Court File No. CV-22-00683592-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

WILLIAM ADAMSON SKELLY and ADAMSON BARBECUE LIMITED

Applicants
(Responding Party)

and

HIS MAJESTY THE KING IN RIGHT OF ONTARIO, CITY OF TORONTO, BOARD OF HEALTH FOR THE CITY OF TORONTO, and EILEEN DE VILLA

Respondents
(Moving Party)

RESPONDING RECORD OF THE APPLICANTS, WILLIAM ADAMSON SKELLY and ADAMSON BARBECUE LIMITED
(Returnable September 8, 2023)

August 28, 2023

PERRYS LLP
3817 Bloor Street West
Toronto ON M9B 1K7

Ian J. Perry (LSO# 65670S)
ian@perrysllp.com

Tel: 416-579-5055
Fax: 416-955-0369

Lawyers for the Applicants

TO: THIS HONOURABLE COURT

AND TO: **THE ATTORNEY GENERAL OF ONTARIO**
Constitutional Law Branch
720 Bay Street, 4th Floor
Toronto, ON M7A 2S9

S. Zachary Green (LSO# 48066K)
Tel: 416 992-2327
Fax: 416-326-4015
zachary.green@ontario.ca

Padraic Ryan (LSO# 61667J)
Tel: 647 588-2613
Fax: 416-326-4015
padraic.ryan@ontario.ca

Priscila Atkinson (LSO# 85500P)
Tel: 647 534-5802
Fax: 416-326-4015
priscila.atkinson@ontario.ca

Of Counsel for the Respondent,
His Majesty the King in Right of Ontario

AND TO: **CITY SOLICITOR'S OFFICE**
City of Toronto, Legal Services Station 1260
55 John Street, 26th Floor
Toronto, ON M5V 3C6

Kirsten Franz (LSO# 45946O)
Tel: 416-392-1813
kirsten.franz@toronto.ca

Penelope Ma (LSO# 66367O)
Tel: 416-397-7690
penelope.ma@toronto.ca

Counsels for the Respondents, City of Toronto,
Board of Health for the City of Toronto, and
Eileen De Villa

INDEX

9	Order of Justice Akbarali, dated March 9, 2021
10	Endorsement of Justice Akbarali, dated June 28, 2021
11	Endorsement of Justice Akbarali, dated July 13, 2021
12	Endorsement of Justice Akbarali, dated February 1, 2022
13	Endorsement of Justice Sanfillippo, dated August 16, 2022
14	Endorsement of Justice Centa, dated September 6, 2022
15	Case Conference Endorsement of Justice Morgan, dated June 28, 2023
16	Supplementary Endorsement of Justice Morgan, dated June 29, 2023

1

Court File No. CV-22-00683592-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

WILLIAM ADAMSON SKELLY and ADAMSON BARBECUE LIMITED

Applicants
(Responding Party)

and

HIS MAJESTY THE KING IN RIGHT OF ONTARIO, CITY OF TORONTO, BOARD OF HEALTH FOR THE CITY OF TORONTO, and EILEEN DE VILLA

Respondents
(Moving Party)

AFFIDAVIT OF LUCA TROIANI

I, Luca Troiani, Law Student with Perrys LLP, of the City of Brampton, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a Law Student with Perrys LLP counsel of record for the applicants in the within application and, as such, have knowledge of the matters to which I hereinafter depose. The matters deposed to in this, my affidavit, are within my personal knowledge and belief, unless otherwise stated. Where matters deposed to are not within my personal knowledge and belief, I have identified the source of such information and, in every circumstance, do verily believe it to be true.

2. The applicants/responding parties wish for the following evidence to be before the Court when this motion is heard:

   a. Our office has been retained by the applicant, Adam Skelly, to pursue damages against his former counsel, Mr. Michael Swinwood. Now shown

to me and attached hereto as **Exhibit "A"** is the Statement of Claim bearing Ontario Superior Court of Justice File Number CV-23-00701918-0000 (the "**Swinwood Claim**").

b. I am advised by the applicant, Adam Skelly, and I am informed by a review of email correspondence, and do verily believe to be true, that His Majesty the King had consented to adjourn Mr. Skelly's criminal trial to allow the within application to be heard. Now shown to me and attached hereto as **Exhibit "B"** is a true copy of the email correspondence from Assistant Crown Counsel, Mr. Michael Coristine and the Applicant, Mr. Adam Skelly, dated August 17 and 18th, 2022.

c. The City of Toronto initiated a claim against the applicants in this Court bearing Court File Number CV-21-00658546-0000 (the "COT Claim"). Now shown to me and attached hereto as **Exhibit "C"** is a true copy of the COT Claim, dated March 10, 2021.

PUBLIC INTEREST

3. I do verily believe this matter has significant public importance and interest surrounding it. I was personally captivated by Mr. Skelly's protests in November of 2020. In my role as law student, I have been tasked with collecting just some of the local and national news pieces that were written about this protest, such as:

a. Now shown to me and attached hereto as **Exhibit "D"** is a true copy of a News Article from the National Post titled 'BBQ Rebellion' gets turned away from court, delaying face-off over COVID lockdowns, published June 28, 2021.

b. Now shown to me and attached hereto as **Exhibit "E"** is a true copy of a News Article from The Globe and Mail titled "Adamson BBQ owner Adam Skelly charged by Toronto police for flouting COVID-19 lockdown", updated November 27, 2020.

c. Now shown to me and attached hereto as **Exhibit "F"** is a true copy of a News Article from NOWTORONTO titled "How did Adamson Barbecue guy become an anti-lockdown martyr", dated March 1, 2021.

d. Now shown to me and attached hereto as **Exhibit "G"** is a true copy of a News Article from CP24 titled "Toronto BBQ restaurant owner arrested for defying coronavirus lockdown", updated November 26, 2020.

4. I make this Affidavit in support of the applicants' relief sought in the underlying motion, and for no other or improper purpose.

SWORN remotely by Luca Troiani stated as being located in the City of Brampton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 28th day of August, 2023, in accordance with O.Reg 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:
Ian Perry
94FBBD3F03614F9...

A Commissioner, etc.

DocuSigned by:
Luca Troiani
6F973694E0AB45A...

LUCA TROIANI

This is **Exhibit "A"** referred to in the **Affidavit of Luca Troiani** sworn before me at the City of Toronto, in the Province of Ontario, this 28th day of August, 2023 in accordance with O.Reg 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:
Ian Perry
34FBBD5F03814F9...

A Commissioner for taking Affidavits for Ontario

Electronically issued / Délivré par voie électronique : 28-Jun-2023
Toronto Superior Court of Justice / Cour supérieure de justice

Court File No./N° du dossier du greffe : CV-23-00701918-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

WILLIAM ADAMSON SKELLY

Plaintiff

- and -

MICHAEL SWINWOOD and ELDERS WITHOUT BORDERS

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made by the Plaintiff appears on the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, to receive notice of any step in the proceeding or to be served with any documents in the claim you or an Ontario lawyer acting for you must forthwith prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff WITHIN TWENTY DAYS, after this Statement of Claim is served on you, if you are served in Ontario. and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and $1,500.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and $400 for costs and have the costs assessed by the court.

Electronically issued / Délivré par voie électronique : 28-Jun-2023
Toronto Superior Court of Justice / Cour supérieure de justice

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____ Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
330 University Ave.
Toronto, ON M5G 1R7

TO: MICHAEL SWINWOOD
237 Argyle Avenue,
Ottawa, ON K2P 1B8

LSO #14587R
E-mail: spiritualelders@gmail.com

Tel: 613-563-7474
Fax: 613-563-9179

Defendant

AND TO: ELDERS WITHOUT BORDERS
237 Argyle Avenue,
Ottawa, ON K2P 1B8

Tel: 613-563-7474
Fax: 613-563-9179

Defendant

THIS ACTION IS BROUGHT AGAINST YOU UNDER THE SIMPLIFIED PROCEDURE PROVIDED IN RULE 76 OF THE RULES OF CIVIL PROCEDURE

CLAIM

1. The plaintiff claims against the defendants:

    a. Damages in the amount of $200,000.00 for professional negligence.

    b. Pre-judgment and post-judgment interest pursuant to sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43 as amended;

    c. Costs of this action and disbursements, and applicable taxes on such costs;

    d. Such further and other relief as counsel may advise and this Honourable Court may permit.

OVERVIEW

2. In November, 2020, the plaintiff, William Adamson Skelly, made headlines when he opened his beloved Toronto BBQ restaurant for dine-in customers, in protest of the stringent public health restrictions imposed during the COVID-19 pandemic. Mr. Skelly has been embroiled in litigation with the Government ever since.

3. In response to the litigation and the need to bring a constitutional challenge against the restrictions, the plaintiff retained the defendants, Michael Swinwood, and his law firm, Elders Without Borders, to represent his rights.

4. For reasons that will be made plain in the proceeding paragraphs, the defendants failed to competently represent the plaintiff's rights and interests.

5. As a result, the plaintiff suffered wasted and unnecessary legal costs without making any material progress in the litigation.

6. The plaintiff states and the fact is that he was taken advantage of, charged for work that was done in complete error, and the defendants acted in a manner that is entirely below the standard of a reasonably competent lawyer.

THE PARTIES

7. The plaintiff, William Adamson Skelly ("Mr. Skelly"), is the sole officer and director of Adamson Barbecue Ltd. which is an Ontario corporation that operated as a family style restaurant in the City of Toronto and the Town of Aurora.

8. The defendants, Elders Without Borders and Michael Swinwood, are a law firm and a licensed lawyer with the Law Society of Ontario having over 20 years of experience and was retained by the plaintiff to represent him the Ontario Application.

BACKGROUND

9. Following the emergence of COVID-19, the government of Ontario issued regulations and lockdowns with an apparent goal of stemming the spread of the virus (the "Provincial Regulations").

10. The lockdowns went on for months and the directions from the government were poorly managed with publicly available evidence pointing to the unreasonableness of the Provincial Regulations.

11. As a restaurant owner, Mr. Skelly was earning his livelihood in an industry that was hardest hit by the restrictions. By September 2020, Mr. Skelly had to lay off one third of his workforce. Like many Canadians, he was frustrated and confused about the seemingly endless restrictions that were threatening his livelihood.

12. Mr. Skelly believed that the regulatory framework and COVID-19 response by the various local and provincial agencies had been conducted in an arbitrary, excessive, ill fashioned, and coercive manner. With nowhere else to turn, Mr. Skelly chose to exercise his *Charter* protected right to peaceful assembly and protest what he believed to be unjust actions by the government.

13. Mr. Skelly went on to open his Etobicoke location in peaceful protest of the restrictions.

14. Between November 24 and 29, 2020, Mr. Skelly and other community members exercised their constitutionally protected rights by attending in person at Adamson Barbecue in Etobicoke. These efforts were swiftly curtailed by various officials within the City of Toronto.

15. On or around November 24, 2020, Toronto's Medical Officer of Health issued an Order against Mr. Skelly and Adamson Barbeque pursuant to section 22 of the *Health Protection and Promotion Act,* which forced Adamson Barbecue to immediately close.

16. On or around November 25, 2020, Toronto Public Health charged Mr. Skelly with failing to comply with the arbitrary policies. The charge carries a fine up to $500,000 and imprisonment for up to one year for Mr. Skelly, and up to $10 million dollars in fines against Adamson Barbecue.

17. Mr. Skelly had an array of business and personal items that were unlawfully confiscated and or blocked from being accessed. On or around November 26, 2020, the Toronto Medical Officer of Health issued directions to officials pursuant to section 24 of the *Health Protection and Promotion Act*, to lock and seal the doors to Adamson Barbecue in Etobicoke, and to ensure that no access was available to the restaurant.

18. On or around November 26, 2020, Mr. Skelly was arrested by the Toronto Police and charged with Mischief under $5,000.00 and for obstructing a peace officer pursuant to the *Criminal Code of Canada*.

THE GOVERNMENT OF ONTARIO'S APPLICATION

19. On November 28, 2020, the government of Ontario issued an application bearing court file number CV-20-652216-0000, seeking to restrain Mr. Skelly and Adamson Barbeque from operating their restaurant in contravention of Provincial Regulations (the above defined "Ontario Application").

