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Canada's Evolving Right to Shelter: *Region of Waterloo v Named Respondents & Persons Unknown*

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Case Commented On: *The Regional Municipality of Waterloo v Named Respondents and Persons Unknown,* 2026 ONSC 2971 (CanLII)

On May 21, 2026, the Ontario Superior Court of Justice (the Court) released its decision in *The Regional Municipality of Waterloo v Named Respondents and Persons Unknown,* 2026 ONSC 2971 (CanLII) (the Decision). The Decision considered the constitutionality of a regional government bylaw that sought to remove residents from an encampment. Housing rights advocates are lauding the Decision as a significant step forward in terms of courts recognizing the *Canadian Charter of Rights and Freedoms* (the *Charter*) as providing legal protections for the rights of unhoused Canadians, as well as its specific reliance on principles from international human rights law. This case comment provides a brief overview of the Decision, highlighting some of the key developments including:

- The Court found that the impugned bylaw violated both section 7 and section 15 of the *Charter* and was not justified under section 1.
- The Court recognized that the *Charter* should be interpreted to reflect the human right to housing, as recognized in international law and as implemented domestically through the federal *National Housing Strategy Act*, SC 2019, c 29, s 313 (the *NHSA*). In its reasons, the Court relied on the work of the Federal Housing Advocate, who was appointed under this legislation.
- The Court found that homelessness was an analogous ground under section 15 of the *Charter.*
- The Court seemed poised to analyze section 7 using procedural fairness as a principle of fundamental justice but ultimately did not.
- In terms of remedy, the Court granted what it described as a "Declaration Plus", retaining jurisdiction over the case to oversee the Region's promulgation of a plan that would comply with the *Charter,* through a "safe tenting protocol" or the provision of an alternate encampment site.

Since the British Columbia Court of Appeal's 2009 decision in *Victoria v Adams*, 2009 BCCA 563 (CanLII), Canadian courts have recognized that section 7 of the *Charter* protects a right to shelter. But this right to shelter is limited: unhoused people can erect temporary, overnight shelters on public property if there are inadequate alternative spaces for them (e.g., in local emergency

shelters). The Decision considered what the right to shelter looks like in the context of a specific housing encampment in Kitchener, Ontario.

The Situation in Kitchener

The Decision centred on a parcel of publicly owned land in Kitchener, Ontario (known as "100 Victoria") that has been the site of an encampment since 2021. The regional government wanted to use the site to lay down construction materials and equipment in advance of building a transit hub nearby. The regional government had previously sought to remove the encampment residents using a general bylaw that prohibited people from erecting shelters on land owned or occupied by the regional government. In a 2023 decision (the 2023 decision), the Ontario Superior Court had held that the general bylaw was unconstitutional as applied to the 100 Victoria lot and declared the general bylaw to be: "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" (the 2023 decision at para 158). The general bylaw remained in force with respect to all other publicly owned or occupied properties in the Waterloo region and indeed other encampments were closed in ensuing years.

However, the regional government still sought access to the 100 Victoria site for construction of the planned transit hub. In April 2025, it created a new bylaw specific to the 100 Victora site (the site-specific bylaw) which did a number of things:

- Provided that the people residing at the 100 Victoria site on April 16, 2025, could remain there until December 1, 2025. April 16, 2025 was the day the municipality gave public notice of the new bylaw;
- Otherwise prohibited anyone else from erecting a shelter on the site; and,
- As of December 1, 2025, prohibited everyone from entering onto the site and empowered the region to fence it off.

The region earmarked additional funds to provide alternative housing for those residents who had been living at 100 Victoria at the time of the notice of the site-specific bylaw. A transition plan indicated that these residents would also be provided with "enhanced site supports" to find alternative housing (para 64). However, residents who moved to the site after the notice would not be offered the same housing supports.

The regional government then asked the Court to declare that the site-specific bylaw, was compliant with the *Charter* While the case was before the Court, the region passed amendments to the site-specific bylaw to address a few concerns around timing, removing an offence provision, and codifying a "transition policy". The Decision for the most part discusses the original and amended bylaws together as "the bylaws". In this comment, we refer to them as the "site-specific bylaw."

