



May 23, 2024

*Sent via e-mail to cco@ohrc.on.ca*

Patricia DeGuire  
Chief Commissioner  
Ontario Human Rights Commission  
Dundas/Edward Centre, 9th Floor  
180 Dundas Street West  
Toronto, Ontario M7A 2G5

Dear Chief Commissioner DeGuire:

**Re: Request for Inquiry into Ottawa's Heavy Truck Routing**

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We are writing to request that the Ontario Human Rights Commission (“**Commission**”) use its public inquiry powers under section 31 of the *Human Rights Code* (“**Code**”) to investigate the City of Ottawa’s ongoing practice of routing heavy trucks through the City’s densely populated downtown core. This practice disproportionately and adversely impacts the health and lives of members of protected groups and, in our view, violates their rights guaranteed by the *Code*.<sup>1</sup> We ask that you also examine the role of the Province of Ontario, as the level of government responsible for municipalities and highways, in enabling this discriminatory conduct and what the Province could do to end it.

There is a proven link between diesel emissions from heavy trucks and the release of fine particles called particulate matter. These particles can be inhaled deeply into the lungs, leading to respiratory issues such as asthma, bronchitis, and other respiratory illnesses. Long-term exposure to particulate matter has been linked to reduced lung function and increased risk of heart attacks, strokes, and premature death.<sup>2</sup>

The City’s heavy truck routing disproportionately and adversely impacts *Code*-protected groups of individuals residing in the trucking corridor who are directly exposed to harmful emissions, including people with disabilities, children, elderly individuals, unhoused individuals, and people living in poverty.<sup>3</sup> By investigating the City’s practice of routing heavy trucks through the densely populated downtown core, the Commission can shed light on its *Code*-related implications and develop, in consultation with *Code*-protected groups, human rights-based recommendations to remedy this situation. The Commission can also help clarify the role of the Province of Ontario in protecting people with disabilities, children, elderly individuals, unhoused individuals, and people living in poverty who live in densely populated areas from harmful emissions.

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<sup>1</sup> [Human Rights Code](#), RSO 1990, c H19, RSO 1990, c H19. In particular, see s 1.

<sup>2</sup> A. Sydbom et al, “Health effects of diesel exhaust emissions” (2001) 17 [European Respiratory J](#) 733. See also Health Canada, [Human Health Risk Assessment for Diesel Exhaust – Summary](#) (March 4, 2016).

<sup>3</sup> Lynda Collins & Ali Naraghi, “[Clearing the Air in Downtown Ottawa: An Open Letter to His Worship, Mark Sutcliffe, Mayor of Ottawa](#)” (January 11, 2022).

This issue is within the Commission’s jurisdiction given that the routing of heavy trucks is a “service” within the meaning of the *Code*. While the adverse effects of this practice on members of *Code*-protected groups are well documented, impacted individuals may face significant access to justice barriers that could make it difficult for them to engage in lengthy and costly human rights litigation. The discriminatory impact of the City’s heavy truck routing and the Province’s failure to act to protect those who are adversely impacted by heavy truck routing are also issues that fit squarely within the Commission’s Strategic Plan: the Commission has identified “health and well-being” as an urgent priority area and has committed to addressing discrimination in the area of health.<sup>4</sup>

A Commission-led inquiry would allow for the development of human rights-based solutions, informed by consultations with *Code*-protected groups in Ottawa who are adversely impacted by the City’s practice and the Province’s inaction and by their shared failure to remedy this problem and prevent further discrimination. For these reasons, an inquiry into Ottawa’s heavy truck routing practices and the Province’s role in this situation would be an ideal use of the Commission’s discretionary powers and would help advance the values of the *Code* of recognizing the dignity and worth of every person.

### **1. Clean air is a human right**

The United Nations General Assembly has recognized that everyone has a right to a healthy environment, including clean air, water, and a stable climate.<sup>5</sup> Air pollution is one of the biggest environmental threats to global health, resulting in an estimated 7 million premature deaths every year.<sup>6</sup> In Canada, air pollution causes approximately 15,300 premature deaths every year.<sup>7</sup>

While air pollution affects everyone, “causing widespread violations of the right to a healthy environment... the burden of related disease has a disproportionate impact on certain vulnerable populations.”<sup>8</sup> As the United Nations Special Rapporteur on human rights and the environment has explained, “Approaching air quality from a human rights perspective highlights the principles of universality and non-discrimination, under which human rights are guaranteed for all persons living in vulnerable situations.”<sup>9</sup>

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<sup>4</sup> Ontario Human Rights Commission, [Strategic Plan 2023-2025: Human Rights First: A plan for belonging in Ontario](#) at p. 12.