20. On December 4, 2020, the Order was granted on notice and treated as an *ex parte* hearing by the Honourable Justice Kimmel (the "Restraining Order").

21. The Honourable Justice Kimmel contemplated a "come-back motion" in her December 11, 2020, Reasons for Decision as an opportunity for Mr. Skelly to have the Restraining Order set aside, varied, or terminated on the basis of a challenge to the constitutionality of the legislative scheme.

MR. SKELLY RETAINS MR. SWINWOOD

22. In late 2020 or early 2021, Mr. Skelly learned about Mr. Swinwood and retained him to pursue a constitutional challenge against the public health measures.

23. Mr. Skelly was under the impression that Mr. Swinwood was not only a reasonably competent lawyer but also one who had significant experience in constitutional and civil matters.

GROSS INCOMPETENCE AND FAILURE

24. Throughout the duration of his retainer, Mr. Swinwood representing Mr. Skelly, acted with complete disregard for the *Rules of Civil Procedure* and in a manner that can only be described as completely incompetent and negligible.

25. In an Endorsement of the Honourable Justice Myers dated February 26, 2021, His Honour reprimanded Mr. Swinwood for sending an unsolicited letter to Justice Kimmel asking that she remain seized of the matter. Justice Myers highlighted that she was never seized of the matter to begin with and explicitly ordered that "Mr. Swinwood is to comply with Rule 1.09 in any future communication with the Court."

26. In Her Honour's Direction dated March 9, 2021, the Honourable Justice Akrabali set out a timetable for the hearing of the constitutional issues raised by Mr. Skelly, with the hearing to take place on June 28 and 29, 2021 (the "June Hearing").

27. In the Direction, Justice Akrabali made a point to tell Mr. Swinwood to make sure he files his materials with the proper style of cause as the materials he submitted failed to do so. A hearing for the come-back motion contemplated by Justice Kimmel and Mr. Skelly's constitutional challenge was scheduled for June 28 and 29th, 2021.

Hearing of June 28 and 29, 2021

28. At the June Hearing, Mr. Swinwood came with an interim motion with no originating process seeking a final order for damages under s. 24(1) of the *Charter of Rights and Freedoms*.

29. The motion did not seek to set aside, vary, or terminate the Restraining Order.

30. As a result, Justice Akrabali concluded that she did not have jurisdiction to adjudicate the issues raised by Mr. Skelly because of the manner in which they constituted the proceedings.

31. In her Endorsement dated June 28, 2021, Justice Akrabali pointed out various flaws in the steps taken by Mr. Swinwood resulting in the court not having the issues properly raised before it (the "June Endorsement"). These flaws are listed below:

i. Not seeking to vary or set aside the Order of Justice Kimmel based on unconstitutionality in the Notices of Motion making it deficient rendering the proceeding procedurally unfair;

ii. Not properly placing the February Notice of Motion before Her Honour;

iii. Not having the February Notice of Motion initially placed in the respondent's Motion Record and adding it only after the applicant brought up the issue in an attempt to fix the defect;

iv. The relief in the February Notice of Motion is not based on any Notice of Constitutional Question;

v. Having two Notices of Motion for the same motion instead of amending the document;

vi. Not making it clear to Ontario which Notice of Motion the hearing was to proceed on;

vii. Not giving appropriate notice of the relief sought in the Notice of Motion;

viii. The Notice of Constitutional Question did not raise the issue of setting aside the legislative scheme on the basis of unconstitutionality until its third iteration on June 8, 2021, which was well after the date of cross-examinations and the finalization of the evidentiary record;

ix. Neither Notice of Motion sought an Order setting aside the legislative scheme on the basis of unconstitutionality;

x. Failing to put before Her Honour the Affidavits of Service for Mr. Swinwood's June 24, 2021, Motion Record; and,

xi. No originating process for the damages or declaration of invalidity sought.

32. At paragraph 44 of Justice Akrabali's June Endorsement she states the following:

> "This is not a case where the respondents are self-represented parties. They were represented at the hearing by two counsel, at least one of whom has been practicing for many years. Earlier in the proceedings, when the Notices of Motion were being prepared, the respondents were represented by four counsel. I cannot explain why none of them considered these very basic issues, or if they did, why they did not address the deficiencies in the proceeding which could have been done easily and efficiently in February or March 2021…"

33. The motion was dismissed and costs were ordered against Mr. Skelly in the amount of $15,000.00.

34. In Justice Akrabali's Endorsement dated July 13, 2021, addressing the costs of the motion she stated at paragraph 8:

> "the fact that no hearing on the merits proceeded before me on June 28 and 29, 2021 as anticipated was the result of **respondents' counsel's failure to follow basic civil procedure** to ensure they had constituted the proceeding in a way that the court would have jurisdiction to address the issue. **The respondents' counsel's errors caused delay**." (Emphasis added)

35. Mr. Skelly subsequently terminated his retainer with Mr. Swinwood.

Mr. Swinwood fails to advise Mr. Skelly regarding December 11, 2020, Costs

36. In the Restraining Order of December 11, 2020, Justice Kimmel set Ontario's costs at $15,000.00 with the order for costs to be decided at the "come-back motion" (the "December Costs").

37. In Justice Akrabali's Endorsement of July 13, 2021, she pushed the determination of the December Costs until there was a determination on the merits or if the proceedings were not reconstituted appropriately within six months in which Ontario can contact Her Honour to have the December Costs addressed.

38. In the six months that passed Mr. Skelly obtained new counsel to issue the correct originating process Mr. Swinwood failed to issue and to bring Mr. Skelly's challenge back for a hearing on the merits.

39. During this time, neither Mr. Skelly nor his new counsel received any correspondence regarding the desire of Ontario to receive the December Costs.

40. Mr. Skelly eventually discovered that such a notice was provided to Mr. Swinwood who failed to contact Mr. Skelly and decided not to bring it to the attention of his new counsel.

41. As a result, the December Costs were ordered in the amount of $15,000.00 without the participation of Mr. Skelly.

PROFESSIONAL NEGLIGENCE OF MR. SWINWOOD

42. In the time he was represented by the defendants, Mr. Skelly paid an exorbitant amount of legal fees, much of which was fundraised.

43. The defendants have not acted in accordance with the high standard of care that a reasonably competent lawyer must uphold.

44. The defendants have breached the duty of care owed to Mr. Skelly not only for their inability to follow basic civil procedure but by neglecting to inform him of the province's notice that it was moving to obtain the December Costs, which caused the costs of $15,000.00 to be ordered without ever receiving a reply from Mr. Skelly.

45. Had the defendants acted in a reasonably competent manner, Mr. Skelly's matter would have concluded or substantially progressed towards a resolution. Instead, Mr. Skelly has had to obtain new counsel to conduct from the beginning what should have been accomplished by the June Hearing, resulting in over a year's worth of delay and more costs.

DAMAGES

46. Mr. Skelly seeks recovery of all legal costs paid to the defendants and recovery of the $30,000.00 costs he paid to the Crown.

PLACE OF TRIAL

47. The plaintiff respectfully requests that the trial of this action be heard at the Ontario Superior Court in Toronto.

DATE: June 28, 2023

PERRYS LLP
3817 Bloor Street West
Toronto ON M9B 1K7

Ian J. Perry (LSO# 65670S)
ian@perrysllp.com

Tel: 416-579-5055
Fax: 416-955-0369

Lawyers for the Plaintiff

Electronically issued / Délivré par voie électronique : 28-Jun-2023
Toronto Superior Court of Justice / Cour supérieure de justice

Court File No./N° du dossier du greffe : CV-23-00701918-0000

WILLIAM ADAMSON SKELLY

Plaintiff

-and-

MICHAEL SWINWOOD and ELDERS WITHOUT BORDERS

Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

STATEMENT OF CLAIM

PERRYS LLP
3817 Bloor Street West
Toronto ON M9B 1K7

Ian J. Perry (LSO#65670S)
ian@perrysllp.com

Tel: 416-579-5055
Fax: 416-955-0369

Lawyers for the Plaintiff

This is **Exhibit "B"** referred to in the **Affidavit of Luca Troiani** sworn before me at the City of Toronto, in the Province of Ontario, this 28th day of August, 2023 in accordance with O.Reg 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:
Ian Perry
94EBBD5E03614E9...

A Commissioner for taking Affidavits for Ontario

Subject: Fw: NOTES FROM THE JPT
Date: Wednesday, January 25, 2023 at 11:07:46 AM Eastern Standard Time
From: Ian Perry
To: Sarah Thomas

From: Ian Perry <ian@perrysllp.com>
Sent: August 18, 2022 3:34 PM
To: brisketsandwich <brisketsandwich@protonmail.com>
Subject: Re: NOTES FROM THE JPT

This is slightly different than what we discussed. Let me know if you have questions and please let me review the Form 1 Application before you serve Coristine.

1. Mr. Skelly will waive 11(b) only until his SCJ NCQ application is heard and determined by the SCJ or May 31, 2023, whichever comes first.

2. In the event that the SCJ NCQ application and appellate authority is exhausted, and is not favorable to Mr. Skelly, he agrees not to pursue a new NCQ at the OCJ.

From: brisketsandwich <brisketsandwich@protonmail.com>
Date: Wednesday, August 17, 2022 at 3:25 PM
To: Ian Perry <ian@perrysllp.com>
Subject: Fw: NOTES FROM THE JPT

Sent from Proton Mail mobile

-------- Original Message --------
On Aug. 17, 2022, 1:11 p.m., Coristine, Michael (MAG) < Michael.Coristine@ontario.ca> wrote:

> Hi Mr. Skelly,
>
> Here is what we discussed today with Justice Robertson in terms of your application:

1. Mr. Skelly will waive 11(b) until the next trial date TBD, during which time either his SCJ NCQ will have been decided or appellate authority will exist

2. In the event that the SCJ motion/appellate authority is not favorable to Mr. Skelly, he agrees not to pursue a new NCQ at the OCJ (any future adjournments of this matter due to appeals etc will have to be canvassed as they materialize down the road).

The motion is next TBST at SCJ in mid-Sept. It is expected that a hearing will occur by mid-2023 from what Mr. Skelly's lawyers have been told.

As an aside, if Mr. Skelly is successful in striking down the ROA (or if it is struck down by a binding authority), the Crown undertakes to not proceed on the criminal/POA charges in this matter.

Mr. Skelly asked about severance and it was made clear that due to the intertwining of all the offences/incidents/witnesses, there would not be severance by the Crown.

Mr. Skelly also discussed the issue of lawful seizure by the City – Crown and Justice Robertson of the view that this can only be decided when/if the matter goes to trial as the issue goes to the heart of a possible defence to the charges.

Mr. Skelly will file a formal Form 1 this Friday, August 19 @ 1:15pm. Given the above parameters established by Justice Robertson and the timeliness of the application which will allow for court time to be used by other matters, Crown will not be in a position to reasonably oppose an adjournment.

The link for 205 court for Friday at 1:15pm EDT is

https://ca01web.zoom.us/j/68383153634?pwd=ZzJ2NDlDM2ptRWs0cjcvcG9EblBZUT09

Thank you,
Michael

Michael Coristine
Assistant Crown Attorney
Toronto West Crown Attorney's Office
437-242-1171 (Direct)
416-314-3949 (Fax)
michael.coristine@ontario.ca

This is **Exhibit "C"** referred to in the **Affidavit of Luca Troiani** sworn before me at the City of Toronto, in the Province of Ontario, this 28th day of August, 2023 in accordance with O.Reg 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:
Ian Perry
94EBBD5E03614E9...

A Commissioner for taking Affidavits for Ontario

Court File No./N° du dossier du greffe: CV-21-00658546-0000

Court File No.

ONTARIO

SUPERIOR COURT OF JUSTICE

Electronically issued
Délivré par voie électronique : 10-Mar-2021
Toronto

B E T W E E N:

BOARD OF HEALTH FOR THE CITY OF TORONTO HEALTH UNIT and CITY OF TORONTO

Plaintiffs

- and -

ADAMSON BARBECUE LIMITED o/a ADAMSON BARBECUE and WILLIAM ADAMSON SKELLY

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and $1,000.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and $400 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date .....

