

## **Leave to Intervene in Ontario Court of Appeal Case on Encampments**

**Date:** September 25, 2025

**To:** City Council

**From:** City Solicitor

**Wards:** All Wards

### **SUMMARY**

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The City Solicitor is seeking authority to proceed with a motion for leave to intervene in a case that is being heard at the Ontario Court of Appeal, where the Court will consider the scope of constitutional protections for persons sheltering in encampments.

### **RECOMMENDATIONS**

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The City Solicitor recommends that:

1. City Council authorize the City Solicitor, with retroactive authority if required, to:
  - a. Bring a motion seeking leave to intervene in the appeal to be heard by the Ontario Court of Appeal of the decision in *Heegsma v. Hamilton*;
  - b. Intervene in the appeal if leave is granted by the Court; and
  - c. Instruct counsel, as necessary, in consultation with the General Manager of Toronto Shelter and Support Services.

### **FINANCIAL IMPACT**

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The City will incur some minor expenses for filing materials at the Ontario Court of Appeal. These are estimated to be minimal and can be absorbed by the Legal Services budget.

### **DECISION HISTORY**

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None.

## COMMENTS

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### ***Superior Court Decision in Heegsma v. Hamilton***

On December 23, 2024, the Superior Court of Justice released its decision in *Heegsma v. Hamilton*, [2024 ONSC 7154](#).

The court application was brought by 14 individuals experiencing homelessness (the “Applicants”) who sought a declaration that the City of Hamilton’s enforcement of its Parks by-law during the period from August 2021 to August 2023 breached their rights under the Charter to life, liberty and security of the person (s.7) and to equal benefit of the law (s.15).

Justice J.A. Ramsay denied the Applicants’ request for relief, finding that they were not prevented from staying in the encampment overnight and that the Applicants did not have the right to remain in the encampments during daytime hours. (the “Decision”).

### ***Notice of Appeal filed***

In January 2025, the Applicants filed a notice of appeal, appealing the Decision. A hearing date has been scheduled for mid-February 2026.

### ***The Scope of Constitutional Protections for Persons Living in Encampments is a Significant Issue***

This will be the first time the Ontario Court of Appeal has heard a case addressing the scope of constitutional protections for individuals experiencing homelessness who are sheltering in encampments. Any decision of the Court of Appeal will have significant impact on how the City addresses encampments and conducts enforcement.

As an intervenor, the City would be able to offer its unique perspective on several of the legal issues relating to encampments, without taking a position on the appeal. Intervention would provide the City with an important opportunity to raise the challenges that encampments present in a large municipality. The City’s perspective as the province’s largest municipality would assist the Court of Appeal in developing a coherent legal framework with respect to encampments and ultimately give the City more clarity in addressing encampments, including any necessary enforcement.

This report has been prepared in consultation with the General Manager of Toronto Shelter and Support Services, who agrees with the recommendation.

## CONTACT

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## **SIGNATURE**

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Wendy Walberg  
City Solicitor

## **ATTACHMENTS**

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Confidential Attachment 1 - Confidential instructions from the City Solicitor