<sup>5</sup> United Nations General Assembly [A/RES/76/300](#), Resolution adopted by the General Assembly on 28 July 2022, The human right to a clean, healthy and sustainable environment. See also [OHCHR, UNEP, and UNDP Information Note: “What is the Right to a Healthy Environment?”](#) (January 25, 2023).

<sup>6</sup> [OHCHR, UNEP, and UNDP Information Note: “What is the Right to a Healthy Environment?”](#) (January 25, 2023), p. 5.

<sup>7</sup> Health Canada, [Health Impacts of Air Pollution in Canada: Estimates of morbidity and premature mortality outcomes – 2021 Report](#).

<sup>8</sup> United Nations Report of the Special Rapporteur on Human Rights and the Environment, [A/HRC/40/55](#) (January 8, 2019) at para 31.

<sup>9</sup> United Nations Report of the Special Rapporteur on Human Rights and the Environment, [A/HRC/40/55](#) (January 8, 2019) at para 50.

## 2. Routing of heavy trucks is a “service” within the meaning of the *Code*

The City of Ottawa’s Traffic and Parking By-Law directs heavy truck traffic through a downtown corridor covering densely populated and heavily used streets.<sup>10</sup> This practice constitutes a “service” within the meaning of the *Code*: traffic management and the protection of air quality are services provided by the City to its residents.

While the *Code* itself does not explicitly define “services,” courts and human rights tribunals have consistently adopted a broad and purposive interpretation of the term as found in the *Code* and other human rights legislation. This is consistent with the recognition that human rights legislation must be interpreted in accordance with its quasi-constitutional status and in a way that best reflects the remedial goals of the statute.<sup>11</sup> For instance, the Human Rights Tribunal of Ontario (“**HRTO**”) has interpreted a “service” to be “something which is of benefit that is provided by one person to another or to the public,”<sup>12</sup> and the Supreme Court of Canada has recognized that this definition can encompass a “broad range of activities.”<sup>13</sup> The City of Ottawa’s traffic routing practices aim to confer a benefit to the public. Indeed, according to the City’s Traffic Service Catalogue, its practices aim to maximize the safety, efficiency, and predictability of the existing road network for the benefit of civilians.<sup>14</sup> This benefit of reducing road safety risks is conferred by the City through practices such as engineering, education, and enforcement.<sup>15</sup>

The HRTO has heard numerous applications relating to allegations of discriminatory practices arising from city bylaws when they confer a benefit to the public and has found these challenges to be within its jurisdiction.<sup>16</sup> We are of the view that the City of Ottawa’s practices relating to heavy truck routing falls under the broad range of services that can be investigated by the Commission.

## 3. The City’s practice of routing heavy trucks through the downtown corridor adversely impacts members of *Code*-protected groups

The City limits heavy truck traffic to prescribed routes for various reasons, including the ability of roads to withstand heavy vehicles. It purports to take into account noise, emissions, and safety impacts, and asserts that it “minimizes trucking impacts on residential areas by designating

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<sup>10</sup> City of Ottawa, No 2017-301, [A by-law of the City of Ottawa regulating traffic and parking on highways](#) (27 September 2017), s 53(1); City of Ottawa [Urban Truck Routes](#) (March 1, 2021).

<sup>11</sup> [New Brunswick \(Human Rights Commission\) v Potash Corporation of Saskatchewan Inc](#), 2008 SCC 45 at paras 19 (per Abella J), 65-70 (per McLachlin CJC, concurring). See also [Braithwaite v Ontario \(Attorney General\)](#), 2005 HRTO 31 at para 17; [Canada \(House of Commons\) v Vaid](#), 2005 SCC 30; [CN v Canada \(Canada Human Rights Commission\)](#), [1987] 1 SCR 1114 at para 24; [Doppelhammer v Workplace Safety and Insurance Board](#), 2009 HRTO 2056 at para 9.

<sup>12</sup> [Braithwaite v Ontario \(Attorney General\)](#), 2005 HRTO 31 at para 22. See also [Ontario \(Attorney General\) v Ontario Human Rights Commission](#), [2007] OJ No 4978 (QL), 2007 CanLII 56481 (ON SCDC).

<sup>13</sup> [Gould v Yukon Order of Pioneers](#), [1996] 1 SCR 571 at para 59.

<sup>14</sup> City of Ottawa “[Traffic Services Catalogue](#)” (October 2022).

