

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE
A.J.
JUSTICE GOODMAN

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TUESDAY, THE 8th DAY
OF NOVEMBER, 2022

BETWEEN:

ASHLEY POFF, DARRIN MARCHAND, GORD SMYTH,
MARIO MUSCATO and SHAWN ARNOLD

Applicants

and

THE CITY OF HAMILTON

Respondent

ORDER

THIS MOTION, made by the Applicants was heard on this day at the Courthouse, 45 Main Street East, Hamilton, ON, L8N 2B7.

ON READING the Motion Record of the Applicants, filed; and on hearing the submissions of counsel for the Applicants and Respondent,

1. THIS COURT ORDERS that pursuant to Rule 59.06(1) of the *Rules of Civil Procedure*, the Reasons for Judgment of the Honourable Andrew J. Goodman dated November 2, 2021 in this proceeding shall be amended to remove the phrase "...and the Application is dismissed" from paragraph 256 thereof, to clarify that this Honourable Court dismissed the Applicants' motion for an interim injunction, only, and not the Application.

2. THIS COURT ORDERS that leave is granted pursuant to Rules 26.02(c) and 26.03(1) of the *Rules of Civil Procedure* to file a Fresh as Amended Notice of Application in the form attached hereto as Schedule "A".

3. THIS COURT ORDERS that the title of proceedings herein shall be amended as follows:

Court File No. CV-21-00077187-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

**KRISTEN HEEGSMA, DARRIN MARCHAND, GORD SMYTH, MARIO
MUSCATO, SHAWN ARNOLD, BRADLEY CALDWELL, CHRISTINE
DELOREY, GLENN GNATUK, TAYLOR GOGO-HORNER, CASSANDRA
JORDAN, JULIA LAUZON, AMMY LEWIS, ASHLEY MACDONALD, COREY
MONAHAN, MISTY MARSHALL, SHERRI OGDEN, JAHMAL PIERRE,
LINSLEY GREAVES and PATRICK WARD**

Applicants

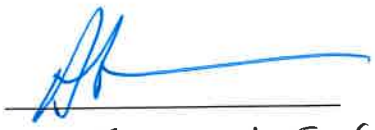
and

THE CITY OF HAMILTON

Respondent

4. THIS COURT ORDERS that pursuant to Rule 37.07(2) of the *Rules of Civil Procedure* service of notice of this motion on Kristen Heegsma, Bradley Caldwell, Christine Delorey, Glenn Gnatuk, Taylor Gogo-Horner, Cassandra Jordan, Julia Lauzon, Ammy Lewis, Ashley Macdonald, Corey Monahan, Misty Marshall, Sherri Ogden, Jahmal Pierre, Linsley Greaves and Patrick Ward shall be and is hereby dispensed with.

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



Mr. Justice A-J. Goodman

Schedule A

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

**KRISTEN HEEGSMA, DARRIN MARCHAND, GORD SMYTH, MARIO
MUSCATO, SHAWN ARNOLD, BRADLEY CALDWELL, CHRISTINE DELOREY,
GLENN GNATUK , TAYLOR GOGO-HORNER, CASSANDRA JORDAN, JULIA
LAUZON, AMMY LEWIS, ASHLEY MACDONALD, COREY MONAHAN, MISTY
MARSHALL, SHERRI OGDEN, JAHMAL PIERRE, LINSLEY GREAVES and
PATRICK WARD**

Applicants

– and –

CITY OF HAMILTON

Respondent

APPLICATION UNDER RULE 14.05 OF THE *RULES OF CIVIL PROCEDURE*

FRESH AS AMENDED
NOTICE OF APPLICATION

TO THE RESPONDENT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made
by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing on date to be determined by the parties and the Court, at the courthouse, 45 Main Street East, Hamilton, Ontario, L8N 2B7.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date June 15, 2022

Issued by

Local Registrar

Address of Superior Court of Justice
court office: 45 Main Street East
Hamilton ON
L8N 2B7

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APPLICATION

1. The Applicants make application for:

(a) An order pursuant to pursuant to section 52(1) of the *Constitution Act, 1982*, declaring sections 3 (hours of entrance), 12 (encroachment), 17 (camping and lodging) and 18 (tents and structures) of City of Hamilton *By-Law No. 01-129* (the "*Parks By-Law*"), and section 16(12) (miscellaneous prohibitions) of City of Hamilton *By-Law No. 86-077* as amended by *By-Law No. 97-162* (the "*Streets By-Law*"), are *either* of no force or effect *or* inapplicable to the Applicants and other homeless individuals who erect tents as a temporary form of shelter, pursuant to section 52(1) of the *Constitution Act, 1982*.

(b) In the event that this Honourable Court suspends any declaration of invalidity issued in relation to the *Parks By-Law* and/or *Streets By-Law*, that any such suspension be for no longer than six months from the date of this Honourable Court's decision.

(c) In the event that this Honourable Court suspends any declaration of invalidity issued in relation to the *Parks By-Law* and/or *Streets By-Law*, an order pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms* (the "*Charter*") during the period of the suspension, in the form of an interlocutory injunction, that prohibits the City of Hamilton from preventing the erection of tents as a temporary form of shelter by homeless individuals (including the Applicants), and/or giving notice to homeless individuals (including the Applicants) to dismantle and/or move such tents, and/or evicting or removing homeless individuals (including the Applicants) from such tents and/or dismantling such tents, if those tents comply with the following conditions, which are based on the following parameters:

- (i) The tent is in an area considered to be a "park" within the meaning of the *Parks By-Law*;
- (ii) The tent is at least 50 meters away from a playground, school or childcare centre;
- (iii) The tent consists of a grouping of a no more than of six tents; *and*

(iv) The tent be at least 200 meters away from any other grouping of a no more than of six tents.

(d) In the event that this Honourable Court does not suspend any declaration of invalidity issued in relation to the *Parks By-Law* and/or *Streets By-Law*, or the suspension expires without the adoption of measures to replace the provisions declared invalid by this Honourable Court, an order granting a permanent injunction with terms identical to order (c) above.

(e) An order pursuant to section 24(1) of the *Charter* declaring that the City of Hamilton, and/or its agents, pursuant to any purported legal authority, including but not limited to the *Parks By-Law*, the *Streets By-Law*, *Noise Control By-Law No. 11-285* ("*Noise Control By-Law*") and/or the *Public Nuisance By-Law No. 20-077* ("*Public Nuisance By-Law*") violated the *Charter* rights of the Applicants, including section 7 and/or section 15, by preventing them from erecting tents as a temporary form of shelter, and/or giving notice to homeless individuals (including the Applicants) to dismantle and/or move such tents, and/or evicting or removing homeless individuals (including the Applicants) from such tents and/or dismantling such tents, and that such violations cannot be demonstrably justified in a free and democratic society pursuant to section 1 of the *Charter*.

(f) In addition, an order pursuant to section 24(1) of the *Charter* for compensatory damages for the physical harm(s) suffered by the Applicants caused by the City of Hamilton and/or its agents pursuant to any purported legal authority, including but not limited to the *Parks By-Law*, the *Streets By-Law*, *Noise Control By-Law*, and/or the *Public Nuisance By-Law* in violation of the *Charter* rights of the Applicants, including section 7 and/or section 15, by preventing them from erecting tents as a temporary form of shelter, and/or giving notice to homeless individuals (including the Applicants) to dismantle and/or move such tents, and/or evicting or removing such tents and/or dismantling such tents.

