

CANADA / JUDGMENT

Heegsma v. Hamilton (City)

2025 ONCA 904

COURT

Court of Appeal for Ontario

DECIDED

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Heegsma v. Hamilton (City)

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Judges

Favreau, Lise G.

Subject

Civil

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: Heegsma v. Hamilton (City), 2025 ONCA 904

DATE: 20251224

DOCKET: M56452, M56454, M56455, M56460, M56467, M56498, M56501, M56504, M56507, M56511 (COA-25-CV-0166)

Favreau J.A. (Motion Judge)

BETWEEN

Kristen Heegsma, Darrin Marchand, Gord Smyth, Mario Muscato, Shawn Arnold, Cassandra Jordan, Julia Lauzon, Ammy Lewis, Ashley MacDonald, Corey Monahan, Misty Marshall, Sherri Ogden, Jahmal Pierre, and Linsley Greaves

Applicants (Appellants)

and

City of Hamilton

Respondent (Respondent)

Sujit Choudhry, Sharon Crowe and Wade Poziomka, for the appellants

Bevin Shores, Jordan Diacur and Jennifer King, for the respondent

Tabir Malik, for the proposed intervener British Columbia Civil Liberties Association

Margaret Flynn and Princess Doe, for the proposed intervener Canadian Centre for Housing Rights

Tina Yang and Naomi Greckol-Herlich, for the proposed intervener Canadian Civil Liberties Association

Martha Jackman, for the proposed interveners Charter Committee on Poverty Issues and the National Right to Housing Network

Andrew Reeson, for the proposed intervener The Corporation of the City of Kingston

Fred Fischer, Michele Brady and Molly Lowson, for the proposed intervener City of Toronto

Aidan Johnson and Donald Tremblay, for the proposed interveners Clinique juridique itinérante and Niagara Community Legal Clinic

Mercedes Perez, Lisa Leinveer, Robin Nobleman and Adrian Merdzan, for the proposed interveners Income Security Advocacy Centre and Mental Health Legal Committee

Erika Anschuetz and Alexa Biscaro, for the proposed intervener Women's Legal Education and Action Fund

Reema Khawja and Alisha Krishna, for the proposed intervener Ontario Human Rights Commission

Sara Badawi, for the intervener Ministry of the Attorney General

Heard: December 12, 2025 by video conference

REASONS FOR DECISION

- [1] The appellants are a group of individuals who allege that the respondent, the City of Hamilton, violated their rights under ss. 7 and 15 of the Canadian Charter of Rights and Freedoms when they were evicted from City parks between August 2021 and August 2023. On the appeal, the appellants claim that the judge below erred in finding that a municipal by-law that prohibited individuals from erecting tents or living in public parks during this time period did not violate their Charter rights. They further submit that they are each entitled to Charter damages.
- [2] The appeal is scheduled to be heard over two days on February 10 and 11, 2026.
- [3] There are 10 separate proposed sets of interveners on the appeal. The Attorney General of Ontario also intends to intervene as of right on the appeal.
- [4] For the reasons below, I grant leave to intervene to the following interveners:
 - (a) British Columba Civil Liberties Association;
 - (b) Canadian Civil Liberties Association;
 - (c) Canadian Centre for Housing Rights;
 - (d) Ontario Human Rights Commission;
 - (e) Women’s Legal Education and Action Fund;
 - (f) City of Toronto; and
 - (g) The Corporation of the City of Kingston.

General principles

- [5] All proposed interveners seek to intervene as friends of the court pursuant to r. 13.02 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194. The court must determine whether the proposed intervener will likely make a useful contribution to the resolution of the appeal without causing injustice or prejudice to the immediate parties: *Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada Ltd.* (1990), 74 O.R. (2d) 164 (C.A.), at p. 167. When considering this issue, the court is concerned with “the nature of the case, the issues which arise and the likelihood of the applicant being able to make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties”: *Peel*, at p. 167; *Canadian Federation of Students v. Ontario (Colleges and Universities)*, 2020 ONCA 842, 476 C.R.R. (2d) 258, at para. 10.
- [6] The test for granting leave in constitutional cases is more relaxed than in litigation between private parties: *Peel*, at p. 167. This provides the court with the benefit of various perspectives on the historical and sociological context, as well as policy and other considerations that bear on the validity of legislation: *Authorson (Litigation Guardian of) v. Canada (Attorney General)* (2001), 147 O.A.C. 355 (C.A.), at para. 7. Moreover, because

constitutional cases may have a wide impact on the rights of others who are not parties to the litigation, interventions provide such affected individuals and groups with an opportunity to be heard.