<sup>15</sup> City of Ottawa “[Traffic Services Catalogue](#)” (October 2022).

<sup>16</sup> See e.g. [Wheaton v Ottawa \(City\)](#), 2013 HRTO 1597; [Dream Team v Toronto \(City\)](#), 2012 HRTO 25; [Hodgson v Fort Erie \(Town\)](#), 2014 HRTO 1073.

alternative routes so that impacts are not concentrated in one area.”<sup>17</sup> Despite this, the City routes heavy truck traffic through the downtown core. The City itself acknowledges that the volume of truck traffic passing through the downtown has substantial negative impacts on local neighbourhoods and businesses.<sup>18</sup> In more privileged areas of the City outside of those routes, people are protected from heavy truck impacts. People in the downtown core – including some of the City’s residents who face multiple and compounding structural risks – are denied such protection.

Air monitoring conducted by Ecology Ottawa in 2021 found particulate matter concentrations in Lowertown and Sandy Hill – neighbourhoods along the trucking corridor – seven times higher than those in outlying neighbourhoods.<sup>19</sup> Research findings indicate that roadways generally influence air quality within a few hundred metres downwind from the vicinity of heavily traveled roadways or along corridors with significant trucking traffic.<sup>20</sup> Within the broader mix of traffic-related air emissions, large diesel trucks are the worst offenders, and older, large trucks are the worst of the worst. Health Canada confirms that diesel emissions can cause, among other things, cancer, respiratory inflammation, and asthma.<sup>21</sup> Moreover, diesel emissions from heavy trucks disproportionately impact vulnerable people, including low income and racialized communities, children, elders, and people living with respiratory disabilities.<sup>22</sup> The leading Canadian study on near-road air pollution, which analyzed emissions from 200 million vehicles over approximately 400 days, explained that “[h]ighly polluting diesel trucks are making a disproportionate contribution and they represent the major source of key pollutants such as nitrogen oxides and black carbon... [E]xcessive exposure to diesel exhaust can occur near roads with a significant proportion of truck traffic.”<sup>23</sup>

Air pollution has well-documented detrimental effects on human health, particularly for members of *Code*-protected groups. The United Nations Special Rapporteur on human rights and the environment has raised the alarm about the disproportionate impact of air pollution on vulnerable populations.<sup>24</sup> In particular, air pollution caused by heavy trucks significantly and disproportionately impacts people with disabilities and existing medical conditions and those who are unhoused and living in poverty. It also harms the health and well-being of elderly individuals as well as children and youth. In accordance with the *Code*, Ottawa’s traffic practices ought to reduce the impacts of air pollution caused by heavy traffic on members of protected groups rather than exacerbate them.

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<sup>17</sup> City of Ottawa, [2013 Transportation Master Plan](#) (November 2013), p. 79.

<sup>18</sup> City of Ottawa, [2013 Transportation Master Plan](#) (November 2013), p. 80.

<sup>19</sup> Ecology Ottawa, [Breathe Easy 2021: Findings from a citizen science project monitoring air quality in Ottawa](#).

<sup>20</sup> United States Environmental Protection Agency, [“Near Roadway Air Pollution and Health: Frequently Asked Questions”](#), p. 2.

<sup>21</sup> Health Canada, [Human Health Risk Assessment for Diesel Exhaust – Summary](#) (March 4, 2016).

<sup>22</sup> See Canadian Association of Physicians for the Environment, [Mobilizing Evidence: Activating Change on Traffic Related Air Pollution \(TRAP\) Health Impacts \(2022\)](#).

<sup>23</sup> Southern Ontario Centre for Atmospheric Aerosol Research – University of Toronto, [Near-Road Air Pollution Pilot Study – Final Report](#) (2019).

<sup>24</sup> United Nations Report of the Special Rapporteur on Human Rights and the Environment, [A/HRC/40/55](#) (January 8, 2019) at pp. 6-7.

### (a) People with disabilities and with medical conditions

People with disabilities, in particular respiratory disabilities, are disproportionately affected by the impacts of air pollution, including the air pollution caused by Ottawa’s heavy traffic routing. Research has shown that air pollution caused by heavy traffic significantly affects individuals with disabilities, lung diseases, and environmental sensitivities. People with disabilities are particularly vulnerable to air pollution due to their pre-existing conditions.<sup>25</sup> Those with respiratory or cardiac disorders may experience worsened symptoms when exposed to polluted air,<sup>26</sup> while individuals with physical limitations may struggle to protect themselves or find areas with better air quality. Furthermore, air pollution exacerbates respiratory diseases such as asthma, chronic bronchitis, and emphysema.<sup>27</sup> Common pollutants in the air, such as fine particulate matter and nitrogen oxides, irritate the airways, leading to inflammation and respiratory symptoms.<sup>28</sup> Lastly, individuals with environmental sensitivities may have heightened reactions to chemicals and pollutants present in the air, resulting in a range of symptoms that significantly impact their daily lives.

