-law. They are put at risk by homelessness. Encampments contribute to this risk. They are lawless, dangerous and unsanitary.

28. In reaching this conclusion, Ramsay J. preferred the evidence of Hamilton's sole expert, Dr. Koivu, regarding generalized harms of homelessness, over the evidence of the Appellants' experts, Drs. Kate Hayman, Stephen Hwang, Andrew Orkin, and Andrea Sereda. He also refused to qualify Dr. Sereda because of her advocacy.

29. Ramsay J. found no breach of s. 15 also based on causation:

[80] I do not think that the by-law violates the equality rights of Indigenous persons, women and persons with a disability. The law does not treat them differentially by intent or impact. They are disadvantaged by homelessness, not by enforcement of the by-law.

[81] The fact that a group is over-represented does not by itself prove illegitimate discrimination.

[82] The only characteristic that the applicants all share is homelessness. It is agreed that homelessness is not an enumerated or analogous ground.

30. Finally, in *obiter*, Ramsay J. stated that *Charter* damages were not warranted because Hamilton had not acted "wrongly, in bad faith or in abuse of power".¹⁶

31. On March 5, 2025, Council repealed the *2023 Protocol* effective March 6, resulting in a blanket prohibition on tents in public parks.¹⁷

Court of Appeal

32. On January 22, 2025, the Appellants appealed the final order, and the November 5 and December 4, 2025, interlocutory orders regarding the exclusion of evidence.

¹⁶ *Heegsma*, para. 66.

¹⁷ [Hamilton City Council Minutes \(March 6, 2025\)](#), item 9.2, pp.23-25.

33. On February 26, 2025, Hamilton brought a motion to quash the appeal of the two interlocutory orders. On July 22, 2025, the Court dismissed Hamilton's motion.¹⁸

PART III – ISSUES AND ARGUMENT

34. This appeal raises the following issues:

- a. **Issue 1:** Did Ramsay J. err in assessing the impact of sheltering restrictions on the Appellants?
- b. **Issue 2:** Was Ramsay J.'s finding of no overnight evictions tainted by discriminatory stereotypes?
- c. **Issue 3:** Did Ramsay J. err by finding no s. 7 violation?
- d. **Issue 4:** Did Ramsay J. err by finding no s. 15 violation?
- e. **Issue 5:** Were the ss. 7 and 15 violations saved by s. 1?
- f. **Issue 6:** What is the appropriate remedy?

Issue 1: Did Ramsay J. err in assessing the impact of sheltering restrictions?

35. In assessing the impact of sheltering restrictions on the Appellants, Ramsay J. erred by misapplying R 51 of the *Rules of Civil Procedure*, failing to apply *Mohan*, applying the wrong legal test for the evidence of the Appellant's treating physicians, and basing a material determination that the Appellants had alternatives to sleeping rough

¹⁸ *Heegsma v. Hamilton*, [2025 ONCA 554](#) [*Motion to Quash*].

on no evidence. It is an error of law to ignore relevant evidence. The standard of review for these errors is correctness.¹⁹

Misapplying R 51

36. Ramsay J. excluded relevant evidence by misapplying R 51, which sets the process for a party to admit or be deemed to admit the authenticity of a document without the need for it to be proven at trial.

37. Between May 31, 2023, and August 24, 2024, the Appellants served RTAs regarding the authenticity of three sets of City documents:²⁰

- a. Hamilton's monthly data of the number of actively homeless persons and shelter bed capacity from January 2020 to January 2024 (broken down by sex) from Hamilton's "Housing and Homeless Dashboard" website;
- b. Hamilton's explanation of the purpose for collecting the Dashboard data and definitions of the relevant terms; and
- c. Hamilton's 2021 "Point in Time Count" of the demographic makeup of Hamilton's unhoused population, including its Indigenous population.

38. Hamilton admitted the authenticity of the City documents between June 20, 2023, and September 10, 2024.²¹ Cross-examinations closed on October 15, 2024. On November 22, 2024, the Appellants included these documents in the application record.

¹⁹ *Rules of Civil Procedure*, [RRO 1990 Reg. 194](#), R [51](#); *R. v. Mohan*, [\[1994\] 2 SCR 9 \[Mohan\]](#); *Canada (Director of Investigation and Research) v. Southam*, [\[1997\] 1 SCR 748](#), para.[41](#); *Sharbern Holding v. Vancouver Airport Centre.*, [2011 SCC 23](#), paras.[62](#) and [71](#); *Davies v. AIG Insurance*, [2024 ONCA 509](#), para.[29](#); *P.S. v. Ontario*, [2014 ONCA 900](#), para.[161](#).

²⁰ RTA (May 31, 2023) [**ABC, Vol-11**, Tab-144, pp.150-420], RTA (August 2, 2023) [**ABC, Vol-11**, Tab-146, p.432-509], RTA (June 7, 2024) [**ABC, Vol-11**, Tab-148, p.520-550], RTA (June 25, 2024) [**ABC, Vol-11**, Tab-150, p.557-578], RTA (August 26, 2024) [**ABC, Vol-11**, Tab-153, pp.619-830].

²¹ RTA Response (June 20, 2023) [**ABC, Vol-11**, Tab-145, pp.422-430], RTA Response (August 23, 2023) [**ABC, Vol-11**, Tab-147, pp.511-518], RTA Response (June 7, 2024)

39. But on December 4, 2024, Ramsay J. excluded the City documents on a motion by Hamilton, reasoning as follows:²²

Volumes XVIII, XIX and XX of the application record [containing the authenticated documents] might have been admissible if they had been introduced before cross-examinations but admitting them now would be prejudicial to the respondents. The expert witnesses could have relied on the documents in their affidavits or in cross-examination. The requests to admit authenticity do not constitute notice that the documents would be admitted into evidence. These three volumes of the application record are struck.

40. As this Court explained in dismissing Hamilton's motion to quash the relevant ground of appeal, Ramsay J. excluded:²³

...evidence of the demand for shelter beds, the challenges and disproportionate effect of the measures taken on the responding parties which is relevant to the issue of whether the sheltering restrictions and evictions constitute a deprivation of their s. 7 right to life, liberty and security of the person, and their s. 15 right to equality, and whether the evictions were conducted in a manner that could be justified as a reasonable limit prescribed by law within the meaning of s. 1 of the *Charter*.

41. Ramsay J. failed to comply with the plain and ordinary language of R 51, whereby authenticated documents become part of the record without further steps. He superimposed the additional requirement that a party relying on authenticated documents must also make them exhibits to an affidavit or cross-examination. But the *Rules* do not impose such a requirement. On the contrary, as the Divisional Court explained in *Muskoka Lakes*:²⁴

[**ABC, Vol-11**, Tab-149, pp.552-555]; RTA Response (June 26, 2024) [**ABC, Vol-11**, Tab-151, pp.580-583]; RTA Response (July 15, 2024) [**ABC, Vol-11**, Tab-152, pp.585-588]; RTA Response (September 10, 2024) [**ABC, Vol-11**, Tab-154, pp.832-836].

²² Endorsement (December 4, 2024) [**ABC, Vol-1**, Tab-12A, p.154].

²³ *Motion to Quash*, para.[37](#).

²⁴ *Muskoka Lakes v. 1679753 Ontario*, [2011 ONSC 1997](#), para.[35](#) (emphasis added); *Ash v. Ontario (Chief Medical Officer)*, [2022 ONCA 849](#), para.[7](#); *Rule 51-Admissions*, [2022 CanLIIDocs 1039](#), s.[1](#).

The request to admit procedure is intended to expedite the resolution of disputes **by dispensing with the need for formal proof at trial of a particular fact or of documentary authenticity**. It provides a simplified format for admissions to assist parties in defining the issues, thereby **reducing the length and costs** of litigation...

42. Ramsay J.'s interpretation of R 51 undermines the goal of the RTA process: to streamline the creation of the record by obviating the need for proof of authenticated documents through a witness. He also interpreted R 51 inconsistently with R 1.04, which requires the *Rules* to be interpreted "to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits" – i.e., for authenticated documents to become part of the record without formal proof.

43. Further, this Court should admit Hamilton's authenticated documents into evidence under the public documents exception to the hearsay rule, whereby "reports of public officials are admissible for the truth of their contents" because of "the inherent reliability and trustworthiness of records and reports generated by public officials" and "to avoid the inconvenience of public officials having to be present in court to prove them". These documents are admissible because:²⁵

- a. they were made by public officials;
- b. the public officials made them in discharging a public duty or function;
- c. they were made to serve as a permanent record; and
- d. they are available for public inspection.

²⁵ *J.N. v. C.G.*, [2023 ONCA 77](#), paras. [25-28](#).

Failing to apply Mohan

44. Ramsay J. failed to apply *Mohan* to admit evidence given by Hamilton's expert, Dr. Koivu, with respect to general health outcomes of homelessness. *Mohan* requires the Court to assess whether a tendered expert is properly qualified to give the evidence at issue and whether expert evidence is relevant. Ramsay J. did not apply these criteria to Dr. Koivu or her evidence. If he had, they would not have been satisfied.

45. Dr. Koivu is unqualified to give evidence on general health outcomes of homelessness because she is an inpatient **addiction** physician who treats unhoused patients referred by other medical services **in hospital**. She does not practice family or emergency medicine in relation to the unhoused, unlike the Appellants' physician experts, Drs. Hayman, Hwang, Orkin, and Sereda. Nor does she provide outpatient care of any kind – also unlike the Appellants' physician experts – let alone in encampments or shelters, unlike Dr. Sereda. Her publications are only about addiction. Further, her testimony strayed from her expertise. She drew on her experience as a **camper** (not a physician) to implausibly opine that tents did not reduce the risk of frostbite. Finally, most of the sources she cited were inadmissible hearsay – news stories on events in encampments she did not directly observe and with which she was uninvolved.²⁶

46. Dr. Koivu's evidence also failed to satisfy *Mohan* because it was irrelevant. She compared the health outcomes of unhoused persons staying in **shelters** to those in

²⁶ *Heegsma*, paras. [55-61](#); Sharon Koivu XE Transcript (September 6, 2024) [**"Koivu XE"**], p.62, Q56; pp.62-69, Q57-Q180; pp.70-71, Q190-Q212; pp.75-76, Q277-Q290, pp.76-79, Q296-Q357; pp.82-138, Exs.1-5 [**ABC, Vol-11**, Tab-143]; Sharon Koivu Affidavit (July 26, 2024) [**"Koivu Affidavit"**], pp.9-10, paras.5-6; p.11, para.15; pp.29-40, Ex.A [**ABC, Vol-11**, Tab-142].

encampments but did not address the central issue: how outcomes or medical care for **encampment** residents compare to those for persons **living rough**.

47. Because Dr. Koivu’s evidence was inadmissible, the Appellants’ expert evidence was uncontradicted and Ramsay J. should have relied on it.

48. Ramsay J. also erred by asking the wrong question in assessing the admissibility of Dr. Sereda’s evidence. Instead of determining whether her evidence met *Mohan*, Ramsay J. excluded it on the basis that she was “a partisan advocate for one side” because she had advocated for the unhoused in London. He failed to follow *Black*, which held that advocacy by experts on homelessness is not disqualifying *per se*. Nor did he address *Kingston*, which held that Dr. Sereda’s advocacy for the unhoused did not disqualify her as an expert in a *Charter* challenge to a by-law prohibiting encampments.²⁷

Applying the wrong test regarding the treating physicians’ evidence

49. Ramsay J. erred by applying the participant expert test to exclude relevant evidence from the Appellants’ physicians – Drs. Wiwcharuk, O’Shea, Bodkin and Lamont – of the Appellants’ experiences of sheltering restrictions and evictions, and the resulting physical and psychological harms.

50. To be clear, Ramsay J. correctly struck opinion evidence from the physicians’ affidavits, because the physicians were not tendered as experts. The Appellants’ Notice

²⁷ *Heegsma*, para. [54](#); *Black v. Toronto*, [2020 ONSC 6398](#), para. [31](#) [**Black**]; *Kingston v. Doe*, [2023 ONSC 6662](#), para. [104](#).

of Motion and Factum made it clear that they tendered the physicians as fact witnesses.²⁸

- Notice, ground 6: “the affiants are put forward as fact witnesses only, with no intention to adduce improper opinion evidence”;
- Factum, para. 9: “The Applicants did not provide a Form 53 for any of the reports and subsequent affidavits, as it was always the intention for the doctors to be fact witnesses only”; and
- Factum, para. 20: “Should the Court grant leave under Rules 1.04(1), 1.05, 2.01(1), 25.11, 37.10 and 37.13 to amend the four medical fact witness affidavits?”.

51. Ramsay J. had previously determined the number and identity of the Appellants’ expert witnesses pursuant to a motion under s. 12 of the *Ontario Evidence Act*.²⁹ But he nonetheless excluded portions of the physicians’ evidence using the “participant expert” test, as the physicians were not experts, but fact witnesses.³⁰ This was an error.

52. These physicians saw and treated the Appellants and relied on their medical records to prepare their reports. They also relied on and had access to additional information sources to create a reliable medical record, including from other physicians, paramedics with the Respondent’s Social Navigation program, pharmacy records, social services, shelter workers, harm reduction groups, and patient advocacy groups.³¹

²⁸ Notice of Motion [**ABC, Vol-11**, Tab-156, p.863]; Factum [**ABC, Vol-11**, Tab-155, pp.842-843].

²⁹ Order (October 30, 2023) [**ABC, Vol-1**, Tab-7, pp.106-108].

³⁰ Endorsement (November 12, 2024) [**ABC, Vol-1**, Tab-11, pp.119-150].

³¹ E.g. Jill Wiwcharuk Affidavit (June 7, 2024) [**“Wiwcharuk Affidavit”**], pp.113-114, paras.3,7; Ex.A [**ABC Vol-7**, Tab-90]; Jill Wiwcharuk XE Transcript (August 16, 2024), p.133, Q41; p.134, Q56; p.136, Q85,92 [**ABC Vol-7**, Tab-91]; Jill Wiwcharuk Continued XE Transcript (September 6, 2024), pp.154-155, Q74-82 [**ABC Vol-7**, Tab-92]; Rachel Lamont XE (October 7, 2024), p.105, Q23-24; pp.112, Q123-124; p.136, Q386-389 [**ABC Vol-6**, Tab-80].

53. *Davies* considered the scope of evidence allowed from a fact/participatory witness who is a treating doctor and classified the evidence of treating doctors as “pure fact witnesses whose evidence falls clearly within the definition of a participatory witness” where the evidence related to the patient history, treatment, diagnosis and prognosis.³²

Determination that Appellants had alternatives to sleeping rough

54. Ramsay J. concluded that:³³

- a. unhoused persons in Hamilton had sheltering options beyond the shelter spaces established in the record; and
- b. it would be “impossible” for Hamilton to provide accessible shelters.

55. There was no evidence in the record for either conclusion, which were material to assessing the impact of sheltering restrictions and Ramsay J.’s rejection of *Waterloo* as “arbitrary”. The Appellants lacked sheltering options beyond the shelter spaces established in the record. The By-Law’s sheltering restrictions required them to sleep rough when they could not access indoor shelter space. Ramsay J.’s determinations in the absence of evidence constitute an error of law.³⁴

56. *First*, Hamilton’s own data shows that demand for shelter spaces exceeded supply during the relevant period. Hamilton’s website hosts a “Housing and Homelessness Dashboard” that reports “Current Individuals Actively Homeless” and “Current Systemwide Shelter Bed and Room Capacity”. A “Data Notes” defines “Actively Homeless” as “individuals who were experiencing homelessness at the end of the

³² *Davies v. The Corporation of the Municipality of Clarington*, [2016 ONSC 1079](#), paras.[36-37](#); *Paul v. Miller*, 2022 [NSSC 255](#).

³³ *Heegsma*, paras.[42](#), [73](#).

³⁴ *R. v. J.M.H.*, [2011 SCC 45](#), para.[25](#); *R. v. Hodgson*, [2024 SCC 25](#), paras.[34-35](#). See also: *R. v. Attard*, [2024 ONCA 616](#), para.[43](#); *R. v. Varghese*, [2024 ONCA 555](#), para.[31](#).

month” and “Shelter Bed or Room Capacity” as “the total number of beds and rooms available on the last day of the month” that are “city-funded”, such that “Beds and rooms combined represent the system capacity”. A June 19, 2024, City report to the General Issues Committee, “Reducing Homelessness and Managing Encampments” [**“June 2024 Report”**] explains that each “hotel room” contains 4 beds.³⁵

57. In August 2021, there were 1182 “actively homeless”, and 249 shelter beds and 177 rooms (including 157 hotel rooms). If each room had 4 beds, the “system capacity” was 957 beds. In September 2021, there were 1202 actively homeless and 997 beds; in June 2022, 1539 and 950; in December 2022, 1530 and 576; in August 2023, 1881 and 573. Robert Mastroianni, Manager, Homelessness and Housing Support, testified that shelter bed data can overstate capacity because shelters do not provide empty beds in a room with a family to an unrelated person.³⁶

58. The June 2024 Report draws the same conclusion from Hamilton’s data:

We know that the shelter system is consistently at 99-100% occupancy with **many individuals and families being turned away each night**. While we continue to provide **52 hotels rooms (or 208 beds)** as overflow, this paired with the **current capacity of 345 permanent and 20 temporary shelter beds does not come close to meeting the needs of the roughly 1592 people experiencing homelessness in the City**.

³⁵ Housing and Homelessness Dashboard (May 16, 2022) [**ABC, Vol-19**, Tab-153, pp.624-626]; Data Notes (August 25, 2024) [**ABC, Vol-11**, Tab-153, p.628]; Dashboard Data (January 2020-January 2024) [**ABC, Vol-11**, Tab-153, pp.629-637]; Reducing Homeless and Managing Encampments (June 19, 2024) [**“June 2024 Report”**], p.1092 [**ABC, Vol-9**, Tab-125].

³⁶ Dashboard Data (January 2020-January 2024) [**ABC, Vol-11**, Tab-153, pp.629-637]; Robert Mastroianni Third Supplementary Affidavit (July 31, 2024) [**“3rd Supplementary Mastroianni Affidavit”**], pp.140-141, Ex.A [**ABC, Vol-10**, Tab-134]; Robert Mastroianni XE Transcript (August 28, 2024) [**“Mastroianni XE 2024”**], p.154, Q130-131 [**ABC, Vol-10**, Tab-135]; Medora Uppal Supplemental Affidavit (June 4, 2024) [**“Supplemental Uppal Affidavit”**], p.88, para.17 [**ABC, Vol-7**, Tab-88].

The June 2024 Report also states the homeless count “is **consistently approximately 1600**” and “city-funded shelters are **consistently at, or over, capacity**”.³⁷ Indeed, Ramsay J. seemed to accept that demand exceeded supply.³⁸

59. *Second*, Hamilton’s witnesses also testified that demand for shelter beds exceeded supply:

- a. In October 2021, Mr. Mastroianni stated “[t]here have been occasions where no space was available at hotels or shelters.” In 2024, he twice agreed with the March 2023 statement of a coalition of Hamilton shelters that Hamilton’s shelter system was on the “verge of collapse”.³⁹
- b. David Buckle, Supervisor of the Housing First Street Outreach Team, agreed that “City-funded shelters are consistently at or over capacity.”⁴⁰
- c. Shawn MacKeigan, Executive Director of Mission Services, agreed that lack of shelter capacity could place people (especially women, Indigenous people, members of the 2SLGBTQ community, and people with disabilities) at risk of physical harm, violence and even death; insufficient capacity in the women’s system has long been the focus of advocacy; and despite the creation of additional beds during COVID, the women’s system is virtually always over capacity.⁴¹
- d. James Moulton, Executive Director of Salvation Army, confirmed that his men’s shelter has operated at over 100% capacity for years. Tess

³⁷ June 2024 Report, pp.1091,1098,1099,n1 [**ABC, Vol-9**, Tab-125] (emphasis added).

³⁸ *Heegsma*, para.43.

³⁹ Robert Mastroianni Affidavit (October 6, 2021), p.82, para.62 [**ABC, Vol-10**, Tab-131]; Supplementary Robert Mastroianni Affidavit (October 12, 2021), p.89, para.7 [**“Supplementary Mastroianni Affidavit”**] [**ABC, Vol-10**, Tab-132]; Mastroianni XE 2024, p.146, Q23; p.149, Q65; p.155, Q152 [**ABC, Vol-10**, Tab-135].