(g) Costs of this proceeding on a full indemnity basis or in the alternative, on a substantial indemnity basis.

(h) Such further and other relief as counsel may advise to this Honourable Court may deem just.

2. The grounds for the application are:

Overview

(a) The Applicants are 19 individuals who have erected tents or shelters (collectively referred to as “tents”), and thereby have created and lived in encampments (“encampment residents”), in various public parks and/or other public spaces considered parks throughout Hamilton, including J.C. Beemer Park, the greenspace at Strachan and James Streets, Sir. John A. McDonald, Ferguson and Central Park (“encampments”). The City of Hamilton (“City”) has forcibly evicted the Applicants and many other homeless individuals from encampments where they resided, pursuant, *inter alia*, to the *Parks By-Law* and/or *Streets By-Law*. These encampments were located in City-owned and operated parks and/or public spaces under the care, control and responsibility of the City.

(b) The Applicants became homeless for the reasons that are common. Housing precarity has become an unfortunate reality in Hamilton, because of raising rental costs, inadequate Ontario Disability Support Program (“ODSP”) and Ontario Works benefit levels, and the breakdown of relationships, especially women fleeing domestic abuse at the hands of male partner. Some individuals with complex mental health, addiction and/or trauma cannot function in independent living. Chronically homeless individuals may become trapped in a vicious cycle of homelessness they cannot escape.

(c) The Applicants, like other homeless individuals, have at times not entered shelter for many reasons. The demand for shelter spaces often exceeds supply. As of March 2022, 1,596 people were actively experiencing homelessness in Hamilton, but there are only 96 shelter beds designated by the City of Hamilton for women and 212 for men. There is a dramatic undersupply of shelter spaces for women, a shortage and often complete absence of shelters which permit couples to stay together, and no shelter in Hamilton for indigenous men, couples, youth or Two Spirit individuals. There are also structural barriers in the design of shelters that prevent individuals from using them: admission on a first

come, first served basis, and a limit on the number of nights individuals can stay. The design of the shelter system discriminates on the basis of disability, against individuals with complex mental health, addiction and/or trauma, substance dependencies, and mental health disorders that trigger disruptive behaviour. Shelters do not accommodate Indigenous cultural practices. Shelters are congregate settings where individuals face the risk of assault and theft, and of contracting infectious disease (as happened during the COVID-19 pandemic). Shelters do not permit individuals to keep personal items or pets. They afford individuals little control over their living space. Finally, there is a risk to women queuing to enter shelters from male sexual predators who loiter in the vicinity to target victims who are unable to access shelters.

(d) The Applicants had no choice but to reside in encampments instead of sleeping on the street, because encampments function as mutual aid societies where residents share food, blankets and huddle together to stay warm; provide a buffer that mitigates the risk of rape, sexual assault, theft and assault; mitigate the risk of overdosing; provide an emotional support system for residents; and provide physical care and support for disabled residents. Encampments also provide shelter 24 hours, 7 days a week, which mitigates the risk of hypothermia, sunburn, heatstroke, and dehydration; make life less physically taxing because residents are not transient; enable residents to exert control over substance use; promote mental health; provide a sense of community and reduce isolation; and enable residents to attend to wellness beyond survival. Encampments enable residents to live continuously in a single location, which enhances their access to: medical care; social workers or other system navigators who can help residents access social programs; harm reduction supplies and treatment; medication delivery; food donations; and donations of blankets, clothing, and mobile phones.

(e) Most of the Applicants remain homeless. After being repeatedly evicted from encampments by the City, many Applicants simply “sleep rough” (i.e., without a tent) in various public parks and/or other public or private spaces in an effort to avoid being further targeted for eviction. Without shelter and a community to protect them, they have experienced and face an increased risk of rape, sexual assault, theft, and violence. Because they can no longer reside in encampments, they suffer from the health effects of sleeping out

in the open and being exposed to the elements, including hypothermia and chronic sleep deprivation. Because they no longer reside in a fixed location, and/or they have been forced to move to remote locations to avoid further evictions, their access to medical care, addiction treatment, and support services has been greatly impaired. Most do not have a mobile phone.

(f) Among Hamilton's homeless population, Indigenous persons (23%) and women (53%) are overrepresented. The Applicants reflect this diversity. Seven are Indigenous women and three are non-Indigenous women. They also include among their number a transgender black woman, an Indigenous man, and a black man.

(g) The evictions of the Applicants violated sections 7 and 15 rights of the *Charter* in a manner that cannot be justified under section 1. In addition, the relevant provisions of the *Parks By-Law* and/or *Streets By-Law* violate sections 7 and 15 of the *Charter* and cannot be justified under section 1.

Kristen Heegsma

(h) Kristen Heegsma ("Kristen") is a 31 year old Indigenous woman who has been homeless continuously since 2019, after being evicted by family members (although she was occasionally homeless before then). Kristen lives with mental health and substance abuse disorders and receives approximately \$900 in ODSP benefits per month to cover her basic needs and special diet. She is not entitled to a shelter allowance while homeless. Even if she received an additional shelter allowance of \$497 per month, she would be unable to afford housing.

(i) Between 2019 and Fall 2021, Kristen lived in a tent in encampments. In Summer 2020, Kristen was forcefully evicted from the Ferguson Encampment. She went onto stay in three more encampments and was evicted each time. The last time Kristen slept in a tent was at Wolverton Park, in Fall 2021. During these repeated evictions, she lost her belongings, including her tent.

(j) Since Fall 2021, Kristen has slept on the streets with only a sleeping bag.

(k) Within two to three weeks after being evicted from Wolverton Park, Kristin was raped while sleeping on a public bench outside of City Hall. She has been repeatedly robbed and assaulted. Without even the protection of a tent, she often wakes up to discover that her belongings have been stolen.

(l) Kristen has been unable to access a shelter, for many reasons. Kristen has repeatedly tried to get into a women's shelter, without success. She does not have a phone but has her physician and the Wesley Day Centre regularly call women's shelters on her behalf. They are almost always told that the women's shelters are full. In the past, Kristen was periodically able to access a shelter bed, but was repeatedly service restricted for a variety of reasons, including missing curfew and allegations of domestic violence. Kristen has periodically been in a relationship during her periods of homelessness and has at times been unable to access a shelter bed with her partner.

(m) When Kristen cannot get into a shelter and cannot put up a tent, she usually wanders around all night trying to find somewhere safe, putting her at an increased risk of violence. She has slept in stairwells, on the street outside of an overflow shelter, and on a park bench. As a result, Kristen hardly sleeps at night. Instead, she is up for days at a time, and then crashes. She regularly falls asleep during the day. In late May 2020, she fell asleep while walking and fell, hitting her head and cutting it open.

(n) Kristen would prefer to live in a tent again for the following reasons: a degree of privacy in order to get changed, be removed from the public gaze; improved sleep; protection against the risk of sexual assault, assault and theft by having a physical barrier, locking her tent, and having the protection of friends and allies in an encampment; improved mental health that comes from a sense of belonging and community, which translates into a lower dependence on drugs lower risk of overdose; and maintaining connections to street outreach supports such as medical care.

Cassandra Jordan

(o) Cassandra Jordan ("Cassandra") is a 39 year old Indigenous woman who has been homeless since August or September 2020. Cassandra became homeless after an

unlawful eviction from her rental unit. Cassandra is a person living with disabilities, in receipt of ODSP. Her medical conditions include degenerative disc disease, chronic pain and substance abuse disorder.