Issued by .....
Local registrar

Address of court office:
393 University Ave.
Toronto, ON M5G 1T3

TO: ADAMSON BARBECUE LIMITED o/a ADAMSON BARBECUE
176 Wicksteed Avenue
Toronto, Ontario
M4G 2B6
Canada

TO: WILLIAM ADAMSON SKELLY
176 Wicksteed Avenue
Toronto, Ontario
M4G 2B6
Canada

THIS ACTION IS BROUGHT AGAINST YOU UNDER THE SIMPLIFIED PROCEDURE PROVIDED IN RULE 76 OF THE RULES OF CIVIL PROCEDURE.

CLAIM

1. THE PLAINTIFFS CLAIM as against Adamson Barbecue Limited o/a Adamson Barbecue and William Adamson Skelly (the "Defendants") jointly and severally:

   (a) damages in the sum of $187,466.39, inclusive of HST, for expenses and costs incurred by the plaintiffs in carrying out directions given by the Medical Officer of Health for the City of Toronto Health Unit, pursuant to section 24 of the *Health Protection and Promotion Act,* RSO 1990, c H7;

   (b) prejudgment and post-judgement interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C43;

   (c) their costs of this action; and

   (d) such further and other relief as this Honourable Court deems just.

The Parties

2. The plaintiff, Board of Health for the City of Toronto Health Unit, is a board of health for the City of Toronto, established pursuant to the *City of Toronto Act, 1997* (No 2), SO 1997, c 26, continued pursuant to s. 405 of the *City of Toronto Act, 2006*, SO 2006, c 11, Schedule A, and deemed to be a board of health established under the *Health Protection and Promotion Act*, RSO 1990, c H7.

3. The plaintiff, City of Toronto, is a municipality incorporated pursuant to section 2(2) of the *City of Toronto Act, 1997*, SO 1997, C 2, and continued pursuant to section 125(1) of the *City of Toronto Act, 2006*, SO 2006, c 11, Schedule A.

4. The defendant, Adamson Barbecue Limited o/a Adamson Barbecue, with Ontario Corporation Number 2589834, is a corporation incorporated under the laws of the Province of Ontario. Adamson Barbecue Limited operates barbecue restaurants, two of

which are located in the City of Toronto, with addresses municipally known as 7 Queen Elizabeth Boulevard and 176 Wicksteed Avenue.

5. The defendant, William Adamson Skelly ("Mr. Skelly"), is the sole director of Adamson Barbecue Limited.

COVID-19

6. COVID-19 is a disease of public health significance.

7. The COVID-19 virus is spread from an infected person to a close contact by direct contact or when respiratory secretions from the infected person enter the eyes, nose or mouth of another person. COVID-19 may be transmitted from one person to another during an asymptomatic and pre-symptomatic state.

8. The symptoms of COVID-19 include mild to severe illness consisting of fever, cough and difficulty breathing (shortness of breath). In severe cases, symptoms can include pneumonia, kidney failure and death.

9. On March 11, 2020, the World Health Organization declared the outbreak of COVID-19 a global pandemic. On March 17, 2020, the Premier of Ontario declared an emergency in the whole of Ontario pursuant to section 7.0.1 of the *Emergency Management and Civil Protection Act,* RSO 1990, c E9 ("*EMCPA*"). On March 23, 2020, City of Toronto Mayor John Tory declared a state of emergency under Chapter 59 of the Toronto Municipal Code due to the outbreak of COVID-19.

10. At all material times, COVID-19 was present in the City of Toronto and posed a risk to the health of the residents of the City of Toronto through community transmission.

Health Protection and Promotion Act ("HPPA")

11. The purpose of the *HPPA* is to provide for the organization and delivery of public health programs and services, the prevention of the spread of disease and the promotion and protection of the health of the people of Ontario. The plaintiffs plead and rely on section 2 of the *HPPA*.

12. Under the *HPPA*, boards of health have jurisdiction over certain areas, which are referred to as health units. The plaintiff, Board of Health for the City of Toronto Health Unit (the "Board of Health") serves the City of Toronto Health Unit.

13. Pursuant to section 4 or the *HPPA*, the Board of Health has a duty to, *inter alia*, superintend, provide or ensure the provision of the health programs and services required by the Act and the regulations to the persons who reside in the City of Toronto Health Unit.

14. Pursuant to section 5 of the *HPPA*, the control of infectious diseases and diseases of public health significance, is a mandatory health program and/or service that the Board of health is required to superintend, provide or ensure the provision of.

15. COVID-19 is a disease of public health significance, and at all material times, was designated as a communicable disease pursuant to Ontario Regulation 135/18, as amended, under the *HPPA*.

16. The *HPPA* requires every board of health to appoint a medical officer of health. At all material times, Dr. Eileen De Villa was the Medical Officer of Health for the City of Toronto Health Unit (the "MOH"), appointed by the Board of Health pursuant to section 62(1) of the *HPPA*.

17. Pursuant to subsection 67(1) of the *HPPA*, the MOH reports directly to the Board of Health on issues relating to public health concerns and to public health programs and services under the *HPPA* or any other act.

18. Section 22 of the *HPPA*, which is contained within Part IV ("Communicable Diseases"), provides the MOH with authority, under certain circumstances, to make an order requiring a person to take or to refrain from taking any action that is specified in the order in respect of a communicable disease. COVID-19 is a communicable disease, as described above.

19. Where the MOH is of the opinion that the person to whom an order is or would be directed under section 22, has refused to or is not complying with the order, or is not likely to comply with the order promptly, then section 24 of the *HPPA* provides the MOH with authority to give directions to the persons whose services are engaged by or who are the agents of the Board of Health to take such action as is specified in the directions.

20. With respect to expenses incurred by the Board of Health in carrying out directions given by the MOH, subsection 24(5) of the *HPPA* provides that such expenses may be recovered with costs by the Board of Health from the person to whom an order is directed under section 22, by action in a court of competent jurisdiction. The within action has been commenced against the Defendants pursuant to subsection 24(5) of the *HPPA*.

Events Leading to the MOH's Section 22 Order against the Defendants

21. In September 2020, the City of Toronto Health Unit began to experience the second wave of the COVID-19 pandemic. COVID-19 was spreading at a greater rate than in the first wave, and by November 2020, confirmed case counts were rising in City of Toronto Health Unit at an alarming extent.

22. On Monday, November 23, 2020, the City of Toronto Health Unit entered the "Grey – Lockdown" zone or "Stage 1" of the Ontario government's "COVID-19 Response

Framework: Keeping Ontario Safe and Open" (the "Framework"), and became subject to Ontario Regulation 82/20 ("Stage 1 Regulation") under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*, SO 2020, c 17 (the "*ROA*").

23. The *ROA* was enacted by the Ontario government in summer 2020 as part of the province's response to the pandemic. It established a framework for a staged approach to re-opening. Ontario Regulation 363/20, under the *ROA*, designates what stage (and control measures) each public health unit is subject to.

24. At the material time, the five zones of public health measures in the Framework corresponded with stages under O Reg 363/20. In order of least to most severe measures, they were:

a) "Green – Prevent" or "Green Zone of Stage 3"
b) "Yellow – Protect" or "Yellow Zone of Stage 3"
c) "Orange – Restrict" or "Orange Zone of Stage 3"
d) "Red – Control" or "Red Zone of Stage 2"
e) "Grey – Lockdown" or "Stage 1"

25. As of November 23, 2020, the City of Toronto Health Unit was one of two health units in the Province of Ontario to enter "Grey – Lockdown" or "Stage 1", which includes the implementation of maximum, widescale measures and restrictions, including closures, to halt or interrupt the transmission of COVID-19.

26. The Stage 1 Regulation imposed, *inter alia*, the following conditions on the public health units subject to it, including City of Toronto Health Unit:

a) Restaurants are permitted to open only for the purpose of providing take-out, drive-through or delivery service. (Schedule 2, subsection 3(2))
b) The person responsible for a business that is open shall ensure that any person in the indoor area of the premises of the business wears a mask or face covering, subject to exceptions for specified individuals (e.g. for children under two). (Schedule 1, subsection 2(4))

Framework: Keeping Ontario Safe and Open" (the "Framework"), and became subject to Ontario Regulation 82/20 ("Stage 1 Regulation") under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020,* SO 2020, c 17 (the "*ROA*").

23. The *ROA* was enacted by the Ontario government in summer 2020 as part of the province's response to the pandemic. It established a framework for a staged approach to re-opening. Ontario Regulation 363/20, under the *ROA,* designates what stage (and control measures) each public health unit is subject to.

24. At the material time, the five zones of public health measures in the Framework corresponded with stages under O Reg 363/20. In order of least to most severe measures, they were:

a) "Green – Prevent" or "Green Zone of Stage 3"
b) "Yellow – Protect" or "Yellow Zone of Stage 3"
c) "Orange – Restrict" or "Orange Zone of Stage 3"
d) "Red – Control" or "Red Zone of Stage 2"
e) "Grey – Lockdown" or "Stage 1"

25. As of November 23, 2020, the City of Toronto Health Unit was one of two health units in the Province of Ontario to enter "Grey – Lockdown" or "Stage 1", which includes the implementation of maximum, widescale measures and restrictions, including closures, to halt or interrupt the transmission of COVID-19.

26. The Stage 1 Regulation imposed, *inter alia,* the following conditions on the public health units subject to it, including City of Toronto Health Unit:

a) Restaurants are permitted to open only for the purpose of providing take-out, drive-through or delivery service. (Schedule 2, subsection 3(2))
b) The person responsible for a business that is open shall ensure that any person in the indoor area of the premises of the business wears a mask or face covering, subject to exceptions for specified individuals (e.g. for children under two). (Schedule 1, subsection 2(4))

c) The person responsible for a business that is open shall limit the number of persons in the place of business so that members of the public are able to maintain a physical distance of at least two metres from every other person in the business. (Schedule 1, subsection 3(1))

d) The person responsible for a business that is open must not permit patrons to line up inside the business or place, or to line up or congregate outside of the business or place, unless they are maintaining a physical distance of at least two metres from other groups of persons and wearing a mask or face covering, subject to the specified exceptions for wearing a mask or face covering. (Schedule 1, section 4)

e) The person responsible for a business that is open must prepare and make available a safety plan that, among other things, describes the measures and procedures which have been implemented or will be implemented in the business to reduce the transmission risk of COVID-19. (Schedule 1, subsections 5(1) and (2))

f) Each person responsible for a business that is permitted to open shall ensure that the business meets the specified conditions or is closed. (Schedule 1, subsection 2(2))

27. The Defendants' barbecue restaurant in Etobicoke has the municipal address of 7 Queen Elizabeth Boulevard (the "Etobicoke Restaurant"), and is located within the City of Toronto Health Unit. At all material times, the Defendants were subject to the Stage 1 Regulation.

28. On November 23, 2020, the day the City of Toronto Health Unit was made subject to the Stage 1 Regulation, the Defendants publicly announced on their Instagram account (@adamsonbarbecue) of their intention to open the Etobicoke Restaurant for dine-in service the next day (on November 24, 2020), in contravention of the Stage 1 Regulation.

29. The posting on the Instagram account had the written caption,

> Enough is enough – we're opening. Starting Tuesday, November 24th, the Adamson Barbecue Etobicoke location will be open for dine-in service.

And in the video, Mr. Skelly stated,

> I'm coming on here today to let you guys know that our Etobicoke location tomorrow – that's Tuesday – will be opening for in-restaurant dining against provincial orders at 11 o' clock.

30. On November 24, 2020, the Defendants opened the Etobicoke Restaurant for indoor and outdoor (patio) dining in contravention of the Stage 1 Regulation. At one point during the day, there were between 150 and 175 people gathered at the Etobicoke Restaurant. These persons were not maintaining a physical distance of at least two metres. Generally, these persons were not wearing masks or face coverings. The staff of the Etobicoke Restaurant were not wearing appropriate personal protective equipment.

