

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**

Applicants
(Appellants)

-and-

CITY OF HAMILTON

Respondent
(Respondent on Appeal)

-and-

ATTORNEY GENERAL OF ONTARIO

Intervenor

AMENDED MOTION RECORD
MOTION FOR LEAVE TO INTERVENE
(Canadian Centre for Housing Rights, proposed Intervenor)

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TO THIS HONOURABLE COURT

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ATTORNEY GENERAL OF ONTARIO

Intervenor

AMENDED NOTICE OF MOTION FOR LEAVE TO INTERVENE
(Canadian Centre for Housing Rights, Proposed Intervenor)

The Proposed Intervenor, the Canadian Centre for Housing Rights (“CCHR”), will make a motion to the Court on December 12, 2025 at 10:00 AM or as soon after that time as the motion can be heard, at Osgoode Hall, 130 Queen Street West, Toronto.

PROPOSED METHOD OF HEARING: The motion is to be heard:

[] In writing under subrule 37.12.1 (1) because it is on consent;

☐ In writing as an opposed motion under subrule 37.12.1(4);

☐ In person;

☐ By telephone conference;

☒ By video conference (zoom)

THE MOTION IS FOR:

1. An order permitting the Proposed Intervenor to intervene as a friend of the Court for the purpose of providing assistance to the Court by way of written and oral argument in this Appeal.
2. Such further and other order as this Court may deem appropriate.

THE GROUNDS FOR THIS MOTION ARE:

1. The Appellant challenges the constitutionality of municipal by-laws and enforcement practices relating to the eviction and displacement of persons residing in encampments. This appeal raises important issues concerning the scope of rights under sections 7 and 15 of the *Canadian Charter of Rights and Freedoms*, the principles that govern government conduct that impacts peoples' ability to shelter, and the limitation on government to breach constitutional rights under section 1.
2. CCHR is Canada's leading registered non-profit organization dedicated to promoting human rights in housing, eliminating housing discrimination, and ensuring the right to adequate housing as guaranteed under domestic and international human rights law. Since its inception

in 1987, CCHR has achieved its mission through direct individual and test case legal representation, public legal education, policy advocacy and development, academic research, and law reform.

3. Given CCHR's mandate, special knowledge, and deep expertise, as described in the Affidavit of the acting Executive Director, Mathieu Pierre Dagonas, CCHR believes that it can assist the Court in its consideration of the appeal.
4. Specifically, CCHR seeks to assist the Court by offering a distinct perspective, grounded in its expertise in housing law, human rights, and international obligations. Its submissions will focus on how international human rights law informs the interpretation of section 15 and section 1 of the Charter in the context of forced evictions and encampment clearances.
5. CCHR will address:
 - (a) The Honourable Court has a duty to consider and apply international law relating to the right to housing (some of which Canada has ratified, and some of which pre-dates the *Charter*), in *Charter* interpretation, in keeping with the presumption of conformity.
 - (b) International law and norms relating to adequacy within the right to housing are contextual factors that will help the Court evaluate the impact of eviction on the encampment residents, and whether that impact amounts to substantive discrimination under section 15 of the *Charter*; and
 - (c) International law and norms relating to proportionality in evictions (ie, eviction as a last resort), and government's duties to accommodate the needs of people it evicts will help the Court evaluate: (i) whether encampment residents can show government failure to accommodate the needs of encampment residents amounting to a section 15

breach; and (ii) whether the municipality can pass the minimal impairment and proportionality tests of section 1.

6. This appeal raises matters of public importance, determining how the Charter safeguards the rights of persons experiencing homelessness from forced evictions in the absence of shelter alternatives. The outcome of this appeal will shape the analysis of discriminatory impact under section 15 and proportionality and minimal impairment assessment under section 1. It will further clarify the duties of municipalities to ensure that by-laws and enforcement practices respect both constitutional guarantees and Canadian's international commitments.
7. The outcome will have a direct impact on the work of CCHR and the rights of the clients it serves. Accordingly, CCHR seeks to intervene in the appeal in order to bring a unique perspective on the issues raised by the parties. The submissions that CCHR proposes to make are explained further in the corresponding Motion Factum of the Proposed Intervenor.
8. CCHR does not seek to repeat the arguments of other parties. Consistent with the role of interveners, CCHR will take no position on the disposition of this appeal. Its participation will not cause prejudice to the parties and will not delay the proceeding. CCHR seeks to file a factum of up to 12 pages in length and make oral submissions of 15 minutes. CCHR will not expand the record, will not seek costs, and asks that it will not be exposed to a costs order.
9. Rule 13.03(2) of the *Rules of Civil Procedure*, R.R.O 1990, Reg. 194.
10. Such further grounds as counsel may see fit to raise and may be permitted by this Honourable Court.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the

motion:

11. The Affidavit of Mathieu Pierre Dagonas.
12. Such further and other material as counsel may advise and this Court permit.

DATED November 14, 2025

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Court File No. COA-25-CV-0166

HEEGSMA ET AL
Applicants (Appellants)

-and-

CITY OF HAMILTON
Respondent (Respondent on Appeal)

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT HAMILTON

**NOTICE OF MOTION
MOTION FOR LEAVE TO INTERVENE**

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ATTORNEY GENERAL OF ONTARIO

Intervenor

AFFIDAVIT OF MATHIEU PIERRE DAGONAS

I, Mathieu Pierre Dagonas, of the City of Ajax, in the Province of Ontario, hereby AFFIRM THAT:

1. I am the acting Executive Director of the Canadian Centre for Housing Rights (“CCHR”), formerly known as the Centre for Equality Rights in Accommodation until 2022, and, as such, have personal knowledge of the facts and matters hereinafter deposed to. Where specific CCHR activities are referred to below in which I have had no personal participation, I have reviewed the relevant files, documentation or submissions and base my account thereof on this knowledge.

2. I have held my position with CCHR since August 2025. Prior to assuming this position, I sat on the Board of CCHR as a Director-at-large since September 2021.

Overview of Intervention

3. I make this affidavit in support of CCHR's application for leave to intervene in this appeal, and for no other, or improper, purpose.
4. This appeal concerns the constitutionality of sheltering restrictions and park encampment evictions enacted by Hamilton's *Parks By-law* between August 2021 and August 2023. At issue on appeal is whether Justice Ramsay excluded and disregarded relevant expert, official-record, and Appellants' evidence, and whether he applied the appropriate legal test on ss. 7 and 15 of the *Charter*. The appeal further submits that these violations are not justified under s. 1. Part of the evidence and arguments that were not substantively addressed by the trial judge was the role of Canada's international human rights obligations.
5. CCHR seeks leave to intervene in the appeal in order to bring a unique perspective to bear on the issues raised by the parties, specifically as it relates the role that international law has in informing the legal analysis of ss. 15 and s. 1 of the Charter. International law, namely the right to adequate housing, can also help inform factual findings of the impact of sheltering restrictions and lack of suitable and accessible shelter spaces. Given CCHR's mandate, special knowledge, and expertise as described below, CCHR believes that it can assist the Court in its consideration of the appeal.
6. The issues raised in the appeal are significant to CCHR, its members, and those it serves. The law surrounding shelter, housing rights, and evictions is of central concern for CCHR and has long been a focus of CCHR's research and advocacy. CCHR represents a constituency affected

by housing issues. Our organization and members are actively engaged in promoting housing rights in a variety of domains (including in Ontario). I believe that CCHR can assist this Court by making useful and distinct submissions in this appeal.

