

Statement from a Coalition of Municipal and Regional Councillors On the Use of the Notwithstanding Clause to Clear Encampments

On October 31, the Mayors of 13 Ontario municipalities publicly released a letter to Premier Doug Ford regarding provincial support for action on encampments.

This letter requests that the Premier use the Notwithstanding Clause to “[intervene] on any courtcase that restricts the ability of municipalities to regulate and prohibit encampments” — even when there is nowhere else for people to go. In 2023, the Ontario Superior Court of Justice struck down a Region of Waterloo encampment By-Law. The presiding Justice Michael J. Valente found that the By-Law violated encampment residents’ Charter-protected right to life, liberty, and security of the person (Section 7) as a result of a lack of adequate shelter beds.

As individual Councillors in our respective municipalities, we know that Ontario municipalities are facing a humanitarian crisis that is affecting all of us. We see it every day in our communities. But no municipality should be above the law, and we are sworn to uphold democracy and human rights as Councillors.

We are also concerned that Councillors in the 13 municipalities named — now expanded to 15 — were not consulted prior to this letter being made public. We are elected by our constituents to represent their interests, but we cannot do this without the opportunity for input and democratic debate at the municipal level.

We also note that this letter represents a break among the 29 municipalities that comprise the Ontario Big City Mayors (OBCM) caucus. The caucus did not support the use of the notwithstanding clause in the final draft of its motion requesting support for addressing homelessness and encampments from the Premier. As well, the Association of Municipalities of Ontario (AMO) — which represents 444 municipalities — released policy recommendations advocating for evidence-based and effective solutions that address the root causes of homelessness, including investing in deeply affordable and supportive housing. They did not name the use of the notwithstanding clause.

We request that this letter be rescinded, and that our municipal Councils support evidence-based solutions to homelessness and the Charter to ensure that the democratic will of our constituents and human rights are respected.

Signed,

Aidan Kallioinen, Councillor, Town of Espanola

Alejandra Bravo, Councillor, Toronto, Ward 9 — Davenport

Alex Bierk, Councillor and Co-Chair of Housing and Homelessness, City of Peterborough, Town Ward

Alex Wilson, Councillor, Hamilton, Ward 13 — Dundas and Flamborough

Alysson Storey, Councillor, Chatham-Kent, Ward 6

Amber Morley, Deputy Mayor, Toronto, Ward 3 — Etobicoke-Lakeshore

Amy Courser, Councillor, City of Barrie, Ward 4

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Signatures (Continued)

Ariel Troster, Councillor, Ottawa, Ward 14 — Somerset
Ausma Malik, Deputy Mayor, Toronto, Ward 10 — Spadina-Fort York
Beth Blackwell, Councillor, Municipality of Kincardine, Ward 1
Brandon Tozzo, Councillor, City of Kingston, Kingscourt-Rideau
Brock McGregor, Councillor, Chatham-Kent, Ward 6
Caleb Ratzlaff, Councillor, St. Catharines, Ward 4 — St. Patrick's
Cameron Kroetsch, Councillor, Hamilton, Ward 2
Catherine Kiewning, Councillor, Dryden
Cathy Downer, Councillor, Guelph, Ward 5
Chantal Huinink, Councillor, Regional Municipality of Waterloo
Chris Moise, Councillor, Toronto, Ward 13 — Toronto Centre
Colleen James, Councillor, Region of Waterloo, Kitchener
Conny Glenn, Councillor, City of Kingston, Sydenham District
David Baughman, Councillor, Central Elgin, Ward 5
David J. Ferreira, Councillor, London, Ward 13
Debbie Chapman, Councillor, City of Kitchener, Ward 9
Doug Craig, Councillor and Former Mayor, Region of Waterloo, Cambridge
Erin Caton, Councillor, Guelph, Ward 1
Glen Gower, Councillor, Ottawa, Ward 6 — Stittsville
Gord Perks, Councillor, Toronto, Ward 4 — Parkdale-High Park
Greg Miller, Councillor, St. Catharines, Merritton
Greg Ridge, Councillor, City of Kingston, King's Town District
Hadleigh McAlister, Councillor, London, Ward 1
Haley Bateman, Councillor, Niagara Region, St. Catharines
Janet-Lynne Durnford, Councillor, Orillia, Ward 4
Jay Fallis, Councillor, Orillia, Ward 3
Jeff Leiper, Councillor, Ottawa, Ward 15 — Kitchissippi
Jennifer Shaw, Deputy Mayor, Arran-Elderslie
Joel Loughead, Councillor, Grey Highlands
John Thompson, Councillor, Town of Goderich
Kari Williams, Councillor, Region of Waterloo, Kitchener

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Signatures (Continued)