31. Members of the Toronto Police Service ("TPS"), Toronto Public Health ("TPH"), and Municipal Licencing & Standards ("MLS") attended the Etobicoke Restaurant to address the intentional and flagrant contraventions of the Defendants, which posed a significant risk to public health and safety.

32. In light of the actions of the Defendants and the risk to public health, the MOH issued an order against the Defendants pursuant to section 22 of the *HPPA*, requiring the Defendants, *inter alia,* to immediately close the Etobicoke Restaurant and to keep it closed until authorized in writing to reopen by TPH ("Section 22 Order").

33. The requirements specified in the Section 22 Order were necessary in order to decrease the risk to health presented by COVID-19.

34. The Section 22 Order was issued against the Defendants, and served upon Mr. Skelly on November 24, 2020 at 3:55pm.

35. Mr. Skelly advised the TPH employee who served him with the Section 22 Order that he intended to re-open the restaurant the next day. That evening, a story was posted to the @adamsonbarbecue Instagram account with the caption: "Etobicoke. 11am to sold out. Dine-in". The Instagram story also contained a drawing of Mr. Skelly standing on a TPS cruiser in front of the Etobicoke Restaurant, brandishing a spatula, and stating to a TPS officer in a speech bubble: "We're not closing".

Events Leading to the MOH's Section 24 Direction

36. On November 25, 2020, the Defendants once again opened the Etobicoke Restaurant for indoor and outdoor (patio) dining, in contravention of the Stage 1 Regulation and the Section 22 Order. At one point during the day, there were between 170 and 190 people gathered at the Etobicoke Restaurant. These persons were not maintaining a physical distance of at least two metres. Generally, these persons were not wearing masks or face coverings.

37. TPS, TPH, and MLS attended at the Etobicoke Restaurant again, to address the intentional and flagrant contraventions of the Defendants, which continued to pose a significant risk to public health and safety.

38. MLS charged the Defendants for carrying on business at the Etobicoke Restaurant without a license, in contravention of Toronto Municipal Code Chapter 545-2A(50).

39. TPH charged the Defendants with failing to comply with the Stage 1 Regulation, an offence under the *ROA*, for their actions on November 24.

40. Following the charges being laid, the Defendants publicly announced on their Instagram account (@adamsonbarbecue) of their satisfaction with the turnout at the Etobicoke Restaurant, and their intention to again open the Etobicoke Restaurant for dine-in service throughout the week, from Tuesday to Sunday from 11am:

> After begging the authorities for hours, my corporation was finally charged under the provincial act (after we sold out).
> Lawyers are excited to dig in!
> No patrons were fined, turnout was incredible and we had a quick sell-out.
> Crowdfunding is being organized to provide defence to all small businesses opening in protest. Please reach out and we will mobilize everybody to your business and provide legal support.
> Etobicoke location will continue to open for lunch! Dine-in, take-out or patio.
> Tuesday to Sunday from 11 am.
> We're all in this together.

41. The Defendants refused to and were not complying with the Section 22 Order, and the MOH had reasonable and probable grounds to believe that the Defendants were not likely to comply with the Section 22 Order promptly.

42. Therefore, pursuant to her authority under section 24 of the *HPPA*, the MOH issued directions to MLS, TPH, TPS, and third parties engaged to provide locksmith and other services, to "take actions necessary to ensure that the Premises [the Etobicoke Restaurant] is and remains closed, and that access to the Premises is restricted until such time as the Order has been lifted" ("Section 24 Direction").

43. The Section 24 Direction is dated November 25, 2020, and the MOH sent the Section 24 Direction via e-mail to the addressees on November 26, 2020 at 12:22am.

Carrying Out of the MOH's Section 24 Direction

Thursday, November 26, 2020

44. Early in the morning on November 26, 2020, pursuant to the Section 24 Direction, TPH and MLS, with the assistance of TPS and Lock-Up Services Inc. (a third party engaged to provide locksmith services), changed the locks and sealed the doors to the Etobicoke Restaurant, and also installed a magnetic locking mechanism on one of the entrances.

45. Mr. Skelly arrived at the Etobicoke Restaurant that morning and gave a media interview where he stated his intention to re-open the Etobicoke Restaurant despite the doors being locked and sealed.

46. Shortly thereafter, TPH laid provincial offences charges against the Defendants under the *ROA* for the conduct the day prior, on November 25, 2020. TPH also charged Adamson Barbecue Limited under section 100(1) of the *HPPA* for failing to comply with the Section 22 Order.

47. At approximately 9am, TPS officers attended the Etobicoke Restaurant and set up barriers to restrict street access to vehicles.

48. By 12:00pm, at least 100 people had gathered in the Etobicoke Restaurant parking lot, becoming increasingly aggressive, and requiring the attendance of additional TPS officers.

49. At that time, Mr. Skelly was permitted to enter into an adjacent part of the building to access a purported second business, which had not been subject to the Section 22 Order. Mr. Skelly and some unidentified individuals used this opportunity to break through the wall separating the rear of the building from the Etobicoke Restaurant. Mr. Skelly, with the assistance of unidentified persons, then transported food through the broken wall into the restaurant.

50. Mr. Skelly and unidentified individuals then battered down the Etobicoke Restaurant's main entrance, breaking the locks that had just been placed earlier that same morning. The crowd outside then rushed inside the restaurant. TPS officers attempted to prevent further entry and secure the perimeter of the building.

51. By 1:00pm, the crowd outside the restaurant had grown to approximately 400 people. Additional TPS officers, including mounted police, were requested to attend the Etobicoke Restaurant to assist.

52. At this point, as a result of Mr. Skelly's actions that day, TPS arrested Mr. Skelly and charged him with Mischief Under and Obstruct Peace Officer pursuant to the *Criminal Code of Canada*. TPS also charged Mr. Skelly with Enter Premise Where Entry Prohibited pursuant to the *Trespass to Property Act*, RSO 1990, c T21.

53. Upon Mr. Skelly's arrest, the crowd at the Etobicoke Restaurant became highly confrontational with police. Additional TPS officers, including additional mounted officers, arrived on scene to assist.

54. Even after Mr. Skelly's arrest, individuals remained at the Etobicoke Restaurant and continued to dine indoors, in contravention of the Section 22 Order and the *ROA*. By 6pm, the crowd at the Etobicoke Restaurant had largely dispersed. The Etobicoke Restaurant was secured, and the services of Sure General Contractors Inc. were engaged to board up the building to restrict further access.

55. Paid duty TPS officers were deployed to secure the Etobicoke Restaurant throughout the night.

Friday, November 27, 2020

56. On November 27, 2020, MLS, TPS, and TPH continued to carry out the Section 24 Direction, to ensure that the Etobicoke Restaurant remained closed, and to ensure that access to the Etobicoke Restaurant was restricted.

57. TPS officers attended at the Etobicoke Restaurant to maintain security at the boarded-up property. Throughout the day, a crowd grew outside the Etobicoke Restaurant and further attempts were made to breach the building barriers. TPS officers were redeployed to reinforce the perimeter from inside the restaurant.

58. TPH laid four further provincial offences charges against the Defendants under the *ROA* and the *HPPA* for the conduct the day prior, on November 26, 2020. In total, the Defendants were charged with over 20 provincial offences between November 24 and November 27, 2020.

Saturday, November 28, 2020 and beyond

59. On November 28, 2020, at a large public demonstration against public health measures in Toronto, Mr. Skelly gave a statement, published on social media where he encouraged "every other business" to contravene the Stage 1 Regulation, minimized the potential penalties for breaking the Stage 1 Regulation, and promised to fund legal assistance for anyone who did so.

60. TPS officers continued to secure the Etobicoke Restaurant on November 28, 2020.

61. On December 4, 2020, Her Majesty the Queen in right of Ontario made an application to the Ontario Superior Court of Justice for an order under section 9 of the *ROA* restraining Adamson Barbecue Limited and William Adamson Skelly from contravening the Stage 1 Regulation. The order was granted, and the Defendants were thereby restrained from contravening the Stage 1 Regulation at, *inter alia*, the Etobicoke Restaurant. The court expressly found that there was a clear breach of the Stage 1 Regulation at the Etobicoke Restaurant, along with an express intention by the Defendants to defy the Stage 1 Regulation. The court also found, "Various orders made by the medical officer of health under s. 22 of the HPPA were also openly disregarded at this location".

62. Between November 28, 2020 and December 13, 2020, TPH staff continued to monitor the property to ensure that the Etobicoke Restaurant remained closed, pursuant to the Section 24 Direction.

63. On December 14, 2020, the MOH lifted the Section 22 Order, based on available information, including information from TPH inspectors that there had been recent and ongoing compliance with the Section 22 Order at the Etobicoke Restaurant since the date that the retaining order was issued.

Expenses and costs incurred by Board of Health from November 26th to December 14th, 2020

64. Between the time the Section 24 Direction was issued (November 26, 2020) and the time the Section 22 Order was lifted (December 14, 2020), the following expenses and costs were incurred by the Board of Health in carrying out the Section 24 Direction:

i) The costs of locksmith services required at the Etobicoke Restaurant and performed by Lock-Up Services Inc., inclusive of labour, materials, and HST, totalling $2,792.59;

ii) The cost of the boarding-up services performed on November 26, 2020 by Sure General Contractors Inc., inclusive of labour, materials, and HST, totalling $6,777.51;
iii) TPS staffing costs totalling $165,188.73;
iv) TPH staffing costs totalling $8,140.82; and,
v) MLS staffing costs totalling $4,566.74.

65. The plaintiffs plead that at all material times, the Defendants, through their actions, invited and encouraged members of the public to gather at and dine inside the Etobicoke Restaurant, in contravention of applicable laws and the Section 22 Order.

66. The plaintiffs plead that at all material times, the Defendants were acting intentionally, in contravention of applicable laws, in contravention of the Section 22 Order, and with complete disregard for public health and safety in the midst of a pandemic.

67. The plaintiffs plead that the expenses and costs incurred by the plaintiffs in carrying out the Section 24 Direction of the MOH, were reasonable and necessary in all the circumstances.

68. The plaintiffs will provide further particulars of its damages prior to trial.

69. The plaintiffs plead and rely on the *City of Toronto Act, 1997* (No 2), SO 1997, c 26, the *City of Toronto Act, 1997*, SO 1997, C 2, the *City of Toronto Act*, 2006, SO 2006, c 11, the *Courts of Justice Act,* RSO 1990, c C43, the *Health Protection and Promotion Act*, RSO 1990, c H7, the *Emergency Management and Civil Protection Act,* RSO 1990, c E9, the Toronto Municipal Code, and the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020,* SO 2020, c 17, each as amended, including any regulations passed thereunder, as amended.

70. The plaintiffs propose that the trial of this action be held in Toronto, Ontario.

Date: March 10, 2021

CITY SOLICITOR'S OFFICE
City of Toronto, Legal Services
Station 1260, Metro Hall
55 John Street, 26th Floor
Toronto, ON M5V 3C6

Kirsten Franz (LSO 45946O)
Tel: (416) 392-1813
Fax: (416) 397-5624
Email: Kirsten.Franz@toronto.ca

Penelope Ma (LSO 66367O)
Tel: (416) 397-7690
Fax: (416) 397-5624
Email: Penelope.Ma@toronto.ca

Lawyers for the Plaintiffs

This is **Exhibit "D"** referred to in the **Affidavit of Luca Troiani** sworn before me at the City of Toronto, in the Province of Ontario, this 28th day of August, 2023 in accordance with O.Reg 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:
Ian Perry
94EBBD5F03614F9...

A Commissioner for taking Affidavits for Ontario

SUMMER SALE! For a limited time, get the National Post for only $40/year. *Don't miss out!*

Toronto / News / Canada

'BBQ Rebellion' gets turned away from court, delaying face-off over COVID lockdowns

An Ontario judge declined to hear a constitutional challenge from Adam Skelly, the man who refused to close indoor dining at his restaurant Adamson Barbeque

Adrian Humphreys

Published Jun 28, 2021 • 5 minute read

187 Comments

Owner Adam Skelly at the Etobicoke location of Adamson Barbecue in Toronto on Nov. 25, 2020, after it was ordered to shutdown. PHOTO BY ERNEST DOROSZUK/POSTMEDIA

To the dismay of supporters of a high-profile COVID-19 scofflaw, an Ontario judge declined to hear a constitutional challenge of pandemic enforcement mounted by Adam Skelly, who refused to close indoor dining at his Toronto barbecue restaurant during the lockdown.