Allowing trucks in residential areas can also reduce accessibility for individuals with disabilities. Larger trucks occupying more space on the road can make it difficult for individuals with mobility aids, such as wheelchairs or walkers, to navigate sidewalks and crosswalks safely.<sup>29</sup> The continuous exposure to heavy truck traffic can also have psychological impacts. While the constant noise, vibrations, and perceived safety risks create a stressful environment for everyone, it is particularly impactful for individuals with sensory or cognitive sensitivities, contributing to anxiety, fear, and a decrease in their overall quality of life.<sup>30</sup>

The disproportionate impact of air pollution on persons with disabilities caused by the City’s heavy traffic routing practices is of particular concern given the number of shelters for unhoused

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<sup>25</sup> Jayajit Chakraborty, [“Disparities in exposure to fine particulate air pollution for people with disabilities in the US” \(2022\)](#) 842:156791 *Sci Total Env* 1, pp. 3-5.

<sup>26</sup> See Byeong-Jae Lee et al, [“Air Pollution Exposure and Cardiovascular Disease” \(2014\)](#) 30:2 *Toxicological Research* 71.

<sup>27</sup> Michael Guarnieri & John R. Balmes [“Outdoor Air Pollution and Asthma” \(2014\)](#) 383:9928 *The Lancet*; Dany Doiron et al, [“Ambient air pollution exposure and chronic bronchitis in the Lifelines cohort” \(2021\)](#) 76:8 *Thorax* 772; Matthew C. Altman et al, [“Associations between outdoor air pollutants and non-viral asthma exacerbations and airway inflammatory responses in children and adolescents living in urban areas in the USA: a retrospective secondary analysis” \(2023\)](#) 7:1 *Lancet Planetary Health* e33.

<sup>28</sup> See Yixuan Jiang et al, [“Effects of personal nitrogen dioxide exposure on airway inflammation and lung function” \(2019\)](#) 117:108620 *Environmental Research* 1.

<sup>29</sup> See e.g. John D Kraemer & Connor S Benton, [“Disparities in road crash mortality among pedestrians using wheelchairs in the USA: results of a capture-recapture analysis” \(2015\)](#) 5:11 *BMJ Open* 1. Kraemer and Benton found that, between 2006 and 2012, the mortality rate for pedestrians using wheelchairs was 36% higher than the overall population pedestrian mortality rate.

<sup>30</sup> See e.g. Hooman Hematian & Ehsan Ranjbar, [“Evaluating urban public spaces from mental health point of view: Comparing pedestrian and car-dominated streets” \(2022\)](#) 27:101532 *J Transport & Health* 1; Ankita Salvi & Samina Salim, [“Neurobehavioral Consequences of Traffic-Related Air Pollution” \(2019\)](#) 13 *Frontiers in Neuroscience* 1; Public Order Emergency Commission, [“Public Hearing—Volume 2” \(14 October 2022\)](#), pp. 5-7.

individuals in Ottawa’s downtown core.<sup>31</sup> A large proportion of the individuals who are sheltered or receive services from these shelters are persons with disabilities.<sup>32</sup> Yet, the City of Ottawa has failed to take this into account in its heavy traffic routing practices. Rather than consulting with Ottawa’s community of persons with disabilities or accommodating its disability-related needs, the City’s heavy truck traffic route disproportionately impacts members of this population and exacerbates the harms caused by air pollution that they experience. As persons with disabilities experience disproportionate rates of poverty and encounter various barriers when seeking to access justice, members of this community could have more difficulty lodging an application against the City of Ottawa. In light of this, we believe that an inquiry by the Commission is an effective way for the *Code*-protected rights of persons with disabilities to be asserted.