7. As set out in greater detail in CCHR's Draft Factum, if granted leave to intervene, CCHR proposes to make submissions relating to the following:

- (a) The Honourable Court has a duty to consider and apply international law relating to the right to housing (some of which Canada has ratified, and some which pre-dates the *Charter*), in *Charter* interpretation, in keeping with the presumption of conformity.

8. International law and norms relating to adequacy within the right to housing are a contextual factors that will help the Court evaluate the impact of eviction on the encampment residents, and whether that impact amounts to substantive discrimination under section 15 of the *Charter*; and

- (a) International law and norms relating to proportionality in evictions (ie, eviction as a last resort), and government's duties to accommodate the needs of people it evicts will help the Court evaluate: (i) whether encampment residents can show government failure to accommodate the needs of encampment residents amounting to a section 15 breach; and (ii) whether the municipality can pass the minimal impairment and proportionality tests of section 1.

Overview of CCHR

9. Founded in 1987, CCHR is a non-profit corporation with charitable status, governed by a

Board of Directors.¹ Until 2022, CCHR was named Centre for Equality Rights in Accommodation. A copy of CCHR's Articles of Incorporation is attached and marked as **Exhibit A** to this Affidavit. Articles of Amendment, reflecting CCHR's name change, are attached and marked as **Exhibit B** to this Affidavit.

10. CCHR works within Canada and internationally to promote and protect human rights in housing and to apply both domestic and international human rights law to address issues of homelessness and poverty.
11. Since its formation, CCHR has provided direct services to, advocated on behalf of, and represented thousands of people who face discrimination in housing, substandard housing conditions impacting their health, or are facing eviction. The majority of CCHR's clients are in need of adequate housing or facing eviction and are therefore either at serious risk of homelessness or they are experiencing homelessness.
12. To advance its purpose, CCHR engages in rights-based housing policy through research, policy development, advocacy, and litigation, including:
13. assisting individuals, households or groups facing discrimination in relation to access to or occupancy of housing;
14. assisting those facing eviction from housing to avoid eviction or to avoid homelessness if eviction cannot be avoided;
15. conducting research into issues of housing policy or practices which may lead to homelessness;
16. identifying and attempting to address systemic barriers to accessing adequate housing faced by

¹ Ontario Corporation Number: 730858; Charitable Registration Number: 106897853RR0001.

vulnerable or disadvantaged groups;

17. conducting research and public legal education on issues of human rights in housing, housing policy and practices affecting access to adequate housing or ability to remain in existing housing;
18. assisting governments and policy-makers in identifying causes of and solutions to homelessness or inadequate housing;
19. providing evidence or expertise to courts, tribunals, human rights bodies, parliamentary and legislative committees, task forces, human rights commissions and other bodies on issues of housing, homelessness and human rights;
20. participating in international human rights processes to enhance compliance with international human rights in Ontario and in Canada and to promote the right to adequate housing; and
21. taking forward or assisting in interventions in test cases under laws which CCHR judges to be helpful to the interests of the groups CCHR serves in terms of protecting their rights and promoting access to or ability to remain in adequate housing.
22. As will be described below, CCHR has appeared before numerous administrative and human rights bodies, parliamentary and legislative committees, commissions, task forces, and all levels of government to advocate for effective housing strategies. Recent examples include collective advocacy with partners in the housing, homelessness, and harm reduction sectors against the use of the notwithstanding clause to clear encampments, a policy report with recommendations for human rights and gender sensitive shelter standards based on engagement with service providers, and human rights reviews of the City of Toronto's response to evictions and homelessness during the COVID-19 pandemic. In CCHR's view, a

lack of effective strategies to address housing insecurity and ensure better access to adequate housing sustains the inequality and deprivation experienced by disadvantaged individuals and groups, leading to serious health effects, vulnerability to violence and severe stress.

CCHR's Client Base: Groups Disadvantaged in Accessing or Maintaining Adequate and Secure Housing

23. Clients who use CCHR's individualized services are predominantly low-income members of equity-deserving groups – i.e. groups facing significant discrimination, unequal access to adequate housing and therefore particular vulnerability to homelessness. Some of the major client-groups with whom CCHR works with include (but are not limited to) the following:

- (a) People Experiencing Homelessness: The deeply entrenched stigma associated with people experiencing homelessness, including those who are living in shelters, means their applications for tenancy are often rejected, leaving many people trapped in homelessness. Low social assistance rates paid to those residing in a shelter also means that any kind of income qualifications applied by landlords will exclude these individuals from the vast majority of the rental market. Beyond the stigma and dehumanization linked to homelessness, lack of access to internet, a computer, or a direct phone line at which they can be reached can make the search for accommodation nearly impossible.
- (b) Women and gender diverse people: The majority of CCHR's clients are women, and much of CCHR's work has been aimed at investigating and addressing the economic and social conditions that contribute to gender inequality in housing. In July 2024, CCHR engaged with partners in a project and ultimate report entitled "Human Rights-

Based, Gender Sensitive National Standards for Emergency Shelters Across Canada”, which confirmed that women and gender-diverse people are more likely to have trouble finding safe and secure places to live, living in core housing need. Unhoused women and gender-diverse individuals are often denied access to emergency shelters due over-capacity. Furthermore, women leaving abusive relationships are in a particularly precarious and vulnerable situation, and the use of credit and rental history requirements frequently disqualifies women leaving abusive situations. For 2SLGBTQIA+ people, these risks are heightened, and they often face gender-based discrimination and violence when seeking alternative housing solutions, including in the shelter system.

- (c) Indigenous People: For a number of reasons including colonization, forced displacement, and dispossession of Indigenous peoples from their lands and territories, there is currently a disproportionate rate of housing need and homelessness among Indigenous people.²

24. People with Disabilities: As illustrated in CCHR’s March 2025 report “Measuring Discrimination in Rental Housing Across Canada”, People with disabilities are one of the groups most widely and openly discriminated against by landlords, many of whom are also in receipt of social assistance or living on a very low income. CCHR has started an ongoing research project on the “Right to Housing for People with Disabilities”. As illustrated by CCHR’s research report, “Measuring Discrimination in Rental Housing Across Canada”.

² See, e.g. this article from Homeless Hub: <https://homelesshub.ca/collection/population-groups/indigenous-peoples/>, and this report from CMHC: <https://www.cmhc-schl.gc.ca/professionals/housing-markets-data-and-research/housing-research/research-reports/housing-needs/indigenous-housing-needs-conditions>.

(a) People who Are Racialized: In CCHR's experience and research, discrimination based on race and its related characteristics represent serious barriers to housing. In a recent report, CCHR found that over 9% of racialized individuals were more likely to be rejected from a landlord than white individuals. Housing providers who do not want to rent to racialized persons generally use indirect ways of discriminating. Among other things, racialized groups are more likely to be disqualified by landlords' income requirements as they are more vulnerable to poverty and low income.

CCHR's Programs and Strategies on Behalf of Disadvantaged Groups in Need of Adequate Housing

I. Public Education and Outreach

25. CCHR provides legal education to tenant and service provider groups throughout Ontario (particularly in the Greater Toronto-Hamilton Area) on a wide-range of housing and human rights law topics. In 2024, these training sessions reached nearly 4,500 people. In 2025, CCHR supported the City of Hamilton in developing tenant education materials on housing and human rights law, as well as Hamilton's new Renoviction-prevention bylaw.