The judicial fizzle came as Skelly and his supporters were expecting a titanic face-off during two days of scheduled court time, for which they prepared a full-throttle attack on lockdowns, masks, COVID testing, hospitalization statistics and the danger of the virus itself.

Skelly had put his food business on the back burner for six months to prepare for the constitutional challenge, supported by a war chest of more than $300,000 raised through a GoFundMe campaign.

Skelly said he had "hired and fired six lawyers" before settling on his team, and assembled six witnesses to offer expert opinion, all of them with PhDs or medical degrees, including Dr. Joel Kettner, a former chief medical officer of health for Manitoba.

RECOMMENDED FROM EDITORIAL

Diners, and cops, return to Etobicoke BBQ spot that continues to breach COVID lockdown

In November 2020, Skelly's restaurant in west Toronto became a high-profile flashpoint when he defied orders to close indoor dining to help stop the spread of COVID-19. Anti-lockdown protesters clashed with police, who arrived in large numbers to enforce compliance.

Skelly became an early focus of anti-lockdown anger. He maintains the order and the government's response were unjustified and unconstitutional.

The city sought a court order restraining Skelly and his company, Adamson Barbecue Limited, from contravening the Reopening Ontario Act, the province's regulations on what can and cannot be done in the fight against the virus that causes COVID-19.

STORY CONTINUES BELOW

That restraining order, opposed by Skelly, is what brought the parties to court Monday, but for Skelly, it was about far more than his ability to serve food without government permission.

Supporters gather and barbecue outside Adamson Barbecue on Nov. 27, 2020. PHOTO BY ERNEST DOROSZUK/POSTMEDIA

Leading up to Monday's hearing, Adamson Barbeque's website was pushing his legal case along with his brisket and short ribs, a court challenge branded the "the BBQ Rebellion."

"My lawsuit has very little to do with my restaurant. It is a constitutional question of the Reopening Ontario Act, and the evidence (or lack thereof) used to justify it," Skelly said in a written statement prior to the hearing's start.

"If this challenge is successful, entrepreneurs can reopen their restaurants, bars, gyms and salons, children can go back to school, and everyone can gather together to celebrate, mourn and worship."

He refers to it as Canada's most important constitutional case.

"My lawyers tell me that the courts tend to rule with public opinion. While the tides are turning, the media won't report any counter-narrative, so much of the public consciousness in Canada is still blanketed by fear. I've done the best I can to disseminate this information, the rest is up to us on the big day," he wrote to supporters.

STORY CONTINUES BELOW

In response, his case attracted a rush of interest.

People logging in to watch the online hearing quickly exceeded the maximum capacity of 500 long before court started, meaning there wasn't room for the judge or the province's lead lawyer to be let into the hearing.

Most observers seemed to be Skelly supporters. One man was wearing a gas mask until the court asked cameras be turned off to reduce broadcast bandwidth. The online names of some observers included Open Ontario, Ontario Stands with Adam, WhoDoYouServe, GoAdamGo, Dr. Freedom, SeeThe Truth and Let's Go Adam!!!!.

A plea from the court registrar for some to volunteer to leave eventually allowed the judicial participants in, and for the hearing to convene.

Observers didn't get the fireworks or debate they had hoped for. Instead, they got a muted argument over judicial jurisdiction.

Zachary Green, representing the province of Ontario, argued there was no procedural basis to entertain Skelly's constitutional objections.

He said Skelly has not embarked on any court application claiming relief against the province, he has only contested Ontario's motion against him and his restaurant. Green said that violates established rules of procedure.

STORY CONTINUES BELOW

Green said Skelly has been represented by experienced lawyers, their reply to the government's notice "was signed by four lawyers," adding it is not as if it is "an inmate appeal" or a scribbled note from a self-represented litigant.

In court materials, the province said Skelly's wide objections about the COVID response — called "far-fetched grievances" — far exceed the scope of the government's action against him, which is only to close his restaurant, when everyone is told to, for health reasons.

"Indeed, they are vexatious," the government's court filing says.

Michael Swinwood, representing Skelly, replied that the constitutional element of Skelly's defence has been clear from the start. If the province objected to his constitutional questions, they should have asked a judge to strike them out of their reply to the court.

"It is straightforward, and we complied with what was asked of us," Swinwood told court.

Pre-trial procedures, including judicial case management conferences and the examination and cross-examination of expert witnesses, went ahead arguing the wider constitutional issues without any complaint or objection from the province, he said.

STORY CONTINUES BELOW

“It was always understood to be a notice for constitutional relief,” Swinwood said.

In court materials, Swinwood said the government’s responses to COVID-19 were not based on scientific principles or respect for human rights and are more intrusive than available alternatives.

“The epidemic of fear has ruled people and governments, and not sound scientific analysis,” Skelly’s materials say.

Judge Jasmine Akbarali, of the Ontario Superior Court of Justice, briefly adjourned court to deliberate before returning with her verdict.

“I regret to say, I do not think I have the jurisdiction to proceed to deal with these issues on their merits today,” she said.

“I do not think the hearing has been constituted in such a way to give me that jurisdiction, and it is in nobody’s interest to go ahead with the two-day hearing that is easily vulnerable on appeal on the basis that I didn’t have jurisdiction.”

Written reasons were to be issued later.

Supporters of Skelly seemed upset with the ruling.

“Bullshit,” said one to the court. “This is injustice,” said another. The hearing was terminated just as many others were unmuting their microphones.

STORY CONTINUES BELOW

After court, Skelly’s lawyer expressed dissatisfaction with the outcome.

“The courts have no appetite for constitutional challenges to COVID-19 lockdowns and protocols,” Swinwood told National Post.

“Technical procedure is to rule over substance. Our freedoms are in peril and the court refused to take jurisdiction over the matter despite the rules that are designed to be flexible so that serious matters can be heard and not summarily dealt with.

“There is something deeply amiss,” he said.

Green deferred to the Ministry of the Attorney General’s spokesman for comment on the case. The ministry declined to comment, “as this matter is before the court,” said spokesman Brian Gray.

On Twitter, Adamson Barbecue’s branded account has been railing against COVID restrictions and related issues, including vaccinations, which they call “experimental gene therapy.”

The matter is expected to return to court at a later date, once a constitutional application is filed in the court.

• *Email: ahumphreys@postmedia.com | Twitter: AD_Humphreys*

COMMENTS

Postmedia is committed to maintaining a lively but civil forum for discussion and encourage all readers to share their views on our articles. Comments may take up to an hour for moderation before appearing on the site. We ask you to keep your comments relevant and respectful. We have enabled email notifications—you will now receive an email if you receive a reply to your comment, there is an update to a comment thread you follow or if a user you follow comments. Visit our Community Guidelines for more information and details on how to adjust your email settings.

TRENDING

1 
'Canada's favourite facial tissues' Kleenex to be pulled from shelves

2 
Bjorn Lomborg: Fear-mongering over forest fires and climate change isn't rooted in reality

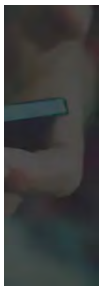
3 
Conrad Black: Democratic witch-hunt won't deny Trump's triumph in 2024
SUBSCRIBER ONLY

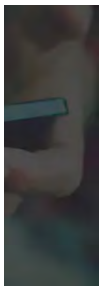
4 
Ari Blaff: Toronto schools' anti-racism trainer demands religious blind faith

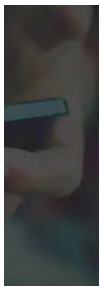
5 

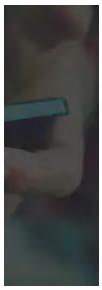
Federal Court judge delays deportation over gender neutral pronouns used by government

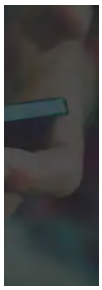
READ NEXT

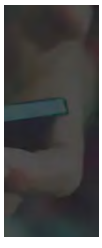










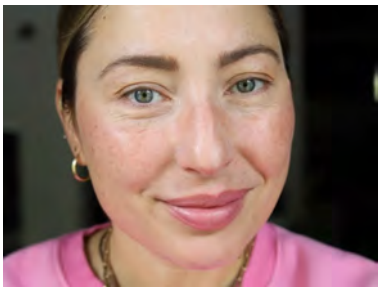


LATEST FROM SHOPPING ESSENTIALS

Makeup tutorial: Natural and effortless feather brows

Easy makeup tips to achieve effortless brows.

26 minutes ago
FASHION & BEAUTY



What the Pumpkin Spice Latte founder orders at Starbucks

And how he prepares coffee at home

2 hours ago
SHOPPING ESSENTIALS

6 yoga mats to consider if you're looking for grip, support and durability

You can order most of them from Amazon

4 hours ago
SHOPPING ESSENTIALS

Fab Five: Sleek styles for back to school, work

Whether you're stepping into a classroom after a long hiatus or simply returning to the office after a final hurra...

23 hours ago
FASHION & BEAUTY

This Just In: Sisley Paris Phyto-Rouge Shine Lipstick, Narciso Rodriguez All of Me eau de parfum, and L'Occitane Reine Blanche Rich Cream Brightening Ultra-Moisturizer

Three buzzed-about beauty products we tried this week.

23 hours ago
FASHION & BEAUTY

THIS WEEK IN FLYERS

Manage Account

My Account

Manage My Print Subscription

Manage My Tax Receipt

ePaper

Contact Us

Advertise

Advertise With Us

Appointment Notice

Content Works

Partnerships

Resources

Classified

Remembering

Celebrating

Classifieds Marketplace

Careers

FlyerCity

Post a Classified ad

Local Directory

Sales

About Us

Postmedia Network

Financial Post

Canada.com

Canoe.com

Driving.ca

The GrowthOp

Winnipeg Sun

The London Free Press

Regina Leader-Post

Saskatoon StarPhoenix

Windsor Star

Ottawa Citizen

The Province

Vancouver Sun

Edmonton Journal

Calgary Herald

Montreal Gazette

Toronto Sun

Ottawa Sun

Calgary Sun

Edmonton Sun

›

Follow us

Give us some feedback!

365 Bloor Street East, Toronto, Ontario, M4W 3L4

This is **Exhibit "E"** referred to in the **Affidavit of Luca Troiani** sworn before me at the City of Toronto, in the Province of Ontario, this 28th day of August, 2023 in accordance with O.Reg 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:
Ian Perry
94EBBD5E03614E9...

A Commissioner for taking Affidavits for Ontario

Adamson BBQ owner Adam Skelly charged by Toronto police for flouting COVID-19 lockdown

COLIN FREEZE ›

PUBLISHED NOVEMBER 26, 2020
UPDATED NOVEMBER 27, 2020

The owner of Adamson Barbecue, Adam Skelly, holds a stack of tickets on Nov. 25, 2020.

CARLOS OSORIO/REUTERS

Police have criminally charged a Toronto restaurateur who was keeping his business open in defiance of emergency orders that aim to contain the spread of COVID-19.

The decision by Toronto Police Service to lead Adam Skelly away from his restaurant in handcuffs was part of a broader police blitz across the city as pandemic

restrictions stoke frustrations over shuttered businesses across Canada.

Mr. Skelly's arrest on Thursday followed three days of his flouting rules ordering restaurants to close in Toronto for the next month. Ranks of police, including mounted police, formed a wall to keep anti-lockdown protesters away as they rallied around Mr. Skelly and his west-end restaurant.

To date, such enforcement has been rare. So rare that in "freedom rallies" being held across Canada, speakers have alleged that the state is bluffing about police being able to enforce emergency measures, given the country's long-standing constitutional protections for individuals.

Legal experts, however, caution that Canadians are not living in typical times. "All these people waving the Charter around need to know what the Charter actually says," says Kerri Froc, a law professor at the University of New Brunswick.