⁴⁰ Supplementary Mastroianni Affidavit, p.89, para.7 [**ABC, Vol-10**, Tab-132]; Mastroianni XE, p.146, Q23; p.149, Q65; p.155, Q152 [**ABC, Vol-10**, Tab-135]; David Buckle XE Transcript (August 19, 2024) [**“Buckle XE”**], p.1082, Q104 [**ABC, Vol-9**, Tab-125].

⁴¹ Shawn MacKeigan XE Transcript (August 21, 2024) [**“MacKeigan XE”**], pp.221-222, Q181-185 [**ABC, Vol-10**, Tab-139].

McFadzean, Director of Women's Services at Good Shepherd, confirmed that all women's shelters have been over capacity since June 2021.⁴²

60. *Third*, each female Appellant experienced the women's shelter system to be regularly, if not always, at capacity. So did two male Appellants.⁴³

61. *Fourth*, Hamilton's documents also demonstrate that even if shelter beds are available, they are inaccessible to some persons, and if accessible shelter were available, a large majority of encampment residents would prefer it. Hamilton's May 15, 2024 "Encampment Report" to Council's General Issues Committee cited "barriers to emergency shelter" including "a lack of pet-friendly and couples' spaces, harm reduction friendly policies, privacy concerns, and requirements to leave and return to secure a bed every day, that precluded them from wanting to access the service". It also stated that 71% of encampment residents "**would consider accessing spaces in the emergency shelter system more suitable to their needs** (i.e. some of the barriers to access were potentially reduced)" and "**[h]ousing also continues to be difficult to acquire for individuals living in encampments**, especially those who may require supports that assist in their transition."⁴⁴

62. The June 2024 Report repeated these points:⁴⁵

While there will always be individuals who prefer to live outside, **there are individuals who would shelter within City-funded programs if there were**

⁴² James Moulton XE Transcript (August 26, 2024) ["**Moulton XE**"] p.254, Q47 [ABC, Vol-10, Tab-141]; Tessa McFadzean XE Transcript (August 22, 2024) ["**McFadzean XE**"] p.184, Q118-119 [ABC, Vol-10, Tab-137]; Ameil Joseph Affidavit (June 14, 2022), p.849, para.4 [ABC, Vol-8, Tab-106].

⁴³ Monahan XE, p.147, Q266-272 [ABC, Vol-4, Tab-58]; Mario Muscato Affidavit (May 11, 2022), p. 26, paras.11, 14-15; Mario Muscato XE (August 14, 2024), pp.39-40, Q213-214 [ABC Vol-5, Tab-63].

⁴⁴ Encampment Report (May 15, 2024), pp.1117-1118 [ABC, Vol-9, Tab-125] (emphasis added).

⁴⁵ June 2024 Report, p.1099 [ABC, Vol-9, Tab-125] (emphasis added).

appropriate spaces. However, city-funded shelters are consistently at, or over, capacity (Figure 3). In addition to these capacity pressures, there are gaps in service for individuals with pets and couples without children. **Because there is no space for those who are unwilling to access shelter separately from their partners, these individuals often chose to live in encampments. Without additional resources in these targeted areas, encampments are likely to persist.**

63. *Fifth*, Hamilton's evidence is that in December 2023, 65% of encampment residents had high or very high acuity. In 2021 and 2024, Mr. Mastroianni testified that behaviours associated with high acuity can lead to exclusion from shelters because they are "difficult to manage in a congregate setting."⁴⁶ Mr. MacKeigan agreed that shelters are not equipped to support people with complex mental health needs, and that behaviours associated with mental health and substance use disabilities can lead to service restrictions.⁴⁷

64. *Sixth*, the uncontradicted evidence of the Appellants' expert witnesses shows that these barriers are a function of how homeless shelters operate, including that shelters operate overnight and discharge people in the morning, are set up for individuals and are separated by gender/gender identity, provide shelter in a congregate setting with many people in the same room, may limit the number of nights an individual can stay, operate on a first come first served basis, have a curfew, generally do not have staff trained to deal with mental illness, have rules and restrictions, do not permit personal possessions beyond the minimum, and generally do not allow drinking and drug use. People may also fear threats, violence and property damage from other

⁴⁶ Buckle Affidavit, p.1017, para.9; p.1020, para.26 [ABC, Vol-9, Tab-123]; Mastroianni XE Transcript (October 13, 2021) ["Mastroianni XE 2021"], p.107, Q12 [ABC, Vol-10, Tab-133]; Mastroianni XE 2024, pp.147-148, Q49-52 [ABC, Vol-10, Tab-135].

⁴⁷ MacKeigan XE, p.219, Q154-157; p.220, Q169 [ABC, Vol-10, Tab-139].

shelter residents. Women fear sexual and other violence in shelters and have had their belongings stolen.⁴⁸ The fact witnesses confirmed these facts all hold true for Hamilton.⁴⁹

Issue 2: Was the finding of no overnight evictions tainted by discriminatory stereotypes?

65. Ramsay J.'s determination that no overnight evictions took place was material to his findings that there was no s. 7 breach and that *Charter* damages were unwarranted. This was the wrong question, because the issue was not the time of day that evictions physically took place, but whether sheltering restrictions and evictions interfered with the Appellants sheltering themselves overnight.

66. Moreover, his finding that no evictions took place overnight was tainted by discriminatory stereotypes about persons with mental health and addiction disabilities. Other than this stereotype-based credibility assessment, Ramsay J. provided no coherent reasons for rejecting the evidence from each Appellant of their experience with sheltering evictions. Basing material determinations on discriminatory stereotypes is an error of law, as is a failure to provide adequate reasons for credibility assessments.⁵⁰

⁴⁸ Stephen Gaetz Affidavit (June 14, 2022) [**"Gaetz Affidavit"**], p.19, para.25; pp.23-27, para.30 [**ABC, Vol-8**, Tab-97]; Kaitlin Schwann Affidavit (June 13, 2022) [**"Schwann Affidavit"**], Ex.B [**ABC, Vol-9**, Tab-115, pp.57-116]; Kate Hayman Affidavit (February 28, 2023) [**"Hayman Affidavit"**], pp.555-557, para.7 [**ABC, Vol-8**, Tab-100]; Andrea Sereda Affidavit (May 12, 2023) [**"Sereda Affidavit"**], pp.558-563, paras.26-33 [**ABC, Vol-9**, Tab-118].

⁴⁹ Olivia Mancini Affidavit (July 18, 2023) [**"Mancini Affidavit"**], p.164, para.23; pp.165-166, paras.26-27 [**ABC, Vol-6**, Tab-82]; Moulton XE, p.258, Q103-109 [**ABC, Vol-10**, Tab-141]; McFadzean XE, pp.181-182, Q73-82 [**ABC, Vol-6**, Tab-137].

⁵⁰ *R. v. Kruk*, [2024 SCC 7](#) [*Kruk*]; *Law Society of Upper Canada v. Neinstein*, [2010 ONCA 193](#), para.94; *R. v. Dinardo*, [2008 SCC 24](#), para.26; *Dovbush v. Mouzitchka*,

Discriminatory stereotypes regarding perception and memory

67. Ramsay J. rejected the credibility of the Appellants' evidence that they had been evicted overnight with a single paragraph of reasons:⁵¹

[24] **The remaining applicants all used or use drugs.** Many of the affidavits of the applicants contain boilerplate. Parts were obviously drafted by lawyers. **The applicants, apart from Mr. Smyth, have mental issues or drug problems which can affect perception and memory.** Some of their recollections of being evicted were **hazy or were the product of what they were told.** I prefer the evidence of the City staff as to what happened in enforcement of the by-law.

68. This statement reflects a reliance on discriminatory stereotypes that persons with mental health and addiction disabilities have reduced ability to perceive and remember their own experiences. This error is reviewable on the correctness standard.

69. *First*, *Kruk* held that it is an error of law for a finder of fact to base credibility determinations on stereotypes. *Kruk* rejected credibility determinations based on stereotypes regarding sexual assault claimants because such stereotypes are “rooted in discrimination and inequality of treatment”. It recognized that reliance on **other** stereotypes “rooted in discrimination and inequality of treatment” may also constitute errors of law.⁵² Mental health and addiction disability stereotypes are rooted in discrimination and inequality of treatment.

70. *Second*, appellate courts have long rejected discriminatory stereotypes about persons with mental health disabilities. *Swain* rejected the discriminatory stereotype that

[2016 ONCA 381](#), paras.[28-29](#); *Gholami v. The Hospital of Sick Children*, [2018 ONCA 783](#), paras.[65-66](#).

⁵¹ *Heegsma*, para.[24](#) (emphasis added); also see para.[38](#).

⁵² *Kruk*, paras.[49-57](#).

persons with mental health disabilities “are incapable of rational thought”.⁵³ Yet Ramsay J. relied on this stereotype.

71. *Third*, in *Tranchemontagne*, this Court condemned discriminatory stereotypes in relation to mental health disabilities arising from substance dependence: “[a]ddiction is a disability that carries with it great social stigma and [...] this stigmatization is compounded where an addicted person is also part of another stigmatized group, such as those on social assistance”.⁵⁴ Ramsay J. also relied on this stereotype.

72. *Fourth*, as this Court explained in *JC*, reliance on discriminatory stereotypes is an error of law if it plays a “material or important role” in explaining a negative credibility determination, and even if the discriminatory stereotype was one of several reasons offered for the decision. No deference is owed to credibility determinations in such circumstances.⁵⁵ This is precisely the case here – the stereotypes were central to the discounting of the memories of overnight evictions.

Appellants’ memories of overnight evictions

73. While some Appellants acknowledged some generalized memory issues, there was no evidence that:

- a. “mental issues or drug problems” affected the Appellants’ perception or memory of their evictions;
- b. **all** the Appellants were unreliable;
- c. **any** memory problems were sufficient to cast doubt on their evidence regarding overnight evictions;

⁵³ *R. v. Swain*, [1991] 1 SCR 933, p.948.

⁵⁴ *Ontario (Disability Support Program) v. Tranchemontagne*, 2010 ONCA 593, para.126.

⁵⁵ *R. v. JC*, 2021 ONCA 131, paras.72-74.

- d. the Appellants' affidavits were the "product of what they were told", including evidence of what they were purportedly told, or by whom; and
- e. evictions from the by-law or HPS officers who enforced the *2021 Process* contradicted the Appellants' evidence of overnight evictions.

74. Indeed, Ramsay J. did not cite a **single** instance of alleged memory problems regarding overnight evictions from the Appellants' evidence. Nor could he have, as the Appellants' consistent evidence was that they remembered multiple instances of encampment evictions between August 2021 and August 2023. Their physicians corroborated this evidence. Some non-exhaustive examples include:

- a. Ms. Marshall consistently recounted an overnight eviction that took place in May 2022, with the police attending at approximately 11:00 pm, giving her about 20 minutes to leave, her leaving to avoid being arrested, and only using a tarp – which didn't provide much protection – because tents were no longer allowed.
- b. Ms. Heegsma consistently recounted the timeline of her November 2021 eviction from Wolverton Park, the fact that the eviction was tied to the November 2021 dismissal of the *Poff* injunction, that she was forced to leave all her belongings behind, and that she had to sleep on park benches following the eviction. Dr. Lamont confirmed this evidence and provided additional evidence of subsequent assaults and sexual assaults.
- c. Mr. Greaves consistently recounted his eviction from Woodlands Park, including the three days' notice given to vacate, the fact that he was the last one to be evicted, and that he lost his belongings after Hamilton had agreed to provide storage. He also verified that he could not stay in the hotel because he could not bring his remaining belongings and then couch surfed following the eviction.⁵⁶

75. In addition, Dr. Lamont's uncontradicted evidence was that:

⁵⁶ Misty Marshall Affidavit (May 12, 2022), p.107, para.28 [**ABC, Vol-4**, Tab-53]; Marshall XE, pp.121-122, Q187-196 [**ABC, Vol-4**, Tab-55]; Kristen Heegsma Affidavit (June 7, 2022), p.54, paras.8-11 [**ABC, Vol-3**, Tab-35]; Heegsma XE Transcript, pp.72-73, Q184-203 [**ABC, Vol-3**, Tab-37]; Lamont Affidavit, p.78, Ex.A, para.3 [**ABC, Vol-6**, Tab-79]; Lamont XE, pp.111-112, Q110-120 [**ABC, Vol-6**, Tab-80]; Linsley Greaves Affidavit (June 2, 2022), p.30, paras.17-22 [**ABC, Vol-3**, Tab-32].

- a. Her patients were “able to relay their own experiences quite well”.⁵⁷
- b. A diagnosis of opioid stimulant use disorder does not make someone unable to provide accurate information. While a person who is “particularly intoxicated” [etc.] might have “some difficulty with memory and recall of information”, she did not indicate this was the case for any of her patients.⁵⁸
- c. Psychosis could affect a patient's ability to provide information, but only “in relation to whatever the nature of their psychosis is”.⁵⁹
- d. “[M]ost people with schizophrenia would ... be able to provide a reliable history”.⁶⁰

76. Dr. O'Shea's uncontradicted evidence was that his patients (who typically have mental health disabilities) had no better or worse ability to recall or report information than any other patients.⁶¹

77. Hamilton's evidence does not support its factual assertion that there were no overnight evictions between August 2021 and August 2023. A January 2023 report discloses that trespass notices were issued in 2022. While Ms. Monica Ciriello's October 2021 affidavit asserts there were no overnight evictions as of that date, it does speak to the period between October 2021 and August 2023. Ms. Ciriello's July 2024 affidavit was silent on overnight enforcement. She also testified that Hamilton would not

⁵⁷ Lamont XE, p.110, Q94 [**ABC, Vol-6**, Tab-80].

⁵⁸ Eleven Appellants have been diagnosed with stimulant use disorder or substance use disorder: Heegsma, Jordan, Monahan, Marshall, Marchand, Arnold, Muscato, Lewis, Pierre, MacDonald. For five Appellants, the stimulant use disorder relates to opioids: Marshall, Marchand, Arnold, Muscato, Lewis. Lamont XE, p.110, Q97 [**ABC, Vol-6**, Tab-80].

⁵⁹ Marchand has been diagnosed with psychosis. Lamont XE, p.110, Q98 [**ABC, Vol-6**, Tab-80].

⁶⁰ Lamont XE, p.110, Q99 [**ABC, Vol-6**, Tab-80].

⁶¹ Timothy O'Shea XE Transcript, p.206, Q40 [**ABC, Vol-6**, Tab-86].

dictate how HPS would enforce trespass notices. This would presumably include **when** such notices are enforced.⁶²

78. Ramsay J. states that “many” affidavits contained boilerplate language and were “obviously drafted by lawyers” but does not explain which parts were allegedly boilerplate or why. The affidavits do not contain shared phrases, which is what boilerplate commonly means. While some affidavits describe similar facts – needing shelter and finding none, wandering day and night with one's belongings, losing belongings when evicted from sheltering locations, being sexually assaulted, sleeping unsheltered, experiencing physical injuries and mental distress – these reflect common experiences of unhoused individuals.

79. Ramsay J. raised these concerns on his own motion. In oral argument, neither he nor Hamilton raised this concern. Nor did Hamilton raise it when cross-examining the Appellants.

80. Ramsay J. addressed the evidence of the thirteen different witnesses with mental health disabilities as a monolith, making it impossible for a reviewing Court to assess which parts of which witnesses' evidence he found not credible on which points. He stated “some” witness recollections were “hazy”, without explaining which witness's recollections were hazy on what points or why one witness's hazy memory warranted rejecting the evidence the others.

⁶² Monica Ciriello Affidavit (October 5, 2021) [**ABC, Vol-9**, Tab-126]; Second Supplementary Monica Ciriello Affidavit (July 29, 2024) [**ABC, Vol-9**, Tab-127]; Blake Affidavit, Ex.C, Encampment Pilot Evaluation (January 18, 2023), pp.706-707 [**ABC, Vol-9**, Tab-121]; Ciriello XE Transcript, p.1150, Q68-74 [**ABC, Vol-9**, Tab-128].

81. The rejection of the evidence of the Appellants with mental health disabilities reflected the application of a further stereotype – that persons with mental health disabilities “can all be painted with the same brush”. *Ontario (AG) v. G* rejected this very stereotype.⁶³

[61] ... In reality, persons with disabilities are not flawed, nor can they all be painted with the same brush. While they may share experiences of “[s]tigma, discrimination, and imputations of difference and inferiority” [citation omitted] diversity within those labelled disabled is not the exception but the rule ...

82. The stereotype that persons with disabilities are all the same is also reflected in the generalization that Ramsay J. makes two paragraphs later, without any evidentiary basis, that persons with substance use do not prioritize shelter.⁶⁴

83. Without this stereotype-based reasoning for rejecting the Appellants’ evidence of their overnight evictions, what remained was their direct evidence, corroborated on cross examination, that overnight evictions **had** taken place.

Issue 3: Did Ramsay J. err by finding no s. 7 violation?

84. Ramsay J. further erred by failing to apply the established s. 7 framework – or any legal test – to assess the constitutionality of the By-Law’s sheltering restrictions. Had he done so based on the record, he would have found that the By-Law’s sheltering restrictions violated s. 7, both overnight and during daytime.

⁶³ *Ontario (AG) v. G*, [2020 SCC 38](#), para.[61](#).

⁶⁴ *Heegsma*, para.[26](#).

Sheltering restrictions and s. 7

85. The legal framework for sheltering restrictions and evictions under s. 7 is built on the British Columbia Court of Appeal's landmark 2009 decision in *Adams*.⁶⁵ *Waterloo* summarizes the legal framework as follows:⁶⁶

- a. Overnight sheltering restrictions or evictions violate s. 7 of the *Charter* if individuals cannot access shelter, when shelter beds:
 - are **insufficient**, leaving the unhoused “no alternative but to sleep outside”;⁶⁷ or
 - are **inaccessible**, because they are “impractical for homeless individuals either because the shelters do not accommodate couples, are unable to provide required services, impose rules that cannot be followed due to addictions, or cannot accommodate mental or physical disability, they are not low barrier and accessible to the individuals they are meant to serve.”⁶⁸
- b. Overnight sheltering restrictions and evictions deprive individuals of their:
 - **life**, because they interfere with “the ability to provide adequate shelter for oneself”, which “is a necessity of life that falls within the right to life protected by section 7 of the *Charter*”, since “exposure to the elements can result in serious harm, including death”, especially “during the late fall and winter months” (of which courts have taken judicial notice);⁶⁹
 - **security of the person** for the same reasons – that is, they increase the “risk of significant health problems, both physical and psychological in nature”;⁷⁰ and

⁶⁵ *Victoria v. Adams*, [2008 BCSC 1363](#); *Victoria v. Adams*, [2009 BCCA 563](#) [**Adams**]; *Abbotsford v. Shantz*, [2015 BCSC 1909](#) [**Shantz**]; *Prince George v. Stewart*, [2021 BCSC 2089](#) [**Stewart**]; *Bamberger v. Vancouver*, [2022 BCSC 49](#); *Waterloo*; *Waterloo v. Persons Unknown and to be Ascertained*, [2025 ONSC 4774](#) [**Waterloo 2**]; *Kingston*.

⁶⁶ *Waterloo*, paras.[81-82](#); *Waterloo 2*, paras.[87-89](#).

⁶⁷ *Waterloo*, para.[92](#); *Waterloo 2*, para.[91](#).

⁶⁸ *Waterloo*, para.[93](#), following *Shantz*, para.[82](#) and *Stewart*, para.[74](#).

⁶⁹ *Waterloo*, para.[96](#); also see: *Stewart*, para.[86](#); *Kingston*, para.[77](#).

⁷⁰ *Waterloo*, para.[104](#).

- **liberty**, because they interfere with an “individual’s dignity and independence”.⁷¹
- c. these deprivations contravene the principles of fundamental justice in the context of by-laws intended to maintain the use and enjoyment of public spaces, because they are:
- **overbroad** by interfering with conduct bearing no connection to that objective;⁷² and
 - **grossly disproportionate**, because the deleterious effect on life, liberty, and security of person vastly outweighs the beneficial effects of the law.⁷³

86. *Waterloo* also held that the **daytime** sheltering restrictions violated s. 7, because “there is a legitimate need for people to rest and shelter during the day” and no countervailing interests of the public at large, since the property was a vacant lot, not a park. But *Waterloo* does not preclude a *Charter* challenge to daytime restrictions in public parks. While *Kingston* rejected the s. 7 challenge to daytime restrictions in a particular public park on its facts, it left this issue open.⁷⁴

That is not to say that a breach could not be established on the proper evidence. I disagree with the City that s. 7 cannot be invoked to protect daytime sheltering in a public park as this would amount to the grant of a property right.