II. Individualized Case Work and Eviction Prevention

26. CCHR provides individualized legal services, including legal advice, completing Landlord and Tenant Board applications, and representation, to approximately 800 individuals per year in the City of Toronto and the Regional Municipality of York who are facing challenges to housing affordability. Supports that CCHR provides include, among other things, help with maintenance applications, and representation before the Landlord and Tenant Board on no-fault evictions and above guideline rent increases. These services are provided to low-to-

middle income people who otherwise would be unable to afford legal services.

27. CCHR runs a helpline for tenants throughout Ontario that provides legal information to approximately 2,000 individuals and families each year who are facing housing precarity in Ontario. CCHR's main goal is to help tenants understand their rights with the goal of helping them stay in their homes.

III. Litigation

28. CCHR has represented clients and acted in an advisory capacity in many ground-breaking legal challenges to policies and practices on housing rights for disadvantaged groups. These have included challenges to:
29. the use of rent-to-income ratios to screen out low-income tenants: *Kearney v Bramalea Ltd. (No.2)*, 1998 CanLII 29852 (ON HRT) and *Vander Schaaf v M & R Property Management Ltd.*, 2000 CanLII 20867 (ON HRT);
30. credit and reference requirements that disadvantage recent immigrants and refugees: *Ahmed v 177061 Canada Ltd (Shelter Canadian Properties Ltd.)*, 2002 CanLII 46504 (ON HRT);
31. occupancy rules that deny families access to housing: *Cunanan v Boolean Developments Ltd.*, 2003 HRTO 17;
32. questions on tenancy applications that target families with children: *St. Hill v VRM Investments Ltd. and Ray Milosevic*, 2004 HRTO 1;
33. the use of job tenure to screen out young, first-time renters and newcomers: *Sinclair v Morris A. Hunter Investments Ltd.*, 2001 CanLII 26232 (ON HRT);
34. social housing subsidy rules that apply only to social assistance recipients: *Iness v Caroline*

Co-operative Homes Inc., 2006 HRTO 19; and

35. inadequate levels of assistance for housing costs within social assistance benefits: *C B v Her Majesty the Queen in Right of Ontario*, as represented by the Minister of Community, Family and Children's Social Services (Unreported, Ontario Human Rights Commission, File No JWIS-5JUR3L, 17 March 2004).
36. CCHR also led a coalition of organizations and served as a plaintiff on *Tanudjaja v. Canada (Attorney General)*, 2014 ONCA 852,³ a challenge to the federal and Ontario governments for violations of section 7 and 15 of the *Charter* for creating and maintaining conditions that lead to and sustain homelessness and inadequate housing.
37. CCHR was also involved in *Toussaint v Canada (Attorney General)*, 2011 FCA 213, to provide legal research and argument on the question of whether poverty is an analogous ground of discrimination under section 15 of the *Charter*.
38. CCHR has worked at a national level to promote interpretations and applications of the *Charter* to address the rights of equity-seeking groups in need of housing.
39. CCHR in the past has coordinated the Charter Committee on Poverty Issue ("CCPI") on several interventions at the Supreme Court of Canada. Cases include *Gosselin v Québec (Attorney General)*, 2002 SCC 84, which addressed the government's obligations to provide social assistance; *Lovelace v Ontario*, 2000 SCC 37; *New Brunswick (Minister of Health and Community Services) v G. (J.)*, [1999] 3 SCR 46 dealing with access to legal aid for those living in poverty; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, on the status of international human rights law in the exercise of administrative discretion;

³ *Tanudjaja v. Canada (Attorney General)*, 2014 ONCA 852.

Eldridge v British Columbia (Attorney General), [1997] 3 SCR 624 on positive obligations to address needs of disadvantaged groups under section 15 of the Charter; *Thibaudeau v Canada*, [1995] 2 SCR 627 on the rights of single mothers; *Walker v Prince Edward Island*, [1995] 2 SCR 407 and *R v Prosper*, [1994] 3 SCR 236 on the right to state-funded counsel for impoverished accused; and *Symes v Canada*, [1993] 4 SCR 695 on the application of section 15 of the *Charter* to socio-economic policies and taxation.

40. CCHR has also provided research assistance to the Poverty and Human Rights Centre for *Victoria (City) v Adams*, 2008 BCSC 1363, the leading case on the “right to shelter” for individuals living in encampments.
41. CCHR intervened in *Duncan v Toronto Community Housing Corp.*, 2015 ONSC 4728 (CanLII), where the Ontario Divisional Court overturned a decision of the Landlord and Tenant Board which failed to properly consider whether a tenant’s addiction issues had prevented him from attending a hearing.
42. Finally, most recently, CCHR intervened in the Ontario Court of Appeal in the case indexed as *MacKenzie v. Ottawa Community Housing Corp.*, 2023 ONCA 43, about the termination of a rent-geared-to-income subsidy.

IV. Law Reform and Policy Development

43. CCHR has worked extensively on law reform and policy initiatives at all levels of government, bringing forward evidence and human-rights based recommendations to address housing barriers that perpetuate and exacerbate housing insecurity, precarity, and homelessness for equity-deserving groups. A priority area of work in recent years for CCHR has been to assist governments and reviewing bodies to better understand the need for housing strategies based

on human rights principles and how to put those principles into practice.

44. Recent CCHR submissions include:

- (a) Submission the Federal House of Common Standing Committee on Finance for the 2025 Federal Pre-Budget Consultations, including recommendations to provide immediate support to renters and people experiencing homelessness (August 2025)
- (b) Submission to the Ontario Ministry of Municipal Affairs and Housing and Ministry of the Attorney General on housing-related bills passed during the 44th Parliament, 1st session, including on Bill 6, *Safer Municipalities Act, 2025*, which will increase policing, impose fines and jail time, and evict encampment residents suspected of possessing illegal drugs (June 2025)
- (c) With the Right to Housing Toronto Network, sent a submission to the City of Toronto Council on ‘Identifying and Addressing Pressures in the Refugee and Emergency Shelter System’ (March 2025)
- (d) Submission to the National Housing Council Review Panel on “The right to housing for women, Two-Spirit, and gender diverse people” (March 2024)
- (e) Submission to the Regional Council of the Municipality of Peel on “Improving Health Care Services for the Homeless in Peel” (March 2022)

45. *Using International Human Rights and Procedures*

46. CCHR has a long history of participating in the review of Canada’s human rights record by international human rights bodies to ensure they are provided with information regarding Canada’s compliance with its international human rights obligations.