(p) When Cassandra first became homeless, she could not access a shelter bed because she was told that they were all full. This led her to erect a tent at the Ferguson Encampment, from which she was eventually evicted. Although she was offered space in a hotel during the eviction, it was not held for her while she coordinated storage of her belongings. In the end, she did not secure a shelter space. She was left on the street. She lost her tent in the eviction.

(q) Cassandra has continued to reside in various encampments after being unable to access women's shelters because they were full. When she resided in an encampment, Cassandra developed a community that looked out for one another which helped to prevent robberies and assaults.

(r) Cassandra has been repeatedly evicted from encampments. Cassandra has witnessed a heavy police presence with By-law officers at encampment evictions, along with bobcats and garbage trucks to dispose of peoples' belongings. Cassandra describes the evictions as intimidating, traumatizing and forceful, and she felt that she had no option but to comply with By-law officers' directions to move. She has repeatedly lost her tents in evictions. Having to pack up and move from encampment to encampment is exhausting physically, mentally and emotionally.

(s) Cassandra was subject to a forceful eviction while she was recovering from third degree burns on her legs. This led to her placement in the Barrett Centre, a shelter for individuals experiencing a mental health crisis. There were no shelter beds available when Cassandra was discharged from the Barrett Centre. She once again was forced to sleep on the street. She stayed with her mother in her subsidized rental unit temporarily but was required to leave to avoid breaching the guest rules for subsidized housing

(t) In February 2022, Cassandra attempted to get into Carol Anne's Place, an overflow shelter for women. She was denied entry because she had tested positive for COVID-19. She was forced to sleep outside in the freezing cold without a tent.

(u) Cassandra has continued to attempt to access women's shelters but has not been consistently able to do so because of an ongoing lack of shelter space for women. Without being able to erect a tent in an encampment, Cassandra has been forced to stay on the streets: in tunnels, outside of Tim Horton's, the back of City Hall, and outside of churches. When she has to sleep outside without a tent, she is often alone and in hidden, hard to find spaces. She has been robbed while sleeping outside.

Misty Marshall

(v) Misty Marshall ("Misty") is a 30 year old Indigenous woman who has been homeless for just over two years.

(w) Misty has a past history of opiate use disorder, major depressive disorder with suicidal ideation and asthma and stimulant use disorder. She has a history of abuse in childhood and has been in abusive relationships throughout her adult years. Misty's asthma is exacerbated when she is homeless and living in a tent due to oppressive humidity. While homeless and living in a tent her asthma has deteriorated to point that she has required emergency treatment.

(x) Without access to a shower or laundry facilities, Misty has presented with a severe case of head lice that caused underlying cellulitis (skin infection) to her scalp and ears. She has also had extensive body rashes caused likely by scabies.

(y) A physician treating Misty lost contact with her immediately following her eviction from the Ferguson Encampment. Her physician reconnected with her a year later and reported that Misty had drastically decompensated physically and mentally since she was last seen. Misty's street outreach physician was better able to connect with Misty and treat medical issues, but only when they knew where Misty was living. In the opinion of her physicians, had Misty remained in one place, she would not have decompensated to the extent that she did.

(z) As well, it is difficult to establish trust with Misty and this results in her unwillingness to accept help from people readily. Trust can be established with continuity of connection.

(aa) Since becoming homeless, Misty has been unsuccessful in accessing shelter in the women's shelter system. She has attempted to get into the overflow at Carol Anne's Place, but through hard experience has learned that there is little chance of getting in, even after lining up for entry at 10:00 pm. She sometimes feels that it is not worth trying, because she is that much more at risk of violence if she does not have a plan for the night by 10:00 pm. While lining up outside of Carol Anne's Place, Misty has witnessed men driving around Carol Anne's Place soliciting the women in line for sex.

(bb) Misty has stayed in a tent in several encampments as a result of not getting into the women's shelters. She has been evicted from all of these encampments and has lost belongings in the evictions. In some instances, she was only given 20 minutes notice to move. She has witnessed bobcats removing encampment residents' possessions during the course of eviction. Housing support and shelter was not offered to Misty at the time of her evictions from encampments.

Sherri Ogden

(cc) Sherri Ogden ("Sherri") is a 28 year old Indigenous woman in receipt of ODSP. She has been homeless for the past five years. Like the other applicants, Sherri has not been successful in accessing women's shelters, which has resulted in her staying in tents in encampments, only to be evicted and displaced to other encampments. During the course of these evictions, the City has disposed of her possessions, including her tents.

(dd) Sherri does not have a mobile phone. Staff at the Wesley Day Centre have repeatedly tried to get her into shelter but have been told that they are full. Sherri did secure a hotel stay (with a temporary hotel program funded by the City and staffed by Mission Services) for two weeks with an ex-boyfriend but was kicked out over a false allegation of domestic violence that she tried to dispute. She was banned from the hotel for one month. The hotel program has since ended.

(ee) Sherri's applications for supportive and transitional housing both the YWCA and Indwell have been denied because of her complex mental health issues that allegedly exceed the supports available in these programs.

(ff) Without being able to stay in an encampment in a tent, Sherri sleeps in stairwells, parking garages and in parks with only a blanket. She hardly sleeps.

Christine Delorey

(gg) The applicant Christine Delorey ("Christine") is a 33 year old woman in receipt of Ontario Works. She became homeless for the first time in her life when her father kicked her and her (now former) spouse out of his house in 2019. Without shelter space for her and her spouse as a couple, they erected a tent by the Urban Core Encampment where they could remain together and close to healthcare, food and supports.

(hh) Christine prefers to stay in a shelter but is not always able to access it because they are usually full. She was able to access the City's temporary hotel program with her spouse. However, the City accused them of domestic violence based on a verbal argument, and immediately kicked them out and onto the street without alternative shelter, and without an opportunity to challenge the decision. In February 2021, and while pregnant, she was kicked out of another hotel due to a false accusation of selling drugs.

(ii) In order to access an overflow bed at Carol Anne's Place, she lines up for entry hours before the 10:00 pm entry time. She was successful on some nights, and unsuccessful on other nights. When she is unable to access shelter and is not able to erect a tent, she stays in corridors, couch surfs, sleeps in the open with a sleeping bag, finds a parking garage to hide in and sleep, or wanders the streets without sleeping.

(jj) When there is not a space in shelter, a tent offers Christine protection from the elements, privacy and some degree of safety. Being in a tent eases her mental and emotional wellbeing compared to without because she is more sleep deprived without a tent.

Jahmel Lopierre

(kk) Jahmel Lopierre ("Jammy") is a 32 year old black transgender woman in receipt of OW. She has been diagnosed with PTSD, anxiety, depression and substance abuse disorder. She has been homeless one and off for about three years.

(ll) Most recently, Jammy became homeless after being evicted from the Transitional Living Program at the YWCA.

(mm) Jammy has been kicked out of the temporary hotel program for missing curfew. She fled a women's shelter after being threatened with being issued a form under the *Mental Health Act*.

(nn) Jammy has been denied access to women's shelters when they are full. In some cases, Jammy will change her clothing to present as a male in order to get into men's shelters. Having to change her gender expression and identity in order to access a shelter bed is degrading and harmful to her wellbeing.

(oo) It is difficult for Jammy to function in the congregate shelter system because she feels anxious around large groups of strangers and has trouble sleeping. She has experienced theft in shelters and feels that she has no control over her life.

