

COURT OF APPEAL FOR ONTARIO

BETWEEN:

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

Appellants
(Applicants)

- and -

THE CITY OF HAMILTON

Respondent
(Respondents)

- and -

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ASSOCIATION, THE CANADIAN CENTRE FOR HOUSING RIGHTS, CANADIAN CIVIL
LIBERTIES ASSOCIATION, THE CORPORATION OF THE CITY OF KINGSTON,
WOMEN'S LEGAL EDUCATION AND ACTION FUND, ONTARIO HUMAN RIGHTS
COMMISSION and CITY OF TORONTO

Intervenors

**FACTUM OF THE INTERVENER
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PART I – OVERVIEW

1. The Women’s Legal Education and Action Fund (“LEAF”) intervenes in this appeal to provide the Court with assistance on the correct approach to interpreting and applying s. 15 of the *Canadian Charter of Rights and Freedoms* (the “**Charter**”) in a constitutional challenge to municipal encampment bans and enforcement actions.
2. LEAF submits that courts should fully and properly evaluate all *Charter* claims that are duly brought before them to avoid creating a hierarchy of rights and to ensure that redress for the particular and full harms associated with equality rights are not systematically dismissed, overlooked or inadequately considered.
3. A proper evaluation of s. 15 equality claims is one that imposes a fair causal connection burden on claimants and avoids turning step 1 of the s. 15(1) analysis into a preliminary merits screen. It must also give effect to principles of substantive equality by conducting an intersectional analysis of the disproportionate impact and discriminatory effect of the impugned laws and state actions. Here, an intersectional analysis reveals that encampment bans and evictions reinforce, perpetuate and exacerbate structural inequality faced by women and gender-diverse persons, resulting in discrimination on the intersecting grounds of gender, Indigeneity, race, gender identity, and disability.

PART II – SUMMARY OF FACTS

4. LEAF takes no position on the facts of this appeal.

PART III – STATEMENT OF ISSUES, LAW & AUTHORITIES

- A. **Courts must properly adjudicate section 15 *Charter* claims**
 - i. **Equality claims are not secondary issues**

5. This Court must be forceful in showing that the *Charter* does not establish a hierarchy of rights.¹ Canadian courts, particularly first instance courts, should evaluate all *Charter* claims that are presented to them with sufficient supporting evidence.² Claims

¹ *Canadian Council for Refugees v Canada (Citizenship and Immigration)*, 2023 SCC 17 at para [180](#) [**Canadian Council**].

² See, e.g. *Canadian Council* at paras [176](#), [181](#); *Mathur v Ontario*, 2024 ONCA 762 at para [7](#) [**Mathur**].

based on s. 15 of the *Charter* are not secondary issues and should not be treated as such. Nevertheless, Canadian courts have mistakenly dismissed s. 15 claims at a higher rate when they decline to rule on all of the *Charter* rights violations alleged in one matter.³

6. Encampment jurisprudence perpetuates this error.⁴ Certain decisions have not dealt with the s. 15 claim at all.⁵ Even when courts do consider the s. 15 claim, they justify failing to fully engage with s. 15 arguments on flawed grounds by incorrectly applying s. 15 doctrine. Courts have either misconstrued the focus of the discriminatory ground at issue – asking whether “homelessness” is an analogous ground under section 15(1)⁶ – or concluded that because the impugned bylaws were facially neutral, there could be no discrimination against particular groups.⁷ In both cases, the result is significant: s. 15 equality rights are left without adequate and necessary judicial consideration.

7. The decision under appeal is no exception. The Superior Court failed to properly engage with the s. 15 claim by undertaking the analysis in a mere three paragraphs that are without reference to case law. It also made several doctrinal errors. Notably, the Court (i) incorrectly concluded that the claim is based on the Appellants’ homelessness alone, (ii) implied that the impugned bylaws could not be discriminatory because they are facially neutral, and (iii) demonstrated a complete lack of understanding of the purpose of s. 15 by using the term “illegitimate discrimination”, thereby implying that Canadian law recognizes a “legitimate” or “legal” type of discrimination that does not infringe s. 15.⁸

³ Cheryl Milne and Caitlin Salvino, *Analyzing the Treatment of Multiple Charter Claims: Judicial Restraint and the Case for Section 15*, (2023), 114 S.C.L.R. (2d) at [173 – 232](#).

