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December 8, 2025

Court of Appeal for Ontario
130 Queen St. West
Toronto, ON M5K 2N5

By email: COA.E-file@ontario.ca

Dear Registry:

Re: *Heegsma et al. v Hamilton*
Court of Appeal File No. COA-25-CV-0166

We are counsel for the Appellants in the above-named appeal. Please bring this letter to the attention of Justice Favreau, who is the appeal management judge.

We write pursuant to Justice Favreau's endorsement of August 5, 2025 (2025 ONCA 588), to advise the Court of our position on the intervention motions which she will hear on December 12, 2025.

Position on proposed interventions

The Appellants consent to the intervention motions of the: (a) British Columbia Civil Liberties Association; (b) Canadian Centre for Housing Rights; (c) Canadian Civil Liberties Association; (d) Charter Committee on Poverty Issues and National Right to Housing Network (coalition); (e) Clinique Juridique Itinérante and Niagara Community Legal Clinic (coalition); (f) Income Security Advocacy Centre and Mental Health Legal Committee (coalition); (g) Women's Legal Education and Action Fund; and (h) Ontario Human Rights Commission.

The Appellants do not oppose the intervention motions of the: (i) City of Kingston; and (j) City of Toronto.

If the Court grants any of the motions for leave to intervene, the Court should grant the parties leave to file responding facta of equal length, of no more than 15 pages and 3900 words.

Even if the Court denies all the motions for leave to intervene, the Appellants request a reply factum of no more than 10 pages and 2600 words to respond to the Attorney General of Ontario, who is intervening as of right.

If the Court grants the parties additional time for oral argument, it should likewise grant them time of equal length.

Context

The Appellants' positions on the intervention motions – to consent or not oppose them – is rooted in the broader context of this case.

Heegsma is an important test case on the *Charter* rights of the unhoused who live in tents in public parks, and the constitutionality of sheltering restrictions and evictions, not only for Ontario, but for Canada as a whole.

Heegsma is the first case on homeless encampments to reach this Court. Its province-wide importance is underlined by the intervention of two municipalities, Toronto and Kingston, whose policies and practices on sheltering restrictions have come before the Superior Court, in *Black v. City of Toronto*, 2020 ONSC 6398 and *Kingston v. Doe*, 2023 ONSC 6662, but not this Court. Litigation before the Superior Court arising out of the Regional Municipality of Waterloo *(Waterloo v. Persons Unknown and to be Ascertained*, 2023 ONSC 670; *Waterloo v. Persons Unknown and to be Ascertained*, 2025 ONSC 4774) is ongoing, with the latest hearings set for February 2026. It is the understanding of counsel for the Appellants that other municipalities are closely monitoring the appeal.

The province-wide importance of *Heegsma* is underlined by the decision of the Attorney General of Ontario to intervene.

Nationally, *Heegsma* will be first time a provincial court of appeal has addressed the *Charter* rights of residents of homeless encampments since the British Columbia Court of Appeal's 2009 decision in *Victoria (City) v. Adams*, 2009 BCCA 563. There is currently constitutional litigation underway on homeless encampments in British Columbia and Quebec (reflected by the proposed coalition intervention of Clinique Juridique Itinérante) for which *Heegsma* will be a reference point.

Moreover, *Heegsma* raises several novel legal issues which were not before the court in *Adams*: whether s. 7 prohibits daytime sheltering restrictions; whether sheltering restrictions violate s. 7 when shelter beds are either insufficient or inaccessible; whether Hamilton's sheltering restrictions discriminated based on race, sex, race intersecting with sex, and disability; and whether *Charter* damages are an appropriate remedy.

This Court will need to address both the *Adams* framework and these novel legal issues in the context of *Charter* jurisprudence that has evolved significantly since 2009, on s. 7

(*Canada (Attorney General) v. Bedford*, 2013 SCC 72), s. 15 (*Fraser v. Canada (Attorney General)*, 2020 SCC 28), and *Charter* damages (*Canada (Attorney General) v. Power*, 2024 SCC 26).

For these reasons, the Appellants believe it would assist the Court to have a relatively large number of interveners, to ensure it has the benefit of a broad variety of perspectives on the appeal. The interveners can address legal issues in depth which the parties have been less able to do, for reasons of length.

Fortunately, the Court has allocated two days for the hearing, February 10 and 11, 2026, which affords sufficient opportunity to hear from all the proposed interveners.

Conditions

The basic rules governing intervention motions are well known: interveners cannot supplement the factual record without leave, raise new issues, or duplicate the positions of the parties.

Because the Court has the draft facta of the proposed interveners, it can grant leave conditional on addressing any concerns with reference to specific paragraphs, as opposed to denying leave to intervene entirely.

In so doing, the Court should bear in mind the recent decision of Gomery JA on intervention motions in *Christian Heritage Party of Canada v. Hamilton (City)*, 2025 ONCA 700, for three points:

1. "The test for granting leave to intervene is more relaxed in constitutional cases" because [c]onstitutional cases may have a wide impact on the rights of others who are not parties to the litigation" and "[i]nterventions provide affected individuals and groups with an opportunity to be heard and give the court perspectives on the historical and sociological context of the issues raised." (para. 8)
2. "A proposed intervener's lack of indifference to the outcome of a proceeding is not a reason to deny it the right to intervene, so long as it can make a useful contribution to the analysis of the issues before the court …". (para. 15).
3. Two of the proposed interveners to whom the Court granted leave (the Association for Reformed Political Action and Egale Canada) sought to raise *Charter* rights (ss. 2(a) and 7, respectively) which had not been addressed by the parties, whose submissions had focussed on s. 2(b). Gomery JA

nonetheless declined to limit the scope of their submissions, leaving it for the panel hearing the appeal to determine their relevance (paras. 18, 23).

Thank you.

Sincerely,

Sujit Choudhry

Counsel for the Appellants

Cc co-Counsel for the Appellants
Cc Counsel for the Respondent
Cc Counsel for the Attorney General of Ontario
Cc Counsel for: British Columbia Civil Liberties Association; Canadian Centre for Housing Rights; Canadian Civil Liberties Association; Charter Committee on Poverty Issues and National Right to Housing Network (coalition); Clinique Juridique Itinérante and Niagara Community Legal Clinic (coalition); Income Security Advocacy Centre and Mental Health Legal Committee (coalition); Women's Legal Education and Action Fund; Ontario Human Rights Commission; City of Kingston; and City of Toronto.