(pp) Jammy has experienced routine evictions from encampments by police and has been ticketed repeatedly while homeless. She never has a good night's sleep because of a lack of a stable and secure place to stay overnight and feels safer in a tent because she has control over who is around her.

(qq) Jammy no longer erects a tent when she is outside of shelter because of the City's increased enforcement measures. She knows she will just be told to move.

Darrin Marchand

(rr) Darrin Marchand has chosen to live in an encampment because he has had negative experiences in shelters, including witnessing a fellow resident being attacked with a machete by another resident in December 2020. Darrin has also been service-restricted,

or banned, from various shelters at different times, which means that even when he wants to secure shelter where he was not victimized, he is unable to. Darrin has been service restricted from all shelters for long periods, including several consecutive months, leaving him with no option but to sleep on the street.

(ss) Darrin would suffer adverse emotional and physical impacts such as significant levels of stress if he were to be displaced from his encampment. Darrin receives medical care and food support in the encampments.

(tt) At times, Darrin has slept out in the open in the streets for months without a tent. Darrin was the victim of a random shooting while sleeping without a tent on the stairs of a church and believes that he would not have been shot had he been in a tent. It was only when he was shot that a shelter lifted a restriction allowing him to enter, but he was kicked out mid recovery.

Ashley MacDonald

(uu) Ashley MacDonald (“Ashley”) is a homeless Indigenous woman, and she has had no other option but to live in an encampment for several reasons, including the ongoing shortage of shelter beds for women in the City, being repeatedly service restricted, or banned, from shelters. Ashley has a substance use disorder and other mental health issues and has faced discrimination in the shelter system. Ashley has also been denied access to supportive and transitional housing programs because of her high acuity needs. Being able to remain in one encampment would allow Ashley the stability she needs to maintain ongoing and recurrent street outreach healthcare, and pursue treatment for her mental health and substance use.

Shawn Arnold

(vv) Shawn Arnold (“Shawn Arnold”) chose to live in an encampment because he feels unable to access shelter spaces because he is recovering from past substance use, and reasonably fears that the rampant substance use in shelters is a threat to his sobriety. Shawn was also assessed under the *Encampment Protocol* as being high acuity, and as such was permitted to remain at the J.C. Beemer Park Encampment. While an encampment resident,

Shawn was able to benefit from a nearby methadone treatment program, receive meal support and connect with other social supports including a housing worker that secure his current housing. The stabilized encampment location was critical to securing housing, illustrated by the fact that he almost lost a housing offer after being evicted from his encampment, causing him to lose contact with his housing worker.

Gord Smyth

(ww) Gord Smyth (“Gord”) chose to live in an encampment because there is a shortage of affordable housing in the City that has been exacerbated by the COVID-19 pandemic.

(xx) Gord cannot live in a shelter. He has mental health disabilities, including a personality disorder, which make it difficult for him to be around groups of people for sustained periods. Gord also has a dog who would not be allowed in shelters and separating from his pet would have a significant impact on his mental health.

(yy) When living in encampments, Gord has had regular access to community agencies and volunteers who deliver meals, hygiene products, and medical supports.

(zz) Gord was repeatedly evicted from encampments in breach of the *Encampment Protocol*. He was only given 7 days’ notice to move. He also was required to move without having had a VISPDPT assessment completed. On one occasion, Gord was evicted from an encampment within three hours of having been evicted from another encampment. During the course of his encampment evictions, the City did not offer him alternatives to congregate shelter options that accommodate his disability related needs. The constant evictions and the threat of evictions from encampment were mentally and emotionally draining and demoralizing.

(aaa) After several evictions, a paramedic administered Gord a Service Prioritization Decision Assistance Tool (“VISPDPT”), the results of which qualified him to remain in his encampment indefinitely. However, the City refused to accept these results. Although the City presented Gord with rental options, none of them were affordable. Gord was finally

offered a unit with City Housing Hamilton that was subsidized and moved into it on November 27, 2021.

Mario Muscato

(bbb) Mario Muscato ("Mario") is a severely disabled 48 year old Indigenous man who has been homeless since 2017. He was evicted from his accommodation due to an administrative error with Ontario Works. He has resided in encampments when he cannot access shelters.

(ccc) Mario has had negative experiences in the shelter system, including: being unable to access shelter because they are full; being service restricted and routinely being kicked out; having his personal items stolen; experiencing discrimination as a person living with disabilities; and experiencing discrimination as an Indigenous person on the basis of race and creed.

(ddd) Mario does not have the use of his hands and is an amputee. He is a victim of childhood abuse. He has also been diagnosed with opioid use disorder, stimulant use disorder, HIV, post-traumatic stress disorder, major depressive disorder, acquired brain injury, extensive burn injury from neck to face causing chronic pain, severe neuropathy to both upper extremities, and right forearm amputation.

(eee) Mario relies on other encampment residents to assist him with his activities of daily living because he does not have functioning hands. Encampment evictions deny him access to assistance from other residents and friends, for example, to erect a tent, change his clothes, open doors, and cover himself. He cannot erect and dismantle a tent or carry all of his possessions on his own due to his disabilities.

(fff) He has been evicted from encampments and lost his tent on numerous occasions. Evictions are very physically taxing, and this adds to his depressive state where he feels like he would prefer to die.

(ggg) When Mario is forced to sleep in the open, he experiences sleep deprivation, feels unsafe, is not able to meet his basic needs because of a loss of support from other

encampment residents and friends, experiences a deterioration in his mental health and greater sleep deprivation.

(hhh) Although Mario strives to remain connected with medical and housing supports, his constant transiency makes it exceedingly difficult.

Linsley Greaves

(iii) Linsley Greaves (“Linsley”) is a 52 year old black man in receipt of OW.

(jjj) Linsley has had periods of homelessness for over ten years. His most recent housing ended two years ago, after his roommates did not pay their share of the rent. Since Linsley’s name was on the lease, he was evicted.

(kkk) Linsley has stayed in men’s shelters on and off during his periods of homelessness. He has had several negative experiences, including theft, being incited to fight, and having trouble sleeping. Linsley has had several experiences of racism while in shelter, including being repeatedly subjected to the use of the “N” word, being racially profiled, and lacking a sense of community with other Black Canadians.

(lll) Linsley has difficulties functioning in a shelter environment because of his substance use disorder. He is dependent on substances which are not permitted in shelters. This requires him to both hide his drug use and frequently leave. He knows that every time he is absent from the shelter, he risks not being allowed back in.

(mmm) Linsley stayed in a tent in one encampment for almost two years, including during the time the *Encampment Protocol* was in force. During this time, he developed a community. Three women lived beside him for safety and would call out to him if they needed protection.

(nnn) Linsley stopped putting up a tent after his eviction because he knew it would not take long for the City to evict him again. Although he tried to use tarps to provide some protection against the elements, he developed frostbite in his left toes in or about March 2022 when he was sleeping outside with just a blanket. Linsley is slowly losing one of his big toes, and the tips of his other toes.

(ooo) Linsley finds it difficult to sleep in the open because he constantly moves around trying to stay warm and safe. Even without a tent, the City tells him to move along. The constant moving worsens his anxiety. As a result of being unable to sleep properly at night, Linsley falls asleep during the day whenever possible, and has trouble concentrating.