⁴ See *Matsqui-Abbotsford Impact Society v Abbotsford (City)*, 2024 BCSC 1902 at para [85](#) [*Matsqui-Abbotsford*].

⁵ *The Corporation of the City of Kingston v Doe*, 2023 ONSC 6662 at para [118](#) [*Kingston*].

⁶ *The Regional Municipality of Waterloo v Persons Unknown and to be Ascertained*, 2023 ONSC 670, at paras [125 – 127](#) [*Waterloo*]; *Tanudjaja v Canada (Attorney General)*, 2013 ONSC 5410 at paras [122 – 137](#).

⁷ *Abbotsford (City) v Shantz*, 2015 BCSC 1909 at paras [235 – 236](#).

⁸ *Heegsma v Hamilton (City)*, 2024 ONSC 7154 at paras [80 – 82](#) [*Heegsma*].

8. Specifically, the Superior Court's conclusion that the Appellants are only "disadvantaged by homelessness"⁹ assumes that it is impossible to discriminate against a homeless person in the encampment context because any harm that befalls them can only ever be caused by their housing status. A person's *Charter* rights do not vanish because they are unhoused. By swiftly dismissing the s. 15 claim, the Court not only impermissibly relegated s. 15 claims to a lower tier of *Charter* rights but also relegated homeless persons to a lower tier of *Charter* rights holders. Plainly, this is unacceptable.

9. The ground at issue in this case is not homelessness, but rather several other enumerated grounds, including "sex". Inequality harms based on gender raise distinct harms and must be directly addressed and appropriately classified under an equality analysis. Collapsing these concerns into the category of homelessness renders invisible the specific harms experienced by women and gender-diverse persons in the homelessness and encampment context. This is because when they are unhoused, these groups – whose situational reality is shaped by their sex – often rely on informal networks or engage in dangerous survival strategies to access shelter. This not only places them at risk of exploitation and abuse, but renders their needs invisible to mainstream supports and systems.¹⁰ In other words, to ignore their s. 15 claims would serve to further perpetuate the often invisible harm experienced by these individuals.

ii. The causation requirement must not place an undue burden on claimants

10. Courts risk perpetuating the harm experienced by equality claimants if they impose an unduly onerous evidentiary burden. In *Sharma*, the majority of the Supreme Court of Canada made causation a concept central to step 1 of the s. 15(1) analysis. It held that the claimant must prove that the impugned law (and/or state action) "creates or contributes

⁹ *Heegsma* at para [80](#).

¹⁰ *The Pan-Canadian Women's Housing & Homelessness Survey*, at pp 5, 8, 10 [**Pan-Canadian Survey**], Ex B to Affidavit of Kaitlin Schwan dated June 13, 2022 [**Schawn**] Appeal Book and Compendium [**ABC**] Vol 9, Tab 115, pp 61, 64, 66; Schwan at paras 6 – 7, 10, ABC Vol 9, Tab 115, pp 9 – 10.

to a disproportionate impact on the basis of a protected ground".¹¹ This approach must be reconciled with the Court's recent jurisprudence regarding adverse impact discrimination, which recognizes that claimants need not prove that the law (or state action) itself was "responsible for creating the background social or physical barriers which made a particular rule, requirement or criterion disadvantageous for the claimant group".¹²

11. In adverse impact discrimination claims, step 1 of the s. 15(1) test is not meant to be "a preliminary merits screen". Rather, it is meant to simply and only exclude claims that have "nothing to do with substantive equality".¹³ Any causal connection requirement under s. 15(1) should be interpreted as no more onerous than the "sufficient causal connection" test required under s. 7. This test is a flexible, context-sensitive standard. It insists on a real link, but it does not require that the impugned law or state action be the only or dominant cause of the harm nor does it require that it be an "active and foreseeable" or "direct" cause.¹⁴ This test aligns with recent Supreme Court of Canada s. 15 jurisprudence,¹⁵ and the majority's recognition in *Sharma* that (i) step 1 of the s. 15(1) test was not meant to impose "scientific rigour", and (ii) claimants need only demonstrate that the law (or state action) was a cause of the disproportionate impact.¹⁶

12. The imposition of a more rigorous causal connection test risks upending the purpose of step 1 of the s. 15(1) test by placing a nearly impossible burden on claimants, many of whom cannot support their claim with quantitative evidence precisely because

¹¹ *R v Sharma*, 2022 SCC 39 at para [42](#) [**Sharma**].

