



COURT OF APPEAL FILE NOs. CA50275 and CA50273  
Memorandum of Argument for Leave to Intervene

**COURT OF APPEAL**

ON APPEAL FROM the order of Justice Sukstorf of the Supreme Court of British Columbia pronounced on the 17th of October, 2024.

COURT OF APPEAL FILE NO. CA50275

BETWEEN:

**Attorney General of British Columbia**

**APPELLANT**

AND:

**Matsqui-Abbotsford Impact Society**

**RESPONDENT**  
(Petitioner)

AND:

**City of Abbotsford**

**RESPONDENT**  
(Respondent)

AND:

**Sabrina Scoones**

**RESPONDENT**

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(Respondent)

AND:

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**RESPONDENT**  
(Petitioner)

AND:

**Attorney General of British Columbia**

**RESPONDENT**

AND:

**Sabrina Scoones**

**RESPONDENT**

Attorney General of British Columbia	City of Abbotsford
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B.C.'s Human Rights Commissioner	
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## **PART 1: ARGUMENT**

### **I OVERVIEW**

1. B.C.'s Human Rights Commissioner (the "Commissioner") applies for leave to intervene in these appeals, pursuant to Rule 61 of the Court of Appeal Rules.
2. These appeals concern the courts' power to exercise their constitutional and equitable jurisdiction in a case concerning unhoused people, who are some of the most marginalized people in our province. The Commissioner seeks leave to intervene to make submissions to ensure that the law is applied in a manner that protects and promotes, rather than undermines, their human rights.

### **II THE APPLICANT**

3. From 1992 until 2019, B.C. was without a Human Rights Commission or Commissioner. On November 27, 2018, Bill 50 (the *Human Rights Code Amendment Act, 2018*) was passed amending the *Human Rights Code*, [RSBC 1996], c. 210 (the "*Code*") to, amongst other things, establish the role of the Human Rights Commissioner as an independent officer of the Legislature: *Code*, s. 47.01. The Human Rights Commissioner took office on September 3, 2019 and was renewed for a second term beginning September 3, 2024 (Affidavit #1 of Kasari Govender, at paras. 4-5).
4. Pursuant to s. 47.12 of the *Code*, the Commissioner is responsible for protecting and promoting human rights in B.C. The breadth of this statutory mandate requires equally broad powers. Accordingly, the legislation expressly sets out the myriad means by which the Commissioner can pursue her mandate, including by "intervening in [BC Human Rights Tribunal ("Tribunal")] complaints under s. 22.1 and in any proceeding in any court": *Code* s. 47.12(1)(j).
5. The Commissioner's mandate includes "promoting compliance with international human rights obligations": *Code*, s. 47.12(1)(l).

6. The Commissioner submits that these appeals affect the human rights to life, liberty and personal security as well as the right to equality of some of British Columbia's most marginalized residents. She is an expert in advocating for those rights and has a unique perspective to share with the Court.
7. The Commissioner has intervened as of right before the Tribunal once. This is B.C.'s Human Rights Commissioner's eighth application for leave to intervene in court proceedings since she assumed her position. All previous applications have been granted, including four proceedings brought under the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241, and three appeals in this court (Affidavit #1 of Kasari Govender, at para. 15).

### **III THE COMMISSIONER'S INTEREST IN THE APPEAL**

8. The Commissioner seeks leave to intervene in these proceedings to fulfil her statutory mandate to protect and promote human rights in B.C., including B.C.'s compliance with its international human rights obligations as they are given effect through Canada's constitutional law and British Columbia's common law.
9. As an officer of the Legislature with a statutory mandate to promote and protect human rights in B.C., including by intervening in court proceedings, the Commissioner has a strong and clear interest in assisting the court to understand the complexities of the right to housing and how ss. 7 and 15 of the *Charter* and the common law of injunctions should be interpreted in order to protect that right.
10. The right to housing is a human right protected by article 11 the *International Covenant on Economic, Social and Cultural Rights*, 993 UNTS 3 (16 December 1966) (ICESCR). Canada has been a party to the ICESCR since 1976, meaning that it has committed to respect, protect and fulfill that right. Canada has affirmed the right to housing has effect in Canada in the *National Housing Strategy Act*, S.C. 2019, c. 29, s. 313.

11. Even before the right to housing was affirmed by legislation, the courts in British Columbia, including this Court in *Victoria (City) v. Adams*, 2009 BCCA 563, had found that aspects of the right to housing are protected by the *Charter*.
12. B.C. residents face one of the world's most inaccessible housing markets. The rates of homelessness in B.C. are on the rise, as are encampments. The right to housing is thus particularly salient in B.C. and the Commissioner has a demonstrated interest in advancing the human right to housing, as evidenced through the work her Office has done during her time in the role (Affidavit # 1 of Kasari Govender, at para. 14).