### **(b) Unhoused individuals and individuals living in poverty**

Air pollution can have a significant impact on unhoused individuals, exacerbating the already challenging circumstances they face. Unhoused individuals are particularly vulnerable to the health impacts of air pollution for several reasons:

- i. Unhoused individuals often lack access to clean and safe shelter, have limited access to healthcare services, and face additional stressors, which makes them more vulnerable to the harmful effects of air pollution.<sup>33</sup>
- ii. Unhoused individuals often spend a significant amount of time in urban areas and outside at street level where air pollution levels are typically higher due to vehicle emissions, industrial activities, and other sources. They may lack access to safe spaces or shelters with adequate air filtration systems, which further exposes them to polluted air and its health consequences.<sup>34</sup>

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<sup>31</sup> See e.g. Champlain Healthline, [“Drop-in Centres for Adults—Ottawa”](#) (2024). This map shows at least five drop-in shelters for adults in Ottawa’s downtown core: the Capital City Mission at 521 Rideau Street; the Shepherds of Good Hope Emergency Men’s Shelter at 256 King Edward Avenue; the Salvation Army—Booth Centre Ottawa at 171 George Street; Belong Ottawa—Centre 454 at 454 King Edward Avenue; and The Ottawa Mission at 35 Waller Street. See also City of Ottawa, [“Temporary Emergency Accommodations Dashboard”](#) (2024). The Temporary Emergency Accommodations Dashboard collects data on City of Ottawa-funded shelter usage. While this data is not disaggregated by neighbourhood, the information nevertheless provides an important snapshot of shelter usage in the city. For example, in 2023, City of Ottawa-funded shelters supported 8,652 clients Ottawa-wide. Given the concentration of shelters in downtown Ottawa, it is not unreasonable to infer that many of these clients were served in proximity to heavy trucking routes.

<sup>32</sup> Housing Services, City of Ottawa, [“Housing Needs in Ottawa: An Overview”](#) (2013). In 2013, the City of Ottawa found that 60% of long-stay shelter clients were experiencing concurrent mental health and addictions issues. Further, 25% of long-stay shelter clients aged 55+ experienced addiction/mental health issues and/or physical disabilities. This indicates that the City of Ottawa was aware of the intersection between disability and unhoused individuals at least ten years ago.

<sup>33</sup> Chilukuri, Siri. [“How air pollution and the housing crisis are connected”](#). (7 July 2003).

<sup>34</sup> See e.g. Angelina L. DeMarco et al, [“Air Pollution-Related Health Impacts on Individuals Experiencing Homelessness: Environmental Justice and Health Vulnerability in Salt Lake County, Utah”](#) (2020) 17:22 Int J Env't Research Pub Health 1.

- iii. Given that unhoused individuals already face numerous social and psychological challenges, exposure to air pollution can further impact their mental health.<sup>35</sup> Studies have shown a correlation between air pollution and increased rates of depression, anxiety, and cognitive decline. Breathing polluted air can contribute to a sense of hopelessness, frustration, and overall psychological distress for unhoused individuals.<sup>36</sup>

The City of Ottawa's heavy traffic routing practice exacerbates the harms caused by air pollution to unhoused individuals and those living in poverty. As noted above, many shelters and services geared to unhoused individuals and those living in poverty are located in close proximity to Ottawa's heavy traffic routes. An inquiry by the Commission could help document these harms and develop human rights-based solutions to address them.

While being unhoused and living in poverty are not expressly recognized as grounds of discrimination under the *Code*, the Commission has consistently been a leader in shedding light upon the human rights implications of poverty and advocating for the rights of individuals who are unhoused or living in poverty.<sup>37</sup> An inquiry into the City's heavy traffic routing practice would be consistent with the Commission's role and its work engaging on poverty as it relates to housing and health services. In particular, an inquiry into this issue would be key to better understanding the impact of air pollution caused by the City of Ottawa's traffic routing practices on the health and well-being of unhoused people and those living in poverty in Ottawa.

### **(c) Children and youth**

The detrimental effects of air pollution on the health and well-being of children and youth are well documented. In this regard, Ottawa's heavy traffic routing practices are particularly concerning in light of the proximity of the Andrew Fleck Child Care Centre and the University of Ottawa to major heavy truck roadways. The daycare environment is intended to provide a safe and healthy space for children to learn, play, and grow. However, air pollution caused by Ottawa's traffic routing practices poses various risks and challenges for children attending the daycare and youth on the University of Ottawa campus.

One of the most immediate concerns is the impact on respiratory health. The pollutants emitted by trucks can contribute to respiratory issues like asthma, bronchitis, respiratory infections, and allergies in children.<sup>38</sup> These conditions can cause discomfort, limit physical activities, and hinder the normal functioning of the respiratory system, making it difficult for children to lead a normal and active life. Additionally, prolonged exposure to air pollution can disrupt the normal development of children's lungs. This disruption can have long-term consequences and potentially

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<sup>35</sup> Philip Alston, [Report of the Special Rapporteur on Extreme Poverty and Human Rights: Climate Change and Poverty](#), UNHRC, 41st Sess, UN Doc A/HRC/41/39 (2019).