Brad Caldwell

(ppp) Brad Caldwell ("Brad") is a 57 year old homeless man in receipt of the ODSP. He has been homeless for roughly three years. His loss of housing coincided with his wife's passing.

(qqq) Brad has had negative experiences from staying in shelters. He had his possessions stolen more often in shelters than on the street. He has been kicked out of shelter for not securing housing on time, which he could not do because accommodation was not unaffordable. Brad has found the shelter system unreliable. He has been unable to get into shelter because it is full, and he has been kicked out during his stays.

(rrr) When the men's shelter hotel program ended, he was kicked out without a transition plan to alternative shelter. He was forced to sleep on the street.

(sss) Brad has been evicted from various encampment. In some instances he has only received 24 hour notice. He has witnessed evictions where dump trucks and garbage disposal attend and load up residents' tents and possessions. He had not been offered guaranteed shelter prior to eviction.

(ttt) Brad has also been issued roughly fifty to sixty tickets for either sleeping in a public space or in a tent in an encampment. He will comply with a direction to move to avoid escalating the situation, and because of the fear of charges.

(uuu) Brad has difficulty managing his diabetes while homeless because he does not have proper refrigeration to store insulin, and his glucose meter has been stolen from him because it has been mistaken for a digital scale to measure drugs.

(vvv) For Brad, the benefits of staying in a tent include being able to enhance safety through community with other encampment residents, staying warm together to avoid

freezing to death, remaining close to services, and lessening sleep deprivation by stabilizing his immediate environment.

(www) Brad has suffered from infections which have required hospitalization. Because he has been discharged into homelessness where he is exposed to the elements, experiences sleep deprivation, and needs to move, he cannot fully recover and remain healthy.

(xxx) When sleeping in the open, Brad is so physically taxed and tired that his body gives up on him, and he is forced to sleep where his body stops him.

Corey Monahan

(yyy) Corey Monahan ("Corey") is 45 years old, has been homeless for the majority of his life. He is an ODSP recipient.

(zzz) Corey has been diagnosed with fetal alcohol syndrome, attention deficit hyperactivity disorder, and substance abuse disorders. He receives healthcare through the Shelter Health Network and has reported distress sleeping outside, and frustration in not being able to access shelter despite advocacy efforts due to restrictions. His state of homelessness causes mental distress and the stress of it has negatively impacted his mental health.

(aaaa) Despite Corey's best efforts to reside in shelters, he cannot so do so. Space is not always available. Moreover, staying in shelters has significant adverse effects on his mental health, because he does not function well in congregate settings. In some cases, he has had physical altercations with other shelter residents, which have led him to be service restricted.

(bbbb) Corey sleeps in a tent in an encampment. Evictions displace him from encampment to encampment. This has been very destabilizing, psychologically draining and traumatizing. He usually cannot remove all of his possessions and tent in advance of an eviction. He avoids watching City officials tear down his tent because it is traumatizing for him.

Patrick Ward

(cccc) Patrick Ward ("Patrick") is 59 year old man with disabilities. He is an ODSP recipient.

(dddd) Patrick became homeless for the first time in 2017, when the residential care facility that he was renting a room from was abruptly and without notice closed.

(eeee) Upon eviction, he went to a shelter but found was the victim of assaults and theft. The shelter space was detrimental to his mental and emotional wellbeing. He has chosen to erect a tent in an encampment.

(ffff) Patrick has repeatedly been evicted from encampments, and moved along by By-law officers from various locations to other locations, even though those officers are aware that he continues to violate the *Parks By-law* in those new locations. To avoid confrontation with authorities, he has moved to less visible public spaces and into the escarpment.

(gggg) A tent offers Patrick protection from intruders and shields him from animals and the weather. Being routinely evicted from encampments is physically and psychologically draining.

Ammy Lewis

(hhhh) Ammy Lewis ("Ammy") is a 43 year old Indigenous woman. She is an ODSP recipient.

(iiii) Ammy was victim to her landlord's predatory advancements whereby he attempted to extort sex from her. She felt so unsafe that she left her accommodation with her dog who is her constant companion and main source of emotional support. Ammy has been homeless for five months and she has not been accepted into shelter because of her dog.

(jjjj) Ammy relies on her dog for emotional support as well as keeping her safe while she remains without shelter on the street. She sleeps in underground parking lots,

abandoned cars, dumpsters when she does not have a tent. Even without a tent, Ammy is routinely forced to move from where she is in public regardless of the time of day. She has also been assaulted while homeless.

Julia Lauzon

(kkkk) Julia Lauzon (“Julia”) is a 24 year old Indigenous woman who is homeless.

(llll) Julia suffers from significant mental health issues and has not been able to get the medical help that she needs because of a lack of phone and a lack of fixed address, which are all related to her homelessness status. As such, she has not been able to follow through on referrals, she has been cut off from ODSP and has no income at all. There have been multiple unsuccessful attempts to get her help for her addictions, but it is difficult to get a hold of her. She has been to the hospital for suicidal ideations.

(mmmm) Julia has stayed on and off in a tent while homeless because she has been denied access to shelter due to a lack of capacity, however she is occasionally able to get into the overnight drop in center at Carol Anne’s Place.

(nnnn) Being displaced from her tent and its location results in operating in a constant survival mode that results in her inability to focus on other things such as getting to appointments, including medical appointments because of a lack of concentration due to lost sleep and being in survival mode. Julia has been assaulted while living outside without a tent.

(oooo) Julia has a housing worker from the Hamilton Regional Indian center and is on a waitlist for housing.

Glenn Gnatuk and Taylor Gogo-Horner

(pppp) Glenn Gnatuk (“Glenn”) and Taylor Gogo-Horner (“Taylor”) are a disabled couple in receipt of ODSP. They became homeless five years ago after being evicted from their rental unit. They began couch surfing with friends and family but that was time limited, and they had a negative experience where Taylor was assaulted by one the friends that they stayed with.

(qqqq) They were once able to remain as a couple in the hotel shelter program, but this was short lived after they were falsely accused of domestic violence and banned for one year.

(rrrr) Taylor has stayed in shelter on only a few occasions and found her separation from Glenn too difficult, causing so much anxiety that she left to return to stay with him in an encampment.

(ssss) They have been routinely evicted from several different locations throughout Hamilton. They have since begun to erect their tents in less visible places to stay hidden and avoid enforcement. Sometimes they pre-emptively move to avoid conflict. The constant movement has been destabilizing for them.

(tttt) When they were without a tent in the winter, they slept on the grounds of the Children's Museum, only with blankets. They feel that they are always on the run which causes them stress. They hardly sleep because they are worried about their safety. They have experienced severe frostbite, causing their fingers to crack and lose sensation.

Chronology and procedural history

(uuuu) On April 18, 2020, residents of a longstanding encampment located at the Sir John A. MacDonald School ("Sir John A. MacDonald Encampment") in Hamilton advised Hamilton Harm Reduction Action League ("KeepingSix") that they had been given notice to dismantle their tents and move within a week. KeepingSix is a community-based organization that defends the rights, dignity, and humanity of people who use drugs. KeepingSix works closely with the Hamilton Social Medicine Response Team ("HAMSMaRT"), an organization made up of physicians, midwives, and peer workers that provides clinical care to individuals who have difficulty accessing the traditional medical system, primarily the homeless and people who use drugs.

(vvvv) On April 21, 2020, KeepingSix and HAMSMaRT attended a regular weekly meeting with the City of Hamilton ("City") to discuss encampment management and raised concerns about the eviction notice provided to the Sir John A. MacDonald Encampment.