Application of s. 7 framework

87. The sheltering restrictions and evictions violated s. 7. The overnight restriction was unconstitutional because the Appellants could not access overnight shelter. Supply was insufficient to meet demand. Shelter beds were available in theory, but inaccessible

⁷¹ *Waterloo*, para. [101](#), following *Adams*, para. [109](#).

⁷² *Waterloo*, para. [114](#).

⁷³ *Waterloo*, para. [115](#); *Waterloo 2*, para. [93](#).

⁷⁴ *Waterloo*, para. [105](#), following *Shantz*, para. [276](#); *Kingston*, para. [113](#).

in practice. The Appellants were forced to sleep rough, subjecting them to increased health risks that tents would have mitigated.

88. The Appellants' uncontradicted expert evidence supports this conclusion: "if homeless people who sleep outside are prohibited from erecting any form of shelter such as a tent, tarpaulin, or cardboard box, it is absolutely clear that this would have a substantial and potentially severe adverse effect on their health, and would likely increase their risk of death". This is because:⁷⁵

- a. "a lack of protection from wind and rain would increase the wind chill effect, which would greatly increase the risk of **hypothermia**";
- b. "prolonged exposure to cold and dampness increases the risk of **skin breakdown and skin infections**, particularly in the feet [and] can lead to immersion foot or trench foot";
- c. "exposure to the cold increases the risk of developing **respiratory tract infections**", "a lack of shelter from the sun would greatly increase homeless people's risk of severe **sunburn and heatstroke** during the summer months"; and
- d. "a lack of a tent or other structure to provide even a minimal degree of protection from the elements, light, and noise would result in even more **disturbed and fragmented sleep**" which causes an "increased risk of **diabetes, cardiovascular disease, obesity, depression, and injuries**".

The risks of sunburn, heatstroke and sleep disturbance occur **all year around**.

89. Dr. Hayman's evidence added that women who sleep rough are at particularly high risk for negative health outcomes from interpersonal violence.⁷⁶

⁷⁵ Stephen Hwang Affidavit (February 27, 2023) pp.681-683, paras.7-8 [**ABC, Vol-8, Tab-103**] (emphasis added). *Waterloo* 2, para.[89](#).

⁷⁶ Kate Hayman Affidavit (February 28, 2023) [**"Hayman Affidavit"**], p.562, para.15(b), [**ABC, Vol-8, Tab-100**].

90. Increased risks are deprivations of security of the person and life, since “a risk of such a deprivation suffices” under s. 7. Ramsay J.’s conclusion that sheltering restrictions and evictions did not deprive individuals of life, and security of person because “homelessness” caused those harms, is incorrect. He was bound by *Waterloo* and *Kingston* under horizontal *stare decisis* on causation. The harms at issue are caused by **both** homelessness **and** sheltering restrictions and evictions, especially since homelessness is a product of housing precarity for reasons beyond an individual’s control: rising rental costs and inadequate Ontario Disability Support Program and Ontario Works benefits; the inability of some individuals with complex mental health, addiction and/or trauma struggle to function in rental housing without supports; women fleeing domestic violence; and a vicious cycle of homelessness that chronically unhoused individuals may be unable to escape. This is an error on a mixed question of fact and law reviewable for correctness.⁷⁷

91. To be clear, the psychological harm encompassed by security of the person need not rise to the level of nervous shock or psychiatric illness. It includes stigma, loss of privacy, stress and anxiety, possible disruption of family and social life, uncertainty as to outcome and risk of sanction.⁷⁸

92. Overnight sheltering restrictions and evictions were also deprivations of the Appellants’ liberty, which includes “the right to an irreducible sphere of personal

⁷⁷ *R. v. Sullivan*, [2022 SCC 19](#); *CCR v. Canada*, [2023 SCC 17](#), para.56; *Société des casinos du Québec inc. v. Association des cadres de la Société des casinos du Québec*, [2024 SCC 13](#), paras.45, 92-97; *R. v. Pike*, [2024 ONCA 608](#), para.31; *Jacob v. Canada (AG)*, [2024 ONCA 648](#), para.53 [*Jacob*]; *Fair Voting BC v. Canada (AG)*, [2025 ONCA 581](#), para.82.

⁷⁸ *Kingston*, para.49, applying *New Brunswick v. G.(J.)*, [\[1999\] 3 SCR 46](#), paras.58-67 [*G.J.*].

autonomy wherein individuals may make inherently private choices free from state interference”, regarding “fundamentally or inherently personal [matters] ... that ... implicate basic choices going to the core of what it means to enjoy individual dignity and independence”. *Waterloo* correctly held (following *Adams*) that “creating shelter to protect oneself is ...critical to any individual’s dignity and independence”.⁷⁹

93. The daytime restriction also deprived the Appellants of their security of the person and life interests. The Appellants’ uncontradicted expert evidence is that daytime encampments:

- a. provide **health benefits** in the form of shelter 24/7, mitigating the risks of hypothermia, heatstroke and dehydration, enabling individuals to receive emotional and physical support from a community of encampment dwellers, and decreasing the risk of overdose;
- b. enable residents to live continuously in a single location, which **enhances their access to medical care, social workers** (who can help them access the Ontario Disability Support Program, Ontario Works, and social housing, and apply for government-issued identification), **medication delivery**, and **donations of food and blankets**;
- c. give rise to communities that provide individuals with **increased safety**, including by enabling them to remain with their partners, share food and blankets, and mitigate the risk of sexual assault, assault, and theft;
- d. enable **couples** or “survival partners” to remain together; and
- e. enable residents to live with **greater dignity**, including by providing a modicum of **privacy** and solitude and enabling them to keep personal possessions, have pets that provide emotional support, and come and go without a curfew.⁸⁰

94. The January 2023 Report underscores these very concerns.⁸¹

⁷⁹ *R. v. Malmo-Levine*, [2003 SCC 74](#), para.85; [Waterloo](#), para.101.

⁸⁰ Sereda Affidavit, pp.541-546, para.14; pp.548-551, para.16; pp.551-555, paras.21-22; pp.556-558, para.25 [**ABC, Vol-9**, Tab-118]; Hayman Affidavit, p.559, para.12; p.560, para.14a; pp.561-566, paras.15-16 [**ABC, Vol-8**, Tab-100].

⁸¹ January 2023 Report, pp.706-707 [**ABC, Vol-9**, Tab-121c] (emphasis added).

Others living in encampments moved to less conspicuous areas where they would not be found and therefore would not need to move as frequently. This **impacted the ability of HFSO staff to aid as it became more difficult for staff to find them to make necessary referrals and provide harm reduction and other basic supplies.** Additionally, due to gaps between making contact with people living in encampments it **became more difficult for HFSO staff to maintain continuity in providing a housing plan, as this requires ongoing interaction with staff** and coordination with other services in the community.

95. The Appellants were also deprived of their liberty because encampments had enabled them to live with privacy and dignity.

96. These deprivations did not accord with the principles of fundamental justice, because they were overbroad. Sheltering restrictions and evictions interfered with conduct that did not necessarily interfere with public use and enjoyment of parks. The order sought by the Appellants, and the *2020 Protocol* and *2023 Protocol*, would accommodate the public while permitting encampments. The deprivations were also grossly disproportionate, since the negative effects on life, liberty, and security of person outweigh any legitimate City interest.⁸²

Issue 4: Did Ramsay J. err by finding no s. 15 violation?

97. Ramsay J. similarly failed to apply the established test – or any test – for assessing whether the sheltering restrictions violated s. 15. He reasoned only, over a mere three paragraphs, that the law did not “treat [the Appellants differentially by intent or impact. They are disadvantaged by homelessness, not by enforcement of the by-law”.⁸³

98. When the s. 15 test is applied to the record, it establishes that the sheltering

⁸² *Kingston*, paras.[86-87](#).

⁸³ *Heegsma*, paras.[80-82](#).

restrictions and evictions discriminated based on sex, race (including in combination with sex), and disability.

Test for discrimination under s. 15

99. The test for s. 15 has two steps: (a) does the law draw a distinction; and (b) does the distinction reinforce, perpetuate, or exacerbate disadvantage. For Step 1, a facially neutral law draws a distinction if it has a disproportionate impact on a protected group that “is forced to take on burdens more often than others”. Distinctions need only “create or contribute” to the disproportionate impact, not cause it.⁸⁴

100. Ramsay J.’s failure to even apply this framework is an error of law that is reviewed on correctness. His conclusion that the cause of the disproportionate impact was homelessness, not the sheltering restrictions and evictions, is an error on a mixed question of fact and law also reviewed on correctness.⁸⁵

Discrimination based on sex

101. The sheltering restrictions and evictions discriminated based on sex. The best evidence of the demographic makeup of Hamilton’s unhoused is the Point in Time Count [“**2021 PiT**”], which since 2018, has been mandated by the federal and provincial governments. According to the 2021 PiT, 53% of the persons surveyed identified as women.⁸⁶

⁸⁴ *Fraser v. Canada (AG)*, [2020 SCC 28](#), paras.[53-55](#); *R. v. Sharma*, [2022 SCC 39](#), para.[50](#).

⁸⁵ *Heegsma*, para.[80](#).

⁸⁶ 2021 PiT, p.158 [**ABC**, **Vol-11**, Tab-144a]; *Waterloo*, para.[18](#); *Waterloo 2*, para.[90](#).

102. While women account for approximately half of Hamilton's unhoused, they have access to a much lower proportion of shelter beds. In August 2021, there were 218 men's and 26 women's beds. There were more men's than women's beds **every** month until the *2023 Protocol* was enacted. For example, in September 2021 there were 218 men's and 26 women's beds; in June 2022, 193 and 104; in December 2022, 198 and 109; in August 2023, 198 and 66.⁸⁷

103. Hamilton's own witnesses tell the same story. Ms. McFadzean confirmed that all women's shelters were full as of June 2021. Mr. MacKeigan stated that women's shelters have had insufficient capacity for years, despite the creation of additional beds during COVID-19.⁸⁸

104. Medora Uppal is CEO of the YWCA Hamilton, which operates Carole Anne's Place [**"CAP"**], a low-barrier drop-in for unsheltered women which is an "overflow space women can attend when they cannot access the standard shelters". Her uncontradicted evidence is that there were frequently no shelter beds for women, and it was common for shelters to turn away women with complex needs. CAP turned away women 636 times between December 2019 and March 2022 due to a lack of capacity.⁸⁹ She also testified that Hamilton's data **undercounts** the demand for women's shelters, because it only includes data from City-funded shelters. Finally, she also testified that Hamilton cannot rely on the capacity of Violence Against Women shelters, which are not City-

⁸⁷ Dashboard Data (January 2020-January 2024) [**ABC, Vol-11**, Tab-153, pp.629-637].

⁸⁸ McFadzean XE, p.185, Q126, 129-130 [**ABC, Vol-10**, Tab-137]; MacKeigan XE, p.223, Q203-204, [**ABC, Vol-10**, Tab-139].

⁸⁹ Medora Uppal Affidavit (July 17, 2023) [**"Uppal Affidavit"**], pp.6-9, paras.2, 4, 9, 15 [**ABC, Vol-7**, Tab-87]; Supplementary Uppal Affidavit, p.88, para.15 [**ABC, Vol-7**, Tab-88].

funded, without also taking into account demand for their services, which Hamilton's data does not do.⁹⁰

105. Although sheltering restrictions and evictions left all unhoused persons with no choice but to sleep rough because of insufficient and inaccessible shelter beds, they had a disproportionate impact on women because women had a lower share of shelter beds relative to their proportion of the unhoused. In a bad situation, women were worse off than men. The sheltering restrictions and evictions drew a distinction based on sex.

106. In addition to the general harms experienced by the unhoused, women experienced sex-specific harms: assaults and sexual assaults. Ms. Uppal provided many examples of sexual assaults in the vicinity of CAP, men attempting to break into CAP, street level harassment, men loitering around CAP, bear mace attacks – which were all reported to the police. This is consistent with the experiences of the female Appellants.⁹¹

107. It is also consistent with expert evidence. The “Pan-Canadian Women’s Housing and Homelessness Survey” reported that 75% of unhoused women identify as a survivor of trauma or abuse. It also reported other evidence of how unhoused women experience pre-existing disadvantages: the primary reason women and gender diverse people lost their most recent housing was a relationship breakup, suggesting that

⁹⁰ Uppal Affidavit, pp.6-9, paras.2, 4, 9, 15 [**ABC, Vol-7, Tab-87**]; Supplementary Uppal Affidavit, p.88, para.15 [**ABC, Vol-7, Tab-88**].

⁹¹ Uppal Affidavit, pp.10-12, paras.22-30 [**ABC, Vol-7, Tab-87**].

housing for this group is deeply dependent on maintaining a personal relationship with a partner; and 79% report having a disability.⁹²

Discrimination based on race, and the intersection of race and sex

108. Sheltering restrictions and evictions have a disproportionate impact on Indigenous persons, who are overrepresented among the unhoused – as Ramsay J. acknowledged.⁹³ According to the 2021 PiT:⁹⁴

Indigenous Peoples continue to be overrepresented among community members experiencing homelessness in Hamilton. Of Hamilton’s general population, **2% of residents identify as Indigenous or having Indigenous ancestry.** Among community members responding to Hamilton’s PiT survey, **23% self-identified as Indigenous or having Indigenous ancestry.**

109. Sheltering restrictions and evictions also draw a distinction on the combination of race and sex – intersectional discrimination – because they have a particularly severe impact on Indigenous women. Slightly more than half (55%) of unhoused Indigenous persons were women. They are the victims of sex discrimination arising from the disproportionate shortage of women’s shelter beds and the gender-specific harms of being unhoused – i.e., the greater risk of sexual assault. In addition, Indigenous women are unhoused at 10 times the rate of non-Indigenous women and therefore are at a disadvantage relative to **both** unhoused Indigenous men **and** non-Indigenous women.⁹⁵

⁹² Schwann Affidavit (June 13, 2022), Ex.B, pp.92-93, 101-103, 106-109 [ABC, Vol-9, Tab-115].

⁹³ Heegsma, para.40.

⁹⁴ 2021 PiT Infographic – Indigenous Respondents [“PiT Indigenous Infographic”] [ABC, Vol-11, Tab-144u, p.420] (emphasis added).

⁹⁵ Bjorkquist v AGC, [2023 ONSC 7152](#), paras.88-114; PiT Count Indigenous Responses, p.404 [ABC, Vol-11, Tab-144t]; PiT Indigenous Infographic [ABC, Vol-11, Tab-144u, p.420];

110. The *Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* explains that unhoused Indigenous women face a cycle where poverty makes access to any form of housing impossible, forcing them to live in shelters, on the street, or in other forms of precarious housing, which fuels drug and alcohol abuse, and in turn renders them at greater risk of sexual violence. They also exchange or trade sex to meet their basic needs. Ms. Marshall has been repeatedly sexually assaulted while couch surfing, and threatened with it many more times, by men who expect sex in return for shelter.⁹⁶

111. Finally, shelters are often unsafe for Indigenous people for a variety of reasons.⁹⁷

Discrimination based on disability

112. The sheltering restrictions and evictions discriminated based on disability against at least three different categories of disabled persons, whose disabilities are not accommodated in shelters.

113. *First*, as explained in para. 63 above, a large proportion (65% to 70%) of encampment residents are high acuity, and as such are disproportionately impacted by sheltering restrictions. Individuals with mental health and/or substance use may be considered high acuity, meaning that they may display disruptive behaviour in the congregate setting of a shelter because of their disabilities, which often leads to service restrictions.

⁹⁶ Benjamin Hognestad Affidavit (June 7, 2024), Ex.A [ABC, Vol-6, Tab-78, pp.40-71].

⁹⁷ Audrey Davis Affidavit (July 19, 2023), pp.11-12, paras.30, 32-37 [ABC, Vol-6, Tab-76]; Audrey Davis XE Transcript (August 29, 2024), pp.31-32, Q98-105 [ABC, Vol-6, Tab-77].

114. *Second*, individuals with physical disabilities may find it physically taxing to enter and leave shelters every day and move their belongings from site to site. Several Appellants indicated that they either cannot move all their belongings or have considerably difficulty doing so due to their disabilities. *Matsqui-Abbotsford* held that daytime sheltering restrictions and evictions may discriminate based on disability against unhoused persons whose disabilities severely limit their mobility and physical capacity and render it extremely difficult or impossible to pack up their belongings and move every day.⁹⁸

115. *Third*, individuals with substance dependencies cannot use them while in shelter. Ms. McFadzean and Mr. Moulton confirmed that they do not allow substances to be used on site.⁹⁹ Moreover, behaviours related to substance use can lead to service restrictions.¹⁰⁰

Issue 5: Were the ss. 7 and/or 15 violations justified under s. 1?

116. The Appellants reserve the right to respond to Hamilton's s. 1 arguments but make the following preliminary points.

117. *First*, it is difficult to justify a s. 7 violation under s. 1, because "the rights protected by s. 7 – life, liberty, and security of the person – are very significant and cannot ordinarily be overridden by competing social interests".¹⁰¹

⁹⁸ *Matsqui-Abbotsford Impact Society v. Abbotsford*, [2024 BCSC 1902](#), paras.[84-90](#).

⁹⁹ McFadzean XE, p.180, Q56-59 [**ABC, Vol-10**, Tab-137]; Moulton Affidavit, p.224 para.16(f) [**AR, Vol-10**, Tab-140].

¹⁰⁰ MacKeigan XE, p.220, Q169 [**ABC, Vol-10**, Tab-139]; Mancini Affidavit, p.166, para.28 [**ABC, Vol-6**, Tab-82].

¹⁰¹ [G. \(J.\)](#), para.[99](#).

118. *Second*, the blanket sheltering restrictions, and evictions undertaken pursuant to these restrictions, were not minimally impairing. An alternative would have been to permit encampments under the terms proposed by the Appellants in the Notice, which would have permitted the public use of parks.

119. *Third*, s. 1 must be interpreted in accordance with Article 11(1) of the *International Covenant on Economic, Social and Cultural Rights*, which prohibits evictions that render persons homeless and vulnerable to a violation of other rights - e.g. the right to life.¹⁰²

120. *Fourth*, the beneficial effects of the law are outweighed by its deleterious effects, because sleeping rough poses a serious risk to physical and psychological health and is life-threatening.

Issue 6: What is the appropriate relief?

The Court should decide the issues and order the relief sought

121. The Court should exercise its power under s. 134(1) of the *Courts of Justice Act* to decide the issues and order the relief sought. While appellate courts should be wary of making findings of fact without seeing testimony firsthand, that concern is inapplicable in an application such as this one where there was no trial. This Court took this approach in two recent s. 15 cases.¹⁰³

¹⁰² *International Covenant on Economic, Social and Cultural Rights*, 993 UNTS 3; UN Committee on Economic, Social and Cultural Rights, *General Comment No. 4* (December 13, 1991), E/1992/23 and *General Comment No. 7* (May 20, 1997), E/1998/2; *Quebec (AG) v. 9147-0732 Québec*, [2020 SCC 32](#), paras.28-38.

¹⁰³ *Courts of Justice Act*, [RSO 1990, c C43](#), s. [134\(1\)](#); *Hollis v. Dow Corning*, [\[1995\] 4 SCR 634](#), para.33; *Ontario Teacher Candidates' Council v. Ontario (Education)*, [2023 ONCA 788](#), paras.70-77; *Jacob*, paras.85-92.

Declarations

122. The Court should also issue declarations that the sheltering restrictions and evictions were unconstitutional. A declaration is a precondition to issuing *Charter* damages. The Court should also issue declarations to set down constitutional baselines for the City on a go forward basis.

123. As the Supreme Court explained in *S.A.*:¹⁰⁴

Declaratory relief is granted by the courts on a discretionary basis, and may be appropriate where **(a)** the court has jurisdiction to hear the issue, **(b)** the dispute is real and not theoretical, **(c)** the party raising the issue has a genuine interest in its resolution, and **(d)** the responding party has an interest in opposing the declaration being sought.

124. This Court has jurisdiction. The dispute is real and not theoretical. The Appellants have a genuine interest in the resolution of the issue, because the City repealed the *2023 Protocol* in March 2025. The City can no longer argue that the declarations sought are moot. The Supreme Court in *Khadr* issued a declaration because of the practical value of providing prospective legal **advice** in the context of a concrete factual context that was fluid.¹⁰⁵ It should do the same thing here. The City has an interest in opposing the declaration being sought, because it would fetter their power to adopt sheltering restrictions and evictions.