#### **IV THE COMMISSIONER'S POSITION AND ARGUMENT ON THE APPEAL**

13. The Appellants have identified several issues on appeal, which the Commissioner's submission intends to touch upon. These include that Justice Sukstorf misinterpreted the scope and protections afforded by s. 7 and 15 of the *Charter* and imposed terms designed to balance *Charter* rights.
14. If granted leave to intervene, the Commissioner proposes to make the following submissions:
  - a. The right to housing is a human right protected by article 11 of the *International Covenant on Economic, Social and Cultural Rights*, 993 UNTS 3 (16 December 1966) (ICESCR). Canada has been a party to the ICESCR since 1976 and it is a binding international instrument. The protections for encampment residents under s. 7 and 15 of the *Charter* reflect this right.
  - b. Forced eviction, including from an encampment, violates the human right to housing, and may violate s. 7 and 15 of the *Charter*.
  - c. Contrary to the submissions of the Attorney General of British Columbia and the City of Abbotsford, in order not to violate international law and s. 7 and s. 15 when evicting an encampment, the City and the Province have to take steps to minimize impact on the rights of its residents.

## V THE COMMISSIONER'S POSITION ON LEAVE TO INTERVENE

### ***The Commissioner's submissions will be useful to the Court***

15. An intervener's submissions will be useful where the intervener brings a unique and different perspective to the issues that will be of assistance to the Court and does not seek to expand the scope of the appeal: *British Columbia v. Friends of Beacon Hill Park*, 2022 BCCA 383 at para. 46.
16. The issues in which the Commissioner seeks leave to intervene are pure questions of law involving the scope of the rights under s. 7 of the *Charter* as it secures the right to housing, as well as s. 15 *Charter* rights to non-discrimination.
17. The Commissioner is an expert in human rights in British Columbia and has extensive experience with the right to housing as it applies to encampments.
18. Moreover, the Commissioner brings a systemic perspective and provides a balance to the submissions before the Court. There are two appellants, both of which are represented by counsel. On the other hand, Ms. Scoones is an individual respondent who has counsel, but also has individual interests. The Matsqui-Abbotsford Impact Society is not currently represented by counsel. Thus the Commissioner's perspective could provide an important legal perspective on systemic issues.

### ***The Commissioner's submissions will differ from other parties***

19. The Commissioner submits that her perspective on the protection s. 7 offers for the human right to housing, s. 15 offers for encampment residents, as well as how *Charter* rights and values should affect the common law is distinct from the other parties to this appeal and the other prospective interveners.
20. Of the prospective intervenors, none share the Commissioner's singular focus on human rights. No party shares the Commissioner's expertise and mandate to protect and promote human rights in the province, including British Columbia's international human rights obligations.

21. The respondents indicate that their submissions will not overlap with those that the Commissioner proposes, above.
22. If granted leave to intervene, the Commissioner will make principled submissions on the issues raised by these appeals and will ensure that her submissions are unique and do not unnecessarily duplicate those advanced by the parties or any other interveners.
23. The Commissioner respectfully submits that she has an indirect interest in the public law issues raised by the appeal and can offer a different perspective that will be useful to this Court.

## **VI THE EXTENSION OF TIME SHOULD BE GRANTED**

24. Granting the application for an extension of time to bring this application is in the interests of justice. The parties would not be unduly prejudiced by an extension. The application comes only two days after the deadline to file the application in response to the filing of the factum of the appellant, the Attorney General of British Columbia and it has been less than 14 days than the filing of the factum of the Appellant, the City of Abbotsford. The Commissioner brings an important and unique perspective on the human rights implications of this matter and granting the extension ensures that this important point of view is not overlooked.

## **PART 2: ORDER SOUGHT**

25. The Commissioner seeks an order that:
  - a. The Commissioner be granted an extension of time to bring this intervention application;
  - b. The Commissioner be granted leave to intervene in Court of Appeal File Nos. CA50273 and CA50275;
  - c. The Commissioner be granted leave to file a factum of up to 10 pages in length;
  - d. The Commissioner be permitted to apply to the division hearing the Appeal for leave to present oral argument;

- e. No costs of this application or costs of the appeal be awarded for or against the Commissioner; and
- f. Such further and other relief as this Honourable Court may deem just.

All of which is respectfully submitted on behalf of the Commissioner.

Dated at the City of Vancouver, Province of British Columbia, this April 30 of 2025.



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Sarah Khan, K.C. and Maria Sokolova