Kathryn Desrosiers, Councillor, Aylmer

Kelly Spencer, Councillor, Tillsonburg

Kelsie Van Belleghem, Councillor, Kenora

Kieran McKenzie, Councillor, Windsor, Ward 9

Laine Johnson, Councillor, Ottawa, Ward 8 — College

Leah Noel, Deputy Mayor, Town of Goderich

Leanne Caron, Councillor, Guelph, Ward 5

Lindsay Koch, Councillor, Kenora

Lindsay Wilson, Deputy Mayor, Ingersoll

Liz Petrie, Councillor, Town of Goderich

Lori Lococo, City Councillor, Niagara Falls

Lukas Oakley, Councillor, County of Brant, Ward 2

Marty Carr, Councillor, Ottawa, Ward 18 — Alta Vista

Michael Bondy, Councillor, Chatham-Kent, Ward 6

Morgaine Griffin, Councillor, Central Elgin, Ward 2

Nadia Dubyk, Councillor, Grey Highlands

Nrinder Nann, Councillor, Hamilton, Ward 3

Pam Wolf, Councillor, Region of Waterloo, Cambridge

Paul Ainslie, Councillor, Toronto, Ward 24 — Scarborough-Guildwood

Phil Allt, Councillor, Guelph, Ward 3

Paula Fletcher, Councillor, Toronto, Ward 14 — Toronto-Danforth

Randy Carroll, Councillor, Town of Goderich

Reece Van Breda, Councillor, Sioux Lookout

Rhonda Jubenville, Councillor, Chatham-Kent, Ward 4

Robert Deutschmann, Councillor, Regional Municipality of Waterloo

Rory Nisan, Deputy Mayor and Regional Councillor, Region of Halton, City of Burlington

Ross Earnshaw, Councillor, City of Cambridge, Ward 4

Sam Trosow, Councillor, London, Ward 6

Sarah Good, Councillor, City of Cornwall

Scott Hamilton, Councillor, Cambridge, Ward 7

Sean O'Meara, Regional and Town Councillor, Oakville, Ward 1

Statement from a Coalition of Municipal and Regional Councillors On the Use of the Notwithstanding Clause to Clear Encampments

Signatures (Continued)

Shawn Menard, Councillor, Ottawa, Ward 17 – Capital

Sheri Roberts, Councillor, Cambridge, Ward 5

Skylar Franke, Councillor, London, Ward 11

Stephanie Stretch, Councillor, City of Kitchener, Ward 10

Tammy Hwang, Councillor, Hamilton, Ward 4

Tara McCaulley, Councillor, St. Thomas

Trevor Bazinet, Mayor, Town of Goderich

Vincent Cinanni, Councillor, Kingston, Williamsville District

Wendy Stephen, Councillor, Kingston, Lakeside District



Joint statement: Ontario must respect the human rights of encampment residents, not deny them through the notwithstanding clause

November 29 2024

The Canadian Centre for Housing Rights, National Indigenous Women's Housing Network, National Right to Housing Network and Women's National Housing and Homelessness Network are human rights, housing advocacy, and gender justice groups working across Canada to advance the right to housing. We are joining a growing group of over 70 [Ontario Councillors](#), hundreds of members of the [legal community](#) and [thousands of members of the public](#) to raise the alarm about the recent threats targeted towards some of Ontario's most marginalized people who are living in encampments, by the Government of Ontario's potential use of the "notwithstanding clause" to bypass their protected human rights established under the *Canadian Charter of Rights and Freedoms*. We are deeply concerned about the dangerous precedent this could set not only for residents of Ontario, but for people across the country.

On October 31, 2024, over a dozen mayors (now fifteen mayors) from across Ontario sent [a letter to Ontario Premier Doug Ford](#), requesting the premier use the clause to allow municipalities to evict people living in encampments in their cities – following [an invitation from the premier](#) for mayors to make such a request.

The *Charter* establishes that people living in Canada have certain rights – including the right to life, liberty and security of person. The *Charter* says that anyone who feels that the government has not respected these rights can go to the courts to seek a remedy.

In this way, the *Charter* is a law designed to hold Canadian governments at all levels – federal, provincial and municipal – to account.

If someone brings a *Charter* complaint, the government has an opportunity to explain itself. The *Charter* establishes that governments may limit *Charter* rights if those limitations are "reasonable" and "can be demonstrably justified in a free and democratic society."

In 2023, the Ontario Superior Court of Justice considered a case where a municipal government sought to evict people from an encampment. The court found that the people living in the encampment did not have appropriate alternate accommodation options, such as affordable housing or shelter, and so eviction would make their "already dire predicament worse." The court found that eviction would violate the encampment



residents' right to life, liberty and security of person, and so violated the *Charter*. The Court found that the government action could not be justified as “reasonable” or “demonstrably justified in a free and democratic society.”