¹⁰⁴ *S.A. v. Metro Vancouver Housing*, [2019 SCC 4](#), para.[60](#).

¹⁰⁵ *Canada (Prime Minister) v. Khadr*, [2010 SCC 3](#), para.[47](#).

Damages

125. *Power* affirmed the four-step test for determining whether damages are an appropriate and just remedy first articulated in *Ward*.¹⁰⁶

Step 1: has the Charter has been breached?

126. The sheltering restrictions and evictions violated ss. 7 and 15 of the *Charter*. These violations cannot be justified under s. 1.

Step 2: do Charter damages serve compensation, vindication and/or deterrence?

127. Damages would:

- a. **compensate** the Appellants for their distinct physical and psychological harms, and the common experience of sleep deprivation, loss of belongings, and exposure to the elements;
- b. **vindicate** their *Charter* rights, especially since their damages are unlikely to give rise to private cause of action, and the breach of their rights was serious; and
- c. **deter** the City, since it twice repealed encampment protocols, in August 2021 and March 2025.

Step 3: do countervailing concerns render damages inappropriate or unjust?

128. Under Step 3, the question is whether good governance concerns defeat an award of damages, or whether damages promote good governance by deterring *Charter* breaches. On *Power*, the answer turns on the **institution** violating the *Charter* rights and the **legal instrument** at issue, which in combination establish an “**immunity threshold**” that must be surmounted.¹⁰⁷

¹⁰⁶ *Canada (AG) v. Power*, [2024 SCC 26](#), para. [42](#) [**Power**]; *Vancouver v. Ward*, [2010 SCC 27](#), para. [61](#).

¹⁰⁷ *Power*, paras. [5](#), [46](#), [61](#), [68](#), [69](#), [71](#), [84](#), [99](#), [113](#), [114](#).

129. This Application raises the novel legal question of the immunity threshold for municipal by-laws. *Power* affirmed *Mackin*'s holding that the immunity threshold is highest for **legislatures** that violate *Charter* rights through **statutes**: whether the law was “clearly wrong, in bad faith or an abuse of power”. *Power* reaffirmed that the *Mackin* threshold “concerned **only** the enactment of legislation” and justified that threshold by express reference to the constitutional principles of “parliamentary sovereignty”, “the separation of powers” (in particular, “respect for the legislative role”) and “parliamentary privilege”.¹⁰⁸

130. Ramsay J.'s conclusion that the *Mackin/Power* immunity threshold applies to municipalities is incorrect.¹⁰⁹ Municipalities enjoy neither parliamentary sovereignty nor parliamentary privilege. They “hold delegated provincial powers; like school boards or other creatures of provincial statute, they do not have independent constitutional status” like legislatures.¹¹⁰

131. Municipal by-laws do not warrant *Mackin/Power* limited immunity. Since municipal councils are elected, some degree of immunity for by-laws is appropriate: a “clear disregard” standard, which means “either proceeding with a course of action in the face of a known risk that the *Charter* will be violated or by deliberately failing to inquire about the likelihood of a *Charter* breach when the state knows that there is a good reason to inquire.”¹¹¹

¹⁰⁸ *Power*, para.[61](#); *Mackin v. New Brunswick (Minister of Finance)*, [2002 SCC 13](#), para.[79](#).

¹⁰⁹ *Heegsma*, para.[65](#).

¹¹⁰ *Toronto v. Ontario (AG)*, [2021 SCC 34](#), para.[2](#).

¹¹¹ *Brazeau v. Canada (AG)*, [2020 ONCA 184](#), para.[87](#).

132. Hamilton's repeal of the *2020 Protocol* in **August 2021** and restoration of the sheltering restrictions in the By-Law showed "clear disregard" for s. 7 because the Ontario courts had accepted *Adams* as good law beginning in **October 2020**, in *Black*. *Poff* also accepted *Adams*.¹¹² On Hamilton's own data, between August 2021 and August 2023, demand for shelters beds exceeded supply every month and grew progressively worse.

133. The repeal of the *2020 Protocol* and restoration of the sheltering restrictions in the By-Law also showed a "clear disregard" for s. 15, because:

- a. Hamilton's data also showed a shortage of women's to men's beds throughout this period;
- b. the October 2021 PiT put the City on notice that the sheltering restrictions and evictions discriminated based on sex, race, and the intersection of race and sex; and
- c. Hamilton was aware or should have been aware that the sheltering restrictions and evictions discriminated based on disability.

Step 4: what is the appropriate amount of damages?

134. The Appellants seek *Charter* damages in the amount of: **(a) \$5,000** per Applicant **(\$70,000** total) for the common experience of sleep deprivation, loss of belongings, and exposure to the elements; and **(b) \$375,000** for violations of their *Charter* rights: Kristin Heegsma: \$75,000; Darrin Marchand, \$50,000; Gord Smyth: \$5,000; Mario Muscato: \$15,000; Shawn Arnold: \$5,000; Cassandra Jordan: \$5,000; Julia Lauzon: \$10,000; Ammy Lewis: \$25,000; Ashley MacDonald: \$5,000; Corey Monahan: \$10,000; Misty

¹¹² *Black*, paras. [145-146](#); *Poff*, paras. [231-233](#), [236](#), [240](#).

Marshall: \$75,000; Sheri Ogden: \$10,000; Jahmal Pierre: \$10,000; and Linsley Greaves: \$75,000.

135. Hamilton “materially contributed” to these harms¹¹³ with shelter restrictions and evictions that lead to various harms, including sexual assault, a gunshot wound, and the loss of a limb. The Appellants rely on tort law jurisprudence to demonstrate the reasonableness of the amounts sought.¹¹⁴

PART IV – ORDER SOUGHT

136. The Appellants seek: **(a)** declarations that the sheltering restrictions and evictions were unconstitutional, and **(b)** *Charter* damages of \$445,000.

137. The Appellants seek costs throughout and ask that none be awarded against them because of the public interest nature of this proceeding.

A handwritten signature in black ink, appearing to read 'A. Choudhry', with a long vertical stroke extending downwards from the end of the name.

Sujit Choudhry / Sharon Crowe / Wade Poziomka

¹¹³ *Athey v. Leonati*, [\[1996\] 3 SCR 458](#), para.15.

¹¹⁴ *J.B. v. R.B.*, [2021 ONSC 1023](#), para.22; *Desbiens v. Mordini*, [2004 CanLII 41166 \(ON SC\)](#), para.284; *Miller v. Her Majesty the Queen in Right of Canada*, [2015 ONSC 669](#), para.183; *Henebry v. Her Majesty the Queen*, [2018 ONSC 6584](#), paras.314, 334.

CERTIFICATE

I, Sujit Choudhry, counsel for the Appellants, certify that:

1. An Order under subrule 61.09(2) is not required;
2. The Appellants will require 2.5 hours for oral argument of the appeal;
3. The factum complies with an order of the Court referred to in Rule 61.11(3);
4. Parts I to IV of the factum contain 11,967 words; and
5. I am satisfied as to the authenticity of every authority listed in Schedule A.

A handwritten signature in black ink, appearing to read "A. Choudhry". The signature is written in a cursive, flowing style with a long vertical stroke at the end.

Sujit Choudhry
August 29, 2025

APPENDIX TO APPELLANTS' FACTUM

1. Kristen Heegsma		Reference
History of Homelessness	<ul style="list-style-type: none"> • 31 year old Indigenous woman on ODSP • PTSD, depression, anxiety, opiate and stimulant use disorder, and borderline personality disorder • Homeless almost continuously since 2019. She fled an abusive relationship and moved in with her grandparents, who kicked her out because they mistakenly believed she was reconciling with her ex-partner. 	Affidavit of Kristen Heegsma (June 7, 2022), p.53, paras 2-6 ["Heegsma Affidavit"] [ABC , Vol 3, Tab 35]; Affidavit of Tim O'Shea (June 7, 2024), Exhibit A, p.192, para 2 ["O'Shea Affidavit"] [ABC , Vol 6, Tab 84]; Affidavit of Rachel Lamont (June 7, 2024), Exhibit A, p 78, para 2 ["Lamont Affidavit"] [ABC , Vol 6, Tab 79].
Encampment Stays	<ul style="list-style-type: none"> • Periods ranging from a week to 5 months, longer periods prior to repeal of the 2020 Protocol • Left encampments after being told by Bylaw officers she had to leave, and felt she had no choice • Often lost belongings because she could not pack everything. 	Heegsma Affidavit, p. 54, para 8 [ABC , Vol 3, Tab 35]; Heegsma XE, p. 41, Q194-196, p. 57-59, Q275-280 [ABC , Vol 6, Tab 36].
Shelter Access	<ul style="list-style-type: none"> • Says women's shelters "are almost always full". Without a phone, she has to walk from shelter to shelter to find a bed • Doctor's office and a drop in centre regularly tried to find her shelter without success. She learns about shelter bed availability from other unhoused women and City staff • Periodically able to access a shelter bed, but has been repeatedly kicked out – once, for a year from the hotel program – for several reasons, including: missing curfew after working a nightshift; a relationship breakdown that made her ineligible for a couples' hotel; and behaviours related to her mental health and substance use disorders. 	Heegsma Affidavit, p.55, paras 17-21, p. 57, paras 28-29 [ABC , Vol 3, Tab 35]; O'Shea Affidavit, Ex A, p. 192, para 2 para 5 [ABC , Vol 6, Tab 84]; Heegsma XE, p. 74, Q219-221, [ABC , Vol 3, Tab 37].

	<ul style="list-style-type: none"> • Could not stay in shelter with her partner. She is reluctant to stay in congregate living situations because was assaulted while in shelter. 	
Precarious Housing/ Sleeping Rough	<ul style="list-style-type: none"> • Rented a room at the YWCA in or about mid to late 2021, where she stayed for 3-4 months. Had money stolen from her room and was discharged from the program. • Has slept unsheltered on the streets, benches, heating grates, and in stairwells. Sometimes uses a sleeping bag, tarp, and blanket. When she cannot find somewhere to sleep, she walks around all night, where men try to solicit her for sex. • Stayed with her then partner at a friend's apartment in mid-January 2022, but the friend was evicted. She couch surfed with her father, who was also evicted. In December 2022 or January 2023, she couch surfed in a rooming house, where she was held hostage for over 48 hours, beaten and robbed. Left with a broken nose and black eyes. 	<p>Heegsma XE, p. 65-66, Q47-50 [ABC, Vol 3, Tab 37]; Heegsma Affidavit, p.55, paras 22-23 [ABC, Vol 3, Tab 35];</p> <p>Heegsma XE, p. 66-67, Q56-59, 68-73, [ABC, Vol 3, Tab 37]; O'Shea Affidavit, Exhibit A, p.193, para 1 [ABC, Vol 6, Tab 84 a]; Supplementary Affidavit of Kristen Heegsma (April 27, 2023), p. 61, para 2 ["Heegsma Supplementary Affidavit"] [ABC, Vol 3, Tab 36].</p>
Impact of Encampment Evictions	<ul style="list-style-type: none"> • Evicted from an encampment in the fall of 2021 after <i>Poff</i>. A Bylaw officer told her she "had one day to move because they were shutting down all encampments, that we were no longer allowed them [sic], and I had to figure out something else". • In the following 3 weeks, she was assaulted 7 times by a male acquaintance, robbed 3 times, and raped while sleeping on a park bench outside City Hall. • Without shelter or a tent, she wanders all night trying to find somewhere safe. She hardly sleeps at night, is up for days at a time, and regularly falls asleep during the day. In late May 2022, she fell asleep while walking and fell, hitting her head and cutting it open. As a result of being unable to both 	<p>Heegsma XE, p. 72, Q188-190, [ABC, Vol 3, Tab 37]; Heegsma Affidavit, pp. 54-57, paras 11-15, 24-26 [ABC, Vol 3, Tab 35]; O'Shea Affidavit, Exhibit A, p. 193, para 1 [ABC, Vol 6, Tab 84 a]; Lamont Affidavit, p. 78, para 3-4 [ABC, Vol 6, Tab 79a].</p>

	<p>access shelter and use a tent, she doesn't "even feel like a person" and feels so discouraged that she "wants to die".</p> <ul style="list-style-type: none"> Without a tent, she experiences a lack of privacy for basic needs such as getting changed and being out of the public gaze; exposure to the elements; a diminished sense of security without physical barrier of a tent and the protection of friends in close proximity; increasing despair, leading to increased substance use; deterioration of her mental health, increased isolation when forced to hide, leading to increased risk of overdose; fewer connections with street outreach services and medical supports; and increased risk of theft and violence. 	
2. Cassandra Jordan		
History of Homelessness	<ul style="list-style-type: none"> 39 year old Indigenous woman ODSP. She has degenerative disc disease, chronic pain, opioid and stimulant use disorder. Had been homeless since August or September 2020 after being unlawfully evicted from her rental unit. 	<p>Affidavit of Cassandra Jordan (June 3, 2022), p. 115, paras 1-8, ["Jordan Affidavit"] [ABC, Vol 3, Tab 38]; Affidavit of Jill Wiwcharuk (June 7, 2024), Exhibit B, p. 113, para 2 ["Wiwcharuk Affidavit"] [ABC, Vol 7, Tab 90 b].</p>
Encampment Stays	<ul style="list-style-type: none"> Evicted from the Ferguson Encampment on October 15, 2020. Bylaw threw away her tent. She was offered a hotel spot and asked for a day to store her belongings. She was told her spot would be held until the next morning, but it was given away. She and workers called shelters and were told that that the shelters were full. She moved to an encampment in JC Beemer Park. She did not have her own tent, but others shared their tents until she was able to get her own. She stayed there for approximately 	<p>Jordan Affidavit, pp. 116-117, paras 14-17, 19 [ABC, Vol 3, Tab 38]; Jordan XE, pp. 124-125, Q74-82 [ABC, Vol 3, Tab 39].</p>

	<p>a year until November 24, 2021, when the City evicted the residents following a fire.</p> <ul style="list-style-type: none"> • Had been receiving treatment for a serious leg burn, using a walker and did not have anywhere to store her belongings. Admitted to the Barrett Centre (a crisis centre) for 5 days and then discharged. Shelters were again full. 	
Shelter Access	<ul style="list-style-type: none"> • After being evicted from her rental unit, Cassandra called shelters and was told that they were full. Without her own phone, she used a phone at a drop in centre and “called and called and called and called just to be rejected, rejected, rejected, rejected”. • Realized that women’s shelters are “almost always full” and stopped calling every day. Several outreach workers were unable to get her into shelter. She was once able to access a spot on the floor of Carol Anne’s Place (“CAP”) for 2 nights. On the third night, CAP was either full, or she was denied access because she tested COVID positive. CAP sometimes prioritizes women who stayed the night before, who are sick, or very old. She could line up at CAP at 530 PM for a bed at 1000 PM, but still not get a space. It is difficult for her to continuously move her belongings in and out of shelter. • Theft is rampant at CAP. Cassandra tries to use a wheelchair accessible washroom stall to bring in her belongings to protect against theft. Once, the accessible stall was not available, and her suitcase was stolen outside her stall. Shelter staff discharged Cassandra from Mary’s Place because her abusive ex-partner kept showing up at the shelter. They said that her presence put other women at risk, and told her to enter shelter outside of Hamilton. She could not leave because her supports are in Hamilton. 	<p>Jordan Affidavit, p. 116-117, paras 10, 15, 17, 19, 25-27; [ABC, Vol 3, Tab 38] Transcript of the Cross Examination of Cassandra Jordan (August 15, 2024), [“Jordan XE”] p.128-129 Q117-126, 134-135[ABC, Vol 3, Tab 39].</p>

<p>Precarious Housing/Sleeping Rough</p>	<ul style="list-style-type: none"> • Able to stay with her mom after being discharged from the Barrett Centre. Since her mother lives in subsidized housing, she could only stay for a short period without jeopardizing her tenancy. In January 2024, she briefly stayed with her boyfriend. He was abusive and she left. • Contacted shelters after leaving her mother's place but they were full. She slept unsheltered outside, including in a tunnel, on the sidewalk outside CAP, and outside a church. In the middle of the winter, Cassandra slept on the heating vents outside City Hall with others. The City boarded up the vents and the police removed everyone. She feared she would freeze to death. 	<p>Jordan Affidavit, pp. 116-117, paras 17-18 [ABC, Vol 3, Tab 38]; Jordan XE, p. 121, Q22, [ABC, Vol 3, Tab 39]; Jordan Affidavit, p. 128, para 28 [ABC, Vol 3, Tab 38].</p>
<p>Impact of Encampment Evictions</p>	<ul style="list-style-type: none"> • Did not receive appropriate wound care for her burn after the JC Beemer eviction. Lost contact with her treating doctor and Social Navigation • Witnessed a heavy police presence with Bylaw officers at encampment evictions, along with bobcats and garbage trucks to dispose of belongings • Evictions are intimidating, traumatizing and forceful, and she felt she had no option but to comply and move • Packing up and moving is exhausting. Has lost her tent and other survival items from encampment evictions • Without a tent, she sleeps outside and searches for hard to find places. It is difficult to sleep and she is so exhausted that at times she does not know what day it is, and finds it harder to abstain from substances. • She has been robbed. She feels "all crippled up" and cannot walk properly from having to continuously move all her belongings around • At encampments, her friends look out for each other, take steps to prevent theft, huddle together to stay warm, and she can have a bit of time to rest. Despite the 2023 	<p>Jordan Affidavit, pp. 116-117, paras 12-13, 21-23 [ABC, Vol 3, Tab 38]; Wiwcharuk Affidavit, p. 113-114, paras 3-6 [ABC, Vol 47 Tab 90 b]; Transcript of Cross Examination of Jill Wiwcharuk (August 16, 2024), p. 139, Q144 ["Wiwcharuk XE"] [ABC, Vol 7, Tab 91]; Jordan XE, p. 129, Q139, [ABC, Vol 3, Tab 37].</p>

	Protocol, Cassandra was asked to move her tent three times at Bayfront, sometimes just twenty feet. She had to move all of her belongings each time, which was very difficult in light of her disabilities and pain.	
3. Misty Marshall		
History of Homelessness	<ul style="list-style-type: none"> 32 year old Indigenous woman receiving approximately \$340 in OW monthly. Has anxiety, depression, PTSD, opiate and stimulant use disorder, and asthma. Became homeless in 2020. Previously rented Air B&B's and stayed in hotels. Her wallet was stolen, losing all of her cash and ID; without ID, she could not rent a room. 	Affidavit of Misty Marshall (May 12, 2022), p.103 paras 1-4, 6-7, [Marshall Affidavit] [ABC , Vol 4, Tab 53]; Wiwcharuk Affidavit, Exhibit G, para 2; [ABC , Vol 7, Tab 90 g].
Encampment Stays	<ul style="list-style-type: none"> Evicted from several encampments and witnessed the City using bobcats. Once, she was given 20 minutes notice to leave. In October 2021, she stayed in a tent by the outdoor heating vents at City Hall until the City blocked the heating vents in the middle of winter. Did not bother to put up or stay in tents very much since 2022, because the City had “ramped up enforcement” and would have to move. Has stayed with different friends in their tents. Following the repeal of 2020 Protocol, police suddenly came around and told people that they could only stay for a week or two, followed by the City showing up with bulldozers. People started using tarps, which were easier to put up than tents. Evicted overnight in early May 2022 while sleeping under a tarp with friends. Police told her at 11:00PM that “the park was closing” and said they would be back in a half hour to make sure they had left. She left to avoid police escalation 	<p>Marshall Affidavit, p.104-106, paras 15-23 [ABC, Vol 4, Tab 53];</p> <p>Marshall Affidavit, p.107, para 29, [ABC, Vol 4, Tab 53]; Marshall XE, p.120, Q174 [ABC, Vol 4, Tab 45];</p> <p>Marshall Affidavit, p. 107, para 28, [ABC Vol 4, Tab 53]; Marshall XE, p. 121, Q187-191 [ABC Vol 4, Tab 54].</p>
Shelter Access	<ul style="list-style-type: none"> On becoming homeless, other women repeatedly told Misty shelters were always full 	Marshall Affidavit, pp. 103-104, paras 8-14, [ABC , Vol 4, Tab 53];