¹² *Fraser v Canada* (Attorney General), 2020 SCC 28 at para [71](#); *Sharma*, at paras [205 – 206](#) (Karakatsanis J.); Jonnette Watson Hamilton and Jennifer Koshan, *Sharma: The Erasure of Both Group-Based Disadvantage and Individual Impact*, [2024 CanLII Docs 3274](#) at p 120 [**Erasure**].

¹³ *Mathur* at para [61](#), citing *Quebec (Attorney General) v Alliance du personnel professionnel et technique de la santé et des services sociaux*, 2018 SCC 17 at para [26](#) [**Alliance**]; *Ontario (Attorney General) v G*, 2020 SCC 38 at para [41](#) [**Ontario AG**].

¹⁴ *Canada (Attorney General) v Bedford*, 2013 SCC 72 at paras [75 – 76](#).

¹⁵ See footnote 12. See also recent Ontario case law: *Mathur* at paras [59, 64 – 65](#); *Fair Voting BC v Canada (Attorney General)*, 2025 ONCA 581 at para [70](#).

¹⁶ *Sharma* at para [49](#).

of their marginalized status.¹⁷ In *Sharma*, the majority stated that it was “mindful of the evidentiary hurdles and the asymmetry of knowledge (relative to the state) that many claimants face”.¹⁸ This is not a theoretical problem. It is widely recognized that obtaining data about unhoused populations is notoriously difficult, especially with respect to women and gender-diverse persons.¹⁹ A proper interpretation of s. 15(1) mandates an approach akin to the sufficient causal connection test, which provides the flexibility required to take into account qualitative factors such as historical, structural and systemic inequalities when assessing causation.²⁰

B. Adverse impact discrimination in the encampment context

i. Substantive equality analysis requires an intersectional approach

13. Section 15(1) requires that claimants show that (i) a law, policy or state action creates a distinction based on a protected ground, and (ii) this perpetuates, reinforces or exacerbates disadvantage.²¹

14. In adverse impact discrimination cases, where the impugned law or state action does not explicitly target a protected group, the first stage of the s. 15 inquiry is centered on whether the law (or state action) has a disproportionate impact.²² Courts must look beyond the facially neutral aspects of government action to examine whether members of the claimant group are disproportionately disadvantaged or denied a benefit.²³

15. At the second stage of the inquiry – whether the impugned law and/or state action

¹⁷ See e.g., Margot Young, *Zombie Concepts* (2023) 114 SCLR (2d) 35 – 38 at para 25 [**Zombie Concepts**], LEAF Book of Authorities [“**LEAF BOA**”], Tab 1; Benjamin Perryman, *Proving Discrimination: Evidentiary Barriers and Section 15(1) of the Charter*, (2024) [114 SCLR \(2d\) 93-109](#), at paras 22 – 23, 29.

¹⁸ *Sharma* at para [49](#).

¹⁹ *The State of Women’s Housing Need & Homelessness in Canada: Key Findings* at pp 4, 7 – 11, 36, Ex C to Schawn, ABC Vol 9, Tab 115, pp 122, 125 – 129, 154 [**State of Women’s Housing**]; *Kingston* at para [127](#).

²⁰ See, e.g., *Erasure*, [p 121](#); *Zombie Concepts* at paras 23 – 27, LEAF BOA, Tab 1.

²¹ *Dickson v Vuntut Gwitchin First Nation*, 2024 SCC 10 at para [188](#) [**Dickson**]; *Sharma* at para [28](#); *Fraser* at para [50](#).

²² *Sharma* at para [29](#); *Fraser* at para [30](#).

²³ *Fraser* at paras [51 – 53](#).

reinforces, perpetuates or exacerbates disadvantage – courts must examine the impact of the harm caused in light of systemic or historical disadvantages.²⁴ Groups historically subject to unfair treatment “are already demeaned in dignity, and further differential treatment of them is more likely to have a discriminatory impact”.²⁵ It is important to recall that “a discriminatory purpose or intention is not a necessary condition of a s. 15(1) violation”: substantive equality demands attention to effect rather than merely intent.²⁶

16. The Supreme Court of Canada has been clear that a substantive equality analysis requires an intersectional approach.²⁷ Intersectionality recognizes that an individual can experience discrimination on multiple and overlapping grounds.²⁸ For example, women and gender-diverse persons who experience discrimination based on sex may also be discriminated against on the basis of their race, Indigeneity, sexual orientation, age, and/or disability. This “intersecting group membership tends to amplify discriminatory effects or can create unique discriminatory effects not visited upon any group viewed in isolation”.²⁹

17. Intersectionality also requires courts to examine how existing systems and laws have created conditions for, and have contributed to, marginalization and discrimination, by targeting certain identities and characteristics as the basis of exclusion, either directly or indirectly. In other words, courts must look at “the way things work rather than who people are”.³⁰ A critical analysis of the impact or “results” of societal systems and

²⁴ *Fraser* at para [76](#); *Sharma* at para [52](#).