47. In 2005, 2006, and 2008, CCHR worked in partnership with approximately twenty non-government organizations across Canada to prepare joint submissions to the CESCR and the UN Committee on the Elimination of Discrimination Against Women about Canada's performance with respect to addressing women's poverty and housing disadvantage.
48. In 2011, CCHR collaborated with UN-HABITAT – a specialized agency of the United Nations dealing with issues of housing and homelessness – drafted a policy guide on land and property rights for Indigenous peoples.
49. More recently, CCHR has made a number of submissions to international bodies that highlight the violations of the right to housing in Canada, including:
- (a) Co-authored a submission to the UN Committee on the Elimination of All Forms of Discrimination, entitled "Equality, the human right to housing and women and gender-diverse people in Canada" (September 2024)
 - (b) co-authored a submission to the UN Special Rapporteur on Adequate Housing in 2021 with the NRHN and SRAC for the Report to the UN General Assembly and Human Rights Council, entitled "Housing Discrimination & Spatial Segregation in Canada" (May 2021)
 - (c) co-authored a submission with the NRHN to the UN Committee on Civil and Political Rights for the International Covenant on Civil and Political Rights ("**ICCPR**"), 132nd Sess, entitled "The Right to Life, Protection of the Home & Non-Discrimination in Canada," which assessed the housing and homelessness crisis in accordance with Articles of the ICCPR (May 2021)

CCHR's Proposed Role in this Appeal

50. If granted leave to intervene, CCHR intends to make submissions on the following issues:

51. This Honourable Court has a duty to consider and apply international law relating to the right to housing (some of which Canada has ratified, and some which pre-dates the Charter), in Charter interpretation, in keeping with the presumption of conformity.

52. International law and norms relating to adequacy within the right to housing are a contextual factors that will help the Court evaluate the impact of eviction on the encampment residents, and whether that impact amounts to substantive discrimination under section 15 of the Charter; and

53. International law and norms relating to proportionality in evictions (ie, eviction as a last resort), and government's duties to accommodate the needs of people it evicts will help the Court evaluate: (i) whether encampment residents can show government failure to accommodate the needs of encampment residents amounting to a section 15 breach; and (ii) whether the municipality can pass the minimal impairment and proportionality tests of section 1.

54. I have reviewed the draft factum for intervening to this affidavit and confirm that this consists of an outline of the submissions that CCHR proposes to make if we are granted leave to intervene.

55. CCHR believes these submissions will be helpful to the Court in interpreting the Charter obligations of municipalities when engaging in forced evictions, at issue in this appeal.

56. CCHR believes its submissions will not duplicate those of the parties to the appeal.

57. CCHR seeks leave to file a factum of up to 13 pages and make oral argument of 15 minutes at

the hearing of this appeal.

58. If granted leave to intervene, CCHR would not:

- (a) take any position on the order that should be made by the Court.
- (b) seek costs. CCHR respectfully requests that no costs be awarded against it.
- (c) take a position on the ultimate disposition of the appeal.

59. I believe that CCHR's proposed intervention will not cause any injustice to the parties or otherwise prejudice their interests, because CCHR will:

- (a) not file any additional evidence or add to the appeal record;
- (b) not unduly expand the issues or raise new issues;
- (c) not unreasonably delay or lengthen the hearing of the appeal;
- (d) work with the parties and any other intervenors to avoid duplicative submissions and to ensure an efficient presentation of its position;
- (e) abide by any schedule set by the Court; and
- (f) comply with any terms, conditions, or limitations that this Court imposes on its participation in the appeal as an intervenor.

60. This Affidavit is made in support of this motion for leave to intervene and for no improper purpose.

AFFIRMED REMOTELY in the City of AJAX in the Province of Ontario, on the 14 day of NOV, 2025 in accordance with O. Reg. 431/290 Adminstrating Oath or Declaration Remotely
Abhilasha Negi, LSO # 86041C
Commissioner for Taking Oaths, etc

Mathieu Pierre Dagonas

ABHILASHA NEGI
Barrister, Solicitor & Notary Public
in and for the Province of Ontario.
My commission is of unlimited duration.
No legal advice given. LSO #86041C



WALK-IN NOTARY 1888-383-0383
www.walkinnotary.com
info@walkinnotary.com
190 Harwood Ave. Ajax, ON., L1S 2H6

Exhibit "A"

CCHR Articles of Incorporation
October 8, 1987

This is Exhibit "B" to the Affidavit of Mathieu Pierre Dagnonas affirmed before ~~me remotely~~ ^{*In Person*} at AJAX, in the Province of Ontario, on this 14th day of November 2025

Abhilasha

A

~~Aedemofe Oye-Ademiran LSO #79116Q~~

Commissioner for Taking Oaths, etc.

ABHILASHA NEGI

Barrister, Solicitor & Notary Public
in and for the Province of Ontario.

My commission is of unlimited duration.
No legal advice given. LSO #86041C

**WALK-IN
NOTARY**

1888-383-0383
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info@walkinnotary.com
190 Harwood Ave. Ajax, ON, L1S 2H6

Exhibit “B”

CCHR Articles of Amendment
August 19, 2024

This is Exhibit “B” to the Affidavit of Mathieu Pierre Dagnonas affirmed before me ^{*Q in Person*} ~~remotely at~~
AJAX, in the Province of Ontario, on this 14th day of November 2025

Abhilasha

Q ~~Acemefo Oye Adeniran LSO #79116Q~~
Commissioner for Taking Oaths, etc.

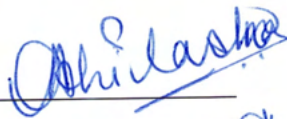
ABHILASHA NEGI
Barrister, Solicitor & Notary Public
in and for the Province of Ontario.
My commission is of unlimited duration.
No legal advice given. LSO #86041C

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Exhibit "C"

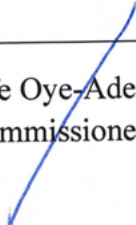
CCHR
Draft Factum

This is Exhibit "B" to the Affidavit of Mathieu Pierre Dagnonas affirmed before me ^{*in Person*} ~~remotely~~ at
AJAX, in the Province of Ontario, on this 14th day of November 2025



~~Aedemofe Oye-Adeniran LSO #79116Q~~ *Q*
Commissioner for Taking Oaths, etc.

ABHILASHA NEGI
Barrister, Solicitor & Notary Public
in and for the Province of Ontario.
My commission is of unlimited duration.
No legal advice given. LSO #86041C



Aedemofe Oye-Adeniran LSO #79116Q
Commissioner for Taking Oaths, etc.

**WALK-IN
NOTARY** 1888-383-0383
www.walkinnotary.com
info@walkinnotary.com
190 Harwood Ave. Ajax, ON., L1S 2H6



Ontario Corporation
Number:

730858

Numéro ontarien de
l'association

Letters Patent

By virtue of the powers vested in me under the Corporations Act, I do by these Letters Patent issue a charter to the applicants named in the application attached hereto and which forms part of these Letters Patent, constituting them a corporation without share capital under the name

Lettres patentes

En vertu des pouvoirs qui me sont conférés par la Loi sur les compagnies et associations, j'accorde par les présentes lettres patentes une charte aux requérants(les) dont les noms figurent dans la demande ci-jointe, qui fait partie intégrante desdites lettres patentes, les constituant en association portant le nom de

CENTRE FOR EQUALITY RIGHTS IN ACCOMMODATION IN ONTARIO

The Letters Patent are subject to the following terms and conditions:

- (a) The corporation shall be carried on without the purpose of gain for its members and any profits or other accretions to the corporation shall be used in promoting its objects;
- (b) The directors shall serve as such without remuneration, and they shall not directly or indirectly receive any profit from their position as such; provided that directors may be paid reasonable expenses incurred by them in the performance of their duties;
- (c) Upon the dissolution of the corporation and after the payment of all debts and liabilities, its remaining property shall be distributed or disposed of to charitable organizations which carry on their work solely in Canada.

