

Court File Number: CV-25-00000750-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**THE REGIONAL MUNICIPALITY OF WATERLOO**

**Applicant**

**- and -**

**PERSONS UNKNOWN AND TO BE ASCERTAINED**

**Respondents**

APPLICATION UNDER Rule 14.05 of the *Rules of Civil Procedure*

**MOTION RECORD**

May 27, 2025

**SWADRON ASSOCIATES**

Barristers & Solicitors  
115 Berkeley Street  
Toronto, ON M5A 2W8

**Jen Danch (LSO # 74520I)**

Tel: (416) 362-1234  
Email: [jdanch@swadron.com](mailto:jdanch@swadron.com)

**KAREN A. STEWARD (LSO # 58758O)**

Barrister & Solicitor  
Email: [karenannesteward@yahoo.ca](mailto:karenannesteward@yahoo.ca)  
Tel: (416) 270-0929

Lawyers for the Mental Health Legal  
Committee (Moving Party)

TO: **PALIARE ROLAND ROSENBERG  
ROTHSTEIN LLP**

155 Wellington Street West  
35th Floor  
Toronto ON M5V 3H1  
Tel: (416) 646-4300

**Gordon Capern (LSO# 32169H)**

Tel: (416) 646-4311  
Email: [gordon.capern@paliareroland.com](mailto:gordon.capern@paliareroland.com)

**Andrew Lokan (LSO# 31629Q)**

Tel: (416) 646-4324  
Email: [andrew.lokan@paliareroland.com](mailto:andrew.lokan@paliareroland.com)

**Kartiga Thavaraj (LSO# 75291D)**

Tel: (416) 646-6317  
Email: [kartiga.thavaraj@paliareroland.com](mailto:kartiga.thavaraj@paliareroland.com)

**Greta Hoaken (LSO# 87903I)**

Tel: (416) 646-6357  
Email: [greta.hoaken@paliareroland.com](mailto:greta.hoaken@paliareroland.com)

Lawyers for the Applicant,  
The Regional Municipality of Waterloo

AND TO: **WATERLOO REGIONAL COMMUNITY LEGAL SERVICES**

450 Frederick Street, Unit 101  
Kitchener, ON N2H 2P5

**Ashley Schuitema (LSO# 68257G)**

Tel: (519) 743-0254 ext. 17  
Email: [ashley.schuitema@wrcls.clcj.ca](mailto:ashley.schuitema@wrcls.clcj.ca)

Joanna Mullen (LSO# 64535V)

Tel: (519) 743-0254 ext. 15  
Email: [joanna.mullen@wrcls.clcj.ca](mailto:joanna.mullen@wrcls.clcj.ca)

Shannon K. Down (LSO# 43894D)

Email: [shannon.down@wrcls.clcj.ca](mailto:shannon.down@wrcls.clcj.ca)

Lawyers for Respondents

Court File Number: CV-25-00000750-0000

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**MOTION RECORD**

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TAB 1



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**NOTICE OF MOTION OF THE PROPOSED INTERVENER,  
THE MENTAL HEALTH LEGAL COMMITTEE**  
(Motion for Leave to Intervene as Friend of the Court pursuant to  
Rule 13.02 of the *Rules of Civil Procedure*)

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The Mental Health Legal Committee (the “MHLC”) will make a motion to the court on the date of 28<sup>th</sup> day, the May of 2025, 2025 at 10:00 a.m. or as soon after that time as the motion can be heard.

**PROPOSED METHOD OF HEARING:**

The motion is to be heard

- ☐ In writing under subrule 37.12.1 (1) because it is made without notice;
- ☐ In writing as an opposed motion under subrule 37.12.1(4);
- ☐ In person;
- ☐ By telephone conference;
- ☒ By video conference.

at the following location: 85 Frederick Street, Kitchener, Ontario N2H 0A7.

**THE MOTION IS FOR:**

1. leave to intervene as a friend of the court;
2. the appointment of lawyer Mercedes Perez of Perez Procope Leinveer LLP as *amicus curiae* for the purpose of testing evidence and advocating on behalf of individuals living at the Victoria Street Encampment whose capacity to engage or instruct counsel is in question and who have no other identified way to participate in these proceedings;
3. permission for *amicus curiae* to file evidence in affidavit form and a factum up to 30 pages in length and to make oral submissions at the hearing of the application not exceeding 60 minutes, or such other duration as the Judge hearing this application may deem appropriate;
4. in the alternative, the MHLC seeks permission to file a factum of up to 15 pages in length and to make oral submissions of 30 minutes or such other duration as this Honourable Court may deem appropriate on the issue of whether *amicus curiae* ought to be appointed;
5. an order that the legal fees of *amicus curiae* or the MHLC be paid by the Ministry of the Attorney General at the rates paid by Legal Aid Ontario plus reasonable disbursements and HST;
6. an order that *amicus curiae* or the MHLC as intervener not seek costs against any party and that no party seek costs from them; and
7. such further relief as this Honourable Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

1. The MHLC is a coalition formed in 1997 of lawyers and community legal workers practicing mental health law.
2. The MHLC has a real and substantial interest in the issues raised on this appeal. The MHLC seeks to have *amicus curiae* appointed in these proceedings because the proceedings affect the

housing and security of individuals who may have mental health disabilities and addictions and have been unable to engage with or instruct counsel.

3. The MHLC is not aware of another way that these individuals could participate in these proceedings. The MHLC proposes that a senior lawyer be appointed as *amicus curiae*.

4. *Amicus curiae* would be able to attend at the encampment, speak with frontline service providers, and attempt to engage with encampment residents who, to date, have been unable to retain or instruct counsel. This will inform the submissions of the *amicus curiae*.

5. Failing the appointment of *amicus curiae*, the MHLC as an intervener offers unique perspective given its significant and longstanding expertise in advancing the equality rights and access to justice for individuals with mental health disabilities including past interventions before the Supreme Court of Canada and other courts and tribunals. Its members are experienced in challenging legal structures that result in inequality or injustice for individuals with mental health disabilities, and are aware of the structural, economic, disability-related, social and legal barriers they face in bringing such claims, including constitutional litigation.

6. The *amicus curiae* or the MHLC, as the case may be, will seek to consult with the parties and any other interveners to minimize any duplication of submissions.

7. The Court's inherent jurisdiction to manage its own process.

8. Rules 3.02 and 13.02 of the *Rules of Civil Procedure*.

9. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE is relied upon in support of this motion:**

1. the affidavit of Jacara Droog affirmed May 15, 2025;

2. the affidavit of Marshall Swadron affirmed May 26, 2025;
3. the affidavit of Sarah Latimer affirmed May 27, 2025;
4. the pleadings and proceedings herein;
5. such further and other documentary evidence as counsel may advise and this Honourable Court permit.

May 27, 2025

**SWADRON ASSOCIATES**

Barristers & Solicitors  
115 Berkeley Street  
Toronto, ON M5A 2W8

**Jen Danch (LSO # 74520I)**

Tel: (416) 362-1234

Email: [jdanch@swadron.com](mailto:jdanch@swadron.com)

**KAREN A. STEWARD (LSO # 58758O)**

Barrister & Solicitor

Email: [karenannesteward@yahoo.ca](mailto:karenannesteward@yahoo.ca)

Tel: (416) 270-0929

Lawyers for the Mental Health Legal  
Committee (Moving Party)

TO: **PALIARE ROLAND ROSENBERG  
ROTHSTEIN LLP**

155 Wellington Street West  
35th Floor  
Toronto ON M5V 3H1  
Tel: (416) 646-4300

**Gordon Capern (LSO# 32169H)**

Tel: (416) 646-4311

Email: [gordon.capern@paliareroland.com](mailto:gordon.capern@paliareroland.com)

**Andrew Lokan (LSO# 31629Q)**

Tel: (416) 646-4324

Email: [andrew.lokan@paliareroland.com](mailto:andrew.lokan@paliareroland.com)

**Kartiga Thavaraj (LSO# 75291D)**

Tel: (416) 646-6317

Email: [kartiga.thavaraj@paliareroland.com](mailto:kartiga.thavaraj@paliareroland.com)

**Greta Hoaken (LSO# 87903I)**

Tel: (416) 646-6357

Email: [greta.hoaken@paliareroland.com](mailto:greta.hoaken@paliareroland.com)

Lawyers for the Applicant,  
The Regional Municipality of Waterloo

AND TO: **WATERLOO REGIONAL COMMUNITY LEGAL SERVICES**  
450 Frederick Street, Unit 101  
Kitchener, ON N2H 2P5

**Ashley Schuitema (LSO# 68257G)**

Tel: (519) 743-0254 ext. 17

Email: [ashley.schuitema@wrcls.clcj.ca](mailto:ashley.schuitema@wrcls.clcj.ca)

**Joanna Mullen (LSO# 64535V)**

Tel: (519) 743-0254 ext. 15

Email: [joanna.mullen@wrcls.clcj.ca](mailto:joanna.mullen@wrcls.clcj.ca)

**Shannon K. Down (LSO# 43894D)**

Email: [shannon.down@wrcls.clcj.ca](mailto:shannon.down@wrcls.clcj.ca)

Lawyers for Respondents

THE REGIONAL MUNICIPALITY OF WATERLOO  
Applicant

and

PERSONS UNKNOWN AND TO BE ASCERTAINED  
Respondents

Court file number: CV-25-00000750-0000

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
Proceeding commenced at Kitchener

**NOTICE OF MOTION**

**SWADRON ASSOCIATES**  
Barristers & Solicitors  
115 Berkeley Street  
Toronto, ON M5A 2W8

**Jen Danch (LSO # 745201)**  
Tel: (416) 362-1234  
Email: [jdanch@swadron.com](mailto:jdanch@swadron.com)

Lawyers for the Mental Health  
Legal Committee, moving party

TAB 2

Court File No. CV-25-00000750-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

PERSONS UNKNOWN AND TO BE ASCERTAINED

Applicant

and

THE REGIONAL MUNICIPALITY OF WATERLOO

Respondents

APPLICATION UNDER Rule 14.05 of the *Rules of Civil Procedure*

**AFFIDAVIT OF JACARA DROOG**

I, Jacara Droog, of the City of Kitchener, in the Province of Ontario, AFFIRM AND SAY:

1. I have personal knowledge with respect to the facts set out below, except where stated otherwise. Where the information is not based on my personal knowledge, it is based upon information provided by others, which I believe to be credible and true.