- [7] In a case that raises Charter issues, proposed interveners are expected to demonstrate that: (1) they have a real and identifiable interest in the subject matter of the proceeding; (2) they have an important perspective distinct from the immediate parties; or (3) they are a well-recognized group with special expertise and a broadly identifiable membership base: *Bedford v. Canada (Attorney General)*, 2009 ONCA 669, 98 O.R. (3d) 792, at para. 2.
- [8] There are nonetheless necessary limits to the scope of intervention even in constitutional litigation. Such limits may arise where a perspective or interest is adequately represented without the proposed intervenor's involvement: *Bhajan v. Ontario (Children's Lawyer)*, 2010 ONCA 560, 322 D.L.R. (4th) 332, at para. 8. Leave to intervene may also be refused where the submissions of the proposed intervenor are duplicative of the submissions of others: *Fair Voting BC v. Canada (Attorney General)*, 2024 ONCA 619, at para. 13.
- [9] The overarching consideration is whether the proposed intervenor can be of assistance to the court in providing a different perspective that is not already addressed by the parties: *Solmar Inc. v. Hall*, 2025 ONCA 570, at para. 11.

Application of the general principles to the proposed interveners

- 1. British Columbia Civil Liberties Association ("BCCLA") [10] The BCCLA is a national, non-profit group that has extensive experience advocating for the protection of civil liberties and human rights. The Supreme Court of Canada and provincial appellate courts in Canada, including this court, have frequently granted the BCCLA intervenor status.
 - [11] If granted leave to intervene, the BCCLA proposes to address the immunity threshold claimants must overcome before obtaining Charter damages arising from an unconstitutional municipal by-law.
 - [12] The appellants consent and the respondent does not oppose granting the BCCLA intervenor status.
 - [13] I am satisfied that the BCCLA can provide a unique perspective on issues on appeal, namely the availability of Charter damages arising from an unconstitutional by-law, and that this perspective is distinct from that of the parties or the other proposed interveners. The BCCLA's participation will not expand the scope of the appeal. I therefore grant the BCCLA leave to intervene.
- 2. Canadian Civil Liberties Association ("CCLA") [14] The CCLA is a national, non-profit, independent, nongovernmental organization that has extensive experience advocating for human rights and civil liberties. The Supreme Court of Canada and provincial appellate courts in Canada, including this court, have frequently granted the CCLA intervenor status.

- [15] If granted leave to intervene, the CCLA proposes to submit that international human rights standards, including the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, are relevant to the interpretation and application of s. 7 of the Charter in this case. Specifically, the CCLA will submit that these instruments have been codified by the enactment of the National Housing Strategy Act, S.C. 2019, c. 29, s. 313, and they should inform the court's determination of whether s. 7 of the Charter includes a right to shelter.
- [16] The appellants consent and the respondent does not oppose granting the CCLA intervener status.
- [17] I am satisfied that the CCLA can provide a unique perspective on issues on appeal, namely the relevance and application of international instruments to the s. 7 Charter issues that arise in this case, and that this perspective is distinct from that of the parties or the other proposed interveners. The CCLA's participation will not expand the scope of the appeal. I therefore grant the CCLA leave to intervene.
3. Canadian Centre for Housing Rights ("CCHR") [18] The CCHR is a non-profit organization that advocates in the area of housing and human rights. The CCHR advocates on behalf of individuals and for policy changes. The CCHR has experience intervening at different levels of court.
- [19] If granted leave to intervene, the CCHR proposes to submit that international human rights standards, including the International Covenant on Economic, Social and Cultural Rights, are relevant to the interpretation and application of s. 15 of the Charter in this case. Specifically, the CCHR will submit that international norms are contextual factors relevant to evaluating the impact of eviction on encampment residents, and whether eviction amounts to discrimination under s. 15.
- [20] The appellants consent and the respondent does not oppose granting the CCHR intervener status.
- [21] I am satisfied that the CCHR can provide a unique perspective on issues on appeal, namely the relevance and application of international law to the s. 15 Charter issues that arise in this case, and that this perspective is distinct from that of the parties or the other proposed interveners. The CCHR's participation will not expand the scope of the appeal. I therefore grant the CCHR leave to intervene.
4. Ontario Human Rights Commission ("OHRC") [22] The OHRC is a statutory human rights body established under the Ontario Human Rights Code, R.S.O. 1990, c. H.19, with a mandate to promote and advance human rights and prevent discrimination in Ontario. The OHRC has experience as an intervener at different levels of court in cases of public importance addressing equality rights in the areas of homelessness, sex, race and disability.