	<ul style="list-style-type: none"> • In spring 2021, Social Navigation contacted shelters for Misty and were told that shelters were full. Tried to get into overflow shelter at CAP. Women lined up for hours for a spot at 10:00 PM. As of May 2022, she was unable to get a spot at CAP. By 2024, she was able to stay once. • Unable to access overnight drop in programs at Willow's Place, which is sometimes full during the day. Sometimes accesses overnight drop in at The Hub during cold alerts, but high demand meant she could only stay for an hour. • Attempts to access shelter beds twice a week without success. 	Supplementary Marshall Affidavit, p. 110, para 2 [ABC, Vol 4, Tab 54]; Marshall XE, p. 116-117, Q98, 102-107 [ABC, Vol 4, Tab 55].
Precarious Housing/Sleeping Rough	<ul style="list-style-type: none"> • Couch surfed with friends and acquaintances in 2020, and more regularly since 2022 after realizing that she would not be able to put up a tent. • Sometimes wanders around at night. Has slept outside unsheltered in various locations and under a tarp. 	Marshall Affidavit, p.105, paras 17, 21-22, 29 [ABC, Vol 4, Tab 53]; Supplementary Marshall Affidavit, pp.109-10, paras 1, 4 [ABC, Vol 4, Tab 54].
Impact of Encampment Evictions	<ul style="list-style-type: none"> • Without shelter or a tent, sometimes only gets one to two hours of sleep and is sometimes up for days. Has trouble concentrating and at times is unable to keep up with her mental health treatment • When she was able to stay at Ferguson for several months, her doctor was able to connect with her, she had access to food delivery and slept better. Lost contact with her doctor immediately after the Ferguson eviction. When they reconnected a year later, she had "drastically decompensated". • Outside of encampments, she has been repeatedly robbed, and exposed to the elements while using a tarp. When wandering the streets at night, she has seen men driving around CAP while women wait in line, appearing to solicit women for sex. Men have followed her in cars, soliciting her 	Marshall Affidavit, paras 11, 24-27, 29 [ABC, Vol 4, Tab 53]; Supplementary Marshall Affidavit, p. 110, paras 3-4 [ABC, Vol 4, Tab 54]; Marshall XE, pp. 124, Q218-223, [ABC, Vol 4, Tab 55]; Wiwcharuk Affidavit, p. 124, para 3 [ABC, Vol 7, Tab 90 g].

	for sex. She has been sexually assaulted 3 times since June 2022 while couch surfing. Some men expect sex in exchange for shelter. Has been threatened with sexual assault many times. She is at increased risk of sexual assault during winter, when she must seek indoor shelter.	
4. Sherri Ogden		
History of Homelessness	<ul style="list-style-type: none"> • 31 year old Indigenous woman on ODSP benefits for depression and substance use disorders and functional pain. • Became homeless in 2017. She had been living with her mom and left because of a strained relationship. 	Affidavit of Sherri Ogden (June 2, 2022) [Ogden Affidavit], p. 26, paras 1-6, [ABC, Vol 5, Tab 64]; Lamont Affidavit, p. 24, paras 2-3 [ABC, Vol 12, Tab 161 f].
Encampment Stays	<ul style="list-style-type: none"> • Stayed in several encampments, from a few days to 7 months. Has been evicted from almost every encampment. For a while, she would take down her tent every morning and then return at night to avoid enforcement. However, Bylaw eventually caught on and showed up at her tent at 530 AM. Sherri recognized the Bylaw officer who told her to leave. When she refused, the officer called police, who showed up ten minutes later and evicted her. • Eventually gave up her tent because she thought it would prevent her from being targeted by the HPS and Bylaw. 	Ogden Affidavit, p.26-47, paras 7, [ABC, Vol 5, Tab 64]; Transcript of Cross Examination of Sherri Ogden (August 14, 2024) [Ogden XE], p. 58-59, Q111, 120-166, p. 63, Q257-260 [ABC, Vol 5, Tab 66]; Lamont Affidavit, p. 24, paras 2-3 [ABC, Vol 12, Tab 161 f].
Shelter Access	<ul style="list-style-type: none"> • Had not stayed in a shelter since 2022 because they have been full. Despite often not having a phone, she repeatedly called shelters asking for a bed. Staff at a drop in centre also called, and shelters were always full. She stayed in the hotel program with her then-boyfriend for 2 weeks but was kicked out after a false allegation of domestic abuse. She was able to stay at CAP once. 	Affidavit of Sherri Ogden, pp. 47-48, paras 11-14, [ABC, Vol 5, Tab 64]; Wiwcharuk Affidavit, p. 115, para 3, [ABC, Vol 7, Tab 90 c]; Lamont Affidavit, p. 24, para 3 [ABC, Vol 12, Tab 161 f].
Precarious Housing/Sleeping Rough	<ul style="list-style-type: none"> • Has slept rough, including at the side of the road, in parking lots, church doorsteps, in stairwells and parking garages. 	Ogden Affidavit, p. paras 6-9, 11, 13, 15 [ABC, Vol 5, Tab 64]; Ogden XE, p. 53, Q12-21, p. 55, Q35-37, p. 63, Q267-268 [ABC,

		Vol 5, Tab 66]; Wiwcharuk Affidavit, p. 115-116, paras 4-5, [ABC, Vol 7, Tab 90 c]; Lamont Affidavit, p. 24, para 3 [ABC, Vol 12, Tab 161 f].
Impact of Encampment Evictions	<ul style="list-style-type: none"> • Lost belongings including tent during an eviction • Difficult to sleep when she cannot stay in one location. Slept better and felt safer while in encampments with friends. It was easier to concentrate and she felt healthier • Heightened stress and anxiety from constantly having to be on the “lookout”. Often exhausted during the day. • Her Hamilton Regional Indian Centre housing worker said she is “too unwell” to get into supportive housing. • Increased sense of hopelessness and depression with each eviction, sleep deprivation, increased substance use while trying to stay awake to protect herself and belongings. 	Ogden Affidavit, p.46-48, paras 7, 10, 16-17 [ABC, Vol 5, Tab 64]; Ogden XE, p. 60, Q180-189, [ABC, Vol 5, Tab 66]; Wiwcharuk Affidavit, pp. 115-116, paras 4-5. [ABC, Vol 7, Tab 90 c]; Lamont Affidavit, pp. 24, paras 3-4 [ABC, Vol 12, Tab 161 f].
5. Jahmel Pierre (“Jammy”)		
History of Homelessness	<ul style="list-style-type: none"> • 34 year old Black transgender woman on OW and employed part time. PTSD, anxiety, depression and substance abuse disorder • She had been homeless one and off for about three years. Most recently, became homeless after being evicted from the Transitional Living Program at the YWCA. She was able to obtain housing in June 2023, and remains housed. 	Affidavit of Jammy Pierre, (June 7, 2022) [“ Pierre Affidavit ”], p. 67, paras 1-7 [ABC, Vol 5, Tab 67]; Wiwcharuk Affidavit, p. 119, para 2 [ABC, Vol 7, Tab 90 e]; Lamont Affidavit, p. 96, para 1 [ABC, Vol 6, Tab 79 g].
Encampment Stays	<ul style="list-style-type: none"> • Has been evicted by police from several encampments • Eventually gave up trying to put up a tent, knowing the City would soon tell her to move, sometimes within a half hour of setting up a tent. 	Pierre Affidavit, p. 69 paras 19-21, 23-24 [ABC, Vol 5, Tab 67]; Jammy Pierre XE Transcript (August 16, 2024 [“ Pierre XE ”] p. 89, Q244-246 ABC, Vol 5, Tab 69].
Shelter Access	<ul style="list-style-type: none"> • Periodically able to access shelters and temporary hotel programs, but repeatedly kicked out because she: missed 	Pierre Affidavit, pp. 68-69, paras 9, 11-19 [ABC, Vol 5, Tab 67];

	<p>curfew; got into an argument with staff, who threatened involuntary hospitalization, was banned for drug use ranging from a day to a week. She also lost her bed after stepping away for a few minutes.</p> <ul style="list-style-type: none"> • Shelters are sometimes full. Sometimes been able to access an overflow bed at CA, but would not know it was full until 1030 PM or 1100 PM; if it is, she then had to figure out where to stay for the night • When women's shelters are full, she sometimes accesses a men's shelter by changing her gender expression. A men's shelter turned her away because of her gender expression. She has lost phones and ID to thefts while staying at CAP. 	<p>Pierre XE, p. 76-78, Q32-40, 46-61, p. 78, Q71-75, p. 80. Q106-108, p. 81, Q109-118, [ABC, Vol 5, Tab 69]; Supplementary Affidavit of Jammy Pierre, (April 27, 2023) ["Pierre Supplementary Affidavit"], p. 71-72, para 1-2 [ABC, Vol 5, Tab 68].</p>
Precarious Housing/Sleeping Rough	<ul style="list-style-type: none"> • Jammy sometimes stayed outside without a tent. 	<p>Pierre XE, p. 77, Q43-44, 48-50 [ABC, Vol 5, Tab 69].</p>
Impact of Encampment Evictions	<ul style="list-style-type: none"> • Without a stable place to stay, Jammy would get one to two hours of sleep, and sometimes no sleep at all, to protect her belongings, worsening her mental health symptoms and substance use. • Wandering the streets put her at an increased risk of theft and assault. The repeated, forced encampment evictions were traumatic and contributed to a worsening of her PTSD, depression and anxiety. 	<p>Pierre Affidavit, p. 69, paras 25-26 [ABC, Vol 5, Tab 67]; Lamont Affidavit, p. 96-97, paras 4-5 [ABC, Vol 6, Tab 79 g].</p>
6. Darrin Marchand		
History of Homelessness	<ul style="list-style-type: none"> • 58 year old man on ODSP. Has psychosis (substance use), and opioid and stimulant use disorders • Homeless since 2017. His landlord threatened him with eviction, and he left his apartment. 	<p>Lamont Affidavit, p. 81, para 2 [ABC, Vol 6, Tab 79 b]; Affidavit of Darrin Marchand, (June 2, 2022) ["Marchand Affidavit"], p. 76-77, paras 4-7, p. [ABC, Vol 4, Tab 50].</p>

Encampment Stays	<ul style="list-style-type: none"> Stayed in several encampments until evicted by the police and Bylaw. Sense of hopelessness when unable to stay in encampments or shelters. In summer 2021, Darrin was evicted from two different encampments, and moved to different greenspaces after receiving verbal warnings to avoid further criminalization. Gave up on staying in encampments. 	<p>Marchand Affidavit, paras 11-12 [AR, Vol 2, Tab 40]; Lamont Affidavit, Exhibit B, p. 1, para 3 [AR, Vol 4, Tab 69 b].</p>
Shelter Access	<ul style="list-style-type: none"> In December 2020, witnessed a hatchet attack at the Salvation Army shelter by one shelter resident on another resident. He was so traumatized that he was admitted to a crisis centre for a few day and then discovered that he was banned from all shelters and had to stay on the streets. Tried to return to the Salvation Army in April 2022 but was told that he was service restricted. That same month, he was denied access to Mission Services due to a “conflict of interest”. Darrin was service restricted from Good Shepherd after he was falsely accused of threatening a staff member. Continues to struggle with staying in shelters following the December 2020 attack. Difficult to sleep in shelters because of the noise. Has experienced theft in shelters, including his mother’s ashes. More recently, able to access shelter for short periods. Trauma from the December 2020 attack is triggered in shelter. When unable to access a shelter bed, he has gone to the hospital and lied about his health to get warm. 	<p>Marchand Affidavit, p. 77. paras 8-10, 14-16, p. 78, paras 22-23, 27, p. 79, paras 33-34, 38-39 [ABC, Vol 4, Tab 50]; Supplementary Affidavit of Darrin Marchand (April 25, 2023), [“Supplementary Marchand Affidavit”], p. 82, para 2, [ABC, Vol 4, Tab 51].</p>
Precarious Housing/Sleeping Rough	<ul style="list-style-type: none"> Has slept rough. He sometimes spends his days and nights wandering outside, searching for a place to rest and sleep where he will not be ticketed or required to move. 	<p>Marchand Affidavit, p. 78, paras 20, 24, 27, 29, 31 [ABC, Vol 4, Tab 50]; Supplementary Marchand Affidavit, p. 83, para 5 [ABC, Vol 4, Tab 51].</p>

Impact of Encampment Evictions	<ul style="list-style-type: none"> • On December 2, 2021, he was living unsheltered outside a church and a man shot him in the shoulder. The hospital discharged him to Good Shepherd, which temporarily waived its service restriction due to his injury. He was kicked out 2 months later because a nurse alleged that he threatened her, which he denies. • When he cannot stay in an encampment and cannot access shelter, he wanders around all day. He feels depressed and isolated. Repeated encampment evictions have led him to lose belongings, and severed connections with supports including healthcare and food programs. He felt hopeless following his evictions, causing an increase in substance use, which triggered his psychosis, and profound sleep deprivation. • Staying in a tent helps protect him from assaults and the elements, provides more privacy, a place to store belongings, and more sleep. 	<p>Marchand Affidavit, p. paras 20, 22-23, 29-30, p. 80, para 35 [ABC, Vol 5, Tab 50]; Supplementary Marchand Affidavit, p. 83, para 5 [ABC Vol 4, Tab 51]; Cross Examination of Darrin Marchand Transcript (August 29, 2024), [“Marchand XE”], p. 95, Q. 144-159 [ABC, Vol 4, Tab 52]; Lamont Affidavit, pp. 81-82, para 3-4, [ABC, Vol 6, Tab 79 b].</p>
7. Ashley MacDonald		
History of Homelessness	<ul style="list-style-type: none"> • Indigenous woman on ODSP. Obsessive compulsive disorder, fetal alcohol disorder, depression and substance use disorder • Homeless on and off throughout her life. Most recently, she became homeless in 2020 after being unlawfully evicted. Ashley was able to get into subsidized, supportive housing on June 29, 2023. The transition has been difficult after so many years of homelessness. She was lonely because she was used to being around people all the time, and her new housing program did not allow guests until recently. She was still in a tent occasionally, but was spending more time in her apartment as time goes on. She was homeless for almost the entire time between the repeal of the 2020 Protocol and the introduction of the 2023 Protocol. 	<p>Ashley MacDonald Affidavit (June 13, 2022) [“MacDonald Affidavit”], p. 30. Paras 3-6, [ABC Vol 4, Tab 46]; Transcript of Cross Examination of Ashley MacDonald (October 10, 2024) [“MacDonald XE”], p. 36, Q. 15-19, p. 41, Q101-106, p. 52, Q367, p. 53, Q373, [ABC, Vol 4, Tab 47].</p>

Encampment Stays	<ul style="list-style-type: none"> • She was repeatedly evicted from several parks, even when shelters were full. • She was in an encampment during the 2020 Protocol, which allowed for high acuity individuals to remain encamped. She was allowed to stay in one place because she was told that she was “too high acuity” to be in a shelter. • She does not want to risk confrontation or criminal charges, so she feels that she has no choice but to leave when an encampment eviction takes place. 	MacDonald Affidavit, p. 30-31, paras 7-9, 14-17 [ABC, Vol 4, Tab 46]; MacDonald XE, pp. 42-43, Q-123-150, pp. 45-47, Q 193-243 [ABC, Vol 4, Tab 47].
Shelter Access	<ul style="list-style-type: none"> • Often experiences shelters to be full. Could not access shelters when she was in a relationship because there was no space for couples. If her partner went to a men’s shelter, it was unsafe for Ashley to remain outside. • She was assaulted when she was on the street alone, causing a serious head injury. Without a cell phone, it was difficult to reconnect with her partner. • She came to understand that the women’s shelters are always full because there were more women on the street than men, and it was easier for men to get into shelters. • Has been told by shelters and transitional living programs that she is too high needs for their program. Has been service restricted from shelters. She was kicked out of CAP despite having been followed and assaulted by her former landlord. Also kicked out of a temporary hotel program. 	MacDonald Affidavit, p. 31, paras 9-13, 18, 21-24 [ABC, Vol 4, Tab 46]; MacDonald XE, p. 43, Q159-160 [ABC, Vol 4, Tab 47].
Precarious Housing/Sleeping Rough	<ul style="list-style-type: none"> • Bylaw has ticketed and evicted her from public spaces, even when she is not in a tent. 	MacDonald Affidavit, p. 32, para 24 [ABC Vol 4, Tab 46].
Impact of Encampment Evictions	<ul style="list-style-type: none"> • Lost many belongings including tents when the City dismantled encampments. Encampment evictions were traumatizing. She lost connections with supports, including healthcare. She was at greater risk of overdose and assault because the increased isolations, and because she used to choose encampment sites in close proximity to safe 	MacDonald XE, p. 41, Q97-98 [ABC, Vol 4, Tab 47]; MacDonald Affidavit, pp. 32-33 paras 19-20, 28 [ABC, Vol 4, Tab 46].

	injection sites. She doesn't know where she can "legally be and exist".	
8. Shawn Arnold		
History of Homelessness	<ul style="list-style-type: none"> • 55 year old man on ODSP. Opiate use disorder, stimulant use disorder, attention deficit hyperactive disorder. • Became homeless in 2020 while staying with a friend, who sold the house. • Brief periods of housing since. At the time of cross examinations, he was precariously housed in a hotel after a fire at his rooming house. Shawn stayed in several encampments, shelters, on the streets unsheltered, and couch surfed. 	Affidavit of Shawn Arnold, (May 9, 2022) ["Arnold Affidavit"], p. 8, 9, para 4, 6 [ABC , Vol 3, Tab 30]; Transcript of Cross Examination of Shawn Arnold (August 14, 2024), ["Arnold XE"], p. 13, Q13-19, p. 25, Q210, p. 16, line 6-13, p. 23, line 9-11 [ABC , Vol 3, Tab 31]; Wiwcharuk Affidavit, p. 125, para 1 [ABC , Vol 7, Tab 90h], Lamont Affidavit, p.15 , para 2, [ABC Vol 12, Tab 161 c].
Encampment Stays	<ul style="list-style-type: none"> • Evicted by Bylaw or police from the Ferguson encampment. Witnessed police and Bylaw officers throwing out belongings and tents • Moved in order to avoid the risk of losing his belongings and went to another encampment. During this time, Shawn was able to remain for several months after he was told that he scored a 16 on an assessment tool that determined the was high acuity, which gave him the right to remain under the 2020 Protocol. When the 2020 Protocol was repealed, Shawn was told that he had to leave 	Arnold Affidavit, p. paras 6-13, [ABC , Vol 3, Tab 30]; Wiwcharuk Affidavit, p. 125, para 1-3 [ABC , Vol 7, Tab 90 h], Lamont Affidavit, p.15 , para 3 [ABC , Vol 12, Tab 161 c].
Shelter Access	<ul style="list-style-type: none"> • Does not function well in shelters because of the crowded conditions. Concerned that being exposed to drug use in shelters will compromise his sobriety. He does not feel safe in shelters. 	Arnold Affidavit, p. 9, para 9, [ABC , Vol 3, Tab 30]; Lamont Affidavit, p.15 , para 2 [ABC , Vol 12, Tab 161 c].
Precarious Housing/Sleeping Rough	<ul style="list-style-type: none"> • Wandered the streets for four days without sleeping after being evicted from JC Beemer Park. 	Arnold Affidavit, p. 10, para 13(d), [ABC , Vol 3, Tab 30].

Impact of Encampment Evictions	<ul style="list-style-type: none"> • Could rest and sleep while staying in an encampment for an extended period. Wandered the streets for days after an eviction, and struggled to sleep without any privacy and the protection of community • Lost belongings including his tent, through encampment evictions. When he was able to remain in place, he could access a nearby methadone treatment program, receive meal support and connect with other social supports • When he was evicted from JC Beemer, his housing worker could not find him to tell him that he had been approved for housing. He almost lost the housing. Exposed to the elements without a tent • Concerned about evictions while he is away from belongings, and misses appointments as a result. 	Arnold Affidavit, para 13 (a)(b)(c)(d)(e)(f) [ABC, Vol 3, Tab 30]; Lamont Affidavit, p.15 , paras 3-5 [ABC, Vol 12, Tab 161 c].
9. Gord Smyth		
History of Homelessness	<ul style="list-style-type: none"> • 57 year old man on ODSP. Depression, personality disorder, chronic obstructive pulmonary disorder, diabetes, heart disease, and degenerative disc disease. He uses a mobility scooter • Became homeless in June 2021 after his landlord served him with an eviction notice to demolish the building. Prior to receiving the eviction notice, there had been talk that the building might be sold. He started looking for housing and applied for subsidized housing, but was unable to find anything. He obtained subsidized housing on November 27, 2021. 	Affidavit of Gord Smyth, (March 9, 2023), pp. 121-122, paras 3-8, paras 5, 7-9, 11, 20 [“ Smyth Affidavit ”] [ABC, Vol 5, Tab 72]; Transcript of Cross Examination of Gord Smyth (August 28, 2024)[“ Smyth XE ”], pp. 124-125, para 28 [ABC, Vol 5, Tab 73].
Encampment Stays	<ul style="list-style-type: none"> • Stayed in several encampments; the first for seven days and then given verbal notice to move from Bylaw. He was evicted from three more encampments, each time without an assessment of his needs as required under the 2020 Protocol. Threatened with eviction from a fourth encampment, but Social Navigation completed an assessment and told him that he scored 13 – which meant 	Smyth Affidavit, p. 122-125, paras 3, 12-17, 23-24, 28 [ABC, Vol 5, Tab 72].