2. I am providing this affidavit to assist the Court in understanding the circumstances of several acutely vulnerable residents of the Victoria Street Encampment, who currently have no legal representation or means of presenting their perspectives to this Court, and whose lives have the potential to be profoundly impacted by the outcome of this Application.



**Background**

3. I am a registered social worker (RSW) in the Province of Ontario, in good standing with the Ontario College of Social Workers and Social Service Workers. I also hold both Bachelor and Master of Social Work degrees.

4. I have been consistently engaged in providing mutual aid and direct support to individuals experiencing homelessness. From January to August 2024, I was consistently present as a community organizer at the encampment located at Victoria Street in Kitchener (“Victoria Street Encampment”), where I engaged regularly with residents. I returned to the site in April 2025 and have been present almost daily since April 22, 2025.

5. I am also currently involved with the Unsheltered Campaign, a grassroots organization focused on amplifying the voices of unhoused and housing insecure individuals. This work informs my ongoing outreach at the Victoria Street Encampment, where I continue to engage frequently with residents.

**Observations of Encampment Residents**

6. During my visits to the Victoria Street Encampment, I observed many residents who appear to experience serious mental health challenges, disabilities, and physical health issues that may impede their ability to make decisions related to health care, activities of daily living, and/or the ability to retain and instruct legal counsel. I have witnessed several encampment residents who appear to lack mental capacity and/or have fluctuating mental capacity, sometimes engaging in

conversation, and at other times appearing overwhelmed by symptoms of mental health or otherwise disoriented.

7. On or about April 25, 2025, I observed a resident of the Victoria Street Encampment exhibiting signs of what appeared to be psychosis. He seemed to be responding to external stimuli, i.e., yelling erratically to himself and others, and his speech and behaviour were disorganized. The resident was not in a position to discuss or understand legal issues relating to the encampment.

8. On April 29, 2025, at approximately 7:28 p.m., I spoke with a woman at the Victoria Street Encampment who identified herself as a resident of the encampment. I attempted to explain to her that the Region of Waterloo recently passed a bylaw (Bylaw PDL-LEG-25-017) and intended to evict the residents of the encampment by December 1, 2025. She appeared confused and unable to comprehend the situation, repeatedly speaking about “a sacred tree” and “gods and goddesses,” and demonstrated potential signs of paranoia, as she expressed a conspiracy theory about the security presence on site. Despite repeated efforts, she did not seem to appreciate or understand why she might require legal assistance.

9. Another resident of the Victoria Street Encampment, who I have known since last year, has shown fluctuating mental capacity with respect to legal and housing matters. Recently, he appears increasingly overwhelmed and stressed. When I and outreach workers from Waterloo Region Community Legal Service tried to explain Bylaw PDL-LEG-25-017 to him, he struggled to follow the conversation and even appeared to drift in and out of consciousness. On other occasions when

I attempted to engage with him, he has responded with visible distress and has requested to be left alone.

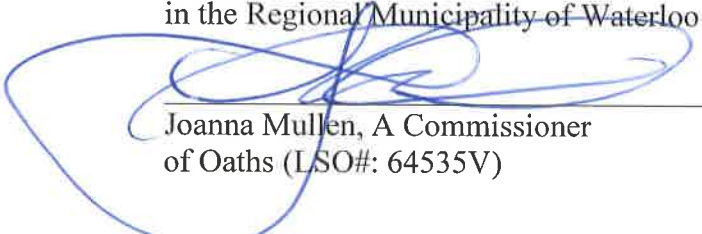
10. Around 2:48 p.m. on April 24, 2025, I sat with a resident of the Victoria Street Encampment who was in visible excruciating pain from a severe abscess. She was slumped over, clutching her arm, intermittently crying out in pain, had visible tears, and occasionally expressed suicidal ideation. At her request, I provided first aid and bandaged her hand and provided her with aspirin. The individual turned septic and ultimately went to the hospital on the night of April 25, 2025, after significant encouragement from me and other community members who coordinated transportation. It is my belief that she was not in a state where she could understand her legal options or have a discussion about housing.

11. On April 29, 2025, at approximately 7:50 p.m., I observed a woman (individual #1) sitting on a loveseat at the Victoria Street Encampment, accompanied by another person (individual #2). She appeared to be in a deepened state of sedation—sialorrhea (hypersalivation), with closed eyes and head tilted back—and was unresponsive to my questions. When I asked if they needed help or support, individual #2 said they were okay. I returned with a bottle of water in case she needed it later and to let me know if they needed anything. In my opinion, Individual #1 did not have capacity to communicate with me about her state, she did not even acknowledge that she heard my questions. She would not have been able to discuss legal matters.

12. In my professional experience and based on my observations, many residents of the Victoria Street Encampment also experience intersecting challenges that exacerbate their vulnerability, including physical disabilities, acquired brain injuries, developmental disabilities, and trauma from experience of abuse or sexual violence. These often co-exist with mental health issues and substance use, significantly impairing daily functioning, decision-making, and their ability to retain and instruct legal counsel.

13. I make this Affidavit in support of the Mental Health Legal Committee's motion to be appointed *amicus curiae* in this Application and for no other improper purpose.

AFFIRMED BEFORE ME in the )  
 City of Kitchener, this 15th day of )  
 May, 2025 )  
 in the Regional Municipality of Waterloo )

  
 Joanna Mullen, A Commissioner  
 of Oaths (LSO#: 64535V)

  
 JACARA DROOG

# TAB 3

Court File No: CV-25-00000750-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**THE REGIONAL MUNICIPALITY OF WATERLOO**  
Applicant

and

**PERSONS UNKNOWN AND TO BE ASCERTAINED**  
Respondents

APPLICATION UNDER Rule 14.05 of the *Rules of Civil Procedure*

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**AFFIDAVIT OF MARSHALL SWADRON**

---

I, Marshall Swadron, of the City of Toronto, in the Province of Ontario, DO SOLEMNLY  
AFFIRM:

1. I am a lawyer licensed to practice law in the Province of Ontario. I have served as the Chair of the Mental Health Legal Committee (MHLC) since 2009 after serving as Acting Chair from 2006 to 2009. As such, I have knowledge of the matters described in this affidavit. Where I have received information from others, I believe it to be true.
2. I am a member of the law firm Swadron Associates. Since my call to the bar in 1989, I have represented clients with mental health issues in the areas of civil, administrative and constitutional law. I have been counsel to many clients who are involuntarily detained in

psychiatric facilities under Ontario's *Mental Health Act*. I have also been counsel in constitutional challenges to mental health and other legislation, including where public interest standing was granted to a public interest organization.<sup>1</sup> I have served as *amicus curiae* in matters involving persons with mental health issues before the Superior Court of Justice and the Court of Appeal for Ontario. As a lawyer representing legally aided clients with mental health issues for many years, and as Chair of the MHLC, I am aware of the economic, structural, disability-related, and legal barriers to accessing justice faced by clients of MHLC members including when challenging the constitutionality of legislation and/or state conduct.

3. The MHLC seeks leave to intervene in the present application to help ensure that the court has the opportunity to consider the circumstances of persons who are vitally affected but who would not otherwise be able to participate. The residents of an encampment can be expected to face multiple, intersecting structural barriers due to lack of housing, poverty, and mental health issues. For clients in similar circumstances, the combination of lack of stable housing and subsequent diminished access to phones and computers together with their mental health disabilities is such that they are not able to retain and instruct counsel.

4. The MHLC seeks to intervene to offer this court a unique and useful perspective on these issues.

## **Overview**

5. The MHLC has 28 years of experience in advocating for the rights of psychiatric consumers and survivors impacted by mental health legislation, including intervening in cases before tribunals and appellate courts, providing legislative submissions, and participating in

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<sup>1</sup> *Thompson v Attorney General of Ontario*, 2011 ONSC 2023.

training and education. The membership of the MHLC is comprised of legal practitioners who have special familiarity with representing clients with mental health issues, in a wide variety of proceedings in both the civil and criminal justice systems, including constitutional litigation. If granted leave to intervene, the MHLC will draw upon this expertise to offer the court a unique perspective, informed by the firsthand day-to-day representation of our clients within legal systems.

### **Background of the Mental Health Legal Committee**

6. The MHLC is a coalition of lawyers and community legal workers practising in mental health law. It was formed in February 1997 and has approximately 55 members across the Province of Ontario. The Chair of the MHLC is selected by its members. The MHLC has been involved in a wide variety of law reform, legal interventions, community development and public education as outlined below.

7. The MHLC maintains an online listserv and convenes meetings as needed to discuss legal issues pertaining to mental health law, policy, and practice. It works closely with advocates within the psychiatric system. Our committee provides a forum in which legal practice issues including institutional, individual and systemic concerns can be aired, discussed and addressed, and offers peer mentorship.

8. Lawyer and community legal workers of the MHLC are committed advocates for the rights of psychiatric consumers and survivors, and other individuals who come into contact with legal systems and structures addressing mental health or capacity. Each member is required to sign the MHLC statement of principles. The statement of principles emphasizes liberty, autonomy, and access to justice concerns, as follows:



Consumers of mental health services have the same rights as other Ontarians. To the extent that laws restrict the rights of mental health consumers to protect them or to protect others, those restrictions should be the minimum necessary having regard to the circumstances of the individual.

The law may also be a means by which mental health consumers can secure entitlements which will help them function in a society with a reasonable quality of life. Lawyers and community legal workers can play an important role in assisting mental health consumers to secure and exercise their rights and entitlements.

9. Since its inception in 1997, the MHLC's advocacy has taken many forms. The scope of the MHLC's activities has included direct advocacy, systemic advocacy, public education, policy work and community development regarding the legal needs of mental health consumers and survivors.

10. Our lawyer members represent clients in all areas where mental health issues arise, including the civil, criminal, constitutional and administrative law contexts. Often, our members assist clients in challenging restrictions on their liberty and autonomy, such as involuntary detention (civil or forensic), findings of incapacity to consent to treatment and the forced administration of psychiatric treatment. MHLC lawyers represent clients in all areas where capacity issues arise, most notably before the Ontario Consent and Capacity Board (CCB) and in the Superior Court of Justice. The CCB reviews civil involuntary psychiatric detention, community treatment orders, treatment and financial incapacity findings, the withdrawal of life support measures, re-integration of long-term patients into the community, and related issues.