When the Court heard the government's application, the respondents comprised individuals who were residing at the encampment at the time of the notice, as well as people who began staying at the encampment after the notice. The Court appointed *amicus curiae* to represent people living in

the encampment who lacked capacity. The Attorney General of Ontario, the Canadian Civil Liberties Association, Aboriginal Legal Services and the Charter Committee on Poverty Issues/National Right to Housing Network all intervened. The respondents argued that the bylaw infringed section 7 and 5 of the *Charter* and could not be saved under section 1. The Court agreed.

The Site-Specific Bylaw Violates Section 7 of the *Charter* (the Right to Life, Liberty and Security of the Person)

Section 7 of the *Charter* provides that "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".

Evidence in the case established that there were not enough shelter spaces for the number of unhoused people in the region: there were 2371 unhoused people in the region but only 377 shelter spaces (at paras 144-145). Notably, not all of the available shelter spaces were realistically accessible to encampment residents, e.g., because they were only available to specific genders, or because mental health issues may prevent some encampment residents from staying in congregate care facilities (at para 170).

The Court explained that the "right to life" under section 7 is engaged when a law or government action directly or indirectly "imposes death or an increased risk of death on a person" (at para 141). Preventing people from erecting temporary outdoor shelters, when they have nowhere else to go, exposes them to risks of serious harm including death. Specifically, the Court accepted evidence that unsheltered homelessness leads to increased risk of hypothermia, serious skin, foot, and respiratory disease, heatstroke and other serious health conditions (at para 186).

The right to liberty under section 7 is engaged when state actions "affect fundamental life actions", including infringing on personal choices or actions that go "to the core of what it means to enjoy individual dignity and independence" (at para 141). The site-specific bylaw engaged the liberty interests of respondents because they permitted arrest without warrant; and also, because they restricted residents from sheltering themselves from the elements and thereby exercising dignity, autonomy, and self-determination (at para 187).

Finally, the right to security of the person "protects both the physical and psychological integrity of the person" (at para 141). Forced evictions from encampments are traumatizing, result in loss of property – including survival property, builds distrust making it more difficult for people to access support services, and results in them moving to more remote and less safe locations (at para 143). The Court found that the security of the person of residents was clearly engaged by the site-specific bylaw (at para 188).

The Court found that the impacts of the site-specific bylaw's prohibitions on shelters and enforcement through forced evictions were not in accordance with the principles of fundamental justice; they were grossly disproportionate to the site-specific bylaw's object (at para 192).

Two important considerations that informed the Court's section 7 analysis were that (1) 100 Victoria was a shelter of last resort and (2) the rehousing commitments made by the region were

limited to only some of the residents at the property. The Court characterized 100 Victoria as a shelter of last resort because once it was closed, unhoused people would have nowhere in the region where they could legally shelter outdoors. Recall the general bylaw was still in force everywhere in the region *except* 100 Victoria and prohibited erecting shelters on publicly owned or occupied land (at paras 149, 161-63). The region had committed to finding housing for those residents who were at the encampment when notice of the site-specific bylaw was given, but many other residents, who had moved to 100 Victoria after the notice date, would not have access to such supports and would not have anywhere they could legally exist (at paras 150, 190). Notably, the Court relied extensively on the section 7 analysis in the previous 2023 decision (referred to above), finding it was bound by the doctrine of horizontal *stare decisis.*

The Site-specific Bylaw violated Section 15(1) of the Charter (Right to Equality)

Section 15(1) of the *Charter* reads as follows:

> "Every individual is equal before and under the law and has the right to 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"

A section 15 analysis comprises two steps. First, a court determines whether there is a distinction created by the law or state action (on its face or in its impact) based on an enumerated or analogous ground. Second, a court assesses whether the distinction has the effect of reinforcing, perpetuating or exacerbating a claimant's disadvantage.

The Court recognized homelessness as an analogous ground under section 15 of the *Charter*. See further discussion of this point below. However, the Court also found that the site-specific bylaw violated section 15 as a result of discrimination against women and gender diverse people, people with disabilities, and Indigenous people.

The Court found that the site-specific bylaw discriminated against women and gender diverse people because they had fewer alternative shelter options, and faced additional dangers if forced to sleep in remote locations, co-ed shelters, or motels (where there was a history of women being sexually coerced and exploited) (at paras 216-223)

The Court found that the site-specific bylaw discriminated against people with disabilities including physical, mental health and addiction disabilities. The disruption and displacements inherent in forced evictions had a particularly negative impact on people with disabilities and the region's plan for rehousing encampment residents did not sufficiently account for the challenges that people with disabilities face when being rehomed (at paras 224-232).