Les lettres patentes sont soumises aux modalités suivantes:

- (a) L'association poursuivra ses activités sans objectif de profit pour ses membres et tous les bénéfices ou la plus-value revenant à l'association seront utilisés de façon à promouvoir ses objets;
- (b) Les administrateurs(les) rempliront leurs fonctions sans rémunération et ne devront pas en tirer profit, directement ou indirectement; mais ils peuvent être défrayés de dépenses raisonnables qu'ils auront encourues dans l'exercice de leurs fonctions;
- (c) A la dissolution de l'association et après liquidation de toutes ses dettes et de son passif, les biens restants seront distribués aux organismes de bienfaisance qui poursuivent leurs activités seulement en Canada.

Dated/Date: October 8 octobre 1987.

William Hrye

Minister
Ministre

per car

Henry H. Ozols
Director/Directeur

730858

1.

Trans Code A 18	Line No. 0 20	Stat 0 28	Comp Type B 29	Method Incorp. 1 30
Share N 31	Notice Rec'd Y 32	Jurisdiction ONTARIO 33 47		

APPLICATION FOR INCORPORATION OF A CORPORATION WITHOUT SHARE CAPITAL
REQUÊTE EN CONSTITUTION D'UNE ASSOCIATION

Form 2
Corporations
Act
Formulaire
numéro 2
Loi sur les
compagnies et
associations

1. The name of the corporation is/Nom de l'association:

C	E	N	T	R	E	F	O	R	E	Q	U	A	L	I	T	Y	R	I	G	H	T	S	I	N		
A	C	C	O	M	M	O	D	A	T	I	O	N	I	N	O	N	T	A	R	I	O					

2. The address of the head office of the corporation is/Adresse du siège social:

229 College Street, Suite 308

(Street & Number or R.R. Number & if Multi-Office Building give Room No.)
(Rue et numéro ou R.R. et numéro et, s'il s'agit d'un édifice à bureaux, numéro du bureau)

Toronto, Ontario

(Name of Municipality or Post Office)
(Nom de la municipalité ou du bureau de poste)

M 5 T 1 R 4
(Postal Code/Code postal)

3. The head office of the corporation is situated in/Le siège social se trouve à:

Municipality of

Metropolitan Toronto

(Name of Municipality, Geographical Township)
(Nom de la municipalité canton)

in the Judicial District of York

dans le (County District, Regional Municipality)
(Comté, district, municipalité régionale)

4. Address of clubhouse or similar premises (if any) is:

Adresse du local de l'association ou autre endroit utilisé aux mêmes fins, s'il y a lieu:

The corporation shall not maintain a clubhouse or similar

(Street & Number or R.R. Number & if Multi-Office Building give Room No.)
(Rue et numéro ou R.R. et numéro et, s'il s'agit d'un édifice à bureaux, numéro du bureau)

premises.

(Name of Municipality or Post Office)
(Nom de la municipalité ou du bureau de poste)

(Postal Code/Code postal)

5. The applicants who are to be the first directors of the corporation are:

Requérants appelés à devenir les premiers administrateurs de l'association:

Name in full, including all first, middle names
Nom et prénoms au complet

Residence address, giving Street & No. or R.R. No & Municipality or Post
Office and Postal Code
Adresse personnelle y compris la rue et le numéro ou la R.R. et le numéro,
le nom de la municipalité ou du bureau de poste et le code postal

Kenneth Michael Sosa

40 Lark Street, Toronto, Ontario M4L 3M6

Barbara Agnes Hansen

27 Walmer Road, Apt. 409, Toronto M5R 2X2

Rosalind Mary Waters

110 Jameson Ave. Apt. 501 Toronto M6K 2X9

Merrie-Ann Mary McCrea

9 Crown Hill Place, Apt. 302, Etobicoke M8Y 4C5

G. The objects for which the corporation is incorporated are:
Objets pour lesquels l'association est constituée:

- a) To provide advice and assistance, representation and referral to victims of discrimination in accommodation in Ontario to help them to enforce their human rights.
- b) To provide educational materials and programs in human rights in accommodation to groups who face discrimination, to landlords and to the public at large.
- c) To promote attitudes which will encourage respect for equality rights in housing.
- d) To prepare and offer training programs in human rights in accommodation.
- e) To encourage and facilitate effective public education and enforcement of human rights in accommodation by the Ontario Human Rights Commission or by other agencies, organizations, institutions and levels of government.
- f) To cooperate with other organizations, whether incorporated or not, which have objects similar in whole or in part to the objects of the corporation.
- g) To solicit, receive and hold grants, donations, gifts, legacies and bequests and to expend the same in furtherance of the objects of the corporation.
- h) To engage in fund-raising to assist in achieving the objects of the corporation.
- i) To engage in other activities as may seem expedient in promoting respect for and enforcement of equality rights in accommodation.

7. The special provisions are/Dispositions particulières:
- a) The corporation shall be carried on without the purpose of gain for its members and any profits or other accretions to the corporation shall be used in promoting its objects.
 - b) The directors shall serve as such without remuneration, and no director shall directly or indirectly receive any profit from her or his position as such; provided that a director may be paid reasonable expenses incurred by him or her in the performance of his or her duties.
 - c) The borrowing power of the corporation pursuant to any by-law passed and confirmed in accordance with section 59 of the Corporations Act shall be limited to borrowing money for current operating expenses, provided that the borrowing power of the corporation shall not be so limited if it borrows on the security of real or personal property.
 - d) Upon the dissolution of the corporation and after the payment of debts and liabilities, its remaining property shall be distributed or disposed of to charitable organizations which carry on their work solely in Canada.

8. The names and residence addresses of the applicants are:
Noms et adresses personnelles des requérants:

36

4.

Name in full, including all first, middle names Nom et prénoms au complet	Residence address, giving Street & No. or R.R. No. & Municipality or Post Office and Postal Code Adresse personnelle y compris la rue et le numéro ou la R.R. et le numéro et la municipalité ou le bureau de poste et le code postal	Calling (occupation) Profession
Kenneth Michael Sosa	40 Lark Street, Toronto M4L 3M6	Community Worker
Barbara Agnes Hansen	27 Walmer Road, Apt. 409 Toronto M5R 2X2	Community Worker
Rosalind Mary Waters	110 Jameson Avenue, Apt. 501 Toronto M6K 2X9	Community Legal Worker
Merrie-Ann Mary McCrea	9 Crown Hill Place, Apt. 302 Etobicoke M8Y 4C5	Student

This application is executed in duplicate.
Cette requête est faite en double exemplaire.

Signatures of applicants/Signature des requérants

Kenneth M. Sosa
Barbara Agnes Hansen
Rosalind Mary Waters
Merrie-Ann Mary McCrea



Articles of Amendment

Not-for-Profit Corporations Act, 2010

Corporation Name (Date of Incorporation/Amalgamation)

CANADIAN CENTRE FOR HOUSING RIGHTS / CENTRE CANADIEN DU DROIT AU LOGEMENT (October 08, 1987)

1. The name of the corporation is changed to:

Not amended

2. The number of directors or the minimum/maximum number of directors are amended as follows:

Not amended

3. The purposes of the corporation are amended as follows:

Not amended

4. The special provisions of the corporation are amended as follows:

We have changed our articles to change the conditions for membership. Previously anyone could become a member of the organization by completing an "application for membership" and there was no term limits on membership. We have changed this so that now membership is limited to staff and volunteers of the corporation. Membership now must also be renewed annually.

Previously members could vote if they registered their membership 10 days prior to an AGM. Now members can vote if they have registered their membership 15 days prior to an AGM.