11. Our lawyer members regularly represent unfit and Not Criminally Responsible (NCR) accused clients in Part XX. I *Criminal Code* proceedings before the Ontario Review Board (ORB), as well as clients before the criminal courts, including Mental Health Courts.

In addition, our members' practices include *Charter of Rights and Freedoms* litigation, coroners' inquests, human rights proceedings, complaints against health professionals, and civil litigation related to mental health matters (including guardianship applications).

12. MHLC members are active in appeal work at all levels of court. Individual members have acted as counsel, *amicus curiae*, or counsel to interveners in many leading mental health law cases. Some examples include:

- *M(A) v Benes*, (1999) 46 OR (3d) 271 (CA) (a constitutional challenge to the provisions of the *Health Care Consent Act, 1996* that allow the Consent and Capacity Board to override treatment decisions of substitute decision-makers for incapable persons);
- *R v LePage*, [1999] 2 SCR 744 (a constitutional challenge to the s. 672.47 and s. 672.54 of the *Criminal Code* respecting NCR accused);
- *Pinet v St. Thomas Psychiatric Hospital*, 2004 SCC 21 (see para 16, below);
- *Mazzei v British Columbia (Director of Adult Forensic Psychiatric Services)*, 2006 SCC 7 (the Court pronounced on the role of Review Boards in making orders and attaching conditions relating to the supervision of treatment of NCR accused, including culturally appropriate treatment for an Indigenous accused);
- *Gligorevic v McMaster*, 2012 ONCA 115 (establishing that a psychiatric patient at a hearing to review a finding of incapacity has a right to effective assistance of counsel, and counsel's role);
- *PS v Ontario*, 2014 ONCA 900 (see para 17, below);
- *Thompson v Ontario (Attorney General)*, 2016 ONCA 676 (a constitutional challenge to provisions of the Ontario's *Mental Health Act* that created a statutory

scheme for forced community treatment and expanded the criteria for involuntary committal in a psychiatric facility);

- *ES v Joannou*, 2017 ONCA 655 (an appeal asking whether the Consent and Capacity Board is a court of competent jurisdiction to grant *Charter* remedies to involuntary psychiatric patients); and
- *Ontario (Attorney General) v G*, 2020 SCC 38 (a successful challenge to the constitutionality of the federal and provincial sex offender registries, based on equality grounds).

13. Significantly, MHLC lawyer members have served as *amicus curiae* at the trial level in matters similar to the within application. In 2022, MHLC lawyers acted as *amici curiae* in *The Regional Municipality of Waterloo v Persons Unknown and to be Ascertained*, 2023 ONSC 670, a successful challenge to the constitutionality of a municipal bylaw of the Regional Municipality of Waterloo as it applied to prevent homeless persons from living on and erecting temporary shelters without a permit on land owned by the Region when the number of homeless individuals in the Region exceed the number of accessible shelter beds. This Honourable Court accepted several submissions made by *amici curiae* in its decision (see paras. 149-151, for example). In 2023, MHLC lawyers acted as *amici curiae* in *The Corporation of the City of Kingston v Doe*, 2023 ONSC 6662, another successful challenge to the constitutionality of a municipal bylaw as it applied to residents of an encampment.

14. MHLC lawyer members have appeared at coroners' inquests investigating the deaths of clients with mental health and/or addiction issues. Many of the inquests investigated deaths within state institutional settings such as psychiatric facilities, long-term care homes, and prisons. Some examples include: the death of Joshua Durnford, an 18-year old who died

awaiting trial at the Maplehurst Detention Centre of neuroleptic malignant syndrome (an adverse effect of antipsychotic medication) (2001); the death of Jeffrey James, a forensic patient who died while physically restrained in hospital (2005); the death of Keigo White, an inmate on the medical unit of Toronto's Don Jail who died after methadone treatment was withheld (2008); the deaths of DM and GA, young people within the meaning of the *Youth Criminal Justice Act*<sup>2</sup> who took their lives while awaiting trial in youth detention centres; inquest into the death of Ashley Smith who died in Grand Valley Institution for Women (2012-2013); and the death of Jeff Munro, a young man with mental health and addiction issues who was killed by another inmate while both were detained on the psychiatric unit at Toronto's Don Jail (2014), and the death of Attila Csanyi (2023), a young man with mental health and addiction issues who died of an overdose after being unlawfully evicted from a Residential Care Facility.

15. The MHLC has provided countless hours of education (both on legal issues and tribunal practices) to stakeholders in the law and mental health systems, including lawyers, law students, forensic and other psychiatrists, adjudicators, Crown prosecutors, police, consumers and survivors and their family members.

#### **The MHLC's Contributions as an Intervener before the Supreme Court of Canada and Other Courts**

16. The MHLC has extensive experience as an intervener before appellate courts. The MHLC has been granted intervener status by the Supreme Court of Canada on eleven previous occasions (either alone or in coalition), as follows:

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<sup>2</sup> SC 2002, C1.

- *Odhayji Estate v Woodhouse*, 2003 SCC 69, in which the Court found that the family of a man who was fatally shot by police could advance a tort claim of misfeasance in public office against individual police officers, and further found that the plaintiffs were liable for costs because they were not public interest litigants;
- *Starson v Swayze*, 2003 SCC 32, in which the Court affirmed that patients with mental disorders are presumptively entitled to make their own decisions respecting psychiatric treatment, and pronounced upon the test for capacity to consent to treatment as it applies to mental health disabilities;
- *Pinet v St. Thomas Psychiatric Hospital*, 2004 SCC 21 and *Penetanguishene Mental Health Centre v Ontario (Attorney General)*, 2004 SCC 20, decisions relating to the liberty restrictions on accused persons found not criminally responsible by reason of mental disorder (NCR). The Court ruled that all terms of dispositions under Part XX.I of the *Criminal Code* must be the least onerous and least restrictive of the accused's liberty, consistent with public safety, the mental condition of the accused, his or her other needs, and the objective of community reintegration;
- *R v Conway*, 2010 SCC 22, where the Court found that the Ontario Review Board is a court of competent jurisdiction to grant *Charter* remedies to NCR accused, representing a major advancement of access to justice for these individuals living with mental disorders;
- *Cuthbertson v Rasouli*, 2013 SCC 53, which affirmed the jurisdiction of the Consent and Capacity Board (as opposed to the courts) to review the refusal by a substitute decision maker to consent to the withdrawal of life supporting

treatments, also significantly facilitating access to justice in the expert, expeditious and cost-effective resolution of end-of-life treatment disputes relating to mentally incapable patients;

- *Ontario v Criminal Lawyers' Association of Ontario*, 2013 SCC 43, a decision relating to the role of *amicus curiae* in assisting the court in cases involving self-represented accused, and the court's jurisdiction to fix the rates of compensation for *amicus*;
- *R v Conception*, 2014 SCC 60, in which the Court considered the grounds on which a hospital may justifiably refuse to receive an unfit accused for treatment once a treatment order has been made under Part XX. I of the *Criminal Code*, an issue invoking the timely access to treatment for mentally disordered individuals awaiting treatment within the criminal justice system;
- *Ewert v Canada*, 2018 SCC 30, which considered whether the Correctional Service of Canada's use of psychological and actuarial risk assessment tools to assess psychopathy and recidivism of Indigenous prisoners violated sections 7 and 15 of the *Charter*;
- *Sherman Estate v Donovan*, 2021 SCC 25, which found that privacy and dignity concerns may justify a sealing or confidentiality order in litigation matters. The Court recognized that privacy over highly sensitive personal information, such as information related to stigmatized mental conditions, is closely linked to dignity of the affected individual;
- *British Columbia (Attorney General) v Council of Canadians with Disabilities*, 2022 SCC 27, in which the Court upheld the Court of Appeal's decision that granted public interest standing to the Council of Canadians with Disabilities

(CCD) to pursue the constitutional litigation challenging the constitutionality of the impugned *Mental Health Act* provisions in British Columbia.

17. The MHLC has also been granted intervener status before other courts and tribunals including:

- *Braithwaite v Ontario (Attorney General)*, 2006 HRTO 15, in which the Honourable Mr. Justice Cory (then sitting as a member of the Human Rights Tribunal of Ontario) found that the Ontario *Coroners Act* was discriminatory in that it provided for mandatory Coroner's inquests for prisoners who die in police detention or penal institutions, but only for discretionary inquests for involuntary patients detained in psychiatric facilities;
- *Ontario (Attorney General) v Ontario Human Rights Commission* (2007), 88 OR (3d) 455 (Div. Ct.), an appeal to Ontario's Divisional Court from the *Braithwaite* decision above;
- *PS v Ontario*, 2014 ONCA 900, a successful constitutional challenge before the Court of Appeal for Ontario respecting the detention and review powers of the Consent and Capacity Board. This decision led to legislative amendments allowing long-term involuntary psychiatric patients to seek certain remedies respecting the conditions of their detention, and was hailed by academics as opening the door to a more meaningful recognition of the profound deprivations of liberty experienced by patients in civil psychiatric detention;<sup>3</sup>
- *Ontario (Community Safety and Correctional Services) v De Lottinville*, 2015 ONSC 3085, a test case in the Ontario Superior Court that affirmed the ability of

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<sup>3</sup> See for instance: Isabel Grant & Peter Carver, "*PS v Ontario*: Rethinking the Role of the Charter in Civil Commitment" (2016) 53:3 Osgoode Hall LJ 999.

disadvantaged persons to pursue remedies at the Human Rights Tribunal of Ontario after having made complaints before disciplinary tribunals; and

- *Thurston (Re)*, 2015 ONCA 351, a decision of the Court of Appeal for Ontario respecting procedural fairness for NCR accused in their hearings before the Ontario Review Board, specifically with respect to the Board's duty to disclose internal policies that may affect a panel's determination of an appropriate disposition for an NCR accused.

18. A guiding principle for the MHLC's participation in interventions has been the advancement of substantive equality, autonomy, dignity and access to justice for persons impacted by mental health legislation, practice or policy. By providing its expertise as a legal advocacy organization informed by client-instructed advocacy, the MHLC has played a leadership role in challenging legal structures that result in inequality or injustice for individuals with mental health disabilities.