(www) On April 25, 2020, the City evicted the residents of the Sir John A. MacDonald Encampment. KeepingSix and HAMSMaRT attended the eviction. Several residents moved to the encampment at Jackie Washington Park (“Jackie Washington Park Encampment”), because they had been advised that the City could better support individuals on municipal property.

(xxxx) On April 27, 2020, the City provided an eviction notice to the residents of the Jackie Washington Park Encampment.

(yyyy) On May 6, 2020, the City evicted the residents of the Jackie Washington Park Encampment. In the course of the eviction, residents’ belongings were destroyed.

(zzzz) On June 4, 2020, legal counsel from the Hamilton Community Legal Clinic (“HCLC”) and Ross and McBride LLP wrote the City Manager, the General Manager of Healthy and Safe Communities and the Director of Housing Services, setting out legal arguments against encampment evictions based on the harm they caused to health and wellbeing, in the context of the COVID-19 pandemic and a shortage of viable alternatives for shelter. They also requested a meeting.

(aaaaa) On June 26, 2020 legal counsel from the HCLC and Ross and McBride LLP, members of HAMSMaRT and Keeping Six met with legal counsel for the City and representatives from the City’s housing and Community and Social Services departments. During this meeting, they asked the City to pause on the encampment evictions pending a satisfactory resolution of the shelter needs of encampment residents and provided notice to the City that any further eviction would be challenged in the courts.

(bbbbb) On July 7, 2020, the parties met again to further discuss solutions to encampments in Hamilton. The City was again asked to pause encampment evictions pending resolution and reminded that news of any new evictions would lead the parties into litigation.

(ccccc) On July 10, 2020, the City provided notice of an imminent “clean up” (i.e., eviction) to the residents of the York Encampment and Bay Encampment. Within a day, KeepingSix and HAMSMaRT worked with the residents to remove larger items from the

site, which led the City to decide not to bring heavy equipment to clear the two encampments.

(ddddd) On July 13, 2020, Councillor Narinder Nann proposed a motion at a meeting of the Emergency and Community Services Committee of Hamilton City Council to request the City analyze the *National Protocol for Homeless Encampments in Canada* (“*National Encampments Protocol*”) proposed by the United Nations Rapporteur for Housing. The motion carried, with Councillor Terry Whitehead voting against.

(eeeeee) On July 22, 2020 legal counsel from HCLC and Ross and McBride LLP wrote a second letter to the City, that alleged that the removal of items necessary for an individual to exist in an encampment, such as a tent or bed, was in effect an eviction.

(fffff) On July 20, 2020, Councillor Jason Farr wrote in an email: “To sum up, I am supportive of dismantling the tents and if staff do not act soon, I will have Council order it.”

(ggggg) On July 28, 2020, the City provided notice that it intended to dismantle encampments on July 31, 2020. The City would not commit to refrain from the involuntarily removal of encampment residents.

(hhhhh) On July 29, 2020, counsel for a subset of the current Applicants, KeepingSix and HAMSMaRT commenced proceedings in this Honourable Court for an injunction prohibiting the City from dismantling encampments.

(iiiiii) On July 30, 2020, this Honourable Court issued a 10 day interim injunction, in *Bailey et al. v. City of Hamilton*, Hamilton Court File No. CV-20-73435.

(jjjjj) On August 7, 2020, the 10 day injunction was extended on consent to a court date set for September 2020.

(kkkkk) On September 30, 2020, the parties executed a settlement agreement, which consisted of: an *Encampment Protocol* which required the City to assess and accommodate individual needs before evicting encampment residents, which in some cases resulting in residents remaining in certain sanctioned encampments indefinitely, and which established

rules around the permissible size and locations of encampments; and a confidential Letter of Understanding, which included a term that the City could remove the largest Ferguson Encampment.

(lllll) Between September 30, 2020 to August 2021, HCLC, KeepingSix and HAMSMaRT had many disagreements with the City over its failure to comply with the *Encampment Protocol* as a result of the perception that the City was not applying the *Encampment Protocol* in the spirit in which it was negotiated. HCLC repeatedly requested a meeting with the City to discuss possible solutions, to no avail.

(mmmmm) On August 9, 2021, Hamilton City Council voted to repeal the *Encampment Protocol* in an emergency meeting, without notice to, or consultation with, the parties to the settlement agreement who had negotiated the *Encampment Protocol* or encampment residents.

(nnnnn) The City delayed new encampment evictions until August 30, 2021.

(ooooo) On September 9, 2021, a peaceful protest of the revocation of the *Encampment Protocol* took place outside City Hall. Representatives from HCLC, HAMSMaRT, Keeping Six, the YWCA, Hamilton Regional Indian Centre, and the Wesley Day Centre all decried the sudden decision taken without consultation, and implored the City to sit down with stakeholders to develop a new approach to encampments. On the same day, the City released a "Six Step Encampment Response" at a meeting of Hamilton City Council. This policy framework does not adhere to or align with the *National Encampments Protocol*. At the same Council meeting, Dr. Jill Wiwcharuk from HAMSMaRT and Marcie McIlveen from KeepingSix addressed the Council, and informed them of the issues with shelter shortages, and harm to encampment residents from evictions. Stephanie Cox, counsel in the within Application, addressed the Council meeting to raise legal concerns.

(ppppp) On September 17, 2021, the City engaged in encampment evictions at the Durand Encampment and Wellington Park Encampment. On September 20, 2021, a further eviction took place at the J.C. Beamer Park Encampment. On these occasions, the City only provided two hours verbal notice to encampment residents to vacate. The City did not

provide written notice of a By-law infraction. The City did not offer appropriate indoor shelter options prior to the eviction. Subsequently, By-law officers and Hamilton Police Services have regularly attended various encampments and only given verbal notice to vacate.

(qqqqq) On October 4, 2021, the Applicants issued this Notice of Application, and brought a motion for an *ex parte* injunction against the City to prohibit it from using its By-laws to evict encampment residents. This Honourable Court directed that the City refrain from encampment evictions pending its ruling.

(rrrrr) On October 13, 2021, the Manager of Housing Service's reported to City Council that: there was not enough shelter space for encampment residents to move into; the system cannot accommodate all unsheltered person's needs; that "the suitability of those [shelter] beds it needs to be discussed as much as the availability of those beds"; that it was "unconscionable to put these individuals into beds or units without the right supports because it creates in many instances, more stress on the individual, whether it's through isolation, whether it's through not meeting their needs"; that there was nowhere else for people to go than to sleep in encampments; that Hamilton has always had people "sleeping rough even in the winter"; and that during the operation of the *Encampment Protocol*, "many [encampment residents] have had weeks or months potentially of stability which no longer the case, because this has been a tremendous traumatic experience for everybody involved."

(sssss) On November 2, 2021, this Honourable Court dismissed the motion for an interim injunction, in *Poff v. City of Hamilton*, 2021 ONSC 7224.

(ttttt) The City of Hamilton immediately recommenced encampment evictions, notwithstanding the City's awareness that many encampment residents had no indoor shelter options. In some cases, shelters were full at the time of eviction. In other instances, the evicted encampment residents were service restricted from shelter. On November 6, 2021, Councillor Nann Tweeted: "I'm here at Woodlands Park to observe an encampment clearing. I have been informed HPS on-site whom have been providing direct engagement that there are no shelter spaces for the couples nor the individuals remaining here."