²⁵ *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203 at para [70](#) [*Corbiere*]; *Gosselin v Québec (Attorney General)*, 2002 SCC 84 at paras [30, 32](#).

²⁶ *Ontario AG* at para [69](#); *Quebec (Attorney General) v A*, 2013 SCC 5 at paras [328-29](#) and [331 – 33](#).

²⁷ See, e.g., *Fraser* at para [116](#); *Ontario AG*, at para [47](#).

²⁸ See e.g., *Law v Canada (Minister of Employment and Immigration)*, [1999] 1 SCR 497 [*Law*] at para [94](#); *Corbiere* at paras [60 – 61, 72](#); *Withler v Canada (Attorney General)*, 2011 SCC 12 at para [58](#); *Bjorkquist et al. v Attorney General of Canada*, 2023 ONSC 7152, at paras [94, 114, 165](#). [*Bjorkquist*]; *Falkiner v Ontario (Minister of Community and Social Services)*, 2002 CanLII 44902 (ON CA) at paras [71-72, 81](#) [*Falkiner*]; Grace Ajele and Jena McGill, *Intersectionality in Law and Legal Contexts*, Women’s Legal Education and Action Fund (LEAF), Toronto, 2020 at p [4, 12, 21 – 22](#) [“**LEAF Report**”].

²⁹ *Ontario AG* at para [47](#). See also footnote 28.

³⁰ LEAF Report at p [23 – 24](#).

structures is particularly important, as “discrimination is frequently a product of continuing to do things the way they have always been done”.³¹

ii. Women and gender-diverse persons are disproportionately impacted

18. In this appeal, an intersectional analysis of the evidence reveals that persistent systemic inequality creates unique pathways to homelessness for women and gender-diverse persons and causes them to face unique hardships. Consequently, these groups are disproportionately impacted when municipalities actively impose encampment restrictions and evictions, thrusting them further into a cycle of violence and discrimination.

19. The Supreme Court of Canada has recognized that “women generally occupy a disadvantaged position in society in relation to men” and that there is a “historical trend of violence perpetrated by men against women”.³² Similarly, the Supreme Court has noted that the members of the transgender community “live their lives facing disadvantage, prejudice, stereotyping, and vulnerability” and are at an increased risk of violence.³³

20. As a result of these systemic inequalities, women and gender-diverse persons often occupy a lower socioeconomic position, a reality evidenced by the feminisation of poverty, a judicially-recognized “entrenched social phenomenon”,³⁴ and a disproportionate level of precarious housing.³⁵ This leads to a risk of homelessness which is compounded for women and gender-diverse persons by the systemic discrimination they face in the housing market—especially that experienced by single mothers—as well as for those who have experienced physical, sexual or emotional abuse.³⁶

³¹ *Fraser* at paras [31](#), [39](#), [58](#).

³² *Weatherall v Canada (Attorney General)*, [1993] 2 SCR 872 at p [877](#). See also *R v Lavallee*, [1990] 1 SCR 852 at para [32](#).

³³ *Hansman v Neufeld*, 2023 SCC 14 at paras [86](#), [89](#) [**Hansman**].

³⁴ *Fraser* at para [112](#). See *Alliance* at para [6](#): “systemic aspect of wage discrimination”; *Pan-Canadian Survey*, at p 11, Ex B to Schawn, ABC Vol 9, Tab 115, p 67.

³⁵ *Pan-Canadian Survey*, at pp 5, 25, Ex B to Schawn, ABC Vol 9, Tab 115, pp 61, 81; Schwan at paras 6, 10, ABC Vol 9, Tab 115, pp 9 – 10.