Prof. Froc was not speaking to a particular case. But as a point of law, she said, it is very likely that judges would backstop police efforts to arrest, fine or summon to court people who are alleged to have undermined measures imposed to contain COVID-19.

"We do have the right to make individual decisions ... but the question is: When do those rights start to infringe on the rights of other people?" Prof. Froc said. Constitutional law calculations are complex, so she simplified matters by referencing a well-known maxim from *Star Trek*.

"I always quote Spock for my students: The needs of the many outweigh the needs of the few."

Ontario, which reported 1,478 new COVID cases on Thursday and 21 deaths, is shaping up to be a key legal battleground.

Police gather outside Adamson Barbecue following the arrest of Adam Skelly on Nov. 26, 2020.

CHRIS YOUNG/THE CANADIAN PRESS

The charges laid against Mr. Skelly include attempting to obstruct police, mischief and trespassing. They follow a slow-burning saga that played out in public this week.

On Monday, he vowed on social media to reopen his restaurant in Toronto's Etobicoke neighbourhood as the city entered a new stage of lockdown that banned in-restaurant dining.

His decision to open Tuesday and Wednesday prompted authorities to lay bylaw and public-health infractions against him, as well as to seize the establishment and change its locks. On Thursday, police let Mr. Skelly temporarily back into the building but allege he lingered, damaged the locks and accessed areas he was not supposed to.

A fracas broke out as Mr. Skelly was led away. Police charged another man with six counts of assaulting police.

Also on Thursday, Ontario MPP Randy Hillier tweeted he was ticketed by Toronto Police and served with a court summons for his alleged role in organizing a "No More Lockdowns" rally at Queen's Park. This was an alleged violation of the Reopening Ontario Act, and the owner of a business in Toronto's Scarborough neighbourhood was similarly ticketed for opening its doors in defiance of the new rules.

One day earlier, Mr. Hillier paid homage to Mr. Skelly in the legislature while vowing that he too would soon test the new laws. "I'm certain that these unlawful orders will be struck down by the courts," he said.

Hamilton police have also pursued Reopening Ontario Act charges this month. On Nov. 13 an alleged "Hugs not Masks" organizer was accused of flouting the provincial emergency law. Then, on Nov. 23, a "Defund the Police" advocate was hit with the same charge.

In both cases, police say they issued prior warnings to the alleged protest organizers by telling them they would face $10,000 fines if they followed through with plans for public rallies they had advertised on social media. "The viability of prosecution will be decided by the courts," said Hamilton police spokeswoman Jackie Penman.

Also, for the past three weeks, police in Aylmer, Ont., have been reviewing evidence related to a Nov. 7 protest against pandemic-fighting measures in which nearly 2,000 people converged on that community of 7,500.

Days before the Nov. 7 rally, the region's medical officer had tried to wave people off for fear that the mostly out-of-town protesters could introduce coronavirus infections into Aylmer.

Police have no option but to strongly consider using their powers to buttress pandemic-fighting measures, Aylmer Police Chief Zvonko Horvat said. "You don't

want to make people martyrs in certain circumstances – but at the end of the day, you also have to take a look at the applicable laws."

Follow Colin Freeze on Twitter: @colinfreeze

Report an error

Editorial code of conduct

This is **Exhibit "F"** referred to in the **Affidavit of Luca Troiani** sworn before me at the City of Toronto, in the Province of Ontario, this 28th day of August, 2023 in accordance with O.Reg 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:
Ian Perry
94EBBD5E03614E9...

A Commissioner for taking Affidavits for Ontario

NEWS (HTTPS://NOWTORONTO.COM/CATEGORY/NEWS/)

How did Adamson Barbecue guy become a martyr for anti-lockdown crowd?

BY ENZO DIMATTEO(HTTPS://NOWTORONTO.COM/AUTHOR/ENZO-DIMATTEO/) MARCH 1, 2021

Just when it looked like we'd heard the last of Adam Skelly, the owner of Adamson Barbecue made famous for defying Ontario's lockdown orders, there he was back in the news last week.

Turns out the city has sent him a bill for around $180K for services related to the shutdown of his restaurant back in November (https://nowtoronto.com/food-and-drink/adamson-barbecue-ordered-closed-after-defying-provincial-lockdown-order). Those services include some $165K in policing costs as well as the costs of boarding up – and keeping closed – his place of business after police and bylaw enforcement officers showed up to enforce the provincial lockdown order.

Skelly was led away in handcuffs back then as police scuffled with anti-mask and anti-lockdown protestors who converged on this south Etobicoke restaurant. Skelly has since launched a constitutional challenge against the Reopening Ontario Act, buoyed by donations to pay for his legal fees through a GoFundMe campaign.

His shop in Etobicoke remains closed "under illegal occupation by Eileen DeVilla!," Toronto's medical officer of health, Skelly proclaims on his website. But a second location in Leaside continues to offer home delivery on weekends. Skelly says the location can no longer operate as a takeout restaurant because of what he describes

as an “old zoning issue tied up in beaurocratic [sic] process.” It may be more accurate to say he was operating without a licence. A third location in the 905 in Aurora is offering lunch and pre-order pick-ups.

City spokesperson Brad Ross tells NOW on the city’s move to collect costs related to Adamson’s shutdown that “Enforcement action was necessary to protect public health from it being open.”

That much seems clear to most, except Skelly. But the Canadian Civil Liberties Association has weighed in suggesting that ordering Skelly to pay policing costs may raise constitutional issues over Skelly’s right to protest provincial lockdown measures.

Cara Zwibel, director of the CCLA’s fundamental freedoms program, told CTV News last week (https://toronto.ctvnews.ca/civil-liberties-lawyer-concerned-after-toronto-s-adamson-barbecue-owner-billed-for-police-response-1.5321944)that enforcing the law should be considered part of the cost of doing business for the city.

That argument may be a little more difficult to make in Skelly’s case, who defied orders to close for three days before he was arrested on criminal trespassing charges – and, it turns out, was operating his business without a licence.

The city, however, seems prepared to make an example of Skelly. It says it’s prepared to fight for the costs in court if Skelly refuses to pay up.

Don’t count on that happening now that Skelly has become a martyr for the anti-lockdown cause.

In retrospect, the city has no one to blame but itself. The effort to close Skelly down was botched from the start. First, the guys sent in to change the locks on his place seemed to not be aware there was a side door. Then someone made the decision to send cops in on horseback (https://youtu.be/-rLjma0mgWw)to keep supporters and protestors outside his joint.

It would have been more prudent for the city to bide its time and move in when things had quieted down. Instead, Mayor John Tory set a confrontational tone by suggesting city bylaw enforcement and police should “throw the book” at Skelly. That hasn’t helped matters.

Skelly has played the role of working-class hero in trademark hoodie, lumberjack jacket and camo cap to a T. It’s attracted a lot of sympathy to his cause, when he’s clearly spent too much time on the internet indulging in conspiracy theories about the coronavirus.

“There seems to be a larger globalist agenda at play,” he has said about the pandemic. “There’s no real answers there’s only blind faith and obedience... to this alleged pandemic.”

He goes further suggesting that federal “subsidies” to media companies are feeding a false narrative on the coronavirus.

Even before he became famous, Skelly was fanning the flames about the pandemic on his business's social media accounts. He was later forced to apologize for labelling as "retards" those questioning his conspiracy theories.

To be sure, disparate groups have been attracted to his cause, most visibly The Line Canada, "a national movement of resistance... to end corruption and tyranny."

Skelly has claimed he never wanted to be the poster boy for the anti-lockdown cabal, but he hasn't been shy about drawing attention to himself or his views of the science of COVID-19. Other observers have already suggested his act of defiance is part publicity stunt – his set-to with the city has already inspired a merchandising spree of Risk It For The Brisket hoodies, jackets and caps.

Also, the bill the city wants him to pay was sent to him last December. He only made that public last weekend. It's the same weekend that he posted a video on his Instagram account (https://www.instagram.com/p/CLk7SLogkAU/?utm_source=ig_web_copy_link) of what looked like his restaurant up in flames.

"My business after challenging the establishment narrative" were the words posted along with the video, leaving the impression that someone had taken a torch to his place. Only, it wasn't his restaurant that was up in flames but another nearby. That fact seemed lost on many of the 482 commenters that the post attracted. Skelly had to explain that it was a meme.

Meanwhile, the press conference announcing his constitutional challenge a few weeks back has received more than 420,000 page views on something called Bright Light News on Facebook, although most mainstream news organizations chose to ignore it. But the money to support that challenge from a GoFundMe campaign keeps coming in, reaching more than $337,000 as of this week.

To some that would seem obscene for someone whose business was seemingly holding up with delivery services during the pandemic – Skelly says he paid out $1 million in payroll last year – when other businesses were being forced to close under the lockdown.

More than 17,000 people have signed a petition on change.org (https://www.change.org/p/gofundme-stop-the-gofundme-for-adamson-bbq-ffda449a-ccff-4b4c-bc78-af0d9c06b08a?recruiter=171016849&utm_campaign=signature_receipt&utm_medium=twitter&utm_source=share_p asking GoFundMe "to re-evaluate what its platform should and should not be used for" and to remove the fundraiser on behalf of Skelly.

As the petition succinctly points out, "Whether you agree with these [provincial] mandates or not, he is putting the lives of others at risk." And there's the crux of the matter.

Skelly, of course, has denied he's putting anyone at risk. He says that no one he knows of who took part in protests at his Etobicoke location or was served at his restaurant has contracted the virus. But the pizza joint sharing the space at Skelly's Leaside

location, Conspiracy Pizza, could not offer the same assurance to its staff and customers, closing down its operations shortly after the controversy broke last December.

Too bad that for the city and police the controversy is turning into a PR exercise.

@enzodimatteo (http://twitter.com/enzodimatteo)

NEWS (HTTPS://NOWTORONTO.COM/CATEGORY/NEWS/)

‘Why do people still support this vile place?’ Canadians disgusted that 15 animals have died in Marineland’s care in just four years (https://nowtoronto.com/news/15-animals-died-in-marinelands-care-in-four-years/)

BY DEVON BANFIELD AUGUST 25, 2023

CULTURE (HTTPS://NOWTORONTO.COM/CATEGORY/CULTURE/), TOP STORY (HTTPS://NOWTORONTO.COM/CATEGORY/TOP-STORY/)

Events happening in Toronto this weekend: Aug. 25-27 (https://nowtoronto.com/culture/events-happening-in-toronto-this-weekend-aug-25-27/)

BY BREANNA MARCELO AUGUST 25, 2023

CULTURE (HTTPS://NOWTORONTO.COM/CATEGORY/CULTURE/), FOOD (HTTPS://NOWTORONTO.COM/CATEGORY/FOOD-AND-DRINK/FOOD/)

Toronto named one of the world's top trending brunch destinations (https://nowtoronto.com/culture/toronto-named-one-of-the-worlds-top-trending-brunch-destinations/)

BY BREANNA MARCELO AUGUST 24, 2023

LIFE (HTTPS://NOWTORONTO.COM/CATEGORY/LIFESTYLE/), TOP STORY (HTTPS://NOWTORONTO.COM/CATEGORY/TOP-STORY/)

Canadian millennials and Gen Xers are making more money than ever – but it's not catching up to their debt (https://nowtoronto.com/lifestyle/canadian-millennials-and-gen-xers-are-making-more-money-than-ever-but-its-not-catching-up-to-their-debt/)

BY OSOBE WABERI AUGUST 24, 2023

LIFE (HTTPS://NOWTORONTO.COM/CATEGORY/LIFESTYLE/), TRENDING (HTTPS://NOWTORONTO.COM/CATEGORY/TRENDING/)

Theatres across Canada are offering $4 movie tickets in honour of National Cinema Day on Sunday (https://nowtoronto.com/lifestyle/theatres-across-canada-are-offering-4-movie-tickets-in-honour-of-national-cinema-day-on-sunday/)

BY OSOBE WABERI AUGUST 24, 2023

LIFE (HTTPS://NOWTORONTO.COM/CATEGORY/LIFESTYLE/)

You can drink booze and enjoy pastries at Indigo's upcoming new concept store in Toronto (https://nowtoronto.com/lifestyle/you-can-drink-booze-and-enjoy-pastries-at-indigos-upcoming-new-concept-store-in-toronto/)

BY BREANNA MARCELO AUGUST 24, 2023

(https://nowtoronto.com)

This is **Exhibit "G"** referred to in the **Affidavit of Luca Troiani** sworn before me at the City of Toronto, in the Province of Ontario, this 28th day of August, 2023 in accordance with O.Reg 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:
Ian Perry
94EBBD5E03614E9...