5. The amendment has been duly authorized as required by sections 103 of the Not-for-Profit Corporations Act, 2010.

The endorsed Articles of Amendment are not complete without the Certificate of Amendment.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

A handwritten signature in black ink, appearing to read "V. Quintanilla W.".

Director/Registrar, Ministry of Public and Business Service Delivery

6. The resolution authorizing the amendment was approved by the members of the corporation on:
September 20, 2023

The articles have been properly executed by the required person(s).

The endorsed Articles of Amendment are not complete without the Certificate of Amendment.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar, Ministry of Public and Business Service Delivery

Court File No. COA-25-CV-0166

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**

Applicants
(Appellants)

-and-

CITY OF HAMILTON

Respondent
(Respondent on Appeal)

-and-

ATTORNEY GENERAL OF ONTARIO

Intervenor

**DRAFT FACTUM OF THE PROPOSED INTERVENOR
CANADIAN CENTRE FOR HOUSING RIGHTS**

Date: November 14, 2025

CANADIAN CENTRE FOR HOUSING RIGHTS

192 Spadina Avenue, Suite 427

Toronto, ON M5T 2C2

Margaret Flynn (LSO# 52240N)

Tel: (416) 995-6290

Mflynn@housingrightscanada.com

Princess Doe (LSO# 87858O)

Tel: (416) 944-0087

Pdoe@Housingrightscanada.com

**Counsel for the Proposed Intervener,
The Canadian Centre for Housing Rights**

TO: REGISTRAR COURT OF APPEAL FOR ONTARIO
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Toronto, ON M5H 2N5
Email: COA.E-file@ontario.ca

AND TO: CIRCLE BARRISTERS
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Toronto, ON M5V 2Y1

Sujit Choudhry (LSO# 45011E)
Tel: (416) 436-3679
sujit.choudhry@circlebarristers.com

MISSISSAUGA COMMUNITY LEGAL SERVICES
130 Dundas St. E., Suite 504
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Sharon Crowe (LSO# 47108R)
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ROSS & MCBRIDE LLP
1 King St. W., 10th Floor
Hamilton, ON L8P 1A4

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Jennifer King (LSO#54325R)
Tel: (905) 549-2468

Lawyers for the Respondent

**AND TO: MINISTRY OF THE ATTORNEY GENERAL –
CONSTITUTIONAL LAW BRANCH**
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720 Bay Street, Toronto, ON M7A 2S9

Andrea Boleiro (LSO# 60034I)
Tel: (416) 551-6263
andrea.boleiro@ontario.ca

Lawyer for the Attorney General

PART I – OVERVIEW

1. The Canadian Centre for Housing Rights (“CCHR”), intervenes in this Appeal, pursuant to the Order of _____, dated _____.
2. This appeal concerns the constitutionality of municipal by-laws and enforcement practices relating to the eviction and displacement of people living in an encampment. It raises important questions concerning the scope of protections under sections 7 and 15 of the *Canadian Charter of Rights and Freedoms*¹, the principles that govern government conduct that impacts peoples’ ability to shelter, and the limitation on government to breach *Charter* rights under section 1.
3. CCHR’s submission is that international law concepts with regard to the “right to housing” provide straightforward frameworks to the Court for its section 15 and section 1 analyses. The Court should use these frameworks because they make good sense in the context of established section 15 and section 1 tests – and because their application satisfies the presumption of conformity with international law.

PART II – STATEMENT OF FACTS

4. CCHR relies upon facts set out in the Appellant’s factum.

PART III – POSITION ON ISSUES

5. CCHR makes submissions with regard to the application of international human rights law on the *Charter*, specifically sections 15 and 1. CCHR will address the following:

¹ *Canadian Charter of Rights and Freedoms*, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 19982, c. 11 [**Charter**].

- a) This Honourable Court has a duty to consider and apply international law relating to the right to housing (some of which Canada has ratified, and some of which pre-dates the *Charter*) in *Charter* interpretation, in keeping with the presumption of conformity.
- b) International law and norms relating to adequacy within the right to housing are contextual factors that will help the Court evaluate the impact of eviction on encampment residents, and whether that impact amounts to substantive discrimination under section 15 of the *Charter*;
- c) International law and norms relating to proportionality in evictions will help the Court evaluate whether there has been a breach of substantive equality and whether the municipality can pass the minimal impairment and proportionality tests of section 1.

PART IV – STATEMENT ON LAW AND ARGUMENT

A. The court has a duty to consider and apply international law in *Charter* interpretation

6. When interpreting the *Charter*, a generous, purposive, and contextual approach should be applied.² As the Supreme Court of Canada explained in *R v Drug Mart Ltd*, the purpose of a *Charter* right or guarantee is derived not only from its language, but the historical origins of said right, and the broader values it seeks to protect in a free and democratic society.³ A purposive analysis therefore requires consideration not only of domestic context, but also of the international human rights principles that influenced the *Charter*'s creation and continue to inform its implementation.⁴

² *R. v. Big M Drug Mart Ltd.*, 1985 CanLII 69 (SCC), at para. 117; *R. v. Grant*, 2009 SCC 32 (CanLII), at para. 15.

³ *R. v. Big M Drug Mart Ltd.*, 1985 CanLII 69 (SCC), at para. 117.

⁴ *Quebec (Attorney General) v. 9147-0732 Quebec Inc.*, 2020 SCC 32 (S.C.C.) see Abella J's minority opinion.

7. This interpretive duty extends to legislation and state actions that infringe *Charter* rights, including measures that authorize or result in forced evictions.⁵ In such cases, the international right to adequate housing and its associated principles must inform the Court’s analysis of the *Charter*.

8. International human rights principles will have various degrees of persuasiveness in Canadian Courts:⁶

- Canada is bound to, and there is a presumption of conformity with regard to, conventions that Canada has ratified.⁷
- The *Charter* is presumed to provide at least as great a level of protection as is found in the international human rights instruments that Canada has ratified.⁸
- Non-binding sources are “relevant and persuasive, but not determinative, interpretive tools”.⁹
- Decisions of “foreign and international courts” are “included among those non-binding sources that ‘are relevant and may be persuasive.’”¹⁰

⁵ *Victoria(City) v Adams*, 2008 BCSC 1363, at para. 85 – 100., Affirmed by the British Columbia Court of Appeal, 2009 BCCA 563.

⁶ See *Quebec (Attorney General) v. 9147-0732 Quebec Inc.*, 2020 SCC 32 and *R v Hape*, 2007 SCC 26.

⁷ *Ibid.*, at para. 33.

⁸ *Ibid.*, at para. 30. See also: *Slaight Communications Inc. v. Davidson*, 1989 CanLII 92 (SCC), where the Court, considering the impact of the ICESCR, stated: “the *Charter* should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified.” See also: *Saskatchewan Federation of Labour v Saskatchewan*, 2015 SCC 4.

⁹ *Ibid.*, at para. 35.

¹⁰ *Ibid.*, at para. 43.

- Instruments that pre-date the *Charter* can be seen to have contributed to the *Charter*, and so will have more weight than instruments (presumably, unratified instruments) that post-date the *Charter*.¹¹

9. The Vienna Convention on the Law of Treaties, which Canada ratified in 1970, states that state parties who ratify a treaty is bound to it, and must “perform” it in good faith.¹² It further states that “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”¹³

10. The International Covenant on Economic, Social and Cultural Rights (“ICESCR”), which Canada ratified in 1976, establishes a “right to housing”, stating:

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.¹⁴

¹¹ *Ibid*, at para. 41.