### **The MHLC's Law Reform, Education and Outreach Work**

19. Aside from interventions and litigation, the MHLC has been active in a wide variety of law reform and advocacy work.

20. The MHLC has made submissions on a number of Bills before the Legislature of Ontario including: Bill 122, *An Act to amend the Mental Health Act and the Health Care Consent Act*;<sup>4</sup> Bill 116, *Creating the Foundation for Jobs and Growth Act* 2010;<sup>5</sup> Bill 159, *An Act Respecting Personal Health Information and Related Matters*;<sup>6</sup> Bill 53, *An Act to*

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<sup>4</sup> 1<sup>st</sup> Sess, 41<sup>st</sup> Leg, Ontario, 2015.

<sup>5</sup> 2<sup>nd</sup> Sess, 39<sup>th</sup> Leg, Ontario, 2010.

<sup>6</sup> 1<sup>st</sup> Sess, 37<sup>th</sup> Leg, Ontario, 2000.



*Amend the Law Society Act*;<sup>7</sup> which sought to make treatment orders an aspect of the disciplinary process with respect to members of the Law Society of Ontario; Bill 68, *An Act, in memory of Brian Smith, to amend the Mental Health Act and the Health Care Consent Act, 1996*;<sup>8</sup> Bill 135, *An Act to Amend the Public Hospitals Act* to regulate the use of restraints that are not part of medical treatment;<sup>9</sup> Bill 140, *An Act Respecting Long-Term Care Homes*,<sup>10</sup> and Bill 115, *an Act to Amend the Coroners Act*.<sup>11</sup>

21. Also, the MHLC has prepared written submissions to the Canadian Senate respecting Bill C-54, *An Act to Amend the Criminal Code and the National Defence Act*,<sup>12</sup> which introduced sweeping changes to Part XX. I of the *Criminal Code*, including the new designation of “high risk” mentally disordered accused.

22. Further, the MHLC is considered to have amassed significant expertise in the practice issues related to mental health law. Government, community agencies, the judiciary and administrative tribunals, among others, regularly consult with the MHLC. The MHLC provides advice on issues arising within and outside of the litigation context in an effort to ensure our clients' access to justice within the courtroom and to facilitate the necessary administrative and funding framework for accessible and competent legal supports.

23. The MHLC has made submissions and provided consultation to Legal Aid Ontario respecting its Mental Health Strategy (2014); the Law Commission of Ontario on its project respecting Legal Capacity, Decision-making and Guardianship (2015); and the statutorily-

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<sup>7</sup> 2<sup>nd</sup> Sess, 36<sup>th</sup> Leg, Ontario, 1998.

<sup>8</sup> 1<sup>st</sup> Sess, 37<sup>th</sup> Leg, Ontario, 2000

<sup>9</sup> 1<sup>st</sup> Sess, 37<sup>th</sup> Leg, Ontario, 2000.

<sup>10</sup> 2<sup>nd</sup> Sess, 38<sup>th</sup> Leg, Ontario, 2007.

<sup>11</sup> 1<sup>st</sup> Sess, 39<sup>th</sup> Leg, Ontario, 2009.

<sup>12</sup> 1<sup>st</sup> Sess, 41<sup>st</sup> Parl, 2013.

mandated government panel reviewing the effectiveness of community treatment orders in Ontario (2005 and 2012). More recently, the MHLC made submissions regarding the consultation on proposed exemptions under the *Police Record Checks Reform Act*, 2015 in respect of mental health contacts with the police and its impact on clients with mental health issues and Legal Aid Ontario's rules and policies respecting eligibility and lawyer roster standards introduced in 2022.

24. The MHLC participated in Legal Aid Ontario's Mental Health Law and Policy Advisory Committee to the Legal Aid Services Board since 2011. In addition, the MHLC assisted with judicial initiatives geared towards self-represented litigants with mental health issues because of the enormous access to justice obstacles that are often encountered by our client group. This includes the Ontario Estates Bench-Bar Liaison Committee, the CCB Bench and Bar Committee, and the Alliance for Sustainable Legal Aid.

25. Members of the MHLC have sat on the Boards of Directors of community mental health agencies and Legal Aid clinics whose clients include persons with mental health issues. Our members also sit on various other committees that advise public and private bodies in relation to mental health law.

26. Other advocacy efforts by the MHLC to promote access to justice for our clients include the elimination of barriers to access to justice. Prior to 1998, our clients faced a \$200.00 filing fee to initiate appeals from decisions of the CCB in the Superior Court of Justice. The MHLC successfully argued for an exemption from this fee. This change was made through an amendment to the regulation respecting fees under Ontario's *Administration of Justice Act*.<sup>13</sup> In addition, in

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<sup>13</sup> RSO 1990, c A6.

2003 and 2020-2021, the MHLC worked closely with the CCB in ensuring that its practices and procedures promote our clients' access to justice, particularly under special emergency circumstances such as Ontario's SARS alert and, more recently, the COVID-19 pandemic.

27. As well, the MHLC was invited by the late Honourable Justice Marc Rosenberg of the Ontario Court of Appeal to participate in a task force addressing the issue of unrepresented NCR and unfit accused appearing before that Court. Other members of the task force included representatives of the Court of Appeal, the Attorney General of Ontario, the Psychiatric Patient Advocate Office, and the Criminal Lawyers' Association. The result of the task force was the creation of an *Amicus Curiae* Program for representation of Mentally Disordered Accused, which commenced in 2001.

28. Recognizing that it is preferable for appellants from ORB dispositions to be represented by counsel rather than by *amicus curiae*, the MHLC has continued to work with the above organizations and with Legal Aid Ontario to expand coverage of counsel in such appeals. MHLC members (along with other lawyers) now act as counsel and, when necessary, as *amicus curiae* in appeals by mentally disordered accused from disposition orders of the ORB in the Ontario Court of Appeal.

29. Counsel and *amicus curiae* appointed in the Court of Appeal on appeals from decisions of the CCB (via the Superior Court of Justice) are drawn from the MHLC's membership (along with other lawyers). In tandem with the MHLC's efforts to ensure representation by counsel in ORB appeals, several MHLC members were involved from 2007 to 2015, both with a formal Working Group chaired by the then Chair of the CCB and with the Estates List lead administrative judge in Toronto in an effort to find practical and reasonable

solutions to the problem of unrepresented litigants on appeals to the Superior Court of Justice from the CCB.

30. From the time of its inception, MHLC members have led or presented papers at continuing legal education programs offered by the Law Society of Ontario, the Ontario Bar Association, the Canadian Bar Association, the Canadian Institute and other legal education forums respecting issues relating to mental health and capacity laws.

### **The MHLC's Interest and Expertise in This Application**

31. The MHLC has a significant interest in the issues of this application. As an organization of legal practitioners informed by client-instructed advocacy for clients with mental health-related disabilities, the MHLC has a direct and genuine interest in ensuring that the rights and perspective of the residents of the encampment are represented.

32. As a public interest committee of lawyers and community legal workers in the field of mental health law, the MHLC has a unique perspective and expertise to offer this Honourable Court in its determination of the issues raised in this application. This application has the potential to directly impact the lives of the residents of the encampment by displacing them from their chosen, and potentially only available, living situation and the community they have created with the other residents of the encampment. Without a mechanism in place to advance the interests of residents who have been unable to retain and instruct counsel, there is a risk they will be excluded from these proceedings.

33. The MHLC's mandate and expertise in representing low-income clients with mental health issues who are found incapable enable it to place the issues in a different perspective than that of the parties. The MHLC can also provide this Honourable Court with information

regarding how the procedural rights of allegedly incapable persons are protected in other contexts, including the criminal, civil, and administrative contexts such as before the Consent and Capacity Board and the Landlord Tenant Board.

34. The MHLC is in a unique position as advocates for persons with mental health disabilities. We hear directly from our clients about their perspectives and experiences, many of whom do not have stable housing due to their mental health and addiction issues, and are keenly aware of the conditions and barriers they face. These include structural, economic, disability-related, social, and legal barriers to accessing justice. Some of our clients are not able to instruct counsel in meaningful ways where their interests are concerned.

**MHLC has a real substantial and identifiable interest in the subject matter of the proceeding**

35. The residents of the encampment are individuals who directly fall within the MHLC's advocacy mandate. Many are individuals with mental health and addiction issues who are unable to retain and instruct counsel, or have fluctuating capacity, largely because of these disabilities. The MHLC has a unique understanding of the barriers its clients face grounded in its direct and systemic advocacy on behalf of low-income clients with mental health issues. If the MHLC is refused leave to intervene, residents who are directly impacted by the proceedings may not be able to engage in the proceedings at all, and a critical perspective will not be heard by this Honourable Court.

**Request and Terms for Proposed Intervention**

36. As the proposed intervention is before a trial level court rather than an appeal, there is scope for advocacy to be informed by the persons living at the encampment and for evidence to be

gathered and submitted to the court. This would best be accomplished by a lawyer assuming the role of *amicus curiae*.

37. The relief sought by the MHLC if granted leave to intervene in the application is therefore the appointment of a lawyer to serve as *amicus curiae* for the purpose of presenting evidence if indicated and advocating on behalf of individuals living at the encampment whose capacity is in question and who have no other identified way to participate in this proceeding.

38. Subject to the submissions of the parties, the result of the present intervention motion could be the appointment of *amicus curiae*. Mercedes Perez, of the firm Perez, Procope, Leinveer LLP, who is a member of the MHLC, has offered to serve as *amicus curiae* if so appointed. A copy of Ms. Perez's *curriculum vitae* is attached as Exhibit "A" to my affidavit.

39. I am informed by Ms. Perez that she is prepared to accept a certificate for Legal Aid issued through the Protocol Cases Unit of Legal Aid Ontario for the purpose of her payment as *amicus curiae*.


40. It would be requested that *amicus curiae* be permitted to participate in cross-examinations, to file a factum up to 30 pages in length, and to make oral submissions of up to 60 minutes, or such other duration as this Honourable Court may deem appropriate.

41. In the alternative, the MHLC seeks permission to participate in cross-examinations, file a factum of up to 15 pages in length and to make oral submissions of 30 minutes or such other duration as this Honourable Court may deem appropriate on the issue of whether *amicus curiae* ought to be appointed.