We are deeply concerned about the attempts by the Premier and these mayors to overturn the precedent that this case set. There is a clause in the *Charter* – the “notwithstanding clause” – that allows the government to essentially ignore certain parts of the *Charter* for a period of time. By invoking the notwithstanding clause to evict people from encampments where they do not have appropriate alternative accommodation options, government would be saying that even though its action would make an “already dire predicament worse”... even though its action violates people’s *Charter* right to life, liberty and security of person... even though courts have already found that this type of eviction could not be justified as “reasonable” or “demonstrably justified in a free and democratic society”... it should be allowed.

If this sounds like a human rights crisis, that’s because it is. The notwithstanding clause should never be used in a situation like this.

If governments were to use the notwithstanding clause to evict people from encampments, it would cause significant harm in two key ways:

1. It would undermine the right to housing, enshrined in Canada’s *National Housing Strategy Act* (NHSA).

The right to housing means that governments should prioritize the housing needs of the most marginalized, disadvantaged groups in society. Overriding the *Charter* by using the notwithstanding clause to evict people from encampments when they have no appropriate alternate accommodation options means governments are doing the exact opposite of what they are supposed to do under the NHSA—Canada’s human right to housing legislation. It makes marginalized groups’ “already dire predicament worse” – when really what governments are obligated to do is to maximize the resources they apply to meet the needs of these groups, for example, by building deeply affordable and supportive housing.

Particularly, the use of the notwithstanding clause to evict people from encampments entrenches women and gender-diverse people in unsafe and invisible forms of homelessness. The lack of appropriate alternative accommodation options is more pertinent for women and gender-diverse people who avoid mainstream shelters due to a lack of gender-specific supports and risk to their safety.

For Indigenous people finding shelter in encampments, the use of the notwithstanding clause to evict people from encampments represents an exercise of colonial policies that



violate their rights to exercise their agency and self-determination to find sustenance and safety on their homelands.

2. It would undermine the rule of law.

The *Charter* lays out consequences for governments, when they do not respect the rights of people living in Canada. To ignore these consequences is to undermine the rule of law.

We urge our elected officials to demonstrate their commitment to respect and uphold the right to housing and the Charter rights of all Ontarians through the following actions:

- The Ontario mayors must rescind their letter to the premier asking the government to use the notwithstanding clause.
- The Ontario premier must retract his invitation to mayors to ask the government to use the notwithstanding clause, and instead provide funding to municipalities to increase services and housing supports.
- All governments must focus their efforts on finding solutions that meet the needs of people experiencing homelessness while respecting their rights and dignity.

Joint statement by:

Canadian Centre for Housing Rights – a registered charitable organization, working to advance the right to adequate housing in Canada. We work at the intersection of human rights and housing, providing free services to renters facing evictions and human rights violations to remain housed, providing education and training about housing rights across Canada, and advancing rights-based housing policy through research, policy development, advocacy, and law reform.

National Indigenous Women's Housing Network – a movement of First Nations, Inuit, and Métis Peoples who are dedicated to improving the living situations of Indigenous women and girls, Two-Spirit, and gender-diverse persons across Turtle Island and ending incidents of becoming unsheltered. All members have the lived experience of needing adequate shelter and a place to call home.

National Right to Housing Network (NRHN) – a broad-based, grassroots civil society network established to fully realize the human right to housing for all in Canada. Launched in February 2020, NRHN is a key resource in guiding Canada's human rights-based



oversight mechanisms—introduced under the National Housing Strategy Act (NHTSA)—to address systemic housing inequities which exacerbates the housing and homelessness crisis across the country. Our network of over 2,000 organizational and individual partners work to hold the government accountable and ensure that their human rights commitments made under the NHTSA are meaningfully realized.

Women's National Housing and Homelessness Network – an organization working to advance the diverse voices of women, girls, gender-diverse lived experts, and their allies to lead transformative, gender-specific solutions that reduce and end housing precarity and homelessness through adopting human rights and intersectional feminism approaches.

The Honourable Doug Ford
Premier of Ontario
Legislative Building
Queen's Park
Toronto ON M7A 1A1

December 2, 2024

Sent via email

Dear Premier Ford:

You have recently proposed using section 33 of the *Canadian Charter of Rights and Freedoms* – the *Charter's* 'notwithstanding clause' – to proactively strip people who are homeless or experiencing mental health or substance use challenges of their most basic constitutional rights, including rights to life, security of the person and freedom from discrimination. As members of the Ontario legal community, bound to uphold the constitution and the rule of law, we urge your government not to take such action.