¹² Vienna Convention on the Law of Treaties, at art. 26.

¹³ *Ibid*, at art. 27. See cases in other context where the Vienna Convention is applied in treaty interpretation by the Courts: *International Air Transport Association v. Canada* (Transportation Agency), 2024 SCC 30 (CanLII), at para 39, <<https://canlii.ca/t/k74q4#par39>>, retrieved on 2025-11-03, *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 778 (SCC), [1998] 1 S.C.R. 982, at paras. 51-52; *Thomson v. Thomson*, 1994 CanLII 26 (SCC), [1994] 3 S.C.R. 551, at pp. 577-78)

¹⁴ International Covenant on Economic, Social and Cultural Rights, at art. 11. Canada is a State Party to several international instruments that recognize the right to adequate housing, including the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights (“ICESCR”), the Convention on the Rights of Persons with Disabilities (“CRPD”), and the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”).

11. From time to time, the Committee on Economic, Social and Cultural Rights (the Committee”) issues interpretative “Comments”, which provide clarification with regard to aspects of the ICESCR.

12. The Committee issued General Comment No. 4 in 1991, which provided clarification about what “adequate” housing means – including that it can be determined by taking into account the following factors:

- Legal security of tenure;
- Availability of services, materials, facilities and infrastructure;
- Affordability;
- Habitability;
- Accessibility;
- Location; and
- Cultural adequacy.¹⁵

The Committee also clarified that:

...instances of forced eviction are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.¹⁶

13. The Committee issued General Comment No. 7 in 1997, which provided clarification that:

Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction. Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless. The non-discrimination provisions of articles 2.2 and 3 of the Covenant impose an additional obligation upon Governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved.¹⁷

¹⁵ Committee on Economic, Social, Cultural Rights, *General Comment No. 4*(1991), at art. 8.

¹⁶ *Ibid.*, at art. 18.

¹⁷ Committee on Economic, Social, Cultural Rights, *General Comment No. 7* (1997), at art. 10.

The Committee also clarified that:

In cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality....¹⁸

and that:

Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.¹⁹

14. In a leading case on encampments and the “right to shelter”, *Victoria (City) v Adams*, the British Columbia Court of Appeal affirmed that trial judges’ reasoning that international human rights law, including the principles on the right to adequate housing, must inform the analysis of section 7 *Charter* rights to life, liberty, and security of the person. In its decision, it confirmed that under international law, all persons should possess a “degree of security of housing tenure that guarantees legal protection against forced eviction and that forced eviction consists of a gross violation of human rights”. It was further confirmed that under international law, “security of tenure takes a variety of forms, including informal settlements, such as occupation of land or property” per General Comment No. 4 on Article 11.1 of the Covenant.²⁰

¹⁸ *Ibid*, at art. 14.

¹⁹ *Ibid*, at art. 16.

²⁰ International law has been used to inform the analysis of the breadth and content of other *Charter* rights. This includes labour rights under s. 2(d) freedom of association [see Reference Re Public Service Employee Relations Act (Alta.), 1987 CanLII 88 (SCC) and *Slaight Communications Inc. v. Davidson*, 1989 CanLII 92 (SCC)]; mobility rights under s. 6(1) [see *United States v. Burns*, 2001 SCC 7 (CanLII)]; s. 10(b) right to retain and instruct counsel in criminal matters [see *R. v. Brydges*, 1990 CanLII 123 (SCC)]; freedom against cruel and unusual treatment and punishment under section 12 [see *Quebec (Attorney General) v. 9147-0732 Inc.*, 2020 SCC 32]; and the constraint that international law has on administrative decision makers [see *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 and *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21 (CanLII)].

B. International law provides guidance to the Court about how to determine whether substantive discrimination has occurred under section 15.

15. Discrimination can occur directly or through indirect (adverse impact) discrimination. Ultimately, substantive equality is the “animating norm” of s.15.²¹ Substantive discrimination does not require intent on the government’s part²²— it occurs if the claimant experiences a disparate harm connected in some way with their belonging to a protected group. Substantive discrimination can be shown in different ways: for example perhaps a disproportionate **quantity** of a protected group or groups was hurt by the impugned government action – or perhaps the people affected by the impugned government action²³ experienced a hurt that was connected to their membership in a protected group and was disproportionate in **quality**. The former is concerned primarily with number, the second with effect (although these are not mutually exclusive). Other ways to look at this are to categorize the types of proof as being about outcomes (typically statistical outcomes) of the government action versus vulnerabilities of the group; or about quantitative versus qualitative evidence of “headwinds” faced by the group or groups; or about the government’s explicit failure to accommodate particular needs of the group versus “headwinds” faced by the group.²⁴ multiple types of evidence are not required to show disparate harm – they are simply different ways to establish it.²⁵

²¹ *R. v. Sharma*, 2022 SCC 39 (CanLII) at para. 37; *Fraser v. Canada (Attorney General)*, 2020 SCC 28 (CanLII) at para. 42; *Withler v. Canada (Attorney General)*, 2011 SCC 12 (CanLII) at para. 2; *R. v. Kapp*, 2008 SCC 41 (CanLII) at para. 15-16.

²² *R. v. Sharma*, 2022 SCC 39 (CanLII) at para. 69.

²³ Disproportionate impact can occur even the people affected by impugned government action is relatively small in number – see *Rodriguez and Carter*.

²⁵ *R. v. Sharma*, 2022 SCC 39 (CanLII) at para. 49; *Fraser v. Canada (Attorney General)*, 2020 SCC 28 (CanLII) at para. 61.

16. The claimant must establish a link or “nexus” between the impugned law and the discriminatory impact. The link or nexus must cause or contribute (perhaps only partially) to disproportionate impact on a protected group. The claimant must show that the disproportionate impact imposes a burden, is an affront to dignity, or perpetuates prejudice.²⁶

17. The Court must look to contextual factors to determine whether there is a nexus, and whether discrimination has occurred. Contextual factors include pre-existing disadvantage of the claimant group(s), and nature of the interest affected.²⁷ Contextual factors help determine the vulnerability that members of protected groups are approaching the impugned government action with – and the degree to which that vulnerability might be exacerbated by the impugned government action. Government intent is irrelevant under a section 15 analysis (as intent or object falls under section 1) In an encampment eviction matter, *claimant* context is key – what the Court needs to understand in this case is whether the government action had a disparate impact on the claimants. Context is relevant insofar as it affects the claimants and shapes *their* vulnerability or shapes how the impugned legislation affects *them*. What matters in this case is how the claimants experienced displacement in light of their own unique contextual situations.

18. International law and norms relating to **adequacy** with regard to the right to housing are contextual factors that will help the Court evaluate the impact of eviction on the encampment residents, and whether that impact amounts to substantive discrimination under section 15 of the *Charter*.

²⁶ *R. v. Sharma*, 2022 SCC 39 (CanLII) at para. 44, 46.

²⁷ *Law v. Canada (Minister of Employment and Immigration)*, 1999 CanLII 675 (SCC). The Court in *R. v. Sharma*, 2022 SCC 39 (CanLII) did not overturn these factors, but did add additional government-related contextual factors like legislative context – which raised concern from the dissent.