(uuuuu) On December 9, 2021, Councillor Nann proposed a motion to the Emergency and Community Services Committee of Hamilton City Council for a human rights based approach to encampment evictions. This motion passed. To date, the approach to responding to encampments outlined in this motion has not come to fruition.

(vvvvv) On March 22, 2022 Councillor Farr proposed a motion that was adopted by City Council, which directs City staff to expedite encampment evictions, and specifically to: issue a Trespass Notice within 12 to 72 hours after staff receive the first complaint regarding unauthorized camping a City or public place; immediately notify the Hamilton Police Service of the Trespass Notice for enforcement purposes; and enforce the By-laws against encampments 24 hours a day, seven days a week. The City of Hamilton allocated \$416,673.73 to hire four new By-law officers to ensure that tents were removed from parks within 12 to 72 hours.

(wwwww) In response to Councillor Farr's motion, City staff stated the following at the Council Meeting: "there is currently no capacity for families or couples in the shelter system, but between 15 and 20 spaces each in the men's and women's systems"; "even when there is space available, some people can't access it due to issues such as having a pet or having had past behavioural issues at the shelter that can lead to barred access"; "we do not have enough housing"; and "we do not have enough beds".

(xxxxx) Since the adoption of Councillor Farr's motion, the eviction against encampment residents has dramatically increased, with evictions taking place continuously. Some former encampment residents have gone deeper into hiding to avoid enforcement, making them more vulnerable and disconnected from supports. Individuals are now "sleeping rough" without even a tent to protect them from the elements and provide a basic level of personal security. Some individuals use a patchwork of tarps, blankets and sheets in a desperate attempt to recreate the protection offered by tents.

Causes of homelessness

(yyyyy) Individuals become homeless for a number of different reasons.

(zzzzz) A major reason for homelessness is the housing precarity has become an unfortunate reality in Hamilton.

- (i) The costs of rental accommodation have increased sharply, and in some cases has become completely unaffordable.
- (ii) ODSP and Ontario Works benefit levels are insufficient, even with a housing allowance.
- (iii) Since poverty intersects with, race, indigeneity, and disability, housing precarity is experienced disproportionately by those groups.

(aaaaaa) Another cause of homelessness is the breakdown of relationships.

- (i) Women may become homeless when fleeing domestic abuse at the hands of male partners.
- (ii) Individuals may also become homeless if they are forced to leave accommodation shared with family or friends.

(bbbbbb) Some individuals with complex mental health, addiction and/or trauma cannot function in independent living.

(cccccc) Chronically homeless individuals may become trapped in a vicious cycle of homelessness they cannot escape.

Why homeless individuals do not go to shelter

(dddddd) Homeless individuals do not enter shelters for many reasons.

(eeeeee) The demand for shelter spaces often exceeds supply, as the Applicants' firsthand experiences attest to. Moreover, aggregate supply and demand mask inequalities in the availability of shelter for different groups:

- (i) There is a dramatic undersupply of shelter space for women, which reflects underfunding that is a product of the hidden nature of

homelessness for women and a hierarchy of deservingness that systematically devalues the need of women for shelter.

(ii) There is a shortage, and often a complete absence, of shelters which permit couples to stay together.

(iii) Although Hamilton has a shelter for indigenous women fleeing domestic violence, it does not have a shelter for indigenous men, couples, youth, or Two Spirit individuals.

(fffff) There are structural barriers in the design of shelters that prevent individuals from using them:

(i) Admission to shelters is on a first come, first served basis, without any prioritization based on need.

(ii) Shelters impose a limit to the number of nights that individuals can stay – they are at best temporary and are never a permanent accommodation solution.

(iii) The design of the shelter system also discriminates on the basis of disability.

(1) Shelters cannot meet the needs of individuals with complex mental health, addiction and/or trauma, who therefore decided not to enter them;

(2) Some disability-related behaviours conflict with shelter policies. Individuals with substance dependencies can neither use them while in shelter, nor bring harm reduction materials into shelters to help them recover from addiction;

(3) Individuals have mental health disorders which may trigger disruptive behaviour in the congregate setting of a shelter; and

(4) It is physically taxing for some disabled individuals with mobility issues to enter and leave shelters every day.

(iv) Shelters do not accommodate Indigenous cultural practices. In addition, the design of shelters may reinforce intergenerational trauma and the lack of trust in institutions arising from the systemic abuse of Indigenous children in residential schools.

(v) Shelters are congregate settings where individuals who have been victims of assault and theft and are unwilling to enter shelter to face that risk again.

(vi) Shelters are congregate settings that create the risk of infectious disease spread, as became apparent during the COVID-19 pandemic.

(vii) Shelters do not permit pets, which provide important emotional support to individuals.

(viii) Shelters do not permit individuals to keep personal items with them, beyond their immediate personal effects.

(ix) Shelter rules afford individuals little or no control over their living space and micromanage them. For example, shelters impose a strict curfew. Moreover, these institutional rules can elicit a trauma response.

(x) Shelters may be situated in remote locations which are hard to reach on foot.

(gggggg) Finally, there is a risk to women queuing to enter shelters from male sexual predators who loiter in the vicinity to target victims who are unable to access shelters.

Why homeless individuals who do not go to shelter erect tents in encampments

(hhhhhh) Homeless individuals who do not shelter for any of the reasons above may choose to erect tents in encampments instead of sleeping on the street, for a number of reasons.

(iiiiii) Encampments give rise to communities that provide individuals with safety:

- (i) They function as mutual aid societies, where residents share food, blankets, and even huddle together to stay warm in the cold weather.
- (ii) They provide a buffer that mitigates the risk of rape and sexual assault, theft and assault for residents from non-residents.
- (iii) They mitigate the risk of overdosing, because of the presence of peers.
- (iv) They provide an emotional support system for residents.
- (v) They provide physical support and care for disabled residents.

(jjjjjj) Encampments provide health benefits to their residents compared to living in the open:

- (i) They provide shelter 24 hours a day, 7 days a week. By contrast, shelters only provide accommodation in the evenings.
- (ii) They mitigate the risk of hypothermia, by providing protection from the wind, rain, snow, and cold.
- (iii) They mitigate the risk of sunburn, heatstroke, and dehydration, by providing protection against the sun.
- (iv) They make life less physically taxing for residents because they are less transient than if they lived in shelters on the street.

- (v) They enable residents to exert control over substance use – either to use it, or to avoid them – by enabling them to choose their peer group.
- (vi) They promote mental health, by providing a feeling of safety for individuals who distrust institutions, based on negative experiences.
- (vii) They provide a sense of community and reduce social isolation.
- (viii) They enable residents to attend to their wellness beyond basic survival.

(kkkkkk) Encampments enable their residents to live with greater dignity compared to living in the open:

- (i) They provide a modicum of privacy and solitude, essential for many basic functions including sleep.
- (ii) They enable couples to live together in the same tent.
- (iii) They enable residents to have pets that provide them with emotional support.
- (iv) They enable residents to keep personal possessions beyond their immediate personal effects.
- (v) They enable residents to come and go as they please without a curfew.
- (vi) They enable residents to plan their lives, because they know where they will be sleeping at night.
- (vii) They enable residents to satisfy their desire for autonomy.
- (viii) They enable residents to build stable relationships with other residents.