<sup>36</sup> Clara G. Zundel et al, [“Air pollution, depressive and anxiety disorders, and brain effects: A systemic review” \(2022\)](#) 93 *Neurotoxicology*.

<sup>37</sup> See e.g. the [OHRC's submission regarding Ontario's next Poverty Reduction Strategy](#) (April 30, 2020), in which the OHRC called for a human rights-based approach by entrenching economic and social responses to COVID-19 as permanent solutions.

<sup>38</sup> American Lung Association, [“Children and Air Pollution: Children and teens face special risks from air pollution” \(17 April 2023\)](#).

lead to chronic lung diseases later in life. The developing lungs of children and youth are particularly vulnerable to the harmful effects of air pollution, and exposure during their formative years can have lasting implications for their respiratory health. Furthermore, air pollution can have adverse effects on cardiovascular health among children and young people. The pollutants in the air can increase the risk of hypertension, heart diseases, and strokes. The proximity of the Andrew Fleck Child Care Centre to heavy traffic exposes children to these pollutants and potentially exacerbates their cardiovascular health risks.<sup>39</sup>

Apart from its physical health implications, air pollution can also affect the mental health and intellectual development of children, adolescents, and young adults. Studies have shown that exposure to high levels of air pollution can contribute to anxiety, depression, cognitive problems, developmental delays, and decreased concentration in school. The presence of heavy truck traffic near a daycare and university campus can subject children and youth to elevated levels of air pollution, potentially impacting their mental well-being and academic performance.<sup>40</sup>

While the *Code* excludes children from age-based discrimination protection, it does not follow that the Commission ought to disregard human rights violations against children. Rather, in light of the well documented barriers faced by children and youth when seeking to access justice before the HRTO, the Commission ought to play a leading role in promoting the rights of children and youth. In our view, investigating the City of Ottawa's traffic routing practice would constitute an important step in recognizing children and youth in Ontario as rights bearers. This would also keep with trends in international human rights law that increasingly recognize the links between the human rights of children and youth and clean air.<sup>41</sup>

#### **(d) Elderly individuals**

High levels of ambient air pollution caused by vehicular exhausts can have significant and disproportionate impacts on the health and well-being of elderly people. Air pollution is known to cause lung disease, in addition to a range of health risks for the elderly. It can exacerbate pre-existing conditions like heart disease, diabetes, and chronic obstructive pulmonary disease.<sup>42</sup> Air pollution exposure can be fatal in elderly adults who experience comorbidity or the simultaneous presence of two or more diseases or medical conditions.<sup>43</sup> One study found a positive association between exposure to air pollution even at low levels and the incidence of dementia among a population of Ontario residents between 55 and 85 years old.<sup>44</sup> Another study found that exposure

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<sup>39</sup> World Health Organization, [“Air Pollution and Child Health: Prescribing Clean Air—Summary”](#) (10 July 2018).

<sup>40</sup> Donatella Marazziti et al, [“Climate change, environment pollution, COVID-19 pandemic, and mental health”](#) (15 June 2021) 773:145182 *Science Total Environ* 1.

<sup>41</sup> John H Knox, [Report of the Special Rapporteur on the Issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment](#), UNHRC, 37th Sess, A/HRC/37/58 (2018); United Nations Committee on the Rights of the Child, [“General comment No. 26 \(2023\) on children's rights and the environment, with a special focus on climate change”](#) (August 22, 2023).

<sup>42</sup> Sarah Hubbart, [“Air pollution, mental health, and America's aging population”](#) (April 30, 2023).

<sup>43</sup> Marzia Simoni et al, [“Adverse effects of outdoor pollution in the elderly”](#) (January 2015) 7:1 *J Thoracic Disease* 34.

<sup>44</sup> Hong Chen et al, [“Exposure to ambient air pollution and the incidence of dementia: A population-based cohort study”](#) (November 2017) 108 *Environment International* 108 (2017) 271-277.

to high levels of air pollutants tends to speed up cognitive decline in Alzheimer’s patients with advanced symptoms.<sup>45</sup>

The City of Ottawa’s heavy truck by-law increases the likelihood of exposure to harmful levels of air pollution by elderly individuals who reside near the City’s heavy truck traffic routes; there is at least one seniors’ residence within a few hundred metres of the trucking corridor. An examination by the Commission into this issue can help prevent and reduce the negative impacts of air pollution on the elderly who are a protected class under the *Code* against age-based discrimination.