³⁶ *Pan-Canadian Survey*, at pp 6 – 7, 12, 26 – 27, 32 – 36, 48 – 49, Ex B to Schawn, ABC Vol 9, Tab 115, pp 62 – 63, 68, 82 – 83, 88 – 92, 104 – 105; See also *Hansman* at

21. These gendered disadvantages are further compounded to create uniquely harmful impacts when they are experienced by persons with other intersecting social characteristics, such as Indigeneity, race, and disability.³⁷ For example, Indigenous women in urban areas – who are overrepresented in the homeless population – navigate “racist barriers deeply embedded in urban services and experiences” and are subject to astonishing rates of physical and sexual violence compared to non-Indigenous women.³⁸ Two of the Appellants, both Indigenous women, had to leave their housing to escape a serious risk of physical and sexual violence at the hands of their landlords.³⁹

22. Because women and gender-diverse persons are more likely to experience homelessness and are at a greater risk of violence than men, they are disproportionately impacted by municipal encampment bans and evictions. First, the risk of physical and sexual violence is increased for women and gender-diverse persons when they are displaced or evicted from encampments, because they may resort to dangerous survival tactics, such as staying in an abusive relationship or couch surfing,⁴⁰ which are often used in order to avoid other gender-based harms, such as the increased exposure to violence

para [86](#); *State of Women’s Housing* at pp 12 – 13, 22, 33, Ex C to Schawn ABC Vol 9, Tab 115, pp 130, 140; *City of Hamilton, Point in Time Connection Results 2021* [“**PIT Results 2021**”] at p 22, Ex D to Affidavit of Medora Uppal dated July 17, 2023 [“**Uppal**”] ABC Vol 7, Exhibit 87, p 63; “Invisible: Single Women’s Experiences of Chronic Homelessness in Hamilton”, Ex F Uppal, ABC Vol 7, Tab 87, p 79 [“**Invisible**”].

³⁷ *Pan-Canadian Survey* at p 12, Ex B to Schawn, ABC Vol 9, Tab 115, p 68; *State of Women’s Housing* at p 13, Ex C to Schawn ABC Vol 9, Tab 115, p 131; Canada, [“Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls”](#) (2019) at p 77 – 78, 520 [“**MMIWG Report**”].

³⁸ *Heegsma* at para [40](#); *Bjorkquist* at paras [88 – 114](#); *State of Women’s Housing* at p 29, 31, 33, Ex C to Schawn ABC Vol 9, Tab 115, p 147, 149, 151; *MMIWG Report* at p [54-57, 503, 508-509, 578, 580, 612](#); *Dickson* at para 201. See also *Sharma* at para [122](#) (Karakatsanis J.).

³⁹ Affidavit of Ammy Lewis, dated June 2022 at paras 6 – 8, ABC Vol 4, Tab 43, p 8; Affidavit of Ashley Macdonald dated June 13, 2022 at para 21, ABC Vol 4 Tab 46, p 32.

⁴⁰ *Heegsma* at para [34](#); Affidavit of Kate Hayman dated February 28, 2023 at para 10, ABC Vol 8, Tab 100, p 558 [“**Hayman**”]; *Invisible*, Ex F to Uppal, ABC Vol 7, Ex 87, p 80; Schwan Affidavit at paras 7, 10, Vol 9, Tab 115, p 9-11; Affidavit of Stephen Gaetz dated June 14, 2022 at para 18, ABC Vol 8, Ex 97, pp 15-16 [“**Gaetz**”]; *Pan-Canadian Survey* at p 12. Ex B to Schwan, ABC Vol 9, Tab 115, p 68; *State of Women’s Housing* at p 7, Ex C to Schawn ABC Vol 9, Tab 115, p. 125.

on the streets, including the risk of becoming victims of sex trafficking.⁴¹

23. Second, women and gender-diverse persons have far fewer sheltering options available to them because of a system that has historically tended to and favoured men.⁴² This results in part from the fact that the homelessness of women and gender-diverse persons is often invisible – precisely because they may engage in gendered survival tactics instead of relying on mainstream services – a status which has been described as being “structurally created and maintained”.⁴³ The insufficient sheltering options available to women and gender-diverse persons are then further reduced for those who are racialized, Indigenous, or suffer from one or multiple disabilities.⁴⁴ This arbitrary lack of shelter spaces results in women and gender-diverse persons being disproportionately exposed to the serious health risks of having to sleep unsheltered, including death.⁴⁵

iii. Encampment bans and evictions perpetuate and exacerbate disadvantage

24. The Superior Court explicitly notes that there are fewer shelter spaces for women.⁴⁶ This dire lack of suitable space reinforces and perpetuates the disadvantaged position of women and gender-diverse persons and then perpetuates and exacerbates the gendered harm they suffer by increasing their risk of physical and sexual violence, as they

