



Hamilton Community Legal Clinic
Clinique juridique Communautaire de Hamilton



Mississauga Community Legal Services/Services juridique communautaires de Mississauga

MEDIA RELEASE

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Appeal Court decision on evictions from homeless encampments takes case back to Superior Court

(Hamilton, Oct. 9, 2026) – The Court of Appeal for Ontario ruled today that it is allowing the appeal from the decision of the Ontario Superior Court regarding City of Hamilton evictions from homeless encampments and is sending the case back to Superior Court to be heard by a new judge.

An appeal was filed in January 2025 on behalf of the 14 applicants, who were living in Hamilton encampments at various times between August 2021 and August 2023. Their application to the Superior Court challenged the City of Hamilton’s by-laws that allowed for their removal from the encampments, basing the challenge on Sections 7 and 15 of the *Canadian Charter of Rights and Freedoms*, and seeking damages. The Superior Court ruled against them, prompting the appeal to the Court of Appeal of Ontario.

In its decision to send the case back to the Superior Court, the ruling stated that many errors had been made in the decision, including:

- Relying on stereotypes of people with mental health and addiction disabilities
- Excluding relevant evidence about shelter capacity and the scale of homelessness
- Failing to apply the correct legal tests for breaches of sections 7 and 15 of the *Charter of Rights and Freedoms*
- Failing to apply the correct legal tests for municipal liability for *Charter* breaches

Writing on behalf of the Panel, Justice Favreau stated, “The issue of homeless encampments is of great public importance. It brings into play the challenging social balance between the ability of vulnerable individuals to shelter safely and everyone’s ability to enjoy public space. The appellants and the City expended tremendous resources in bringing these issues before the court. Yet, for the most part, the application judge only addressed the key factual and legal issues in brief conclusory paragraphs with little or no analysis.”

The Court goes on to state: “the errors I identify in each ground of appeal can be traced back to the lack of analysis and the conclusory nature of the decision. Unfortunately, this also leads to my conclusion that the matter must be sent back to the Superior Court to be decided afresh because it would not be appropriate for this court to make the findings of fact and conduct the necessary analysis as though it were the court of first instance.”

“We are pleased that the Appeal Court was so thorough in its analysis and that this case will be reviewed again,” said Michael Ollier, Director of Legal Services and Acting Co-Executive Director of HCLC.

“We are not advocates of encampments as a solution to homelessness, but unfortunately, we will not see an end to the encampment issue until affordable and supportive housing is addressed. We hope this decision will play an important role in ensuring municipalities address the rights of all in responding to the issues of homelessness, shelter, encampments and affordable housing.”

For the full decision go to: [Heegsma v. Hamilton \(City\) - Court of Appeal for Ontario](#)