(IIIIII) Encampments enable residents to live continuously in a single location, which enhances their access to:

- (i) medical care;
- (ii) social workers or other system navigators who can help residents access social programs (e.g. the Ontario Disability Support Program, Ontario Workers, and public housing), and apply for government issued identification;
- (iii) harm reduction supplies and treatment;
- (iv) medication delivery;
- (v) food donations; *and*
- (vi) donations of blankets, clothing, and mobile phones.

Harms from encampment eviction

(mmmmmm) Encampment evictions harm residents in many ways.

(nnnnnn) Evictions deprive former encampments residents of the safety that comes from the encampment community:

- (i) They face additional hurdles to sharing food and blankets and huddling together to stay warm.
- (ii) They lose the buffer that mitigates the risk of rape and sexual assault, theft and assault for residents from non-residents.
- (iii) They lose the peer group that mitigates the risk of overdosing.
- (iv) They lose the emotional support system provided by other residents.
- (v) Disabled residents lose the physical support and care they receive from other residents.

(oooooo) Evictions force former encampment residents to live in the open, which is harmful to their health:

- (i) They face a greater risk of hypothermia because they are exposed to the wind, rain, snow, and cold.
- (ii) They face a greater risk of sunburn, heatstroke, and dehydration because they are exposed to the sun.
- (iii) They face a life that is more physically taxing because their lives are now transient.
- (iv) They lose the ability to exert control over substance use, because they can no longer choose their peer group.
- (v) They may suffer worsened mental health because they lose a feeling of safety.
- (vi) They lose a sense of community and experience increased social isolation.
- (vii) They cannot attend to their wellness beyond basic survival.

(pppppp) Evictions undermine the dignity of former encampment residents:

- (i) They lose all privacy and the ability to seek solitude.
- (ii) Couples face greater hurdles in living together in the same tent.
- (iii) They lose the ability keep personal possessions beyond their immediate personal effects.
- (iv) They lose the ability to plan their lives, because they no longer know where they will be sleeping at night.
- (v) They lose the ability to build stable relationships with other residents.

(qqqqqq) Evictions impede the access of former encampment residents to:

- (i) medical care, including the diagnosis and treatment of medical conditions, and treatment for normal life conditions such as pregnancy;
- (ii) social workers or other system navigators;
- (iii) housing supports and connections;
- (iv) harm reduction supplies and treatment;
- (v) medication delivery;
- (vi) food donations; *and*
- (vii) donations of blankets, clothing, and mobile phones.

(rrrrrr) In addition, former encampment residents may move to remote locations to avoid further evictions, which put them at a greater geographical distance from the services and supports listed in the previous paragraph.

(ssssss) The process of eviction harms former encampment residents:

- (i) They lose their possessions.
- (ii) They experience dislocation.
- (iii) They experience emotions of fear, loss, and grief
- (iv) They may experience the exacerbation of pre-existing mental health conditions.
- (v) They may lose trust in authority in the police, governments and other public institutions.

Section 7

(ttttt) Sections 3 (hours of entrance), 12 (encroachment), 17 (camping and lodging) and 18 (tents and structures) of the *Parks By-Law*, and section 16(12) of the *Streets By-Law*, violate section 7 of the *Charter*, because they deprive homeless individuals of their liberty and/or security of the person, in a manner that is not in accordance with the principles of fundamental justice.

(uuuuuu) These violations of section 7 cannot be justified under section 1 of the *Charter*.

(vvvvvv) The eviction of the Applicants from encampments violated section 7 of the *Charter*, because those evictions deprived them of their liberty and/or security of the person, in a manner that was not in accordance with the principles of fundamental justice.

(wwwww) These violations of section 7 cannot be justified under section 1 of the *Charter*.

(xxxxxx) The interpretation of section 7 of the *Charter* must comply with Canada's international legal obligations under the *International Covenant of Economic, Social and Cultural Rights*, including (but not limited to) Article 11(1), the right to adequate housing.

Section 15

(yyyyyy) Sections 3 (hours of entrance), 12 (encroachment), 17 (camping and lodging) and 18 (tents and structures) of the *Parks By-Law*, and section 16(12) of the *Streets By-Law*, violate section 15 of the *Charter*, because they discriminate on the basis of race and/or indigeneity, sex, disability, and marital status, either separately or in combination (i.e., intersectional discrimination).

(zzzzzz) These violations of section 15 cannot be justified under section 1 of the *Charter*.

(aaaaaa) The eviction of the Applicants from encampments violated section 15 of the *Charter*, because those evictions discriminated against them on the basis of race and/or

indigeneity, sex, disability, and marital status, either separately or in combination (i.e., intersectional discrimination).

(bbbbbbb) These violations of section 15 cannot be justified under section 1 of the *Charter*.

(ccccccc) The interpretation of section 15 of the *Charter* must comply with Canada's international legal obligations under the *International Covenant of Economic, Social and Cultural Rights*, including (but not limited to) Article 11(1), the right to adequate housing.

3. The Applicant relies on the following legal instruments:

- (a) The *Canadian Charter of Rights and Freedoms*.
- (b) The *Constitution Act, 1982*.
- (c) *International Covenant on Economic, Social and Cultural Rights*.
- (d) City of Hamilton *By-Law No. 01-129 ("Parks By-Law")*.
- (e) City of Hamilton *By-Law No. 86-077* as amended by *By-Law No. 97-162 ("Streets By-Law")*.
- (f) City of Hamilton *By-Law No. 11-285 ("Noise Control By-Law")*.
- (g) City of Hamilton *By-Law No. 20-077 ("Public Nuisance By-Law")*.
- (h) Such further and other grounds as counsel may advise and this Honourable Court may permit.

4. The following documentary evidence will be used at the hearing of the Application:

- (a) Affidavit of Kirsten Heegsma.
- (b) Affidavit of Darrin Marchand.

- (c) Affidavit of Gord Smyth.
- (d) Affidavit of Mario Muscato.
- (e) Affidavit of Shawn Arnold.
- (f) Affidavit of Bradley Caldwell.
- (g) Affidavit of Christine Delorey.
- (h) Affidavit of Glenn Gnatuk and Taylor Gogo-Horner.
- (i) Affidavit of Cassandra Jordan.
- (j) Affidavit of Julia Lauzon.
- (k) Affidavit of Ammy Lewis.
- (l) Affidavit of Ashley Macdonald.
- (m) Affidavit of Corey Monahan.
- (n) Affidavit of Misty Marshall.
- (o) Affidavit of Sherri Ogden.
- (p) Affidavit of Jahmal Pierre.
- (q) Affidavit of Linsley Greaves.
- (r) Affidavit of Patrick Ward.
- (s) Affidavit of Audrey Davis.
- (t) Affidavit of Leilani Farha.
- (u) Affidavit of Stephen Gaetz.
- (v) Affidavit of Kate Hayman.

- (w) Affidavit of Stephen Hwang.
- (x) Affidavit of Ameil Joseph.
- (y) Affidavit of Olivia Mancini.
- (z) Affidavit of Lisa Nussey.
- (aa) Affidavit of Andrea Sereda.
- (bb) Affidavit of Kaitlin Schwan.
- (cc) Affidavit of Medora Uppal.
- (dd) Affidavit of Ruth Toskas.
- (ee) Such further and other evidence as counsel may advise and this Honourable Court may permit.

June 15, 2022

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Respondent

Court File No. CV-21-00077817-0000

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HAMILTON

FRESH AS AMENDED

NOTICE OF APPLICATION

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ORDER

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