- [23] If granted leave to appeal, the OHRC proposes to make submissions on the ss. 7 and 15 Charter issues raised on the appeal. Specifically, with respect to the s. 7 analysis, the OHRC proposes to submit that the court should look at the social context of the appellants' circumstances, such as access to alternative shelter and the differential burden of daytime evictions from parks on women and persons with disabilities. With respect to the s. 15 analysis, the OHRC acknowledges that the appellants do not seek to have homelessness recognized as an analogous ground, and instead propose to assist the court in how to assess whether homelessness has a disproportionate impact based on sex, disability, race and Indigeneity alone or in combination.
- [24] The appellants consent and the respondent does not oppose granting the OHRC intervener status.
- [25] I am satisfied that the OHRC can provide a unique perspective on issues on appeal, namely the interpretation and application of ss. 7 and 15 of the Charter in the context of homelessness, and that this perspective is distinct from that of the parties or the other proposed interveners. The OHRC's participation will not expand the scope of the appeal. I find that it would make a useful contribution to the appeal and grant leave for it to intervene. I therefore grant the OHRC leave to intervene.
5. Charter Committee on Poverty Issues ("CCPI") and the National Right to Housing Network ("NRHN") [26] The CCPI is a national committee that brings together representatives and experts in human rights, constitutional law and poverty law for the purpose of assisting disadvantaged groups in Canada. It has intervened in multiple cases at various levels of court. The NRHN is a pan-Canadian coalition of more than 2,000 organizations, advocates and experts that advocate for those experiencing homelessness.
- [27] If granted leave to intervene, CCPI and NRHN propose to submit that s. 7 of the Charter imposes positive obligations to address homelessness and that the court should recognize that homelessness is an analogous ground of discrimination under s. 15 of the Charter.
- [28] The appellants consent and the respondent opposes granting CCPI and NRHN intervener status.
- [29] I am not satisfied that CCPI and NRHN should be granted leave to intervene. The issues they intend to raise go well beyond the scope of the issues raised by the parties. Specifically, the appellants have not framed their challenge to the respondent's by-law as a claim based on a breach of positive obligations under s. 7 of the Charter or as a claim that homelessness should be recognized as an analogous ground under s. 15. It is not evident that these issues can be argued on the record before the court. The CCPI and NRHN's motion for leave to intervene is therefore dismissed.

6. Clinique juridique itinérante (“CJI”) and Niagara Community Legal Clinic (“NCLC”) [30] The CJI is a legal clinic based in Quebec dedicated to advocacy in the area of houselessness. It has previously been granted intervener status before the Supreme Court of Canada and the Superior Court of Quebec. The NCLC is a legal clinic in the Niagara Region. It advocates on behalf of clients experiencing houselessness, including in matters involving evictions and trespass prosecutions.
- [31] If granted leave to appeal, the CJI and NCLC propose to argue that the respondent’s by-law is unconstitutional under s. 7 of the Charter, with a particular focus on the issue of gross disproportionality. They would argue that the s. 7 analysis should focus on the content of the by-law rather than the respondent’s enforcement process. They propose to bring relevant case law from Quebec to this court’s attention. They also seek to argue that the application judge should have followed other decisions of the Superior Court dealing with the issue of encampments in public parks, in particular *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2023 ONSC 670, 164 O.R. (3d) 177.
- [32] The appellants consent and the respondent opposes granting CJI and NCLC intervener status.
- [33] I am not satisfied that CJI and NCLC should be granted leave to intervene. The appellants already address the issue of gross disproportionality, and these proposed interveners do not propose to add a unique perspective on this issue. In addition, the issue of horizontal stare decisis falls within the core expertise of this court, and there is no need for the court to receive assistance from interveners on this issue. The CJI and NCLC’s motion for leave to intervene is therefore dismissed.
7. Women’s Legal Education and Action Fund (“LEAF”) [34] LEAF is a national charitable organization that advocates for the equality rights of women, girls, trans and non-binary people in Canada. LEAF has extensive experience intervening in the Supreme Court of Canada and many appellate courts across Canada.
- [35] If granted leave to intervene, LEAF proposes to focus its submissions on s. 15 of the Charter. First, LEAF proposes to argue that the evidentiary burden for establishing adverse impact discrimination under s. 15 should not be unduly onerous. Second, LEAF proposes to submit that, when addressing the adverse impacts of the municipal by-law, the court should look at the gendered disadvantages of people experiencing homelessness, which can be further compounded by other intersecting social characteristics such as Indigeneity, race and disability.
- [36] The appellants consent and the respondent opposes LEAF’s motion for leave to intervene.
- [37] I am satisfied that LEAF can provide a unique perspective on the application of s. 15 of the Charter in this case, and that this perspective is distinct from that of the parties or the other proposed interveners. LEAF’s participation will not expand the scope of the appeal. I find that it would make a useful contribution to the appeal and grant leave for it to intervene.