	<p>he was high acuity and permitted to remain. The City's Encampment Task Force did not accept the score, even though it had been completed by another City agency. A shorter version of the assessment was completed with Gord, indicating a score of 11. He refused to leave, wanting to ensure that he could afford new housing.</p> <ul style="list-style-type: none"> Previously paid \$525 in rent on his ODSP benefits of about \$1150. He accepted an affordable unit but the landlord withdrew the offer. Gord was able to accept his current housing because it is subsidized, and moved in on November 27, 2021. 	
Shelter Access	<ul style="list-style-type: none"> Prior to becoming homeless, he contacted and attended shelters, speaking with residents about their experiences Learned that he would not be able to bring most of his belongings, or his dog. Worried that the congregate environment would trigger his personality disorder. He purchased approximately \$3000 in supplies so he could live outside. 	Smyth Affidavit, p. 122, paras 9-10 [ABC, Vol 5, Tab 72].
Impact of Encampment Evictions	<ul style="list-style-type: none"> Gord was evicted during bad weather and found it difficult to move everything to a new location with his mobility scooter. He was anxious every day, worrying that he would be evicted, or he would return to find his tent torn down. When he was able to stay in one place, he had some peace of mind, and connected with various supportive services. 	Smyth Affidavit, p. 124, paras 21-25 [ABC, Vol 5, Tab 72].
10. Mario Muscato		
History of Homelessness	<ul style="list-style-type: none"> 51 year old Indigenous man on ODSP. Lost his right hand, and the majority of his fingers of his left hand after being electrocuted in 2018. Opioid and stimulant use disorder, HIV, post-traumatic stress disorder, major depressive disorder, acquired brain injury, and extensive neck and face burns resulting in chronic pain. 	Affidavit of Mario Muscato, (May 11, 2022), p. 24, paras 2-4, 6-9, p. paras 18-20 ["Muscato Affidavit"] [ABC, Vol 5, Tab 62]; Wiwcharuk Affidavit, pp. 120-121, paras 2-6 [ABC, Vol 7, Tab 90 F];

	<ul style="list-style-type: none"> • Homeless since 2017 after being evicted. Outreach workers have suggested to Mario that they could get him into a lodging home. However, Mario has heard from other people who have stayed in lodging homes, as well as a housing worker, that his entire ODSP cheque would be taken, with the exception of \$150 that would be distributed as an allowance. Mario knows that he cannot survive with only \$150 a month. He also understands that not all lodging homes will help with cooking and laundry. He also understood that lodging homes were more for people with “mental issues” and did not think he belonged. • He wants housing, saying “I think the public needs to be aware of the fact that we are out here because the rents are very, very high” and that he would consider living with multiple roommates in order to secure housing. 	Cross Examination of Mario Muscato, (August 14, 2024) p. 32, Q52-58, p. 40, Q208 [ABC, Vol 5, Tab 63]; Muscato Affidavit, paras 24-26 [ABC, Vol 5, Tab 62].
Encampment Stays	<ul style="list-style-type: none"> • Has stayed in several encampments, from days to seven months (at the Ferguson encampment). • Repeatedly evicted by Bylaw and the police. He sometimes moves pre-emptively to avoid being evicted. Has stayed in hidden locations to avoid being seen by the public and attracting police attention. 	Muscato Affidavit, pp. 27-28, paras 24-26 [ABC, Vol 5, Tab 62].
Shelter Access	<ul style="list-style-type: none"> • Repeatedly experienced shelters to be full. Access is unpredictable, and he often walks around not knowing where he can sleep. • Repeatedly service restricted from shelters. He was banned from one of the three men’s shelters and discovered that the other two shelters were full. He has missed curfew repeatedly, sometimes only by two minutes, and loses his bed. Falsely accused of bringing in alcohol even though he doesn’t drink. Banned for over a month after staff suspected he was using drugs after he took too long in the washroom. 	Muscato Affidavit, pp. 25-27, paras 6-23 [ABC, Vol 5, Tab 62]; Transcript of Muscato XE, pp. 36-38, Q129-172, [ABC, Vol 5, Tab 63].

	<p>He has very limited use of his hands and it takes him a long time to use the washroom</p> <ul style="list-style-type: none"> • Has experienced theft in shelters. Service restrictions are imposed without a formal investigation, based solely on an allegation. • He is sometimes targeted by other shelter residents because of the deformities in his hands. In his words, “People are going to want to play the tough guy, and there you go. The fight’s on. They figure, you know, if they can slap someone like me around, then people will be afraid of them.” Has been service restricted for getting into fights that he did not instigate. The longest service restriction has been approximately six months. • Has also been repeatedly service restricted from hotel programs based on false allegations. Once, the person who made the allegation later admitted she had made it up. Mario was admitted a second time, only to be restricted again. One restriction lasted between 2.5 – three months. 	
Precarious Housing/Sleeping Rough	<ul style="list-style-type: none"> • Without a tent, sleeps in stairwells, hallways, or tries to couch surf. 	Muscato Affidavit, p. 27, para 18, [ABC, Vol 5, Tab 62].
Impact of Encampment Evictions	<ul style="list-style-type: none"> • Unable to carry many belongings around or put up and take down a tent because of his hands. • Without tent or shelter, he hardly sleeps and sometimes doesn’t sleep at all. Often groggy during the day and has trouble concentrating, keeping track of appointments, and having the physical energy to make it to appointments. He has less personal security. 	Muscato Affidavit, para 12, 27-28 [ABC, Vol 5, Tab 62].
11. Linsley Greaves A		
History of Homelessness	<ul style="list-style-type: none"> • 54 year old Black man who was on OW before being granted ODSP around December 2022. Uses a wheelchair 	Affidavit of Linsley Greaves, (June 2, 2022), [“ Greaves Affidavit ”], p. 28, paras 1-6,

	<p>after having an amputation of his left leg below the knee in December 2022</p> <ul style="list-style-type: none"> • Periods of homelessness for over ten years. Most recently, became homeless in 2020 after he was evicted. He has stayed in various locations since becoming homeless in 2020, including shelters, encampments, couch surfing, and unsheltered on the streets. • Linsley had a housing worker who discussed the possibility of getting him into a residential care facility. However, Linsley’s understanding is that they are for elderly people, and he does not know if it would be a stable environment for him. One place that was mentioned was not viable because it was not wheelchair accessible. 	<p>[ABC, Vol 3, Tab 32]; Affidavit of Claire Bodkin, (May 5, 2023) [“Bodkin Affidavit”], p. 168, paras 1-4 [ABC, Vol 5, Tab 74 a]; Supplementary Affidavit of Linsley Greaves, (June 27, 2023), [“Supplementary Greaves Affidavit”], paras 1-2, [ABC, Vol 3, Tab 33]; Greaves XE, p. 47-48, Q173-176 [ABC, Vol 3, Tab 34]. Lamont Affidavit, p. 30, para 2 [ABC, Vol 12, Tab 161 h].</p>
Encampment Stays	<ul style="list-style-type: none"> • Was initially able to stay in an encampment at Woodlands Park for almost two years during the time that overlapped with the 2020 Protocol. Bylaw officers eventually attended and said that the City “wanted their park back”, giving people three days to leave. The City showed up with trucks and bulldozers and surrounded him and some supporters who had showed up in protest. • Started packing up while City trucks drove around him. The City offered to store some of his belongings, but he was unable to find someone to follow up with, and ended up losing many of his belongings including his tent. • Continued to experience encampment evictions from several different locations. Before Woodlands, Linsley had difficulty being able to stay in one encampment location for more than a night because the City would come in the middle of the night – at 400 AM or 600 AM – and tell them they had to move. • 	<p>Greaves Affidavit, p. 30. paras 17-21, [ABC, Vol 3, Tab 32];</p> <p>Greaves XE, p. 42, Q95-101, [ABC Vol 23 Tab 34];</p> <p>Greaves XE, p.42-43, Q101-116 [“Greaves XE”] [ABC, Vol 3, Tab 34]; Supplementary Greaves Affidavit, p. 33, para 1 [ABC, Vol 3, Tab 35];</p> <p>Lamont Affidavit, p. 30, paras 3-4 [ABC, Vol 12, Tab 161 h].</p>

Shelter Access	<ul style="list-style-type: none"> • Feels that his past street life “comes back to haunt him” in shelters, and he gets targeted with theft, property damage, and people trying to start fights. • Has experienced racism in shelters • Had a past dependency on crystal meth that made him both worry about getting caught using in shelters, and getting kicked out if he left to use and was not inside at the right times • Difficulty sleeping in shelters because of noise and discomfort with sleeping around strangers. He has also experienced theft in shelters. 	Greaves Affidavit, p. 28, para 7, p. 29, para 8-12 [ABC, Vol 3, Tab 32]; Lamont Affidavit, p. 31, para 2 [ABC, Vol 12, Tab 161 h].
Precarious Housing/Sleeping Rough	<ul style="list-style-type: none"> • Lost his tent during his eviction from Woodlands Park. Stayed wherever he could, including on a heating vent with about 14 others who slept “sausage style” on the vent. The vents were later turned off. He then went to a parking lot with some of the same people from the heating vents, but it was fenced off after a week. • Stayed in other outdoor locations but everywhere he went, Bylaw or the police were “buzzing around” and told him that he had to leave. If he stayed on a cluster of benches, the City would remove all but one bench. 	Greaves Affidavit, p.30 paras 22-28, [ABC, Vol 3, Tab 32]; Lamont Affidavit, p. 31, para 4 [ABC, Vol 12, Tab 161 h].
Impact of Encampment Evictions	<ul style="list-style-type: none"> • Sleep deprived without a tent, and would often fall asleep during the day. Trouble concentrating. His anxiety worsened and was exposed to the elements. • Developed frostbite in his left foot after sleeping outside with only blankets in the winter of 2021/2022. He lost his left big toe as a result. • In the weeks leading up to December 15, 2022, was repeatedly evicted and his belongings kept getting wet while the temperature fluctuated above and below freezing. Paramedics with the City’s Social Navigation program were concerned about his left leg and brought him to an outreach 	Greaves Affidavit, p.31, paras 29-31 [ABC, Vol 3, Tab 32]; Supplementary Greaves Affidavit, p. paras 2-3 [ABC, Vol 3, Tab 33]; Bodkin Affidavit, p. 168, [ABC, Vol 5, Tab 74 a]; Bodkin XE, p. 175, Q60, [ABC, Vol 4, Tab 34]; Lamont Affidavit, pp. 30-31, paras 3-6 [ABC, Vol 12, Tab 161 h].

	<p>doctor. The doctor was so concerned about this new injury that she sent him to the hospital, where he underwent an amputation below the left knee. As a result, he is now permanently disabled and in a wheelchair.</p> <ul style="list-style-type: none"> • The loss of his leg has been devastating. He feels ashamed and his mental health has been negatively impacted. He has struggled to maintain a relationship with his daughter and mother because he cannot face her in his new state. Experiences increased isolation and sense of despair. • Increased stimulant use following evictions in order to stay awake led to increased paranoid delusions and hallucinations and worsening of mental health 	
12. Cory Monahan		
History of Homelessness	<ul style="list-style-type: none"> • 48 year old man on ODSP: Fetal alcohol syndrome, attention deficit hyperactivity disorder, back pain and opioid and stimulant use disorders. • Homeless for the majority of his life. His last housing was in 2021, but he was unlawfully evicted. As of June 2022, he had been on the waiting list for subsidized housing for years. 	Affidavit of Cory Monahan, (May 12, 2022) [" Monahan Affidavit "], pp. 127-128, paras 2-7, [ABC, Vol 4, Tab 56]; Lamont Affidavit, pp. 18-19, paras 2-3 [ABC, Vol 12, Tab 161 d].
Encampment Stays	<ul style="list-style-type: none"> • After being evicted and running out of money for a hotel, he put up a tent in Carter Park. After three days, the police and Bylaw showed up with trucks and bulldozers to evict everyone. Cory packed up his belongings and left to avoid a confrontation. • He went on to stay in several more encampments, for varying amounts of time before he was evicted by Bylaw officers. Cory has continued to be evicted from his encampments and lose belongings in the process. • Has been evicted overnight – specifically, in early morning hours before sunrise, on several occasions. 	Monahan Affidavit, p. 128, paras 4, 7-9 [ABC, Vol 4, Tab 56]; Supplementary Affidavit of Cory Monahan, (April 23, 2023), paras 1-3, 5 [" Supplementary Monahan Affidavit "], p. 133, paras 1-3,5, [ABC, Vol 4, Tab 57]; Monahan XE Transcript, p.144, Q206; p.153, Q411, 418 [ABC, Vol-4, Tab 58]; Monahan Continued XE Transcript, pp.157-158, Q466-468 [ABC, Vol-4, Tab

		59]; Lamont Affidavit, pp. 18-19, paras 3-4 [ABC, Vol 12, Tab 161 d].
Shelter Access	<ul style="list-style-type: none"> Does not feel comfortable living with groups of strangers and finds it to be a destabilizing environment. History of substance use, and tries to stay away from harder street drugs. At the same time, he has had a marijuana dependency and is unable to use in shelters Service restricted from shelters several times, recently in the middle of winter for eight weeks. Mission Services had a shelter program where alcohol use was permitted. However, he was uncomfortable being exposed to alcohol because of his fetal alcohol syndrome disorder and left after three days. More recently, he has a dog that is not permitted inside shelter. Repeated experiences where he is told that there is shelter space available, but when he shows up, they are full. 	Monahan Affidavit, pp.128-129, paras 10-16 [ABC, Vol 4, Tab 56]; Monahan XE, p. 142, Q143-147, p. 152, Q387-390, [ABC, Vol 4, Tab 58]; Monahan Continued Redirect, p. 157, Q440-453; Supplementary Monahan Affidavit, p. 133, para 3 [ABC, Vol 4, Tab 59].
Impact of Encampment Evictions	<ul style="list-style-type: none"> "Gave up" and slept wherever he could following Carter Park eviction. Lost 15 pounds. Increased risk of theft when continuously moves his belongings Dislocated his shoulder after he was repeatedly woken up by Bylaw and evicted before sunrise. He was rushing and injured himself Lost some of the stability he experienced when he could stay in one location. His sleep is disrupted and he is exhausted from moving. Often loses belongings in the course of because he does not have enough time to move everything when the City's trucks and bobcats arrive 	Monahan XE, p. 146, Q245-256, [ABC, Vol 4, Tab 58]; Monahan Affidavit, p. 129-130, paras 19-22 [ABC, Vol 4, Tab 56]; Lamont Affidavit, pp 18-19, paras 3-4 [ABC, Vol 12, Tab 161 d].

	<ul style="list-style-type: none"> Sleep deprivation has lead to worsening of mental health and substance use. 	
13. Ammy Lewis		
History of Homelessness	<ul style="list-style-type: none"> 46 year old Indigenous woman on ODSP: PTSD, HIV, anxiety, depression, stimulant and opioid use disorder, and borderline personality disorder Does not have a strong chronological memory of her most recent homelessness. Released from jail in late 2020, briefly housed, and then fled from her apartment in late 2021 after her landlord attempted to extort sex from her. Obtained subsidized housing in February 2023. 	Cross Examination of Ammy Lewis (August 14, 2024), ["Lewis XE"] p. 13, Q34-40, [ABC , Vol 4, Tab 45]; O'Shea Affidavit, p. 195, para 2 [ABC , Vol 6, Tab 84 b]; Lamont Affidavit, p. 90, paras 2-3 [ABC , Vol 4, Tab 79 e]; Affidavit of Ammy Lewis, (June 14, 2022), ["Lewis Affidavit"], p. 8, paras 2-8 [ABC , Vol 4, Tab 44]; Cross Examination of Rachel Lamont, (October 7, 2024), ["Lamont XE"], p. 126, Q277 [ABC , Vol 6, Tab 80].
Encampment Stays	<ul style="list-style-type: none"> Received a tent after police found her sleeping in an underground parking lot. She stayed in a couple different locations, and then moved to greenspace at Cathedral Park Bylaw officers would repeatedly tell her that she had to leave. The City evicted Ammy and she was forced to return to an abusive situation. Ammy was also repeatedly assaulted while staying outside. She was constantly worried about when the City would come and enforce an eviction. 	Lewis Affidavit, p. 9, paras 14-15 [ABC , Vol 4, Tab 44]; Lamont Affidavit, p. 90, para 3 [ABC , Vol 6, Tab 79 e]; Lewis XE, p. 24, Q227-229, [ABC , Vol 4, Tab 45].
Shelter Access	<ul style="list-style-type: none"> Went to shelters when she first became homeless, but they would not accept her with her dog (a Jack Russell Terrier/Chihuahua mix). Her dog is an important source of emotional support and safety and it she could not separate Her doctor's office repeatedly tried to get her into shelter, but could not because they were either full or would not accept her emotional support dog. Her doctor's office was 	Lewis Affidavit, pp. 8-9, paras 8-10, 13, 16, [ABC , Vol 4, Tab 44]; O'Shea Affidavit, p. 195-196, para 3,4 [ABC , Vol 6, Tab 84 b]; Lamont XE, p. 139, line 12 – p. 140, line 19 [ABC , Vol 4, Tab 70].

	eventually able to find a temporary foster home for her dog so she could access shelter.	
Precarious Housing/Sleeping Rough	<ul style="list-style-type: none"> After she could not access shelter, she started sleeping outside, unsheltered, including in dumpsters, an underground parking lot, and abandoned cars. 	Lewis Affidavit, para 11 [ABC, Vol 4, Tab 44]; O'Shea Affidavit, p. 195-196, paras 3-4 [ABC, Vol 6, Tab 84 b].
Impact of Encampment Evictions	<ul style="list-style-type: none"> Constantly worried about eviction, and where she would go. Had to move several times, losing belongings, stability and connection to supports. She had suicidal ideation, and worsening of her PTSD and substance use disorders. 	Lewis Affidavit, p. 9, para 15 [ABC, Vol 4, Tab 44]; O'Shea Affidavit, p. 196, para 1 [ABC, Vol 6, Tab 84 b]; Lamont Affidavit, p. 90, para 3 [ABC, Vol 6, Tab 79 e].
14. Julia Lauzon		
History of Homelessness	<ul style="list-style-type: none"> 27 year old Indigenous on ODSP benefits: borderline personality disorder, obsessive compulsive disorder, and substance abuse Became homeless in May 2021 after losing custody of her child and ended up on the street. She obtained subsidized housing in September 2024. 	Affidavit of Julia Lauzon, (August 12, 2024), [" Lauzon Affidavit "], p. 137, paras 2-4 [ABC, Vol 3, Tab 41]; Transcript of Cross Examination of Julia Lauzon, (October 15 2024), [" Lauzon XE "] p. 142, Q25-28 [ABC, Vol 3, Tab 42].
Encampment Stays	<ul style="list-style-type: none"> Stayed in tents in several encampments Never knew how long she would be able to stay. The City repeatedly evicted Julia and her friends from their tents and gave her at least a dozen trespass notices 	Lauzon Affidavit, p. 137, paras 5, p. 138, para 14 [ABC, Vol 3, Tab 41]; Lauzon XE, pp. 143-144, Q54-65 [ABC, Vol 3, Tab 42].
Shelter Access	<ul style="list-style-type: none"> Repeatedly attempted to get into shelters but was usually told that they were full. In March 2022, she tried - unsuccessfully - for nine days in a row Sometimes told to call back every hour to see if a bed opened up, but didn't have a phone. There used to be a protocol where, if all shelters were full, Mary's Place would do a referral. That did not happen for Julia. She was able to stay in Mary's Place for a few days. After that, she could not 	Lauzon Affidavit, p. 137-138, paras 7-12 [ABC, Vol 3, Tab 41]; Lauzon XE, p. 142, Q39-43, p. 144, Q78-line 79-84, p. 145, Q110-111, [ABC, Vol 3, Tab 42].