A Commissioner for taking Affidavits for Ontario

Etobicoke restaurant owner facing new charges for again defying COVID-19 lockdown rules

Joshua Freeman, CP24 Web Writer
@Josh_F

Kerrisa Wilson, CP24 Web Content Writer
@kerrisawilson

Published Thursday, November 26, 2020 7:55AM EST
Last Updated Thursday, November 26, 2020 7:08PM EST

Two men are now facing criminal charges and the city has completely seized a building following a raucous three day-long dispute between police and city officials and a restauranteur who brazenly declared that he would open up to serve customers despite lockdown orders in effect to contain a deadly pandemic.

Adam Skelly, the owner of the Adamson Barbecue restaurant in Etobicoke, was arrested by Toronto police officers Thursday afternoon after a crowd of supporters allegedly broke through a cordoned-off section of the building by smashing down drywall in an effort to reopen the shuttered restaurant.

Speaking with reporters Thursday afternoon, Supt. Domenic Sinopoli said police allowed Skelly into a section of the building “in good faith” because they didn’t believe that it fell under a closure order from Toronto Public Health. However a crowd of supporters then tried to smash through the walls to reopen the facility.

RELATED STORIES

Charges laid after Etobicoke BBQ restaurant openly defies lockdown rules for second straight day

“At that time, and in good faith, we believed that that rear compartment was not captured by the order itself.” Sinopoli said. “The individual was allowed access to the rear compartment. During the process of him entering, they broke through the drywall and entered the restaurant proper and then from the inside, broke out and damaged the locks that were put in place by the city.”

Sinopoli said Skelly, 33, now faces one count of attempting to obstruct police, one count of mischief under, one count of failing to comply with a continued order under the Reopening Ontario Act, and one count of failing to leave when directed under the Trespass to Property Act.

Video captured at the scene Thursday showed a loud and angry scene and Sinopoli said police were spit at and assaulted as they tried to enforce the public health orders at the restaurant.

He said 27-year-old Michael Belito Arana of Markham is now facing a slew of charges, including one count of obstructing police, six counts of assaulting a police officer, two counts of uttering a death threat, and one count of failing to comply with a continued order under the Reopening Ontario Act.

Both men are expected to appear in court via video link tomorrow morning for a bail hearing.

Toronto Public Health has now taken occupancy of the entire premises and police will be posting trespassing signs prohibiting people from entering the building or the adjacent parking lot, Sinopoli said.

“We fully intend on enforcing the regulations in the Reopening Ontario Act, the section 22 order issued by Dr. de Villa, as well as the Trespass to Property Act,” Sinopoli said.

He said many of the officers were wearing body-worn cameras and the footage will form part of the evidence to support the charges that were laid.

City spokesperson Brad Ross told reporters that workers will be boarding up the building and changing the locks tonight to prevent re-entry.

“This is an integrated and coordinated effort, I can assure you, with the City of Toronto, Municipal Licensing and Standards, Toronto Public Health and the Toronto Police Service to protect the public,” Ross said. “We are in a pandemic, this is a health emergency.”

Crowds gather for a third day

At around 6 a.m. Thursday, police returned to the restaurant for a third day in a row to change the locks under an overnight order made by Toronto Public Health.

Skelly was seen first arriving at the premises shortly before 8 a.m. He asked the media to stay off the property and was seen talking with police officers.

Shortly after, he entered a portion of the building where there is no access to the restaurant, through a back door to obtain personal belongings.

Adamson Barbecue posted an Instagram story on their account Thursday morning saying “need locksmith & other hands at Etobicoke asap.”

A crowd of people surrounded the establishment in support of Skelly, who vowed to continue reopening his business despite provincial COVID-19 lockdown rules in Toronto and Peel Region that prohibit indoor dining to curb the spread of the virus.

Crowds formed around the premises throughout the morning and many people were seen without masks or face coverings.

At around 12:30 p.m., Skelly and another man were taken away from the premises in handcuffs by police officers.

Dozens of anti-lockdown protesters then moved to Ontario Premier Doug Ford's home in Etobicoke Thursday afternoon.

In a statement, the premier's office said his family and his neighbours should not be subjected to harassment and intimidation.

"The gathering outside the Premier's home today goes beyond acceptable political protests," the premier's office said.

"These protests have been ongoing for several weeks. We are pleading with them to leave those who have nothing to do with our government's policies alone."

Non-criminal charges laid a day earlier

Police laid nine non-criminal charges against Skelly on Wednesday after he opened the business for a second straight day despite Toronto Public Health formally ordering its closure.

On Wednesday, dozens of patrons were seen inside the restaurant, many of them without face coverings, in a repeat scenario from the previous day. However, the patrons left the premises shortly before noon and police were seen blocking the entrance so that nobody else could go inside.

Police confirmed on Wednesday that both Skelly and the corporation that the restaurant is registered to are facing a combined eight charges under the Reopening Ontario Act as well as one additional charge for operating in contravention of the Toronto Public Health order.

The charges under the Reopening Ontario Act are for hosting an illegal gathering on both Tuesday and Wednesday and for offering dine-in service on both days as well. Each individual charge can result in a fine of up to $10,000 for individuals and $100,000 for corporations.

The City of Toronto says Skelly is also facing two municipal bylaw charges for operating a business without a licence.

-With files from CP24.com staff

TOP VIDEOS

WATCH: Robbery at Parkdale A&W restaurant

Video shows man going 146km/h on highway 50

Crews searching for person reportedly swept away

LOCAL NEWS **WORLD NEWS** **REAL ESTATE NEWS**

BREAKING **Teen found dead after entering storm drain in Toronto park during downpour**

Security footage shows brazen gunpoint robbery at Parkdale fast food restaurant

Kimberly-Clark pulling Kleenex tissues from store shelves in Canada

Kremlin denies role in plane crash believed to have killed Russian mercenary leader Prigozhin

Spanish soccer president refuses to resign despite kissing a player on the lips at Women's World Cup

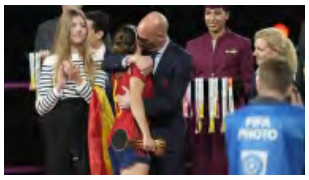
Far-right Israeli security minister lashes out at supermodel Bella Hadid over her criticism of him

‘Affordability continues to deteriorate’: GTA condo sales hit 23-year low in July, building association says

Toronto is now the closest its been to a 'buyer's market' since January: RBC

CMHC says annual pace of housing starts fell 10 per cent in July

SPORTS NEWS



Spanish soccer president refuses to resign despite kissing a player on the lips at Women's World Cup

List of NFL players suspended for violating gambling policies

As temperatures climb across the globe, track and field athletes try to keep cool

ENTERTAINMENT NEWS

‘I’m home’ Neve Campbell says as FanExpo Canada opens with ‘Scream’ panel

Jason Mraz is feeling free and curious - in music and in love

Slain Marine's family plans to refile lawsuit accusing Alec Baldwin of defamation

LIFESTYLE NEWS

Quebec company buys private island with chalet to boost employee happiness

Starbucks' Pumpkin Spice Latte returns today for 20th year

Mobile debit payments in stores jump 53 per cent over past year: Interac

WILLIAM ADAMSON SKELLY et al.

Plaintiffs (Responding Party)

-and-

HIS MAJESTY THE KING IN RIGHT OF ONTARIO et al.

Defendants (Moving Party)

Court File No. CV-22-00683592-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF LUCA TROIANI

PERRYS LLP
3817 Bloor Street West
Toronto ON M9B 1K7

Ian J. Perry (LSO# 65670S)
ian@perrysllp.com

Tel: 416-579-5055
Fax: 416-955-0369

Lawyers for the Applicants

2

CITATION: Ontario v Adamson Barbecue Limited, 2020 ONSC 6494
COURT FILE NO.: TBD
DATE: 20201128

ONTARIO SUPERIOR COURT OF JUSTICE

B E T W E E N :

Her Majesty the Queen in right of Ontario, Applicant

- and -

Adamson Barbecue Limited and William Adamson Skelly

BEFORE: F.L. Myers J.

COUNSEL: Ananthan Sinnadurai, Applicant

READ: November 28, 2020

ENDORSEMENT

[1] The applicant asks for a case conference to schedule an urgent application for relief under *Reopening Ontario (A Flexible Response to Covid-19) Act*, S.O. 2020, c. 17.

[2] The matter has been referred to me as delegate of the Regional Senior Justice in accordance with the process adopted in Toronto for hearing urgent civil matters at this time.

[3] Under Rule 50.13 (1) of the *Rules of Civil Procedure*, RRO 1990, Reg. 194, I convene a case conference before the Honourable Justice Jessica Kimmel by telephone call with the parties and counsel for **Sunday, November 29, 2020 at 5:00 p.m**.

[4] Counsel for the applicant is directed to use best efforts to give notice to the respondents and any lawyer who acts for them, if known, of the timing of the case conference, this endorsement, and the call-in details to be provided by the Motions Coordinator.

[5] Additional materials for use at the case conference, if any, may be filed as searchable PDF attachments to an email sent to Civilurgentmatters-SCJ-Toronto@ontario.ca.

[6] Counsel and the parties are notified and reminded that, under Rule 50.13 (6), at the case conference, the court may make any interlocutory order for the efficient scheduling of this application, including any terms relating to the time prior to the hearing of the application, as may appear appropriate.

[7] The terms of the attached Schedule "A" apply to this application.

[8] If, for any reason, counsel determine that they do not wish to proceed with the case conference, counsel for the applicant is requested to call-in at the time set out above to advise the judge accordingly.

F.L. Myers J.

F.L. Myers J.

Date: November 28, 2020

COURT FILE NO: TBD

SCHEDULE "A" TERMS

[1] Service of materials in this contemplated proceeding may be made by email and shall be deemed effective on the date the email is sent or, if sent after 4:00 p.m., on the next day. No acknowledgement of receipt for email service is required for this motion.

[2] For urgent hearings, all evidence, motion records, and factums shall be filed with the court by delivering them as attachments to an email to the other parties and the Motions Coordinator in searchable PDF format to Civilurgentmatters-SCJ-Toronto@ontario.ca.

[3] No Books of Authority or statutory materials are to be sent to the other parties or the Motions Coordinator. References to case law or statutory material shall be made by hyperlinks to CanLII contained in the parties' factums or in a separate list of authorities.

[4] Any case conferences and all motion hearings will be held by telephone conference or videoconference by Zoom on a line arranged by the Motions Coordinator as a judge may direct.

[5] A copy of all the material delivered electronically for this proceeding, with proof of service, shall also be filed with the court using the Judicial Services Online portal.

[6] This endorsement is effective when signed. No formal order is required.

[7] All parties are given notice that:

a. The presiding judge may convene one or more case conferences and make all orders as she deems appropriate under Rule 50.13(6) to ensure the efficient hearing of the urgent application that is the subject of this endorsement; and

b. Notwithstanding Rule 59.05, orders and judgments made in this proceeding are effective from the date they are made, and are enforceable without any need for entry and filing.

In accordance with Rules 77.07(6) and 1.04, no formal judgments or orders need be entered and filed unless an appeal or a motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal judgment or order for original signing, entry and filing when the Court returns to regular operations;

c. All of the provisions of this order may be varied by the presiding judge on such terms as she deems just; and

d. The hearing may be recorded for the court's purposes.