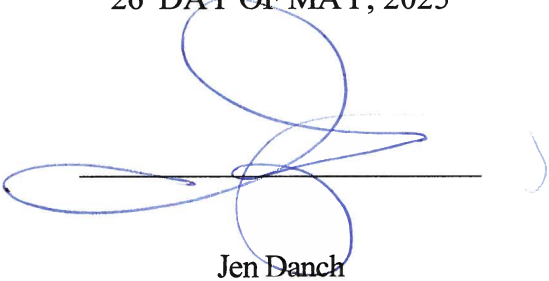
42. The MHLC and *amicus curiae* would not seek costs against any party and ask that they not be liable to any party for costs.

43. I make this affidavit in support of the MHLC's motion for leave to intervene in this application and for the appointment of *amicus curiae* and for no other or improper purpose.

AFFIRMED before me in person )  
at the City of Toronto )  
in the Province of Ontario, )  
this 26th day of May, 2025 )  
\_\_\_\_\_)  
Commissioner for Taking Affidavits )  
etc. )  
Jen Danch )  
LSO#: 74520I )

  
\_\_\_\_\_)  
Marshall Swadron )

THIS IS EXHIBIT  
"A"  
TO THE AFFIDAVIT OF  
MARSHALL SWADRON  
SWORN BEFORE ME THIS  
26 DAY OF MAY, 2025

A handwritten signature in blue ink, appearing to read "Jen Danch", is written over a solid horizontal black line. The signature is stylized with loops and a long horizontal stroke extending to the left.

LSO number: 74520I



**MERCEDES PEREZ**  
Perez Procope Leinveer LLP  
55 University Ave., Suite 1100  
Toronto, Ontario M5J 2H7  
(416) 320-1914 ext. 101  
mperez@pbplawyers.com

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## **LEGAL EXPERIENCE**

### **Adjunct Professor, Osgoode Hall Law School, York University (2010-Present)**

- Co-Instructor, “Law and Psychiatry”

### **Perez Procope Leinveer LLP, Lawyer and Managing Partner (2015-Present)**

- Civil litigation and administrative law; trial, appellate and judicial review work
- Specializing in mental health/ capacity law, psychiatric detention, elder law, disability rights, police and correctional abuse, civil sexual assault, representation of complainants in s.276/ 278 *Criminal Code* applications, coroner’s inquests and *Charter* litigation
- Representation of clients in a broad range of administrative law settings including the Consent and Capacity Board and Ontario Review Board, and at all levels of Court in Ontario and the Supreme Court of Canada
- The firm previously operated under the name Perez Bryan Procope LLP

### **Swadron Associates, Associate Lawyer, Toronto, Ontario (2003-2015)**

- Civil litigation and administrative law; trial, appellate and judicial review work; mediations, advocacy and legal opinions; select *Criminal Code* applications
- Representation of clients before the Supreme Court of Canada, Federal Court and all levels of court in Ontario; coroners’ inquests, Small Claims Court, Consent and Capacity Board, Ontario Review Board, Criminal Injuries Compensation Board, Health Services Appeal and Review Board and the Health Professions Appeal and Review Board

### **EcoJustice (Sierra Legal Defence Fund), Student-at-Law, Toronto, Ontario (2002-2003)**

- Articling position with public interest environmental law NGO
- Drafted written arguments and conducted legal research for matters before the Supreme Court of Canada, Ontario Court of Appeal, Federal Court of Appeal and the Superior Court of Justice
- Contributed to several precedent-setting cases including: *Imperial Oil v. Quebec (Minister of the Environment)* [2003] 2 S.C.R. 624 and *R. v. Kingston (City)* [2004] O.J. No. 1940 (C.A.)

**Centro de Servicios Legales para la Mujer, Inc. (CENSEL), Legal Intern, Santo Domingo, Dominican Republic (2001-2002)**

- Legal intern at CENSEL, a non-profit NGO specializing in legal initiatives to curb violence and discrimination against women
- Legal assistance to victims of discrimination and gender-based violence (criminal, family, labour/ employment contexts)
- Assisted counsel in hearings before local magistrates; trial and appeal preparation; legislative reform initiatives; public legal education workshops delivered to grassroots organizations

**Fundación Regional de Asesoría en Derechos Humanos (INREDH), Legal Intern, Quito, Ecuador (Summer 2000)**

- Independently organized a summer internship program with INREDH, a non-profit non-governmental human rights organization based in Quito, Ecuador
- Organized and delivered workshops on prisoners' rights and non-violent conflict resolution to female inmates at the *El Inca* prison in Quito
- Assisted counsel in the preparation of a constitutional challenge to the U.S. military presence at the Manta air force base
- Organized and delivered workshops on international, regional and domestic human rights instruments to community leaders and grassroots/ civil society organizations in remote northern Ecuadorian villages and in Quito

**EDUCATION**

**Ontario Bar Admission:** July 2003

**LL.B., McGill University, Montreal, Quebec (1998-2001)**

- Graduated with Distinction

**M.A. (International Relations), University of Chicago, Chicago, Illinois (1995-1996)**

- Awarded University Entrance Scholarship

**B.A. (International Relations), University of Toronto, Toronto, Ontario (1991-1995)**

- Graduated with High Distinction
- Dean's Honour List, Trinity College (1993-1995)

**AWARDS****Mental Health Legal Committee, 20<sup>th</sup> Anniversary Advocacy Award (June 2017)****Precedent Magazine, Precedent Setter Award 2011**

- Annual award recognizing lawyers in their first 10 years of practice who have demonstrated leadership and excellence

**PUBLICATIONS**

- “Legislative Reform and the Struggle to Eradicate Violence Against Women in the Dominican Republic” (2005) 14 *Colum. J. Gender & L.* 36
- “Sex Offender Information Registries and the Not Criminally Responsible Accused: Have We Cast Too Wide a Net?” (with Anita Szigeti) (2008) 25 *Windsor Rev. Legal Soc. Issues* 69
- “Re-Centering Equality: The Interplay Between Sections 7 and 15 of the *Charter* in Challenges to Psychiatric Detention” (with C. Tess Sheldon and K. R. Spector), *National Journal of Constitutional Law*, Vol. 35, No. 2, 2016
- “One Size Only Fits Some: “Different Modes for Different Folks” – Ensuring Access to Justice for Vulnerable Parties at Hearings of Ontario’s Mental Health Tribunals” (with Anita Szigeti) (2024) *Canadian Anthology on Mental Health and the Law* (Toronto, LexisNexis Canada)

**CONFERENCES AND SPEAKING ENGAGEMENTS****Osgoode Certificate in Mental Health Law, “Consent, Capacity and Substitute Decision Making” (October 2024)**

- Speaker, “Frequent Issues in Consent and Capacity Board Appeals”

**Legal Aid Ontario – Lunch and Learn, Consent and Capacity Board (July 2024)**

- Speaker, “Treatment Capacity and Appeals”

**Law Society of Ontario, Professionalism and Practice Management Issues in Administrative Law (October 2022)**

- Speaker, “Serving Administrative Law Clients with Disabilities”

**Gerstein Centre, (June 2022)**

- Speaker, Training Seminar “Ontario’s *Mental Health Act* and Crisis Response”

**Osgoode Professional Development, “Legal Guide to Consent, Capacity & Substitute Decision-Making” (December 2021)**

- Speaker, “Understanding the *Substitute Decisions Act* – From Property Management to Personal Care”
- Speaker, “Preparing for a Hearing before the Consent and Capacity Board”

**Canadian Bar Association, Elder Law Program (December 2021)**

- Speaker, “Cultural Competency and Elder Law: Practical and Ethical Considerations”

**Osgoode Certificate in Mental Health Law, “Consent, Capacity and Substitute Decision Making” (October 2021)**

- Speaker, “Frequent Issues in Consent and Capacity Board Appeals”

**Osgoode Professional Development, “Legal Guide to Consent, Capacity & Substitute Decision-Making” (December 2020)**

- Speaker, “Understanding the *Substitute Decisions Act* – From Property Management to Personal Care”

**Ontario Bar Association, “Your Comprehensive Guide to Section 3 Counsel” (November 2020)**

- Speaker, “The role of *amicus curiae*”

**Osgoode Hall Law School, Building a Social Justice Law Firm (March 2020)**

- Guest speaker

**Osgoode Professional Development, “Legal Guide to Consent, Capacity & Substitute Decision-Making” (December 2019)**

- Speaker, “Understanding the *Substitute Decisions Act* – From Property Management to Personal Care”; “Preparing for a Capacity Hearing before the Consent and Capacity Board”; “What does a CCB Hearing Look Like?”

**St. Michael’s Hospital Academic Family Health Team, Health Justice Program (September 2019)**

- Speaker, “Consent, Capacity, Decision-Making and Advance Care Directives”

**Osgoode Hall Law School, “Fairness, Mental Health and Administrative Process” (September 2019)**

- Speaker, “Perspectives and Voices” panel

**Osgoode Hall Law School, “Detained: From Supporting Prisoners to Abolishing Prisons” (March 2019)**

- Speaker, “Psychiatric Detention”

**Osgoode Professional Development, “Legal Guide to Consent, Capacity & Substitute Decision-Making” (December 2018)**

- Speaker, “Understanding the *Substitute Decisions Act* – From Property Management to Personal Care”

**Osgoode Hall Law School, Community & Legal Aid Services Program (June 2017)**

- Guest faculty, “Representing Clients with Mental Health Barriers”

**Law Society of Upper Canada, “Practice Before the Consent and Capacity Board” (June 2015)**

- Speaker, “Law Reform and *Charter* Challenges to Mental Health Legislation”

**Advocacy Centre for the Elderly, 30<sup>th</sup> Anniversary Program (June 2015)**

- Keynote Speaker, "Use of Antipsychotic Medication in the Elderly"

**Social Justice Tribunals Ontario Professional Development Institute, Professional Development Event (June 2015)**

- Speaker, "Accessibility, Capacity and Opportunity to be Heard"

**Osgoode Hall Law School, Elder Law Certificate Program (April 2015)**

- Speaker, "Privacy Rights in Long Term Care, Retirement and Community Settings"

**Osgoode Hall Law School, Mental Health Law Certificate Program (April 2015)**

- Speaker, "The Client's Perspective: Client-Instructed Advocacy"

**International Prisoners' Justice Day, "Mental Health in the Canadian Justice System" (August 2014)**

- Q & A following screening of John Kastner's documentary "NCR: Not Criminally Responsible"