The notwithstanding clause in the *Canadian Charter* is unique. No other constitutional democracy allows legislatures to override constitutionally protected human rights. This means that, in Canada, we rely on an ongoing commitment by our elected representatives to respect and uphold the fundamental principles underlying a constitutional democracy – that governments may not immunize themselves from constitutional accountability or undermine the independent role of the judiciary in safeguarding *Charter* rights.

For forty years, that commitment has largely held. Even when strongly disagreeing with judicial decisions in *Charter* cases, federal, provincial, and territorial governments have not invoked the notwithstanding clause. The Supreme Court of Canada's decision requiring the inclusion of sexual orientation as a prohibited ground of discrimination under Alberta's *Individual Rights Protection Act*, despite the Alberta government's strong objections at the time, is one of many examples. The federal government has never used the notwithstanding clause and no Ontario government, prior to yours, has ever taken this extreme measure.

The notwithstanding clause was never intended to be used to deprive vulnerable groups of constitutional protection. It was to be rarely, if ever invoked, and for the opposite purpose. The notwithstanding clause was to operate as a safety valve in the exceptional event of a judicial decision that was clearly contrary to the public interest. For example, then Justice Minister Jean Chretien suggested that section 33 might be used if a court struck down limits on child pornography in the name of freedom of expression.

What is more, the *Canadian Charter* explicitly provides an opportunity for governments to limit *Charter* rights where there are compelling grounds for doing so. Under section 1 of the *Charter*, governments can impose reasonable limits on *Charter* guarantees, provided such restrictions are demonstrably justified in our free and democratic society. For example, the Supreme Court

agreed that *Criminal Code* prohibitions on hate speech, which limited freedom of expression, were justified under section 1.

Section 1, and Canadian courts, recognize the positive role governments must play in protecting fundamental rights and in determining appropriate responses to pressing social issues. As a rule, courts defer to government policy choices, but such choices should promote, not undermine, the *Charter* rights of disadvantaged groups. Using the notwithstanding clause to allow governments to violate *Charter* rights rather than addressing systemic problems of poverty, mental health, substance use, and homelessness in compliance with the *Charter*, and depriving those whose rights are at stake of the chance to be heard in court, tramples on our society's commitment to fundamental rights. It also deprives all Ontarians of the valuable accountability mechanism that *Charter* review offers, and that your government should welcome, not spurn.

Rather than undermining the very foundations of Canada's commitment to constitutional democracy and depriving one of the most vulnerable groups in our province of constitutional protection, we call on you to stand by Ontario's historic commitment to *Charter* rights. Our province must respond to the current homelessness crisis in a way that respects the *Charter* and secures our constitution's promise of equal protection and benefit of the law to everyone in Ontario, without exception.

Yours sincerely,

Martha Jackman, Professor emerita, Faculty of Law, University of Ottawa, Ottawa

David Wiseman, Professor, Faculty of Law, University of Ottawa, Ottawa

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Ayesha Adamjee, Community Lawyer, Toronto

Sara Ageorlo, Toronto

Saba Ahmad, Lawyer (private practice), Toronto

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Ella Bedard, Staff Lawyer and Coordinator of Workers Rights, Workers Action Centre, Toronto

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WA Bogart, University Professor and Professor of Law, University of Windsor (retired), Toronto

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Trisha Maddeaux, Bobcaygeon

Sharmini Mahadevan, Retired lawyer, Niagara-on-the-Lake

Najia Mahmud, Staff Lawyer, Elgin-Oxford Legal Clinic, St. Thomas

Alicia Mair, Sarnia

Diana Majury, Professor Emerita, Carleton University, Ottawa

Pacifique Manirakiza, University of Ottawa, Ottawa

John A. Manwaring, Professor (Retired), Faculty of Law, University of Ottawa, Ottawa

Lynda Margaret Collins, Full Professor, uOttawa, Ottawa

Joy Marguerite, Community Legal Worker, Kenora

Kim Marie Facca, Thunder Bay—Superior North

Kristin Marshall, Staff lawyer, Toronto

Amelia Martin, Lawyer, Guelph

Miriam Martin, Barrister & Solicitor, Ottawa

Rosalyn Martin, JD Candidate, 2025, Toronto

Veronica Martisius, Staff Counsel, BC Civil Liberties Association, Mohawk, Six Nations of the Grand River and former resident of Brantford, ON

Julie Mathews, Toronto

Heidi Matthews, Assistant Professor, Osgoode Hall Law School, York University, Toronto

Deepa Mattoo, Executive Director and Lawyer, Schlifer Clinic, Toronto

Timothy Maxwell, Toronto

Samantha McBride, Executive Director/Lawyer at Lake Country Community Legal Clinic, Muskoka/Parry Sound

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Peter McCabe, Picton ON

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