#### **4. The Province’s role in the downtown trucking problem**

The Province of Ontario’s role in causing and remedying the downtown trucking problem ought to also be examined by the Commission. Though the Province of Ontario is not directly involved in establishing heavy traffic regulations in Ottawa, human rights case law recognizes that entities that indirectly control services can be deemed liable for their adverse impacts in *Code*-protected groups. Indeed, in *Caring Society v Canada*, the Canadian Human Rights Tribunal (“CHRT”) held that Canada was responsible for the provision of discriminatory child welfare services to First Nations children even though these services were often provided through third party intermediaries such as provinces or child protection agencies.<sup>46</sup> This determination was made following over 70 days of hearings, during which the CHRT heard from over 25 witnesses and thousands of documents were tendered into evidence. In that regard, *Caring Society* stands for the proposition that the determination of which service provider is deemed liable for discrimination when multiple actors are involved is a determination of fact and law that in some circumstances requires extensive evidentiary records.

This is another reason for the Commission to investigate this matter. Both the City of Ottawa and the Province of Ontario play a role in the adverse impact of heavy traffic in downtown Ottawa on members of *Code*-protected groups. Both levels of government can potentially remedy this situation. In addition to being a misuse of the Tribunal’s limited resources, it is unreasonable to expect the members of *Code*-protected groups impacted by this practice to engage in concurrent, parallel human rights litigation against both the City of Ottawa and the Province of Ontario in order to determine which entity is liable for the discrimination. This is precisely why the Commission has a proactive investigation function. Its role is to proactively deal with complex factual and legal issues that are not suitable for litigation.<sup>47</sup> In other words, a Commission investigation could identify the precise roles both the City of Ottawa and the Province of Ottawa play in the disproportionate air pollution experienced by people with disabilities, children, elderly

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<sup>45</sup> Liuhua Shi et al, “[A national cohort study \(2000-2018\) of long-term air pollution exposure and incident dementia in older adults in the United States](#)” (November 19, 2021) 12 *Nature Communications* 6754.

<sup>46</sup> [First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada \(for the Minister of Indian and Northern Affairs Canada\)](#), 2016 CHRT 2 at paras 29-113.

<sup>47</sup> For example, in its investigation on the Right to Read, the Commission explored the barriers in education faced by students with learning disabilities and made recommendation addressed to school boards and the province.

individuals, unhoused individuals, and people living in poverty in downtown Ottawa and how each level of government can act to remedy the situation.

## 5. Discriminatory impacts and request for the Commission to investigate

We are gravely concerned about the downtown trucking problem caused by the City of Ottawa's traffic bylaws, practices, and policies and the Province's failure to act, as well as its adverse effects on members of protected groups. Community leaders have time and again observed the alarming impacts of heavy trucking in the downtown core.<sup>48</sup> Despite the acknowledgement in Ottawa's 2013 Transportation Master Plan ("TMP") that heavy truck traffic entails numerous hazardous risks to public health and safety, and that the downtown trucking corridor in particular has substantial negative local impacts,<sup>49</sup> very little has been accomplished to resolve the matter. The draft 2023 TMP acknowledges that residents "have expressed concerns about truck traffic in the downtown" core and that vulnerable neighbourhoods bear a disproportionate share of negative transportation impacts, including air pollution. However, the draft 2023 TMP proposes only to undertake "a comprehensive review of the City's truck route network" at some point in the future, with no timeline or concrete proposals for such a review.<sup>50</sup> The Province of Ontario, for its part, has failed to take any measures to address the issue, despite being the level of government responsible for municipalities as well as provincial and inter-provincial highways.

Heavy trucking in downtown Ottawa has important human rights implications that a Commission inquiry can bring to light. This is consistent with trends in international human rights law, endorsed by the Canadian Human Rights Commission, which recognize the various ways that air pollution can impede the full enjoyment of fundamental rights and call for a human rights-based response to these issues.<sup>51</sup>

On January 11, 2023, Ecojustice wrote to Ottawa Mayor Mark Sutcliffe on behalf of Friends of the Earth Canada and the Canadian Association of Physicians for the Environment (Ontario Committee) to explain how the City of Ottawa's practice of routing heavy trucks through its high-density downtown core puts the health and lives of members of protected groups at risk.<sup>52</sup> In the letter, we emphasized that the disproportionate and adverse impact this practice has on protected individuals within the community, such as those with respiratory disabilities, children, elders, and unhoused individuals, may breach their rights protected under the *Canadian Charter of Rights and Freedoms*. Though the City of Ottawa confirmed receipt of this letter, it has not otherwise responded nor, to our knowledge, taken any concrete measures to address these concerns.