⁴¹ *Pan-Canadian Survey* at p 12, Ex B to Schawn, ABC Vol 9, Tab 115, p 68; *State of Women’s Housing* at p 22, 25, 36, Ex C to Schawn ABC Vol 9, Tab 115, pp 142, 145, 156; Uppal at paras 24-29, ABC Vol 7, Ex 87, pp 10-12; Schwan at para 21, Vol 9, Tab 115, p 16; Gaetz at para 30(1), ABC Vol 8, Ex 97, p 24; Hayman at para 7(b), 10, ABC Vol 8, Ex 100, pp 555-556, 558. See also Heegsma at para [53](#)

⁴² See *Waterloo* at paras [68-71](#); *Pan-Canadian Survey* at p 14 – 15, 41 – 43, Ex B to Schawn, ABC Vol 9, Tab 115, pp 70 – 71, 97 – 99; *State of Women’s Housing* at pp 4, 15, Ex B to Schawn, ABC Vol 9, Tab 115; Uppal at para 9, 44, ABC Vol 7, Ex 87, p 8, 13 – 14; Schwan at para 11, ABC Vol 9, Tab 115, p 1.

⁴³; See footnote 40.

⁴⁴ *Pan-Canadian Survey* at p 41 – 44, 50 – 53, Ex B to Schawn, ABC Vol 9, Tab 115, pp, 97 – 100, 106 – 109; *State of Women’s Housing* at p 27, Ex B to Schawn, ABC Vol 9, Tab 115, p 147; Schwan at paras 19, 20, 25, ABC Vol 9, Tab 115, pp 14 – 15, 17.

⁴⁵ *Kingston* at paras [73 - 78](#); Hayman at para 10, ABC Vol 8, Tab 100, p 558; Affidavit of Stephen Hwang dated February 27, 2023 at paras 5-8, ABC Vol 8, Tab 103, pp 681-683.

⁴⁶ Heegsma at paras [40-41](#). See also Uppal at paras 9, 15, ABC Vol 7, Ex 87, p 8; See also Affidavit of Jahmal Pierre, dated June 4, 2022, ABC Vol 5, Tab 67 at para 17, a Transgender woman who notes she will change her appearance to “pass” as a man to stay in a men’s shelter when women’s shelters are full.

are forced to sleep unsheltered or engage in gendered survival tactics.⁴⁷ There is ample evidence on the record of women and gender-diverse persons experiencing serious physical and sexual violence after being displaced or evicted from an encampment.⁴⁸ These gender-specific harms are further compounded for those persons with intersecting characteristics, such as many Appellants in this case. For example, courts have found that Indigenous persons and those living with disabilities are disproportionately affected by encampment evictions, which “exacerbate[] existing inequalities”.⁴⁹

25. The discriminatory treatment experienced by women and gender-diverse persons because of encampment bans and evictions is not simply quantitative, in that there are objectively far fewer shelter spaces available to them as compared to those offered to men. The gendered harm experienced by women and gender-diverse persons is *qualitatively* different, because homelessness “is uniquely dangerous” for them.⁵⁰ When these groups are displaced or evicted from encampments and have no place to go, they can become “trapped in traumatizing situations of homelessness and violence”.⁵¹ The severity of this discriminatory impact cannot be overstated.

PART IV – ORDER REQUESTED

26. LEAF takes no position on the outcome of this appeal. LEAF does not seek costs and asks that no costs be ordered against it.

⁴⁷ See footnote 41. See also *Heegsma* at para [34](#).

⁴⁸ See footnote 41. See also *Heegsma* at paras [11 – 12](#), [22 – 23](#), [32](#), [34](#), [36](#); Affidavit of Misty Marshall, dated May 12, 2022, ABC Vol 4, Tab 52 at paras 11, 26; Affidavit of Sherri Ogden, dated June 2, 2022, ABC Vol 5, Tab 64 at para 12; Affidavit of Cassandra Jordan, dated June 3, 2022, ABC Vol 3, Tab 38 at para 21; Affidavit of Julia Lauzon, dated June 2022, ABC Vol 4, Tab 40 at para 13; Affidavit of Ashley Macdonald, dated June 13, 2022, ABC Vol 4, Tab 46 at paras 11, 27.