Finally, the Court found that the site-specific bylaw discriminated against Indigenous people, who are disproportionately represented in the unhoused population in the region (1.7% of total population versus 17% of unhoused population in the region) and who face barriers to using shelters, which are often not culturally appropriate (at paras 233-237).

Section 1 Analysis

If a government law or action violates a claimant's rights under the *Charter*, the government can "save" its law or action by proving that the law or action is a "reasonable limit" and "can be demonstrably justified in a free and democratic society." The Supreme Court of Canada's decision in *R v Oakes,* 2015 SCC 5 (CanLII) sets out the test that courts apply. Specifically, governments must show that their law has a pressing and substantial objective and that the means chosen are proportionate to the goal. "A law is proportionate if: (1) the means are rationally connected to the objective; (2) it is minimally impairing of the rights; and (3) there is proportionality between the deleterious and salutary effects of the law" ("*R v Oakes* at para 94).

In the Decision, the Court held that the site-specific bylaw was not saved under section 1. It was not proportionate because it was not minimally impairing, and the harmful effects of the bylaw were not proportional to the beneficial ones. For the bylaw to be proportionate under section 1, the Court indicated that the municipality should consider providing somewhere for unhoused people to legally stay once 100 Victoria is closed, for example by implementing a "safe tenting protocol" or designating other sites where unhoused people can shelter (at para 242).

Some Notable Developments in the Decision

The Role of International Law and a Rights-based Approach to Housing

The Court accepted that section 7 and 15 of the *Charter* must be interpreted to conform with Canada's commitment under international human rights instruments (at para 105). These instruments oblige Canada to provide adequate housing, including security of tenure and protection against forced evictions (at para 106). In elaborating what the international legal instruments require in the situation of encampments, the Court looked to the *UN Declaration on Human Rights* (Article 25) and the *International Covenant on Economic Social and Cultural Rights* (Article 11) as well as general comments issued by the Committee on Economic, Cultural and Social Rights and a Protocol prepared by the UN Special Rapporteur on the Right to Housing. These instruments specifically require meaningful and robust consultation with affected encampment residents and that governments explore all reasonable alternatives to forced evictions.

The Court emphasized that the human right to housing has been recognized domestically through section 4 of the *NHSA*. The Court noted that the *NHSA* "necessarily strengthens the force that Canada's international obligations should play in interpreting the scope and content of section 7" (at para 126). Notably, the *NHSA* creates the office of the Federal Housing Advocate (the Advocate), whose tasks include researching housing issues and making recommendations to Parliament. The Court relied on reports and guides prepared by the Advocate, and the Advocate provided evidence directly in the case as an expert witness.

Homelessness as an Analogous Ground under Section 15 of the Charter

The Court decided that homelessness should be recognized as an analogous ground under section 15 of the *Charter*. As noted above, section 15 protects people from being discriminated against by governments on the basis of characteristics such as gender, disability, or sexual orientation. Some

of these grounds are specifically set out in the *Charter* (i.e., enumerated grounds), but courts have recognized that protection applies to additional grounds which are analogous to the enumerated ones.

The Court was prepared to find that homelessness was an analogous ground on the basis that (1) homeless people are often the subject of stereotypical reasoning; (2) it is "extraordinarily difficult to extricate oneself" from homeless, and thus it is a "constructively immutable" status; (3) people who are homeless have historically been disadvantaged; (4) homeless people remain a vulnerable and marginalized group in society; and (5) international instruments support recognizing homelessness as an analogous ground (at paras 205-210). In reaching this conclusion, the Court drew heavily on Chief Justice Wagner CJ's concurring reasons in the Supreme Court of Canada's 2026 decision of *Quebec (Attorney General) v. Kanyinda,* 2026 SCC 7 (CanLII) (*Kayinda*). The Chief Justice had determined that refugee claimant status was an analogous ground.