19. The elements of adequate housing can provide the Court with contextual questions to consider when determining whether an enumerated group or groups will be particularly disadvantaged (either in intensity or number) by municipal action around encampment evictions. Questions, mapped to the elements of adequacy as laid out above and as situated in General Comment No. 4, could include whether claimants, in connection to encampment evictions, have experienced losses or other harms relating to:

- Security of tenure or stability?
- Services, materials, facilities and infrastructure?
- Access to an affordable place to live?
- Access to a habitable, safe place to live?
- Access to an accessible place to live?
- Access to a beneficial location in which to live?
- Access to a culturally adequate place to live?

20. Adequacy standards help the Court understand the harm when people are evicted from an encampment, and also help the Court understand the need that people have when they are evicted from an encampment – .ie, where they could viably go as an alternative, and where would simply not be an adequate option.

21. This analysis – especially of harm arising from government failure to address needs of the people it evicts from encampments – is bolstered by General Comment 7 on the ICESCR (noted above), which states:

Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.

In other words, authorities have a duty to ensure adequate housing is available to vulnerable people that they displace.

22. Substantive discrimination can be shown against a protected group or group in a qualitative (disproportionate number of a group) or qualitative sense (a heightened negative impact on members of the protected group or group that it touches) – or in other ways. Adequacy standards can help illustrate both quantitative and qualitative impact – in particular by showing the Court how wide of a circle to draw around statistical and social science evidence that is relevant and should be considered when mapping out the relevant context.

23. These adequacy standards give the Court a sense of the bundle of housing rights that claimants need (and are entitled to by law) – and give the Court direction for understanding which elements of that bundle claimants lose if they are evicted from an encampment, and what parts of that bundle are missing from any alternative housing options offered to claimants evicted from an encampment. In other words, adequacy standards help the court understand both (i) what harms encampment residents will experience from eviction from the encampment and (ii) whether alternative options offered to them are adequate/viable.

24. These adequacy standards can also help the court understand where harms of eviction, or lack of adequacy of alternative offerings, connect to a protected ground or grounds. For example, these adequacy standards show the court what types of contextual, social studies evidence is particularly necessary to conduct a full contextual analysis to root out substantive inequality.

C. International law provides guidance on the application of the *Oakes Test* at section 1 – including the proportionality and minimal impairment analysis.

25. When a court finds a *Charter* infringement, international human rights law must inform the analysis of whether that infringement can be demonstrably justified in a free and democratic society under section 1 of the *Charter*.

26. The Supreme Court of Canada has long recognized that Canada's international human rights obligations underpin the very values that animate section 1 and the foundational principles of a "free and democratic society" including the "inherent dignity of the human person" and "commitment to social justice and equality".²⁸

27. International law therefore guides not only the interpretation of *Charter* rights themselves, but also the standard by which government limitations on those rights are measured. As Chief Justice Dickson held in *Reference re Public Service Employee Relations Act (Alta.)* ("*Alberta Reference*"), "the values and principles enshrined in international human rights law are those that underlie the *Charter* itself".²⁹

28. For a *Charter* infringement to be justified under section 1, the government must demonstrate that the impugned infringement is: 1) prescribed by law, 2) directed toward a pressing and substantial objective, and 3) proportionate in that the means are rationally connected to the objective, minimally impair on the infringed rights, and achieve salutary effects that outweigh the deleterious effects.³⁰

29. In *Slaight Communications Inc v Davidson*, the Supreme Court confirmed that "Canada's international human rights obligations should inform not only the interpretation of the content of the rights guaranteed by the *Charter* but also the interpretation of what can constitute as pressing

²⁸ *R. v. Oakes*, 1986 CanLII 46 (SCC), at pg. 136 ; *R. v. Malmo-Levine*; *R. v. Caine*, 2003 SCC 74 (CanLII).

²⁹ *Reference Re Public Service Employee Relations Act (Alta.)*, 1987 CanLII 88 (SCC).

³⁰ *R. v. Oakes*, 1986 CanLII 46 (SCC).

and substantial s. 1 objectives which may justify restrictions upon those rights.”³¹ The Supreme Court further emphasized that when a government objective aligns with a recognized international human right, that objective carries a “high degree of importance” in the section 1 analysis.³²³³

Proportionality

30. International human rights law provides analytical benchmarks for the proportionality inquiry. Principles articulated under the ICESCR, including ensuring adequate housing and preventing forced evictions, require that state actions affecting shelter be necessary, proportionate, and the least intrusive means available. These principles directly parallel the minimal impairment and proportionality steps of the Oakes test.

31. In the encampment context, where an impugned law discriminatorily impacts individual’s right to shelter themselves, Canada’s obligations under international human rights law reinforce the constitutional imperative of proportionality. The burden of the state to justify displacement is therefore heightened by these obligations. A free and democratic society cannot be said to exist where its law inflicts homelessness or degrade human dignity contrary to international norms to which Canada has bound itself and its municipalities.

32. In other words: International law and norms relating to **proportionality in evictions** (ie, eviction as a “last resort”) will help the Court evaluate whether encampment residents can show government failure to accommodate the needs of encampment residents amounting to a section

³¹ *Slaight Communications Inc. v. Davidson*, 1989 CanLII 92 (SCC), citing *Reference Re Public Service Employee Relations Act (Alta.)*, 1987 CanLII 88 (SCC), at pg. 349.

³³ *Slaight Communications Inc. v. Davidson*, 1989 CanLII 92 (SCC).

15 breach – and also whether government can pass the minimal impairment and proportionality steps of the *Oakes test*.

Minimal Impairment

33. As noted above, General Comment 7 on the ICESCR “Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.” In other words, authorities have a duty to ensure adequate housing is available to vulnerable people that they displace.

34. This puts clear parameters on the minimal impairment test at s.1. The question is not: did they give the tenants enough time before evicting them, or did they evict them in a way that was minimally intrusive or some such. The correct question is: did they do everything they could to find adequate alternative housing? International law helps the Court calibrate the minimal impairment test so that it appropriately conforms with the right to housing.

PART V – ORDER REQUESTED

35. The Intervenor takes no position on the Order requested.

36. Pursuant to this Court’s order of granting leave to intervene, the Intervenor seeks no costs, and respectfully asks that no costs be awarded against it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this [date]

Margaret Flynn

PrincessDoe

Canadian Centre for Housing Rights

Margaret Flynn & Princess Doe

Lawyers for the Proposed Intervenor,
Canadian Centre for Housing Rights

CERTIFICATE OF AUTHENTICITY

I, Margaret Flynn, counsel for the proposed intervener, the Canadian Centre for Housing Rights, certify that I am satisfied as to the authenticity of every authority cited in this factum, pursuant to Rule 4.06. 1(2.1) of the *Rules of Civil Procedure*.

[date]

A handwritten signature in cursive script that reads "Margaret Flynn". The signature is written in black ink and is positioned above a horizontal line.

Margaret Flynn
Counsel, Canadian Centre for Housing Rights

SCHEDULE “A” — CASES

SCHEDULE “B” — LEGISLATION

Court File No. COA-25-CV-0166

HEEGSMA ET AL
Applicants (Appellants)

-and-

CITY OF HAMILTON
Respondent (Respondent on Appeal)

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT HAMILTON

AFFIDAVIT OF MATHIEU PIERRE DAGONAS
MOTION FOR LEAVE TO INTERVENE

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**MOTION RECORD
FOR LEAVE TO INTERVENE**

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