**Empowerment Council, "Mad Hatter Tea Party 2014" (Mad Pride)**

- Speaker, "Debate is better than Denial: Coercion and Community Treatment Orders"

**Law Society of Upper Canada, "The Six-Minutes Estate Lawyer" (2014)**

- Speaker, "Powers of Attorney for Personal Care and End of Life Issues"

**Canadian Bar Association, "Civil Commitment under the *Mental Health Act*: Does 'Brian's Law' Go Too Far?" (November 2013)**

- Speaker, "Constitutional challenge to the Box B and Community Treatment Order provisions in the *Mental Health Act*"

**Society of Trust and Estate Practitioners Canada (STEP Canada), "Powers of Attorney for Personal Care and Advanced Planning" (November 2013)**

- Speaker, "Litigating Personal Care Disputes"

**Ontario Bar Association, "The Other Side of the Coin: Personal Care and the Estate Lawyer" (October 2013)**

- Speaker, "Litigating Personal Care Disputes"

**Law Union of Ontario Conference, "Occupy, Protest, Resist" (February 2012)**

- Speaker, "Community Treatment Orders: Constitutional Issues"

**Ontario Bar Association, Mental Health Law in Ontario: Critical Updates (April 2011)**

- Speaker, "Self-Represented and Unrepresented Litigants in the Mental Health Law Context: A Summary of Relevant Principles and Law"

**HIV & AIDs Legal Clinic Ontario, Public Legal Education Workshops (May 2011)**

- Presenter, "Introduction to Mental Health Law"

**Law Society of Upper Canada, New Lawyer Practice Series: Administrative Law 2011 (May 2011)**

- Speaker, “Administrative Tribunals: Capacity to Instruct Counsel”

**COMMUNITY INVOLVEMENT****Parkdale Community Legal Services, Toronto, Ontario (June 2012-2016)**

- Director, Board of Directors of local community legal clinic providing poverty law services to low-income residents in Parkdale and Swansea

**Movement Defence Committee (Law Union of Ontario) (2011-2015)**

- Legal observer volunteer at political demonstrations in the City of Toronto, including Occupy Toronto and other protest movements

**Voices on the Border, Washington, D.C., United States (February 2010-2016)**

- President and Director, Board of Directors of non-profit NGO involved in community development projects in El Salvador
- Joined fact-finding delegation to El Salvador in February 2010; the purpose of the delegation was to investigate a recent spate of violence and murders in northern towns at the site of proposed gold mining operations
- While in El Salvador, conducted interviews with government and court officials, U.S. Embassy staff, police, community leaders, civil society groups, priests, journalists, and members of locally affected communities

**Mental Health Legal Committee**

- Appointed Vice-Chair (April 2006- August 2008); Member (August 2003-present)
- Committee of lawyers and advocates working to promote and protect the legal rights and interests of psychiatric consumers/ survivors
- Strategic litigation (interventions at the appellate level); written submissions on draft legislation; mentorship to members

**Houselink Community Homes, Toronto, Ontario (2005-2008)**

- Director, Board of Directors of non-profit organization that provides supportive housing to psychiatric consumers/ survivors in the metropolitan Toronto area

**Legal Aid Ontario LAO LAW Users’ Committee (2005–2008)**

- Appointed committee member in September 2005
- Provide feedback and critique to LAO Law respecting on-line legal resources for lawyers, including research tools

**Community and Legal Aid Services Programme (C.L.A.S.P), Osgoode Hall Law School, York University, Toronto, Ontario (June 2005)**

- Presentation at training workshop for summer student caseworkers

- Topic of presentation: advanced interviewing skills (victims of gender-based violence)

**Schedule A – Selection of Reported Cases**

Supreme Court of Canada

*Ewert v. Canada*, 2018 SCC 30 (CanLII), [2018] 2 SCR 165  
*R. v. Conception*, 2014 SCC 60 (CanLII), [2014] 3 SCR 82  
*Ontario v. Criminal Lawyers’ Association of Ontario*, 2013 SCC 43 (CanLII)

Federal Court

*Salmon v. Canada (Attorney General)*, 2014 FC 1098 (CanLII)

Court of Appeal

*B.V. v. Knox*, 2024 ONCA 92 (CanLII)  
*Aliko (Re)*, 2023 ONCA 857 (CanLII)  
*White (Re)*, 2023 ONCA 28 (CanLII)  
*M.F. v. Milovic*, 2023 ONCA 568 (CanLII)  
*Hines (Re)*, 2022 ONCA 402 (CanLII)  
*Robertson (Re)*, 2021 ONCA 737 (CanLII)  
*Atkinson (Re)*, 2020 ONCA 152 (CanLII)  
*Medcof (Re)*, 2020 ONCA 105 (CanLII)  
*Sharpe (Re)*, 2019 ONCA 203 (CanLII)  
*Larose (Re)*, 2018 ONCA 208 (CanLII)  
*Ranieri v. Nagari*, 2017 ONCA 336 (CanLII)  
*D.H. v. Ferencz*, 2017 ONCA 20 (CanLII)  
*Afemui (Re)*, 2016 ONCA 689 (CanLII)  
*Kusi (Re)*, 2016 ONCA 317 (CanLII)  
*M.M. v. de Souza*, 2016 ONCA 155 (CanLII)  
*P.S. v. Ontario*, 2014 ONCA 160 (CanLII)  
*Gligorevic v. McMaster*, 2012 ONCA 115 (CanLII)  
*Starson v. Pearce*, 2011 ONCA 37 (CanLII)  
*D’Almeida v. Barron*, 2010 ONCA 564 (CanLII)  
*P.S. v. Ontario*, 2008 ONCA 550 (CanLII)  
*Giecewicz v. Hastings*, 2007 ONCA 890 (CanLII)  
*R. v. Gardner*, 2007 ONCA 905 (CanLII)

Divisional Court

*Ontario (Community Safety and Correctional Services) v De Lottinville*, 2015 ONSC 3085 (CanLII)  
*Harris v. Ontario Review Board*, 2007 CanLII 8925 (ON SCDC)

Superior Court

*The Corporation of the City of Kingston v. Doe*, 2023 ONSC 6662 (CanLII)



*The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2023 ONSC 670 (CanLII)  
*SBJ v. Ali*, 2023 ONSC 4515 (CanLII)  
*D.K. v. Gilfoyle*, 2021 ONSC 7248 (CanLII)  
*D.K. v. Gilfoyle*, 2021 ONSC 6215 (CanLII)  
*KM v. Agrawal*, 2021 ONSC 5748 (CanLII)  
*Nixon v. Armstrong*, 2019 ONSC 1417 (CanLII)  
*R.C. v. Dr. Klukach*, 2018 ONSC 7415 (CanLII)  
*Murray v Dev*, 2017 ONSC 2966 (CanLII)  
*R. v. Teixeira*, 2013 ONSC 5054 (CanLII)  
*Freidberg v. Korn* [2013] O.J. No. 6135 (S.C.J.)  
*Thompson and Empowerment Council v. Ontario*, 2013 ONSC 6357 (CanLII)  
*Thompson and Empowerment Council v. Ontario*, 2013 ONSC 5392 (CanLII)  
*P.S. v. Her Majesty the Queen*, 2013 ONSC 2970 (CanLII)  
*Salzman v. Salzman*, 2012 ONSC 1733 (CanLII)  
*Amy Anten v. Shree Bhalerao*, 2012 ONSC 410 (CanLII)  
*Thompson v. Attorney General of Ontario*, 2011 ONSC 2023 (CanLII)  
*Gligorevic v. McMaster*, 2010 ONSC 3842 (CanLII)  
*Harris v. Ontario Review Board*, 2007 CanLII 11721 (ON SC)  
*T. S. v. O'Dea*, 2004 ONSC 12720 (CanLII)

#### Ontario Review Board

*Filli (Re)*, [2025] O.R.B.D. No. 683  
*Presta-Hislop (Re)*, [2025] O.R.B.D. No. 848  
*Labelle (Re)*, [2025] O.R.B.D. No. 861  
*Arana-Sanchez (Re)*, [2025] O.R.B.D. No. 595  
*Groves (Re)*, [2025] O.R.B.D. No. 564  
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Consent and Capacity Board

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*J. C., Re*, 2004 CanLII 28822 (ON CCB)  
*A.M., Re*, 2004 CanLII 57240 (ON CCB)  
*J.M.C., Re*, 2004 CanLII 57225 (ON CCB)  
*J. T., Re*, 2004 CanLII 57180 (ON CCB)  
*J.D.L., Re*, 2004 CanLII 26925 (ON CCB)  
*T. S., v. O'Dea*, 2004 CanLII 12720 (ON SC)  
*M. C., Re*, 2004 CanLII 6727 (ON CCB)  
*S.T., Re*, 2003 CanLII 16135 (ON CCB)  
*R.N. , Re*, 2003 CanLII 54909 (ON CCB)  
*X., Re*, 2003 CanLII 54894 (ON CCB)

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*EGJW v MGC*, 2014 CanLII 49888 (ON HPARB)  
*G.N., v K.M.*, 2011 CanLII 28252 (ON HPARB)  
*G.N., v. J.K.*, 2011 CanLII 11479 (ON HPARB)

#### Health Services Appeal and Review Board

*L.A.B. v Ontario (Health Insurance Plan)*, 2016 CanLII 62267 (ON HSARB)  
*C.A. v Ontario (Health Insurance Plan)*, 2015 CanLII 107412 (ON HSARB)



THE REGIONAL MUNICIPALITY OF WATERLOO  
Applicant

and

PERSONS UNKNOWN AND TO BE ASCERTAINED  
Respondents

Court file number: CV-25-00000750-0000

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
Proceeding commenced at Kitchener

# AFFIDAVIT OF MARSHALL SWADRON

**SWADRON ASSOCIATES**

**Barristers & Solicitors**  
115 Berkeley Street  
Toronto, ON M5A 2W8

**Danch (LSO # 74520I)**  
Tel: (416) 362-1234  
Email: [jdanch@swadron.com](mailto:jdanch@swadron.com)

Lawyers for the Mental  
Health Legal Committee,  
moving party

# TAB 4

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**THE REGIONAL MUNICIPALITY OF WATERLOO**  
Applicant

and

**PERSONS UNKNOWN AND TO BE ASCERTAINED**  
Respondents

APPLICATION UNDER Rule 14.05 of the *Rules of Civil Procedure*

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**AFFIDAVIT OF SARAH LATIMER**

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I, Sarah Latimer, of the City of Toronto, in the Province of Ontario, DO SOLEMNLY AFFIRM:


1. I am a lawyer at the law firm Swadron Associates and I am licensed to practice law in the Province of Ontario.
2. My colleague, Jen Danch, has advised me that on May 26, 2025 she sent a letter to the parties with a copy of the Mental Health Legal Committee’s (“MHLC”) draft notice of motion and draft order. Attached as Exhibit “A” to my affidavit is a copy of Ms. Danch’s correspondence.
3. On May 27, 2025 counsel for The Regional Municipality of Waterloo (“the Region”) sent a letter to the Honourable Justice Gibson advising on page three that the Region consents to the MHLC’s

motion to have *amicus curiae* appointed, subject to a determination of the appropriate page limit of *amicus*’ factum and time allocation for oral submissions. Attached as Exhibit “B” to my affidavit is a copy of the Region’s letter dated May 27, 2025.