The Court's holding on this point marks a change in the law. In *Tanudjaja v. Attorney General (Canada),* 2013 ONSC 5410 (CanLII), the Ontario Superior Court rejected the argument that homelessness was an analogous ground under section 15 (at paras 122-137). On appeal, the Court of Appeal decided the matter for other reasons and held it was unnecessary to rule on whether homelessness is an analogous ground: *Tanudjaja v. Canada (Attorney General),* 2014 ONCA 852 (CanLII) at para 37). In the 2023 decision regarding the region's general bylaw, the Court concurred with the lower court in *Tanudjaja* and held that homelessness was not an analogous ground (the 2023 decision at para 126). However, the Court in the present case declined to follow this line of reasoning because of the Supreme Court of Canada's subsequent decision in *Kanyinda.*

Procedural Fairness and Section 7

The Court raised a procedural fairness issue regarding the site-specific bylaw and seem poised to consider the breach of procedural fairness in its section 7 analysis but ultimately only considered whether the breach amounted to evidence of bad faith by the municipality, and held that it did not.

Previous encampment and eviction case law indicates that procedural fairness is one of the principles of fundamental justice that can apply under section 7. In *Bamberger v Vancouver (Board of Parks and Recreation),* 2022 BCSC 49 (CanLII) (*Bamberger*) at paras 46-74, the Supreme Court of British Columbia held that the General Manager of Parks had a duty of fairness to unhoused people living in a park which included a right to notice and to be heard before closing the park to them. In *Wright v Yukon (Government of),* 2024 YKSC 41 (CanLII), the Court found that a forced eviction from a rental premises had been carried out in a manner that infringed the resident's security of person and was not consistent with procedural fairness as a principle of fundamental justice. Procedural fairness in that case required that the person being evicted "know the case against them" and have an opportunity to "present their case fully and fairly" (at para 13). Courts have also examined procedural fairness in the encampment cases of *Matsqui-Abbotsford Impact Society v Abbotsford (City),* 2025 BCSC 264 (CanLII) (at paras 107-113, under appeal), and *Vandenberg v Vancouver (City) Fire and Rescue Services,* 2023 BCSC 2104 (CanLII) (at paras 211-241).

The public notice of the site-specific bylaw had been posted to the region's website but was not posted at the encampment (at para 62). The date that notice was given was important for the site-specific bylaw because people living at 100 Victoria were treated more favourably than people who joined the encampment after the notice date. But the giving of notice was also important because it was intended to alert people that the site-specific bylaw was under consideration and would give them an opportunity to engage in the legislative process before the site-specific bylaw was passed. Lack of effective notice hampers the ability of encampment residents to exercise their right to be heard and have the opportunity to present their case fully and fairly. However, as the Court noted in *Bamberger,* there is not duty of procedural fairness in a legislative process (*Bamberger* at para 43), and thus it is not clear if and when the right of unhoused people to receive notice and be heard before being evicted from 100 Victoria would be triggered.

The Court seemed primed to consider procedural fairness as a principle of fundamental justice under section 7. The Court highlighted that human rights approaches to encampments required meaningful consultation with unhoused people, including "a process which provides people with real choices and an opportunity to make informed decisions" (at para 131). It also acknowledged that the principles of justice in section 7 can be both procedural and substantive (at para 133) Yet, it ultimately only analyzed the principle of fundamental justice of gross disproportionately.

A "Declaration Plus" Remedy

In terms of remedy, the Court drew on Professor Kent Roach's concept of a "Declaration Plus" remedy for constitutional breaches. Professor Roach argued that there "is a need for an intermediate remedy stronger than a bare declaration but not as strong as an enforceable mandatory order" (at para 254). In the Decision, the Court declared that the site-specific bylaw violated the *Charter* and thus was of no force and effect. It also retained jurisdiction over the case to oversee the Region's promulgation of a plan that would comply with the *Charter,* through a "safe tenting protocol" or the provision of an alternate encampment site. This "Declaration Plus" remedy is similar to the ongoing oversight exercised by the judge as part of a *Charter* remedy in the language rights case of *Doucet-Boudreau v. Nova Scotia (Minister of Education),* 2003 SCC 62 (CanLII).

It appears that the Region will not take up the Court's invitation to request a review or further direction on these matters: on June 22, 2026, the region filed a notice of appeal of the Decision. The Ontario Government has also mused about using the *Charter's* notwithstanding clause (section 33) to remove the encampment at the 100 Victoria lot.

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