	<p>get back into shelter despite outreach workers trying to find her a spot.</p> <ul style="list-style-type: none"> Occasionally able get a spot at CAP. She sometimes couldn't get there before it was full, particularly when she worked as a bartender until 11:00 p.m. When CAP was full, she would sleep right outside the building. 	
Precarious Housing/Sleeping Rough	<ul style="list-style-type: none"> Julia would sleep outside CAP when she could not get it. She slept outside on several occasions, including the time she was sexually assaulted. 	Lauzon Affidavit, paras 12-13 [ABC, Vol 3, Tab 41]; Lauzon XE, pp. 145-146, Q112-118, [ABC, Vol 3, Tab 42].
Impact of Encampment Evictions	<ul style="list-style-type: none"> Was employed at the start of her homelessness as a bartender. After it ended, she was unable to look for new work due to the stress of living on the streets and not knowing where she would sleep at night. Hardly sleeps when she is constantly on the move, existing in a constant survival mode where she cannot focus on other things, like going to appointments Sexually assaulted while sleeping outside without a tent. In the course of defending herself, Julia was charged with aggravated assault against her attacker. Her attacker was later charged and convicted. 	Lauzon XE, p. 144, Q88-91, pp. 145-146, Q112-118, p. 147, Q-138-145 [ABC, Vol 3, Tab 42]; Lauzon Affidavit, p. 138, paras. 13, 15-16 [ABC Vol 3, Tab 41].

SCHEDULE “A”

LIST OF AUTHORITIES

Jurisprudence

1. *Abbotsford v. Shantz*, [2015 BCSC 1909](#)
2. *Ash v. Ontario (Chief Medical Officer)*, [2022 ONCA 849](#)
3. *Athey v. Leonati*, [\[1996\] 3 SCR 458](#)
4. *Bailey v. City of Hamilton* (Court File No. CV-20-73435)
5. *Bamberger v. Vancouver*, [2022 BCSC 49](#)
6. *Black v. City of Toronto*, [2020 ONSC 6398](#)
7. *Bjorkquist v AGC*, [2023 ONSC 7152](#)
8. *Brazeau v. Canada (AG)*, [2020 ONCA 184](#)
9. *Canada (AG) v. Power*, [2024 SCC 26](#)
10. *Canada (Director of Investigation and Research) v. Southam*, [\[1997\] 1 SCR 748](#)
11. *Canada (Prime Minister) v. Khadr*, [2010 SCC 3](#)
12. *CCR v. Canada*, [2023 SCC 17](#)
13. *Davies v. AIG Insurance*, [2024 ONCA 509](#)
14. *Davies v. The Corporation of the Municipality of Clarington*, [2016 ONSC 1079](#)
15. *Desbiens v. Mordini*, [2004 CanLII 41166 \(ON SC\)](#)
16. *Dovbush v. Mouzitchka*, [2016 ONCA 381](#)
17. *Fair Voting BC v. Canada (AG)*, [2025 ONCA 581](#)
18. *Fraser v. Canada (AG)*, [2020 SCC 28](#)

19. *Gholami v. Hospital of Sick Children*, [2018 ONCA 783](#)
20. *Heegsma v. Hamilton*, [2024 ONSC 7154](#)
21. *Heegsma v. Hamilton*, [2025 ONCA 554](#)
22. *Henebry v. Her Majesty the Queen*, [2018 ONSC 6584](#)
23. *Hollis v. Dow Corning*, [\[1995\] 4 SCR 634](#)
24. *Kingston v. Doe*, [2023 ONSC 6662](#)
25. *J.B. v. R.B.*, [2021 ONSC 1023](#)
26. *J.N. v. C.G.*, [2023 ONCA 77](#)
27. *Jacob v. Canada (AG)*, [2024 ONCA 648](#)
28. *LSUC v. Neinstein*, [2010 ONCA 193](#)
29. *Mackin v. New Brunswick (Minister of Finance)*, [2002 SCC 13](#)
30. *Matsqui-Abbotsford Impact Society v. Abbotsford*, [2024 BCSC 1902](#)
31. *Miller v. Her Majesty the Queen in Right of Canada*, [2015 ONSC 669 \(CanLII\)](#)
32. *Muskoka Lakes v. 1679753 Ontario*, [2011 ONSC 1997](#)
33. *New Brunswick v. G.(J.)*, [\[1999\] 3 SCR 46](#)
34. *Ontario (AG) v. G*, [2020 SCC 38](#)
35. *Ontario (Disability Support Program) v. Tranchemontagne*, [2010 ONCA 593](#)
36. *Ontario Teacher Candidates' Council v. Ontario (Education)*, [2023 ONCA 788](#)
37. *Paul v. Miller*, 2022 [NSSC 255](#)
38. *Poff v. Hamilton*, [2021 ONSC 7224](#)
39. *Prince George v. Stewart*, [2021 BCSC 2089](#)

40. *P.S. v. Ontario*, [2014 ONCA 900](#)
41. *Quebec (AG) v. 9147-0732 Québec*, [2020 SCC 32](#)
42. *R. v. Attard*, [2024 ONCA 616](#)
43. *R. v. Dinardo*, [2008 SCC 24](#)
44. *R. v. Hodgson*, [2024 SCC 25](#)
45. *R. v. JC*, [2021 ONCA 131](#)
46. *R. v. J.M.H.*, [2011 SCC 45](#)
47. *R. v. Kruk*, [2024 SCC 7](#)
48. *R. v. Malmö-Levine*, [2003 SCC 74](#)
49. *R. v. Mohan*, [\[1994\] 2 SCR 9](#)
50. *R. v. Pike*, [2024 ONCA 608](#)
51. *R. v. Sharma*, [2022 SCC 39](#)
52. *R. v. Sullivan*, [2022 SCC 19](#)
53. *R. v. Swain*, [\[1991\] 1 SCR 933](#)
54. *R. v. Varghese*, [2024 ONCA 555](#)
55. *R. v. Z.A.*, [2020 ONSC 2824](#)
56. *Sharbern Holding Inc. v. Vancouver Airport Centre*, [2011 SCC 23](#)
57. *Shot Both Sides v. Canada*, [2024 SCC 12](#)
58. *Société des casinos du Québec v. Association des cadres de la Société des casinos du Québec*, [2024 SCC 13](#)
59. *Waterloo v. Persons Unknown and to be Ascertained*, [2023 ONSC 670](#)

60. *Waterloo v. Persons Unknown and to be Ascertained*, [2025 ONSC 4774](#)
61. *Toronto v. Ontario (AG)*, [2021 SCC 34](#)
62. UN Committee on Economic, Social and Cultural Rights, *General Comment No. 4* (December 13, 1991), E/1992/23.
63. UN Committee on Economic, Social and Cultural Rights, *General Comment No. 7* (May 20, 1997), E/1998/2
64. *Vancouver v. Ward*, [2010 SCC 27](#)
65. *Victoria v. Adams*, [2008 BCSC 1363](#)
66. *Victoria v. Adams*, [2009 BCCA 563](#)

Legislation, Regulations and International Treaties

1. *2020 Protocol*
2. *2021 Process*
3. *2023 Protocol*
4. *City of Hamilton Act, 1999*, [SO 1999, c 14, Sch C](#).
5. *City of Hamilton By-Law 01-219 (Parks By-Law)*.
6. [City of Hamilton Council Minutes \(March 6, 2025\)](#), item 9.2 (repealing 2023 *Protocol*)
7. *General*, [O Reg 134/98](#) (Ontario Works)
8. *General*, [O Reg 222/98](#) (ODSP).
9. *International Covenant on Economic, Social and Cultural Rights*, 993 UNTS 3
10. *Rules of Civil Procedure*, [RRO 1990 Reg. 194](#)

Secondary Sources

1. *Rules of Civil Procedure Chapters, Pre-Trial Procedures, Rule 51 - Admissions*, 2nd ed, [2022 CanLII Docs 1039](#)

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY-LAWS

Canadian Charter of Rights and Freedoms

Life, liberty and security of person

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

...

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

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

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

...

Enforcement of guaranteed rights and freedoms

24 (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

Constitution Act, 1982

Primacy of Constitution of Canada

52 (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

Courts of Justice Act, [RSO 1990, c C43](#), s. 134(1)

Powers on appeal

- 134** (1) Unless otherwise provided, a court to which an appeal is taken may,
- (a) make any order or decision that ought to or could have been made by the court or tribunal appealed from;
 - (b) order a new trial;
 - (c) make any other order or decision that is considered just.

Rules of Civil Procedure, [RRO 1990 Reg. 194](#)

RULE 51 ADMISSIONS

Interpretation

51.01 In rules 51.02 to 51.06,

“authenticity” includes the fact that,

- (a) a document that is said to be an original was printed, written, signed or executed as it purports to have been,
- (b) a document that is said to be a copy is a true copy of the original, and
- (c) where the document is a copy of a letter or e-mail or other telecommunication, the original was sent as it purports to have been sent and received by the person to whom it is addressed. R.R.O. 1990, Reg. 194, r. 51.01; O. Reg. 689/20, s. 34.

Request to Admit Fact or Document

51.02 (1) A party may at any time, by serving a request to admit (Form 51A), request any other party to admit, for the purposes of the proceeding only, the truth of a fact or the authenticity of a document. R.R.O. 1990, Reg. 194, r. 51.02 (1).

(2) A copy of any document mentioned in the request to admit shall, where practicable, be served with the request, unless a copy is already in the possession of the other party. R.R.O. 1990, Reg. 194, r. 51.02 (2).

Effect of Request to Admit

Response Required Within Twenty Days

51.03 (1) A party on whom a request to admit is served shall respond to it within twenty days after it is served by serving on the requesting party a response to request to admit (Form 51B). R.R.O. 1990, Reg. 194, r. 51.03 (1).

Deemed Admission Where No Response

(2) Where the party on whom the request is served fails to serve a response as required by subrule (1), the party shall be deemed, for the purposes of the proceeding only, to admit the truth of the facts or the authenticity of the documents mentioned in the request to admit. R.R.O. 1990, Reg. 194, r. 51.03 (2).

Deemed Admission Unless Response Contains Denial or Reason for Refusal to Admit

(3) A party shall also be deemed, for the purposes of the proceeding only, to admit the truth of the facts or the authenticity of the documents mentioned in the request, unless the party's response,

- (a) specifically denies the truth of a fact or the authenticity of a document mentioned in the request; or
- (b) refuses to admit the truth of a fact or the authenticity of a document and sets out the reason for the refusal. R.R.O. 1990, Reg. 194, r. 51.03 (3).

Costs on Refusal to Admit

51.04 Where a party denies or refuses to admit the truth of a fact or the authenticity of a document after receiving a request to admit, and the fact or document is subsequently proved at the hearing, the court may take the denial or refusal into account in exercising its discretion respecting costs. R.R.O. 1990, Reg. 194, r. 51.04; O. Reg. 259/14, s. 9.

Withdrawal of Admission

51.05 An admission made in response to a request to admit, a deemed admission under rule 51.03 or an admission in a pleading may be withdrawn on consent or with leave of the court. R.R.O. 1990, Reg. 194, r. 51.05.

Order Based on Admission of Fact or Document

Motion

51.06 (1) Where an admission of the truth of a fact or the authenticity of a document is made,

- (a) in an affidavit filed by a party;
- (b) in the examination for discovery of a party or a person examined for discovery on behalf of a party; or
- (c) by a party on any other examination under oath or affirmation in or out of court,

any party may make a motion to a judge in the same or another proceeding for such order as the party may be entitled to on the admission without waiting for the determination of any other question between the parties, and the judge may make such order as is just. R.R.O. 1990, Reg. 194, r. 51.06 (1).

(2) Where an admission of the truth of a fact or the authenticity of a document is made by a party in a pleading or is made or deemed to be made by a party in response to a request to admit, any party may make a motion in the same proceeding to a judge for such order as the party may be entitled to on the admission without waiting for the determination of any question between the parties, and the judge may make such order as is just. R.R.O. 1990, Reg. 194, r. 51.06 (2).

Exception: Deemed Undertaking

(3) If Rule 30.1 applies to the admission, its use in another proceeding is subject to Rule 30.1 (deemed undertaking). O. Reg. 61/96, s. 3.

City of Hamilton By-Law 01-219 (Parks By-Law)

Hours of Entrance

3 (1) No person shall enter into or be in any park, except during the times the park is open to the public or during such times as otherwise expressly authorized by permit.

(2) A park shall only be open to the public:

(a) where there is displayed at, within or adjacent to a park a posted sign or notice as to the times such park is open to the public, during the times so indicated on such sign or notice; or

(b) in the absence of a posted sign or notice as referred to in subsection a park shall only be open to the public each day from six o'clock in the forenoon a.m.) until eleven o'clock in the afternoon (11:00 p.m.).

...

Encroachment

12 (a) Unless expressly authorized by permit, no person shall encroach upon or take possession of any park, or any part or area within a park, by any means whatsoever, including but not limited to the placing, construction, installation or maintenance of any fence, structure or other thing, the dumping or storage of any materials, or by planting any plant or otherwise cultivating, grooming or landscaping any part of the grounds thereof;

(b) Where the Director determines that an encroachment upon a part or area of a park will be reasonable in the circumstances and will not be detrimental to the interests of the City, the Director may authorize by permit an encroachment upon a part or area of a park, upon such terms and conditions as the Director may deem appropriate in the circumstances, and may take or require to be taken such measures or actions as the Director deems reasonable to ensure that any authorized encroachments are and continue to be satisfactory to the City;

(c) The Director is authorized to remove or cause to be removed, and to dispose of or cause to be disposed of, any unauthorized or no longer authorized encroachment from any park by any means and in any manner whatsoever, as the Director may, in the exercise of an absolute discretion, deem appropriate in the circumstances, including but not limited to the issuance of an order to remove an encroachment against the person or persons responsible for the encroachment.

(d) No person, responsible for an authorized encroachment, shall fail to comply with the terms and conditions of the permit authorizing such encroachment

(e) No person responsible for an encroachment shall fail to remove an encroachment, when directed or ordered by the Director, where such encroachment is not authorized or no longer authorized by permit.

(f) In the event that a person or persons, against whom an order to remove an encroachment from a park has been made or issued by the Director, fails to comply with said order within the time indicated on the order, the Director may cause the encroachment to be removed and disposed of, all at the expense of such person or persons and the amount of such expense may be recovered by the City by action or may be added by the City Clerk to the collector's roll against any lands within the City of Hamilton owned by such person or persons and collected in a like manner as municipal taxes.

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Camping and Lodging

17 Unless authorized by permit, no person shall dwell, camp or lodge in any park.

Tents and Structures

18 Unless authorized by permit, no person shall place, install or erect any temporary or permanent tent or structure in any park.

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2020 Protocol

Bylaw Enforcement Protocol

When the Encampment Taskforce has been contacted regarding an encampment location, the following process will commence. All city services and responses will be coordinated through the Taskforce.

Persons experiencing homelessness shall be offered an assessment using the Vulnerability Index - Service Prioritization Decision Assistance Tool ("VISPDAT") tool for a determination of acuity. The application of this test and determination of test results shall be completed by the City of Hamilton's Mental Health Street Outreach Program on a periodic basis. The test shall have occurred within the past ninety (90) days.

The VI-SPDAT tool will determine the path for how individuals sleeping rough are approached and engaged. Below outlines the steps and circumstances available:

- For individuals with a VI-SPDAT scores below 13, or those refusing to engage with outreach workers for assessment under the VI-SPDAT tool, the maximum duration for contact, assessment and removal is 14 days from the earliest of the City or its agents making contact as requested by the Encampment Taskforce with a person experiencing homelessness. The outreach that occurs during this 14 day period will provide supports including but not limited to the following:
 - Engagement that treats every individual from a rights-based approach, ensuring dignity and confidentiality is maintained;
 - Immediate work on a personalized housing plan;
 - Informing individuals of the timeline for encampment removal;
 - Determine previous (if any) barriers affecting access into the system and attempt to resolve them
 - Assist with matters that facilitate the movement to shelter/housing including but not limited to transportation, financial assistance and storage of possessions.
- High acuity will be defined as a VI-SPDAT score of 13 or more for the purpose of the protocol for the enforcement of the bylaw. It is recognized that in rare occasions special circumstances may arise that cannot be addressed through the VI-SPDAT assessment. In those cases it is agreed that the City's designate outreach team – currently the City's Mental Health Street Outreach Program – will provide recommendations to the enhanced Encampment Task Force in those rare situations where additional considerations are required outside of the VI-SPDAT assessment.
- Where a person experiencing homelessness is assessed as high-acuity and there is no available option for supportive housing or shelter, outreach efforts will continue in order to help the individual(s) move from the streets to shelter/housing. Such individuals are subject to the prohibited locations/activities listed below but not subject to the defined 14 day timeline for removal.
- In the case of persons experiencing homelessness determined through assessment by the City to have shelter or housing options available for which the transition would not cause trauma or a decline in mental health as determined by the City's Mental Health Street Outreach Program – which are offered and refused or otherwise not accepted or who refuse to be assessed, then the City

may remove such persons and their possessions under such legal authorities as may be employed by the City.

Prohibited Areas: all individuals experiencing homelessness in encampments – even when deemed high acuity or engaged with outreach in the 14-day grace period outlined above - are subject to the following restrictions and may be removed or moved if not in compliance with them:

- No more than 5 in an encampment;
- No encampments on sidewalks, roadways or boulevards;
- Encampments must not encumber an entrance or exit or deemed fire route;
- Encampments must be 50 meters from a playground, school or childcare centre;
- No encampments within any property with an environmental or heritage designation; and
- Situations where health and safety concerns exist for those living within or adjacent to an encampment will be addressed in a reasonable fashion, in good faith, on a case by case basis by the City in its sole discretion that balances the needs of both the person experiencing homelessness/encamped individuals and community members. In these situations, the City will consult with the Encampment Task Force and the City's Mental Health and Street Outreach team to determine how to best balance the needs of persons experiencing homelessness/encamped individuals and other community members.

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2021 Process

Encampment Process

With the repealing of the By-law Enforcement Protocol, staff will proceed with the following Encampment Process:

Step one

Complaints are received by Municipal Law Enforcement (MLE) regarding structures/tents in parks, road allowance and private property.

Step two

MLE attends, determines if there is a violation of a City By-law including the Parks Bylaw, seeks voluntary compliance and notifies Housing Outreach.

Step three

Housing Focused Street Outreach attends site and carries out the following:

- Work from Housing Focused Street Outreach framework and within the context of Hamilton's Homeless Coordinated Access System
- Support individuals, families and groups, in order to promote connection to shelter, housing and the achievement of their optimal health and well-being
- Collaborative development of housing and service plans
- Assist individuals with obtaining necessary documents needed to obtain housing, including the completion of supportive and subsidized housing applications
- Collaborate and co-ordinate services with appropriate community and health agencies
- Crisis intervention
- Provide a summary of these actions (omitting any privileged and confidential information) in the form of an encampment assessment checklist to MLE pursuant to their request

Step four

MLE re-attends and issues a verbal trespass notice and notifies Hamilton Police Service (HPS).

Step five

Hamilton Police Service responds under the *Trespass to Property Act*, R.S.O. 1990, c. T.21

Step six

Park and Waste Divisions are contacted to coordinate a clean up.

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2023 Protocol (Revised June 2024)

D) Prohibited Areas for Erecting Encampments, Temporary Shelters, or Tents

In order to provide for the availability of space for temporary shelter in parks, persons without shelter or being homeless will be able to establish an encampment through erecting a temporary shelter for themselves and also be able group together with other such persons' temporary shelters. However, the encampment or cluster of shelters must not exceed five tents or similar temporary shelters, and there must be at least 50 metres separating the encampment or cluster from other encampments or clusters of shelters. Further, the balancing of public and private interests while allowing for temporary shelter will require encampments or clusters not to be located:

On or within **100 metres** of:

- a school or children daycare centre; and,
- spaces that are designed and programmed for children; and,
- a playground, pool, waterpark, or any spray pad; and,
- a funeral home; and,
- a long-term care facility.

On or within **50 metres** of:

- any lake, beach, pond, watercourse or other body of water, or a dock; and,
- any sports fields, inclusive of but not limited to, skateboard parks, fitness amenities, golf courses, ball diamonds, soccer pitches, tennis courts, or any other sports or multi-use courts, as well as stadiums, dugouts, stages, and bleachers.