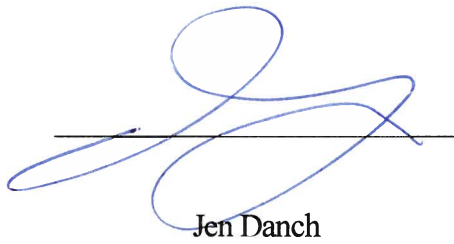
4. I make this affidavit in support of the MHLC's motion for leave to intervene in this application and for the appointment of *amicus curiae* and for no other or improper purpose.

AFFIRMED before me in person )  
at the City of Toronto )  
in the Province of Ontario, )  
this 27th day of May, 2025 )

\_\_\_\_\_  
Commissioner for Taking Affidavits )  
etc. )  
Jen Danch )  
LSO#: 74520I )

  
\_\_\_\_\_  
Sarah M. Latimer

THIS IS EXHIBIT  
"A"  
TO THE AFFIDAVIT OF  
SARAH LATIMER  
SWORN BEFORE ME THIS  
27th DAY OF MAY, 2025



Jen Danch

LSO number: 74520I

## Swadron Associates



May 26, 2025

Gordon Capern, Andrew Lokan, Kartiga Thavaraj & Greta Hoaken  
Paliare Roland Rosenberg Rothstein LLP  
155 Wellington St West, 35th Floor  
Toronto, ON M5V 3H1

Dear Counsel:

**Re: Motion for Leave to Intervene**  
***Regional Municipality of Waterloo v Persons Unknown and to be Ascertained***  
**Court File No. CV-25-00000750-0000**

As you are aware, the Mental Health Legal Committee (the "MHLC") is bringing a motion for leave to intervene in the above matter. The relief sought will be to have *amicus curiae* appointed to represent the interests of encampment residents who may be incapable of instructing their own counsel due to mental health or addiction barriers. A draft copy of our Notice of Motion and Draft Order is enclosed for your review.

Kindly advise if you are available prior to the case conference on May 28, 2025 to discuss your client's position in respect of our motion. If the parties consent to the appointment of *amicus*, the MHLC's motion can likely be heard in writing and a hearing date for the motion would not be required.

Thank you for your kind consideration of this request. We look forward to hearing from you.

Yours very truly,

Jen Danch  
Mental Health Legal Committee

cc. Ashley Schuitema & Joanna Mullen, Waterloo Region Community Legal Services  
Shannon Down

Court File Number: CV-25-00000750-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**THE REGIONAL MUNICIPALITY OF WATERLOO**

Applicant

- and -

**PERSONS UNKNOWN AND TO BE ASCERTAINED**

Respondents

APPLICATION UNDER Rule 14.05 of the *Rules of Civil Procedure*

---

**NOTICE OF MOTION OF THE PROPOSED INTERVENER,  
THE MENTAL HEALTH LEGAL COMMITTEE**  
(Motion for Leave to Intervene as Friend of the Court pursuant to  
Rule 13.02 of the *Rules of Civil Procedure*)

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The Mental Health Legal Committee (the “MHLC”) will make a motion to the court on the date of XXday, the XX day of XX, 2025 at 10:00 a.m. or as soon after that time as the motion can be heard.

**PROPOSED METHOD OF HEARING:**

The motion is to be heard

- ☐ In writing under subrule 37.12.1 (1) because it is made without notice;
- ☐ In writing as an opposed motion under subrule 37.12.1(4);
- ☐ In person;
- ☐ By telephone conference;
- X By video conference.

at the following location: 85 Frederick Street, Kitchener, Ontario N2H 0A7.

**THE MOTION IS FOR:**

1. leave to intervene as a friend of the court;
2. the appointment of lawyer Mercedes Perez of Perez Procope Leinveer LLP as *amicus curiae* for the purpose of testing evidence and advocating on behalf of individuals living at the Victoria Street Encampment whose capacity to engage or instruct counsel is in question and who have no other identified way to participate in these proceedings;
3. permission for *amicus curiae* to participate in examinations for discovery, file a factum up to 30 pages in length and to make oral submissions at the hearing of the application not exceeding 60 minutes, or such other duration as the Judge hearing this application may deem appropriate;
4. in the alternative, the MHLC seeks permission to participate in examinations for discovery, file a factum of up to 15 pages in length and to make oral submissions of 30 minutes or such other duration as this Honourable Court may deem appropriate on the issue of whether *amicus curiae* ought to be appointed;
5. an order that the legal fees of *amicus curiae* or the MHLC be paid by the Ministry of the Attorney General at the rates paid by Legal Aid Ontario plus reasonable disbursements and HST;
6. an order that *amicus curiae* or the MHLC as intervener not seek costs against any party and that no party seek costs from them; and
7. such further relief as this Honourable Court deems just.



**THE GROUNDS FOR THE MOTION ARE:**

1. The MHLC is a coalition of lawyers and community legal workers practicing mental health law formed in 1997.
2. The MHLC has a real and substantial interest in the issues raised on this appeal. The MHLC seeks to have *amicus curiae* appointed in these proceedings because the proceedings affect the housing and security of individuals who may have mental health disabilities and addictions and have been unable to engage with or instruct counsel.
3. The MHLC is not aware of another way that these individuals could participate in these proceedings. The MHLC proposes that a senior lawyer be appointed as *amicus curiae*.
4. *Amicus curiae* would be able to attend at the encampment, speak with frontline service providers, and attempt to engage with encampment residents who, to date, have been unable to retain or instruct counsel. This will inform the submissions of the *amicus curiae*.
5. Failing the appointment of *amicus curiae*, the MHLC as an intervener offers unique perspective given its significant and longstanding expertise in advancing the equality rights and access to justice for individuals with mental health disabilities including past interventions before the Supreme Court of Canada and other courts and tribunals. Its members are experienced in challenging legal structures that result in inequality or injustice for individuals with mental health disabilities, and are aware of the structural, economic, disability-related, social and legal barriers they face in bringing such claims, including constitutional litigation.
6. The *amicus curiae* or the MHLC, as the case may be, will seek to consult with the parties and any other interveners to minimize any duplication of submissions.

7. The Court's inherent jurisdiction to manage its own process.
8. Rules 3.02 and 13.02 of the *Rules of Civil Procedure*.
9. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE is relied upon in support of this motion:**

1. the affidavit of Jacara Droog affirmed May 15, 2025;
2. the affidavit of Marshall Swadron affirmed May 26, 2025;
3. the pleadings and proceedings herein;
4. such further and other documentary evidence as counsel may advise and this Honourable Court permit.

May XX, 2025

**SWADRON ASSOCIATES**

Barristers & Solicitors  
115 Berkeley Street  
Toronto, ON M5A 2W8

**Jen Danch (LSO # 745201)**

Tel: (416) 362-1234  
Email: [jdanch@swadron.com](mailto:jdanch@swadron.com)

**KAREN A. STEWARD (LSO # 587580)**

Barrister & Solicitor  
Email: [karenannesteward@yahoo.ca](mailto:karenannesteward@yahoo.ca)  
Tel: (416) 270-0929

Lawyers for the Mental Health Legal  
Committee (Moving Party)

TO: **PALIARE ROLAND ROSENBERG  
ROTHSTEIN LLP**

155 Wellington Street West  
35th Floor  
Toronto ON M5V 3H1  
Tel: (416) 646-4300

**Gordon Capern (LSO# 32169H)**  
Tel: (416) 646-4311  
Email: [gordon.capern@paliareroland.com](mailto:gordon.capern@paliareroland.com)

**Andrew Lokan (LSO# 31629Q)**  
Tel: (416) 646-4324  
Email: [andrew.lokan@paliareroland.com](mailto:andrew.lokan@paliareroland.com)

**Kartiga Thavaraj (LSO# 75291D)**  
Tel: (416) 646-6317  
Email: [kartiga.thavaraj@paliareroland.com](mailto:kartiga.thavaraj@paliareroland.com)

**Greta Hoaken (LSO# 87903I)**  
Tel: (416) 646-6357  
Email: [greta.hoaken@paliareroland.com](mailto:greta.hoaken@paliareroland.com)

Lawyers for the Applicant,  
The Regional Municipality of Waterloo

AND TO: **WATERLOO REGIONAL COMMUNITY LEGAL SERVICES**

450 Frederick Street, Unit 101  
Kitchener, ON N2H 2P5

**Ashley Schuitema (LSO# 68257G)**  
Tel: (519) 743-0254 ext. 17  
Email: [ashley.schuitema@wrcls.clcj.ca](mailto:ashley.schuitema@wrcls.clcj.ca)

**Joanna Mullen (LSO# 64535V)**  
Tel: (519) 743-0254 ext. 15  
Email: [joanna.mullen@wrcls.clcj.ca](mailto:joanna.mullen@wrcls.clcj.ca)

**Shannon K. Down (LSO# 43894D)**  
Email: [shannon.down@wrcls.clcj.ca](mailto:shannon.down@wrcls.clcj.ca)

Lawyers for Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) DAY THE  
JUSTICE ) DAY OF MAY 2025

B E T W E E N:

**THE REGIONAL MUNICIPALITY OF WATERLOO**

Applicant

and

**PERSONS UNKNOWN AND TO BE ASCERTAINED**

Respondents

APPLICATION UNDER Rule 14.05 of the *Rules of Civil Procedure*

---

**ORDER**

---

THIS MOTION by the Mental Health Legal Committee for an order granting it leave to intervene and for the appointment of *amicus curiae* was heard this day in writing at the Courthouse, 85 Frederick Street in Kitchener.