Although it remains the City of Ottawa's obligation to take concrete measures as soon as possible to remedy this situation, we believe that a Commission inquiry could be effective in compelling

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<sup>48</sup> See e.g. "[Downtown trucks – Learn about the issue and ASH's position](#)"; Ecology Ottawa's [Breathe Easy Campaign](#).

<sup>49</sup> City of Ottawa, "[2013 Transportation Master Plan](#)" (November 2013), p. 80.

<sup>50</sup> City of Ottawa, [Transportation Master Plan, Draft 2.0, Part 1: Policies](#) (March 8, 2023), pp. 28, 37, 117-118.

<sup>51</sup> Canadian Human Rights Commission, "[Stronger Together: The Canadian Human Rights Commission's 2021 Annual Report to Parliament](#)" (2022).

<sup>52</sup> Lynda Collins & Ali Naraghi, "[Clearing the Air in Downtown Ottawa: An Open Letter to His Worship, Mark Sutcliffe, Mayor of Ottawa](#)" (January 11, 2022).

action. An investigation by the Commission would help shed light on the various impacts of Ottawa's traffic practices on members of protected groups and the potential role of the Province of Ontario in this situation. An investigation could also propose solutions to this problem using a human rights-based approach. This approach would be based on the values of meaningful participation, substantive equality, and transparency toward the rights bearers who are impacted by the City's practice and the Province's failure to act. Importantly, an investigation could help the City and the Province understand that ending their discriminatory practices relating to heavy truck routing is not a matter of discretion, but a legally binding obligation which, if not fulfilled, could expose them to considerable liability.<sup>53</sup>

In our view, a successful inquiry ought to include the following components:

1. **Consult the community regarding solutions to address air pollution in Ottawa's downtown core, including ending the City's practice of routing heavy trucks through the downtown core:** Engaging with the community will provide an opportunity for *Code*-protected groups to voice their concerns and share valuable insights. By seeking input from those directly affected, the Commission can better understand the effects of air pollution and the City's heavy trucking route practice to arrive at potential solutions. Consulting the community will foster a sense of transparency, inclusion, and collaboration, ultimately leading to safer and more sustainable human rights-based solutions that reduce, rather than exacerbate, inequalities. In addition to providing opportunities for individuals to participate in the consultation, there are several community groups and non-profit organizations that could provide valuable insight, including the signatories to this letter.
2. **Identify the role of the Province of Ontario, as the level of government responsible for municipalities and provincial and inter-provincial highways, in protecting members of *Code*-protected groups against the adverse impact of air pollution caused by heavy traffic:** Examining the responsibility of the Government of Ontario to act to protect *Code*-protected groups against air pollution caused by heavy traffic and its duty to remedy situations where these individuals are disproportionately affected will have far-reaching implications across the province. This will not only be beneficial to those residing in Ottawa's downtown core but all *Code*-protected Ontarians residing in heavy traffic areas.
3. **Recommend solutions that the City of Ottawa can take to address air pollution in the City's downtown core:** In our January 11 letter to Mayor Sutcliffe, we proposed several solutions to remedy the dangerous air pollution in Ottawa's downtown core, including: (i) undertake continuous air quality monitoring in the downtown truck corridor; (ii) establish an ultra low emissions zone in the downtown core; (iii) prohibit heavy trucks in the downtown core; and (iv) develop and fund a comprehensive program to improve air

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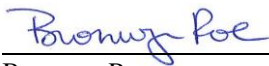
<sup>53</sup> As an example of a situation where government was exposed to significant liability following a human rights proceeding, see Anne Levesque, "[As a lawyer who's helped fight for the rights of First Nations children, here's what you need to know about the \\$40B child welfare agreements](#)" (5 January 2022).

quality in the downtown core. Public engagement with the community may also reveal additional potential solutions.

4. **Monitor the progress of the recommendations made following the inquiry:** This will allow the Commission to ensure that its recommendations are implemented in a comprehensive, effective, and expeditious manner. It will also provide transparency in the implementation process and allow for ongoing engagement of members of protected groups.

Thank you for considering our request for an inquiry. We are available to discuss our request with you should you require any further information. If the Commission decides to undertake an inquiry into this issue, we request the opportunity to make submissions and would be pleased to assist the Commission in any way we can.

Sincerely,



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Encl: Lynda Collins and Ali Naraghi, "Clearing the Air in Downtown Ottawa: An Open Letter to His Worship, Mark Sutcliffe, Mayor of Ottawa" (January 11, 2022)