On or within **25 metres** of:

- an active construction site.

On or within **10 metres** of:

- any private property lines.

On or within **5 metres** of:

- any transit stop or a highway and specifically including a sidewalk, boulevard, or bridge or tunnel being part of such highway; and,
- any property with an environmental or heritage designation; and,
- any pathway, walkway, sidewalk, or parking lot or on or under any bridge including pedestrian access points to such areas and structures.

Encampments are **NOT to be located** on or within any:

- the full length of the Strachan Linear Park,
- fenced-in, off-leash dog area,
- cemetery, including its roads, lanes and paths for travel within the cemetery,
- community garden and including any garden shed or greenhouse; and,
- designated fire route, or the entrance to or exit from a designated fire route, or located so as to block any fire hydrant,
- entrance, exit or a doorway to a building or structure, and including, without limiting the generality of the foregoing, an area adjacent to such entrances or exits required in the event of fire or emergency,
- accessibility entrance or ramp or located in a way that blocks access to such entrances or ramps,

- area identified susceptible to flooding, erosion, slope instability, or other environmental hazards that presents a risk to health and safety,
- Further no temporary shelter or tent will be placed against, or under, or be attached or tied to any building or permanent structure. All shelters or tents must be freestanding.

E) Campfire and Barbecue Use

Section 14 of By-Law 01-219, the Parks By-Law, which regulates campfires and barbecues in City Parks; as well as By-Law No. 02-283, the Open Air Burning By-Law, which regulates open-air burning within the City, shall be complied with and will be enforced.

F) Maximum Personal Space Allotment(s)

The total area for a single tent and all its associated belongings cannot exceed beyond a 3-metre-by-3-metre area, or 9-metres-squared, and the total area for five tents within a cluster cannot exceed beyond a total area of 45-metres-squared. The following chart identifies space limits by number of temporary shelters or tents:

Number of Temporary Shelters/Tents within Encampment Cluster	Maximum Total Space Allotment (metres)
One	9m ²
Two	18m ²
Three	27m ²
Four	36m ²
Five	45m ²

Any items located outside of the allotted personal space area will be subject to removal by City staff.

G) Encampment Response Processes

Given that there are several circumstances that require a unique response from the Coordinated Response Team, the following guidelines have been established to direct responses to people living in encampments, and their temporary shelters, or tents:

- I. When an encampment, temporary shelter, or tent is located on public property, and not within a prohibited area, as defined by this Protocol:

1. Within 72 hours after receiving a complaint or request for service (unless exceptional circumstances exist), Housing Focused Street Outreach staff will engage with the individual(s) living within an encampment, temporary shelter, or tent to better understand their needs and connect them with internal and community supports, including housing-focused case management; referral into the emergency shelter system; referrals to health agencies, social assistance supports, and specialized outreach supports; and any other relevant supports available that would improve an individual's health and wellbeing.
 2. If no health and safety issues are observed by Housing Focused Street Outreach (see Section J, 'Health and Safety' for further detail on specific circumstances or factors), and the encampment, temporary shelter, or tent complies with the prohibitions and locations outlined in this Protocol, individuals will be allowed to maintain and occupy temporary such shelter for the duration of the Protocol, as defined by City Council. Housing Focused Street Outreach will continue to engage with the individual(s) on an ongoing basis to provide supports and referrals as needed and work towards goals in individualized housing plans.
 3. Only if a substantial change in circumstances is observed by Housing Focused Street Outreach in subsequent visits to the encampment, temporary shelter, or tent, such as new significant health or safety issues, will Hamilton Police Services be asked to attend to support any response. Hamilton Police Services will attend encampments within the normal course of responding to emergencies and other policing duties, and Housing Focused Street Outreach and other City partners would work cooperatively with Hamilton Police Services if a concern related to health and safety is identified at an encampment.
 4. Any items or circumstances that are of clear and immediate risk to the individuals living in an encampment or neighbouring encampments or the broader public will result in a call for immediate emergency response. Hamilton Police Service Encampment Engagement Officers will attend the location and conduct a risk assessment when requested and as required.
- II. When an encampment, temporary shelter, or tent is located on public property, within a prohibited area, as defined by this Protocol:
1. Within 72 hours after receiving a complaint or request for service (unless exceptional circumstances exist), Housing Focused Street Outreach staff will engage with individual(s) living within an encampment, temporary shelter, or tent to better understand their needs and connect them with

internal and community supports, including housing-focused case management; referral into the emergency shelter system; referrals to health agencies, social assistance supports, and specialized outreach supports; and any other relevant supports available that would improve an individual's health and wellbeing. Housing Focused Street Outreach will have available information about possible suitable and compliant sites and will consider the needs and choices of the individual and collaborate with the individual(s) living within an encampment, temporary shelter, or tent, to identify a more suitable area that meets the conditions noted within this Protocol.

2. If after visiting an encampment, temporary shelter, or tent, Housing Focused Street Outreach staff observe the encampment, temporary shelter, or tent to be in a prohibited area, as defined by this Protocol, Housing Focused Street Outreach will contact Municipal Law Enforcement within 72 hours of receiving the initial complaint, and Municipal Law Enforcement will respond to the within four (4) business days.
3. Municipal Law Enforcement Officers will visit the site within four business days and confirm whether the encampment, temporary shelter, or tent is in a prohibited area. If so, Municipal Law Enforcement Officers will notify the individual(s) living at the location via a Notice of Trespass and verbally, if possible, that they are in a prohibited area, and that they will be required to move from the existing location.
4. Municipal Law Enforcement Officers will determine compliance timelines depending on the presenting circumstances, for the issuance of notices or actions to be taken in respect to the encampment, temporary shelter, or tent, within a maximum of four (4) total days from the issuance of notice, unless exceptional circumstances exist. For example, if the Municipal Law Enforcement Officers observes a significant health or safety issue for the individual due to placing a shelter on a highway the Municipal Law Enforcement Officers will take more urgent action to require compliance or remediate the concern and may seek Hamilton Police Services support. If there are few or no immediate health, safety, or other concerns due to encampment or its location within a prohibited area, Municipal Law Enforcement Officers will allow for more time, up to a maximum of four (4) total days, unless exceptional circumstances exist, to engage with the individuals in an encampment, temporary shelter, or tent around supports and next steps.
5. After a Trespass Notice has been served and prior to an area being cleared, Housing Focused Street Outreach's will continue to engage with

individual(s) at the location to identify alternate sheltering options and attempt to address any barriers to shelter or housing, such as lack of identification or item storage.

6. If the duration of time provided by a Trespass Notice expires and individual(s) at the site has not moved voluntarily and are unwilling to move, Municipal Law Enforcement Officers will notify Hamilton Police Services Encampment Engagement Officers. Hamilton Police Services will be available to support and assist the Municipal Law Enforcement Officers, operational plan, and/or the individual(s) living at the encampment, temporary shelter, or tent to vacate the prohibited area.
 7. Hamilton Police Services Encampment Engagement Officers will interact with individuals in encampments, temporary shelters, or tents at the request of Housing Focused Street Outreach and/or Municipal Law Enforcement, in a supportive capacity. Otherwise, their level of intervention will be dictated by their own internal policies and the circumstances at a given encampment, temporary shelter, or tent site.
 8. Parks staff will coordinate the clean-up, to be completed either by Parks staff, Roads staff, or the contractor, depending on the location, within 72 hours, with discretion for extenuating circumstances such as inclement weather.
- III. When an encampment, temporary shelter, or tent is located on public property, is not located in a prohibited area, but health and safety concerns are identified:
1. If Housing Focused Street Outreach identify or confirm a health or safety issue at an encampment, temporary shelter, or tent, and depending on circumstances, will address or may collaborate with appropriate partners to address the health and safety concerns identified.
 2. If the health and safety concern is considered serious and/or imminent (e.g., exposed electrical wiring, accumulation of discarded needles, use of propane tanks and other combustible materials, possession of weapons) as identified by Housing Focused Street Outreach or Hamilton Police Services Encampment Engagement Officers, Hamilton Police Services will follow appropriate policing responses required in the circumstances. In addition, they will communicate with the Coordinated Response Team and prioritize working with community partners to address any remaining safety concern. These partners may include Hamilton Fire Department, Hamilton Public Health's Community Points program, Hamilton Parks, or any other parties deemed necessary to address the observed health and safety concerns.

3. All items determined by Hamilton Police Services and/or partners to be a serious risk to the health and safety of individual(s) living at the encampment, temporary shelter, or tent, as well as the public will be removed at the earliest opportunity.
4. If the encampment, temporary shelter, or tent is also in an area deemed to be prohibited based upon the provisions identified in Section D of this Protocol, and after health and/or safety issues placing Municipal Law Enforcement Officers at risk have been removed, Municipal Law Enforcement Officers will initiate steps 49 in Encampment Response Process B – “If an encampment is located on public property, in a prohibited area.”
5. If all serious health and/or safety issues have been removed or otherwise corrected, and the encampment, temporary shelter, or tent is not located in a prohibited area as designated in Section D of this Protocol, then the individual(s) will be permitted to remain where they are, in accordance with Encampment Response Process A.

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March 2025 Council Resolution

THEREFORE, BE IT RESOLVED:

- (a) That the City of Hamilton Encampment Protocol be rescinded as of March 6, 2025;
- (b) That the General Managers of Healthy and Safe Communities, Planning & Economic Development, and Public Works, report back at the February 26, 2025 GIC meeting with the necessary resources and staffing needed to transition from the current Encampment Protocol to the City of Hamilton Parks Bylaw.
- (c) That Housing Services staff be directed to continue working with local social agencies to find shelter space for those living in encampments;
- (d) That Municipal Law Enforcement (MLE) and Parks staff be directed to dismantle all encampments as well as clean and restore parks to the inviting, safe, and green recreational spaces they once were, to be enjoyed by City of Hamilton taxpayers and their families;

...

General, [O Reg 134/98](#) (Ontario Works)

44. (1) The budgetary requirements for an applicant or recipient who receives board and lodging from the same source and who is not a person whose budgetary requirements are determined under subsection (2) or (3) or section 43 shall be equal to the sum of the following amounts:

1. The amount paid for board and lodging up to the maximum set out in the following Table:

Table

Number of Dependants other than a Spouse	Number of Dependants 18 Years or Older	Number of Dependants 0-17 Years	Recipient Amount in dollars	Recipient and Spouse Amount in dollars
0	0	0	533	688
1	0	1	664	752
1	1	0	752	790
2	0	2	737	813
2	1	1	825	851
2	2	0	873	887
3	0	3	806	874
3	1	2	894	912
3	2	1	942	948
3	3	0	980	984

For each additional dependant of a sole support parent, add \$120 if the dependant is 18 years of age or older or \$69 if the dependant is 0 to 17 years of age. Otherwise, for each additional dependant, add \$100 if the dependant is 18 years of age or older or \$61 if the dependant is 0 to 17 years of age.

2. If the applicant or recipient resides north of the 50th parallel and is without year round road access, an amount determined in accordance with the following Table:

Table

Number of Dependants	Recipient Amount in dollars	Recipient and Spouse
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other than a Spouse		Amount in dollars
0	272	403
1	420	485
2	511	578
3	605	672

For each additional dependant, add \$99.

3. Subject to subsection (6), for the month in which the administrator receives an application for a special diet allowance and is satisfied that a member of the benefit unit requires a special diet allowance because of a medical condition set out in Schedule 1 to [Ontario Regulation 564/05](#) (Prescribed Policy Statements) made under the Act and for each succeeding month, up to and including the month in which the administrator requests a new application and a reassessment of the requirement for a special diet allowance, an amount that is the lesser of, for each member of the benefit unit,

i. the sum of the amounts determined by the administrator in accordance with Schedule 1 to [Ontario Regulation 564/05](#), and

ii. \$250.

4. For each member of the benefit unit who is 65 years of age or older, an amount for personal needs due to advanced age equal to \$44.

5. \$71 (Special Boarder Allowance).

6. For the month in which an approved health professional confirms that a member of the benefit unit is pregnant and for each succeeding month up to and including the month in which the pregnancy ends, and subsequently, if the member of the benefit unit is breast-feeding, for each succeeding month up to and including the month in which the infant is 12 months of age, a nutritional allowance equal to,

i. \$50, if an approved health professional confirms that the person requires a non-dairy diet, or

ii. \$40, otherwise

(2) The budgetary requirements for an applicant or recipient who is a sole support parent to whom [subsection 11 \(2\)](#) or [\(4\)](#) applies or is a sole support parent who is a dependant under the [Ontario Disability Support Program Act, 1997](#) shall be equal to the sum of the following amounts:

1. An amount for dependants of the dependant determined in accordance with the following Table:

Table

Number of Dependants of the Dependant	Maximum Amount of the Amount in dollars
1	366
2	419
3	479
4	537
5 or more	568

2. If the applicant or recipient resides north of the 50th parallel and is without year round road access, an additional amount equal to the sum of \$212 for the first dependant of the dependant, \$98 for the second dependant of the dependant and \$102 for any subsequent dependants of the dependant.

3., 4. Revoked: O. Reg. 301/11, s. 5 (5).

5. Subject to subsection (6), for the month in which the administrator receives an application for a special diet allowance and is satisfied that a member of the benefit unit requires a special diet allowance because of a medical condition set out in Schedule 1 to [Ontario Regulation 564/05](#) (Prescribed Policy Statements) made under the Act and for each succeeding month, up to and including the month in which the administrator requests a new application and a reassessment of the requirement for a special diet allowance, an amount that is the lesser of, for each member of the benefit unit,

i. the sum of the amounts determined by the administrator in accordance with Schedule 1 to [Ontario Regulation 564/05](#), and

ii. \$250.

6. For the month in which an approved health professional confirms that a dependant of the dependant is pregnant and for each succeeding month up to and including the month in which the pregnancy ends, and subsequently, if the dependant of the dependant is breast-feeding, for each succeeding month up to and including the month in which the infant is 12 months of age, a nutritional allowance equal to,

i. \$50, if an approved health professional confirms that the person requires a non-dairy diet, or

ii. \$40, otherwise

...

General, [O Reg 222/98](#) (ODSP)

30. (1) The budgetary requirements for an applicant or recipient to whom sections 32, 33 and 33.1 do not apply shall be equal to the sum of the following amounts:

1. The amount payable for basic needs, which is the sum of the following:

i. The amount determined in accordance with the following Table:

Table

Column Number of dependent adults included in the benefit unit	Column 1 Recipient if there is no spouse included in the benefit unit	Column 2 Recipient with spouse included in the benefit unit, if Column 4 is not applicable	Column 3 Recipient with a spouse included in the benefit unit if each of the recipient and the spouse is a person with a disability or a person referred to in subparagraph 1 i of subsection 4 (1) or paragraph 3, 5.1, 5.2, 6, 7 or 8 of subsection 4 (1)
0	\$706	\$1,018	\$1,409
1	\$1,094	\$1,216	\$1,607
2 or more	\$1,293	\$1,437	\$1,828

ii. If more than two dependent adults are included in the benefit, an additional amount of \$222 for each subsequent dependent adult included in the benefit unit.

1.1 An amount of \$143, in the case of a benefit unit in which no spouse is included and all dependants included in the benefit unit are less than 18 years old.

2. If the applicant or recipient resides north of the 50th parallel and is without year round road access, an amount determined in accordance with the following Table:

Table

Number of Dependants other than a Spouse	Recipient Amount in dollars	Recipient and Spouse Amount in dollars
0	272	431
1	430	530
2	526	628

For each additional dependant, add \$102.

3. The amount payable for the cost of shelter calculated under section 31.

4. Subject to subsection (5), for the month in which the Director receives an application for a special diet allowance and is satisfied that a member of the benefit unit requires a special diet allowance because of a medical condition set out in Schedule 1 to [Ontario Regulation 562/05](#) (Prescribed Policy Statements) made under the Act and for each succeeding month, up to and including the month in which the Director requests a new application and a reassessment of the requirement for a special diet allowance, an amount that is the lesser of, for each member of the benefit unit,

- i. the sum of the amounts determined by the Director in accordance with Schedule 1 to [Ontario Regulation 562/05](#), and
- ii. \$250.

5. For the month in which an approved health professional confirms that a member of the benefit unit is pregnant and for each succeeding month up to and including the month in which the pregnancy ends, and subsequently, if the member of the benefit unit is breast-feeding, for each succeeding month up to and including the month in which the infant is 12 months of age, a nutritional allowance equal to,

- i. \$50, if an approved health professional confirms that the person requires a non-dairy diet, or
- ii. \$40, otherwise.

(2) The total amount paid under paragraphs 1 and 3 of subsection (1) with respect to a recipient and his or her spouse shall not exceed \$2,070.

(3) Subsection (4) applies with respect to the special diet for a member of a benefit unit if,

(a) on April 30, 1998, the monthly amount determined for basic needs under the [Family Benefits Act](#) with respect to that member was increased under paragraph 6 of subsection 12 (5) of Regulation 366 of the Revised Regulations of Ontario, 1990 by an amount greater than \$250; and

(b) in each subsequent month, the additional cost required to provide the special diet has continued to be greater than \$250.

(4) Under the circumstances set out in subsection (3), the amount set out in subparagraph ii of paragraph 4 of subsection (1) shall be deemed to be the additional cost required to provide the special diet on April 30, 1998.

(5) For the purposes of paragraph 4 of subsection (1), in order to establish for the Director that a member of the benefit unit requires, or in the case of a reassessment continues to require, a special diet allowance, the member shall submit to the Director the following:

1. A special diet allowance application form approved by the Director, specifying the medical condition for which the special diet allowance is being requested and completed by an approved health professional and the member.
2. Additional information respecting his or her requirement for a special diet allowance because of a medical condition as requested by the Director under subsection 25 (2).
3. An additional application form approved by the Director and completed by an approved health professional, other than the health professional who completed the application form under paragraph 1 or any earlier forms, as requested by the Director.

31. (1) In this section,

“shelter” means the cost for a dwelling place used as a principal residence with respect to any of the following:

1. Rent, other than amounts paid for parking and cable.

2. Principal and interest on a mortgage or loan incurred to purchase the dwelling place or to make repairs that the Director determines are necessary in order for the property to continue to be used as a dwelling place.
 3. Occupancy costs paid under an agreement to purchase the dwelling place.
 4. Taxes.
 5. Premiums for an insurance policy with respect to the dwelling place or its contents.
 6. Reasonable and necessary payments, approved by the Director, for the preservation, maintenance and use of the dwelling place.
 7. Common expenses required to be contributed for a condominium unit or a co-operative housing unit except that portion of the common expenses allocated to the cost of energy for heat.
 8. The following utilities, if they are not included in rent or common expenses:
 - i. An energy source used for household purposes other than for heat.
 - ii. Water and sewage.
 - iii. Rental of a furnace and a hot water heater.
 9. Rent under a land lease.
 10. The cost of energy for heat. O. Reg. 222/98, s. 31 (1); O. Reg. 167/99, s. 5.
- (2) The following rules apply for calculating the cost of shelter:
1. Determine the actual cost payable for shelter under subsection (1).
 2. Determine the maximum amount payable for shelter in accordance with the following

Table:

Table

Benefit Unit Size	Maximum Monthly Shelter Allowance Amount in dollars
1	522
2	821
3	889
4	964
5	1,041
6 or more	1,078

3. Subject to paragraph 4, the amount payable for shelter shall be the lesser of the amount determined under paragraph 1 and the maximum amount determined under paragraph 2.
4. If the cost of energy for heat exceeds the maximum amount payable for shelter under paragraph 2, the cost payable for shelter shall be the cost of energy for heat.
5. The amount payable for shelter determined under paragraph 3 or 4 shall be increased by \$76 if the applicant or recipient has a spouse included in the benefit unit and both spouses are persons with a disability or members of a prescribed class

described in subparagraph 1 i of [subsection 4 \(1\)](#) or paragraph 3, 5.1, 5.2, 6, 7 or 8 of subsection 4 (1).

6. If an applicant or a recipient is a tenant of an authority or agency that provides low rental housing accommodation on behalf of Canada, Ontario or a municipality, shelter does not include that portion of the rent for which the applicant or recipient is liable with respect to a person living in that rental accommodation who is not a member of the benefit unit.

...

International Covenant on Economic, Social and Cultural Rights, 993 UNTS 3

Article 11(1)

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

HEEGSMA ET AL

Appellants

and

CITY OF HAMILTON

Respondent

Court File No. COA-25-CV-0166

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT
HAMILTON

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