ON READING the motion record of the proposed intervener and on being informed of the positions of the parties,

1. THIS COURT ORDERS that that Mercedes of Perez of Perez, Procope, Leinveer LLP shall be appointed as *amicus curiae* for the purpose of assisting the Court by participating in cross-examinations, delivering a factum, and making submissions on behalf of those persons living in

the encampment whose capacity may be in issue and who have not retained counsel.

2. THIS COURT ORDERS that neither the MHLC nor *amicus curiae* may seek an adjournment of the scheduled hearing dates;

3. THIS COURT ORDERS that no party may seek costs against the MHLC nor *amicus curiae*, and neither the MHLC nor *amicus curiae* may seek costs against any of the other parties.

4. THIS COURT FURTHER ORDERS that the Ministry of the Attorney General of the Province of Ontario pay *amicus curiae* at the Legal Aid Ontario rate per hour plus reasonable disbursements.

5. THIS COURT ORDERS that there be no costs of this motion.

---

THE REGIONAL MUNICIPALITY OF WATERLOO  
Applicant

and

PERSONS UNKNOWN AND TO BE ASCERTAINED  
Respondents

Court file number: CV-25-00000750-0000

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
Proceeding commenced at Kitchener

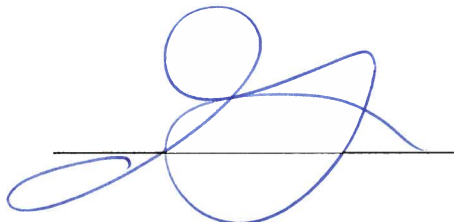
**ORDER**

**SWADRON ASSOCIATES**  
Barristers & Solicitors  
115 Berkeley Street  
Toronto, ON M5A 2W8

**Jen Danch (LSO # 745201)**  
Tel: (416) 362-1234  
Email: [jdanch@swadron.com](mailto:jdanch@swadron.com)

Lawyers for the Mental Health Legal  
Committee, moving party

THIS IS EXHIBIT  
"B"  
TO THE AFFIDAVIT OF  
SARAH LATIMER  
SWORN BEFORE ME THIS  
27th DAY OF MAY, 2025



Jen Danch

LSO number: 74520I

# Paliare Roland

Gordon Capern & Andrew Lokan  
Paliare Roland Rosenberg Rothstein LLP  
155 Wellington St. West, 35<sup>th</sup> Floor  
Toronto, ON M5V 3H1

[gordon.capern@paliareroland.com](mailto:gordon.capern@paliareroland.com)  
[andrew.lokan@paliareroland.com](mailto:andrew.lokan@paliareroland.com)

File # 102678

May 27, 2025

## VIA EMAIL

The Honourable Justice Gibson  
Superior Court of Justice  
85 Frederick Street  
Kitchener, Ontario N2H 0A7

Your Honour:

**Re: Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained**  
**Court File Number: CV-25-00000750-0000 – Case Management Conference May 28, 2025**

We represent the Regional Municipality of Waterloo ("Region"). We write in advance of the case management conference ("CMC") scheduled for Wednesday, May 28 at 10 a.m., to set out the issues to be discussed, from the Region's point of view.

## Background

On April 23, 2025, the Region enacted By-law 25-021, a site-specific by-law relating to property owned by the Region at 100 Victoria Street North, Waterloo (the "Property").

Since 2022, there has been an encampment at the Property (the "Encampment") of people experiencing homelessness. Recently, the Region was advised by Metrolinx that the Property would be required for construction related to the Kitchener Central Transit Hub ("KCTH") by March 2026. This in turn means that the Region requires vacant possession of the Property by December 1, 2025, for site remediation purposes.

By-law 25-021 is accompanied by a plan to make additional resources available to allow for existing residents of the Encampment to transition to appropriate alternative accommodation over the next few months.

The Property was the subject of previous litigation relating to a different by-law. In *Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2023 ONSC 670 (the "Persons Unknown Decision"), Justice Valente declared that the Region's general Code of Use By-law infringes s.7 of the Charter and is inoperative "insofar, and only insofar, as it applies to prevent the residents of the Encampment from living on and erecting temporary shelters without a permit on the Property when the number of homeless persons exceeds the number of available accessible shelter beds in the Region."



# Paliare Roland

By-law 25-021 is not the same as the general Code of Use By-law, and the present application raises different issues than the Persons Unknown Decision. However, in the circumstances, the Region has brought this application to seek guidance and a ruling from the Court that By-law 25-021 complies with the *Charter*.

The application is opposed by some residents of the Encampment, who are represented by Ashley Schuitema, Joanna Mullen, and Shannon Down of the Waterloo Region Community Legal Services ("WRCLS").

## Establishing a Schedule for the Hearing of the Application

The Region seeks to establish a schedule to hear the application on the merits. We believe that the case can be ready for hearing in the early fall. The Region estimates that the hearing could be completed in one day. WRCLS has estimated that the hearing will take 2-3 days.

We have suggested the following draft schedule to WRCLS:

Region's affidavits	May 30, 2025
WRCLS affidavits	June 30, 2025
Region's reply affidavits	July 18, 2025
Cross-examinations	to be completed by August 15, 2025
Region factum	Aug. 22, 2025
WRCLS factum	Aug. 29, 2025
Hearing	Any time from Sept. 3, 2025

WRCLS have advised that they oppose this schedule and would seek later dates for the various steps. The Region is in the Court's hands and is open to considering dates either earlier or later than those proposed above, but stresses the importance of having these issues brought to adjudication as early as is reasonably possible.

We attach a draft order reflecting the above dates, recognizing that dates will be subject to discussion and may be adjusted in the CMC.

# Paliare Roland

**Motion for Leave to Intervene by Mental Health Legal Committee**

In the Persons Unknown Decision, counsel from the Mental Health Legal Committee (“MHLC”) were appointed as *amicus curiae* to represent the interests of encampment residents who may be incapable of instructing their own counsel due to mental health or addiction barriers.

Counsel from MHLC seek to fulfill a similar role in this application and have proposed bringing a motion in writing for intervenor status. The Region consents to this proposal and consents to the MHLC acting as *amicus*, subject to discussion in this or a subsequent CMC about the appropriate page limit for their factum and for their allocation of time for oral argument.

**Other Prospective Intervenors**

The Region has served a Notice of Constitutional Question on the provincial and federal governments. WRCLS has advised that there are other prospective intervenors that may seek leave to intervene.

We suggest that a date be set by which prospective intervenors seeking leave to intervene should file their motion materials. We propose June 27, 2025.

If the provincial or federal governments wish to intervene, they may do so as of right under s.109 of the *Courts of Justice Act*.

**Order Validating Service**

In the Notice of Application, the Region requested an Order that service on the persons unknown and to be ascertained referred to in the style of cause be dispensed with, provided that notice was posted in a prominent location on the Property, and was provided to the WRCLS (who acted for encampment residents opposed to the Region in the Persons Unknown Decision).

There is clearly no need to provide further notice to WRCLS, who have filed a notice of appearance on behalf of 16 encampment residents. Between this and the potential appointment of MHLC as *amicus* for certain residents, it appears likely that the interests of encampment residents generally are represented before the Court. However, out of an abundance of caution, the Region requests an Order in this CMC that service of the Notice of Application be dispensed with, provided that the Notice of Application is posted in a prominent location on the Property (amended so that it refers to the hearing being “on a date to be set by the Court” rather than the *pro forma* date of May 15, 2025 that was included on the Notice of Application as issued).

**WRCLS Injunction Motion**

WRCLS served a notice of motion on May 13, 2025, indicating their intent to seek injunctive relief against the By-law. According to their Notice of Motion, they anticipate a total of 13 affidavits, of which 11 were already sworn as of May 13.

# Paliare Roland

We have requested copies of the affidavits that are already sworn but to date WRCLS has declined to provide them.

If WRCLS intends to proceed with their motion, we will need to set a schedule. The Region will likely oppose the motion. We seek to take a cooperative approach to this schedule that meets the needs of both parties, but the scheduling of an injunction motion should not be at the expense of the hearing on the merits.

We look forward to discussing these matters further in the CMC.

Yours very truly,  
Paliare Roland Rosenberg Rothstein LLP



Gordon Capern & Andrew Lokan

**Encl.**

- c. Ashley Schuitema and Joanna Mullen – Waterloo Region Community Legal Services  
Shannon Down  
Jen Danch, Mental Health Legal Committee

THE REGIONAL MUNICIPALITY OF WATERLOO  
Applicant

and

PERSONS UNKNOWN AND TO BE ASCERTAINED  
Respondents

Court file number: CV-25-00000750-0000

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE**  
Proceeding commenced at Kitchener

**AFFIDAVIT OF  
SARAH LATIMER**

**SWADRON ASSOCIATES**  
115 Berkeley Street  
Toronto, ON M5A 2W8  
  
**Jen Danch (LSO # 745201)**  
Tel: (416) 362-1234  
Email: [jdanch@swadron.com](mailto:jdanch@swadron.com)  
  
Lawyers for the Mental  
Health Legal Committee,  
moving party

# TAB 5

Court File No: CV-25-00000750-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE	)	_____ DAY
	)	
JUSTICE	)	OF _____, 2025

B E T W E E N:

**THE REGIONAL MUNICIPALITY OF WATERLOO**

Applicant

and

**PERSONS UNKNOWN AND TO BE ASCERTAINED**

Respondents

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**ORDER**

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THE REGIONAL MUNICIPALITY OF WATERLOO  
Applicant

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PERSONS UNKNOWN AND TO BE ASCERTAINED  
Respondents

Court file number: CV-25-00000750-0000

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115 Berkeley Street  
Toronto, ON M5A 2W8

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Lawyers for the Mental Health Legal  
Committee, moving party



THE REGIONAL MUNICIPALITY OF WATERLOO  
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77  
PERSONS UNKNOWN AND TO BE ASCERTAINED  
Respondents

Court file number: CV-25-00000750-0000

**ONTARIO  
SUPERIOR COURT OF  
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Proceeding commenced at Kitchener

**MOTION RECORD**

**SWADRON ASSOCIATES**

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115 Berkeley Street  
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