⁴⁹ *Matsqui-Abbotsford* at paras [140](#), [198](#); *Waterloo* at paras [93](#), [94](#), [101](#), [110](#) and [126](#).

⁵⁰ *State of Women’s Housing* at p 22, Ex 3 to Schawn Affidavit ABC Vol 9, Tab 115.

⁵¹ *State of Women’s Housing* at p 5, Ex 3 to Schawn Affidavit ABC Vol 9, Tab 115.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of January, 2026.



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SCHEDEULE “A”**Jurisprudence**

1. *Abbotsford (City) v Shantz*, [2015 BCSC 1909](#)
2. *Bjorkquist et al. v Attorney General of Canada*, [2023 ONSC 7152](#)
3. *Canada (Attorney General) v Bedford*, [2013 SCC 72](#)
4. *Canadian Council for Refugees v Canada (Citizenship and Immigration)*, [2023 SCC 17](#)
5. *Canadian National Railway Co. v Canada (Canadian Human Rights Commission)*, [\[1987\] 1 SCR 1114](#)
6. *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [\[1999\] 2 SCR 203](#)
7. *Dickson v Vuntut Gwitchin First Nation*, [2024 SCC 10](#)
8. *Fair Voting BC v Canada (Attorney General)*, [2025 ONCA 581](#)
9. *Falkiner v Ontario (Minister of Community and Social Services)*, [2002 CanLII 44902 \(ON CA\)](#)
10. *Fraser v Canada (Attorney General)*, [2020 SCC 28](#)
11. *Gosselin v Québec (Attorney General)*, [2002 SCC 84](#)
12. *Hansman v Neufeld*, [2023 SCC 14](#)
13. *Heegsma v Hamilton (City)*, [2024 ONSC 7154](#)
14. *Law v Canada (Minister of Employment and Immigration)*, [\[1999\] 1 SCR 497](#)
15. *Mathur v Ontario*, [2024 ONCA 762](#)
16. *Matsqui-Abbotsford Impact Society v Abbotsford (City)*, [2024 BCSC 1902](#)
17. *Ontario (Attorney General) v G*, [2020 SCC 38](#)
18. *Quebec (Attorney General) v A*, [2013 SCC 5](#)
19. *Quebec (Attorney General) v Alliance du personnel professionnel et technique de la santé et des services sociaux*, [2018 SCC 17](#)
20. *R v Lavallee*, [\[1990\] 1 SCR 852](#)
21. *R v Sharma*, [2022 SCC 39](#)
22. *Tanudjaja v Canada (Attorney General)*, [2013 ONSC 5410](#)

23. *The Corporation of the City of Kingston v Doe*, [2023 ONSC 6662](#)
24. *The Regional Municipality of Waterloo v Persons Unknown and to be Ascertained*, [2023 ONSC 670](#)
25. *Weatherall v Canada (Attorney General)*, [\[1993\] 2 SCR 872](#)

Secondary Sources

1. Benjamin Perryman, *Proving Discrimination: Evidentiary Barriers and Section 15(1) of the Charter*, [\(2024\) 114 SCLR \(2d\) 93-109](#)
2. Canada, “[Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls](#)” (2019)
3. Cheryl Milne and Caitlin Salvino, *Analyzing the Treatment of Multiple Charter Claims: Judicial Restraint and the Case for Section 15*, [\(2023\), 114 S.C.L.R. \(2d\)](#)
4. Jonnette Watson Hamilton and Jennifer Koshan, *Sharma: The Erasure of Both Group-Based Disadvantage and Individual Impact*, [2024 CanLII Docs 3274](#)
5. Margot Young, *Zombie Concepts* (2023) 114 SCLR (2d) 35 – 38
6. Grace Ajele and Jena McGill, [Intersectionality in Law and Legal Contexts](#), Women’s Legal Education and Action Fund (LEAF), Toronto, 2020

SCHEDULE “B”**TEXT OF RELEVANT LEGISLATIVE PROVISIONS**

Canadian Charter of Rights and Freedoms, The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11

Life, liberty and security of person

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

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

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

Affirmative action programs

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

Court File No. COA-25-CV-0166

KRISTEN HEEGSMA et al.
Appellants

-and- THE CITY OF HAMILTON
Respondent

COURT OF APPEAL FOR ONTARIO

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