8. Income Security Advocacy Centre (“ISAC”) and Mental Health Legal Committee (“MHLC”) [38] ISAC is the only legal aid clinic in Ontario that focuses exclusively on income security issues. MHLC advocates for the rights of persons with mental health and addiction issues. ISAC and MHLC have experience intervening in court proceedings dealing with issues of poverty and mental health.
- [39] If granted leave to intervene, ISAC and MHLC propose to address the application judge’s approach to the evidence of the appellants’ circumstances. Specifically, they propose submitting that the application judge improperly relied on impermissible stereotypes and took improper judicial notice when describing the appellants and their circumstances.
- [40] I am not satisfied that ISAC and MHLC can provide a unique perspective on the appeal. The appellants’ factum on the appeal already addresses the application judge’s handling of the evidence, including by submitting that he relied on stereotypes. In addition, the court is well equipped to determine whether the application judge mishandled the evidence as this is one of the core functions of an appellate court. ISAC and MHLC’s motion for leave to intervene is therefore dismissed.
9. City of Toronto (“Toronto”) [41] Toronto is the largest municipality in Canada. It operates the largest shelter system in Canada, sheltering approximately 9,000 people every night. In its materials, Toronto states that its operations in addressing homelessness will be impacted by this court’s decision.
- [42] If granted leave to intervene, Toronto proposes to address the application of ss. 7 and s. 1 of the Charter to cases of this nature. Specifically, Toronto seeks to address the relevance of available municipal resources, such as outreach and other programs, to assessing whether s. 7 rights are engaged or have been breached.
- [43] The appellants do not oppose and the respondent consents to Toronto’s motion for leave to intervene.
- [44] I am satisfied that Toronto has a unique interest and can provide a helpful perspective on the application of s. 7 of the Charter in this case, and that this perspective is distinct from that of the parties or the other proposed interveners. Toronto’s participation will not expand the scope of the appeal. I therefore grant Toronto leave to intervene.
10. The Corporation of the City of Kingston (“Kingston”) [45] Kingston is a municipality in Ontario that faces continued issues of homelessness and encampments in municipal parks, which it describes as a “homelessness crisis”. Kingston is actively working on finding solutions to this situation, including through the use of municipal by-laws.

- [46] If granted leave to intervene, Kingston seeks to address two issues. First, it seeks to address the threshold for the immunity enjoyed by municipalities when implementing by-laws that are later found to be unconstitutional. Second, Kingston seeks to argue that horizontal stare decisis did not require the application judge to follow two previous Superior Court decisions dealing with encampments in municipal parks, namely *Waterloo* and *The Corporation of the City of Kingston v. Doe*, 2023 ONSC 6662, 541 C.R.R. (2d) 255.
- [47] The appellants do not oppose and the respondent consents to Kingston's motion for leave to intervene.
- [48] I am satisfied that Kingston has a unique interest and can provide a helpful perspective on the immunity of municipalities for acts carried out under their by-laws. However, I am not satisfied that Kingston has a unique or helpful perspective on the issue of horizontal stare decisis. As previously indicated, the issue of horizontal stare decisis falls within the core expertise of this court, and there is no need for the court to receive assistance from interveners on this issue. Accordingly, Kingston is granted leave to intervene on its first proposed issue, but not on the issue of horizontal stare decisis.

Disposition

- [49] The motions for leave to intervene as friends of the court brought by the British Columbia Civil Liberties Association, Canadian Civil Liberties Association, Canadian Centre for Housing Rights, Ontario Human Rights Commission, Women's Legal Education and Action Fund, City of Toronto and The Corporation of the City of Kingston are granted. They are granted leave to intervene on the following terms:
- (a) The interveners are permitted to file factums with essentially the same content and of the same length as they provided in draft on the motions, with the exception of the City of Kingston which is to revise its factum to remove the argument dealing with horizontal stare decisis;
 - (b) The interveners will take the record as it is, and are not to raise any new issues or file additional evidence;
 - (c) There shall be no costs awarded in favour of or against any of the interveners on these motions or the appeal;
 - (d) The interveners' factums are to be served and filed no later than January 9, 2026;
 - (e) The Attorney General of Ontario is also required to serve and file its factum, not to exceed 15 pages, by no later than January 9, 2026;
 - (f) The interveners are each granted 10 minutes to make oral arguments;

- (g) The appellants are granted leave to serve and file a factum not exceeding 15 pages that responds to the issues raised in the factums from the Attorney General of Ontario, the City of Toronto and The Corporation of the City of Kingston;
 - (h) The respondent is granted leave to serve and file a factum not exceeding 20 pages that responds to the issues raised in the factums of the British Columbia Civil Liberties Association, the Canadian Civil Liberties Association, the Canadian Centre for Housing Rights, the Ontario Human Rights Commission and the Women's Legal Education and Action Fund; and
 - (i) The appellants' and respondent's responding factums are to be served and filed by no later than January 20, 2026.
- [50] The motions for leave to intervene brought by the Charter Committee on Poverty Issues and the National Right to Housing Network, Clinique juridique itinérante and Niagara Community Legal Clinic, and Income Security Advocacy Centre and Mental Health Legal Committee are dismissed, without costs.

"L. Favreau J.A."

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