Date: November 28, 2020

3

COURT FILE # TBD

Superior Court of Justice

FILE DIRECTION/ORDER

Her Majesty the Queen in the Right of Ontario

Applicant

AND

Adamson Barbecue Limited and William Adamson Skelly

Respondents

Case Management ☐ Yes X No by Judge**: KIMMEL J.**

Counsel	Telephone No:	Email:
Ananthan Sinnadurai **Andi Jin** **Adam Mortimer** **Appearing For the Applicant**		ananthan.sinnadurai@ontario.ca andrew.jin@ontario.ca adam.mortimer@ontario.ca
Will Rosemond **Appearing for the Respondents** **William Adamson Skelly also appearing in person**		Will.Rosemond@roylelaw.ca

☐ Order ✠ Direction for Registrar (No formal order need be taken out)

☐ Above Action transferred to the _____ (No formal order need be taken out)

☐ Adjourned to: _____

☐ Time Table approved (as follows)

By endorsement dated November 28, 2020, Myers J. convened a case conference before me that took place at 5:00 p.m. on Sunday November 29, 2020. That case conference proceeded by telephone with all parties and counsel in attendance. Mr. Rosemond is criminal counsel for the respondent William Adamson Skelly. The respondents are in the process of engaging civil counsel to represent them in this proceeding.

While not obligated to do so, the applicant has served the respondents with this proposed application that it asks to be heard on an urgent basis, by which it seeks

a restraining order under s. 9 of the *Reopening Ontario (A Flexible Response to Covid-19) Act*, S.O. 2020, c. 17 (the "ROA"). The applicant is asking for a hearing date to be scheduled this coming week, as soon as possible.
The respondents would like more time to respond and have suggested a hearing date on December 14, 2020 (or thereafter).
Absent a consent interim restraining order, having regard to the nature of the relief sought and the urgency that has been indicated, I would schedule at least a preliminary hearing this week. I have suggested that the parties try to come to an agreement on the terms of a consent interim without prejudice order under s. 9 of the ROA pending a hearing date to be scheduled in the time frame suggested by the respondents, and to try to reach an agreement as well on a timetable for the exchange of application materials, cross-examinations (if necessary) and the delivery of factums in the interim. Failing such agreement, I will timetable an abbreviated schedule for the delivery of materials and a hearing to take place later this week.
The Applicant will serve its application record by no later than noon on November 30, 2020, together with a proposed interim without prejudice order for the respondents to consider. I also suggest that the applicant propose two different timetables for the respondents to consider, one with a view to a hearing on (or after) December 14, 2020 and the other with a view to a hearing later this week, (perhaps with a come-back provision). I have urged the respondents to appoint counsel to represent them in this proceeding. I encourage them to respond in a timely manner to what the applicant proposes in advance of the next case conference.
The parties and their counsel will attend a case conference before me on Tuesday December 1, 2020 at 12:30 p.m. by teleconference (using the same dial in information as was used for the case conference held on November 29, 2020), at which time a hearing date and timetable for the delivery of materials for the application will be determined by me, depending on whether an interim without prejudice arrangement has been reached or not. I will also make timetabling directions, which will take into account what the parties have agreed to, or proposed to each other.

The Schedule “A” terms appended to the November 28, 2020 endorsement of Myers J. continue to apply. I have also granted leave to the parties to serve each other with materials in this application by uploading those materials onto a sync.com platform to be established by the applicant. Service of materials will be effective upon email notification to the opposing parties indicating what materials were uploaded, by whom and when (“service notice”). Service notice is required for each new document uploaded onto sync.com and the service notice should be separately uploaded onto sync.com as well.
Materials must still be separately filed with the court, either in hard copy or through the Justice Services Online Portal at https://www.ontario.ca/page/file-civil-claim-online Affidavits of service may indicate service having been effected in accordance with this endorsement by uploading onto sync.com and the email service notice. Further instructions will be provided when the hearing is scheduled and timetabled.

November 30, 2020
Date

_____
Judge’s Signature

4

CITATION: Her Majesty the Queen in Right of Ontario v. Adamson Barbecue Limited, 2020 ONSC 7446
COURT FILE NO.: CV-20-00652216-0000
DATE: 20201202

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: **HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, Applicant**

AND:

ADAMSON BARBECUE LIMITED AND WILLIAM ADAMSON SKELLY, Respondents

BEFORE: Kimmel J.

COUNSEL: *Ananthan Sinnadurai, Andi Jin and Adam Mortimer*, for the Applicant

William Adamson Skelly, appearing on behalf of the Respondents. Also in attendance, *W. Calvin Rosemond*, criminal counsel for the Respondent William Adamson Skelly

HEARD: December 1, 2020

SCHEDULING ENDORSEMENT

[1] The applicant seeks an order under s. 9 of the *Reopening Ontario (A Flexible Response to COVID-19) Act*, S.O. 2020, c. 17 (the "ROA") restraining the respondents from contravening Regulation 82/20 (the "Stage 1 Regulation"). The restraining order is stated by the applicant to be required, for among other reasons, to prevent ongoing and future breaches of the Stage 1 Regulation in the interests of public health.

[2] A second Rule 50.13 case conference was held on December 1, 2020 to discuss the scheduling of this application. An earlier case conference had been convened on Sunday November 29, 2020 to consider the applicant's request for an urgent hearing. The urgency for this hearing is said to arise from recent charges against Mr. Skelly for provincial offences under the ROA and the *Health Protection and Promotion Act* and events that took place last week at one of the Toronto restaurants operated by the respondents that resulted in Mr. Skelly's arrest.

[3] The applicant was not required to give notice to the respondents of the order sought, but it did so, albeit with the intention of proceeding on an abbreviated timetable. The court's endorsement following the first case conference included the following direction:

> *Absent a consent interim restraining order, having regard to the nature of the relief sought and the urgency that has been indicated, I would schedule at least a preliminary hearing this week. I have suggested that the parties try to come to an agreement on the terms of a consent interim without prejudice order under s. 9 of the ROA pending a hearing date to be scheduled in the time frame suggested by the respondents, and to try to reach an agreement as well on a timetable for the exchange of application materials, cross-examinations (if necessary) and the delivery of factums in the interim. Failing such agreement, I will timetable an abbreviated schedule for the delivery of materials and a hearing to take place later this week.*

[4] At the conclusion of the first case conference the second case conference was scheduled and the court's endorsement indicated that, at the second case conference:

> *…a hearing date and timetable for the delivery of materials for the application will be determined by me, depending on whether an interim without prejudice arrangement has been reached or not. I will also make timetabling directions, which will take into account what the parties have agreed to, or proposed to each other.*

[5] Two timelines were under consideration, leading to either a hearing date this week, as the applicant was requesting, or a hearing during the week of December 14, 2020 which is what the respondents had proposed. The court had suggested that the parties consider agreeing to an interim without prejudice order so that the hearing could be scheduled for the week of December 14, 2020. As of the December 1, 2020, no such agreement had been reached.

[6] The court was advised at the second case conference that the respondents were not in a position to negotiate a consent without prejudice interim order and would not be ready to present their challenges to this application this week. Mr. Skelly asked for more time to retain counsel to represent the respondents but indicated that he could not commit to any time line until counsel had been retained.

[7] When faced with the prospect of the application proceeding this week, the December 14, 2020 date was suggested again, under the reservation about the availability of the respondents' counsel which was currently unknown. The respondents do not consider the matters raised on this application to be urgent and suggest that the existing regulations and Mr. Skelly's bail conditions impose sufficient restrictions to alleviate any immediate concerns.

[8] The applicant maintains its position that the application is urgent. The applicant points to the conduct of the respondents that forms the basis of this application and is not content to depend upon voluntary regulatory compliance. It is also concerned that the bail conditions are not entirely aligned in scope, applicability or duration with the restraining order sought. Absent an interim order, the applicant maintains

that the application should be scheduled to be heard this week, noting that it has the right to proceed *ex parte* (without notice).

[9] The applicant must meet its onus to obtain the order it seeks whether or not the respondents participate at the hearing. Restraining orders and injunctions are often sought without notice on the basis that the responding parties will have an opportunity to make their objections and challenges afterwards. Given that the respondents are not prepared to respond this week and are not animated by any sense of urgency to respond, I have directed the application to proceed on Friday December 4, 2020 as if it was *ex parte*. I have indicated that if an order is made following this hearing, I expect that it will provide for some mechanism for the respondents to come-back on a timely basis to raise their challenges and seek to have it set aside, varied or terminated if they are so inclined (the "come-back provision").

[10] Thus, while the respondents are on notice and have had the option to respond to and participate in the hearing of the application, I am not requiring them to do so within this time frame. If an order is granted following the hearing, the respondents will be given a further opportunity to raise their challenges after having sought further legal advice, so that their challenges can be informed by that advice.

[11] The *ex parte* hearing of this application will proceed at 10:00 a.m. on Friday December 4, 2020. It will be a virtual hearing. The zoom co-ordinates will be provided by the motions office once they have been arranged. The respondents and their counsel are welcome to appear at the hearing should they wish to do so, without any obligation on them to participate should they want to reserve all of their arguments to a later date. All parties and their counsel who might wish to participate in the hearing will be asked to provide their co-ordinates to the court office so that they are given participant-access to the hearing.

[12] Instructions have previously been provided regarding the filing of materials and their addition to the established sync.com platform that will enable the court to access them. Although the application is proceeding as if *ex parte*, the respondents will still be provided with service notice of any new materials that the applicant uploads onto sync.com for this hearing, in accordance with the court's last endorsement. The sync.com platform has now been configured to allow the respondents to upload materials as well. They too are to comply with the court's last endorsement regarding service notice and filing of any materials. The parties may also receive an invitation to upload the application materials to Caselines and should follow the accompanying instructions in that event.

[13] The applicant's factum and book of authorities is to be uploaded by 5:00 p.m. on Wednesday December 2, 2020. The applicant's proposed draft order including a come-back provision for the respondents shall be uploaded by 12:00 noon on Thursday December 3, 2020. If the applicant intends to use a compendium at the hearing of the application, that should be uploaded by no later than 9:00 a.m. on the day of the hearing.

[14] If the respondents retain counsel and wish to re-engage in the negotiation of a without prejudice consent interim order and work towards a hearing date that they will participate fully in during the week of December 14, 2020, that option remains available to them and is not foreclosed by this endorsement. Further directions will be provided by the court should such an agreement be reached, with respect to scheduling, timetabling, briefing and other pre-hearing steps.

[15] Similarly, further directions regarding timetabling and scheduling will be provided by the court in connection with any future hearing that may be requested under the come-back provision, if an order is granted following the December 4, 2020 hearing.

Kimmel J.

Date: December 2, 2020

5

CITATION: Her Majesty the Queen in Right of Ontario v. Adamson Barbecue Limited, 2020 ONSC 7679

COURT FILE NO.: CV-20-00652216-0000
DATE: 20201211

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO Applicant	*Ananthan Sinnadurai, Andi Jin and Adam Mortimer*, for the Applicant
– and –	*Geoffrey Pollock, Leo Ermolov, Sam Goldstein and Alexander Wilkes,* for the Respondents
ADAMSON BARBECUE LIMITED AND WILLIAM ADAMSON SKELLY Respondents	
	HEARD: December 4, 2020 by remote videoconference

KIMMEL J.

REASONS FOR DECISION – RESTRAINING ORDER

The Background to this Application

[1] These are unprecedented times. A state of emergency was declared under the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9 (the "EMCPA") by the Premier of Ontario on March 17, 2020 as a result of the outbreak of the highly communicable COVID-19 (coronavirus disease) that was determined to constitute a danger of major proportions that could result in serious harm to Ontarians (the "pandemic").

[2] As part of its response to the pandemic, the Ontario government enacted the *Reopening Ontario (A Flexible Response to COVID-19) Act,* 2020*,* S.O. 2020, c. 17 ("ROA"). The ROA continued various orders that had been made pursuant to s. 7.0.1 of the EMCPA. The ROA sets out a regulatory framework by which the government

determines staged control measures to be applied to public health units across the Province. The ROA was designed to allow for a targeted approach to identify what stage a public health unit would be placed in based on epidemiological statistics, among other considerations. Ontario's Response Framework published on November 22, 2020 describes the risk factors and priorities that the control measures are attempting to balance through the targeted approach, including:

a. Limiting the transmission of COVID-19;

b. Avoiding business closures;

c. Maintaining health care and public health system capacity;

d. Protecting vulnerable Ontarians, such as the elderly and those with compromised immune systems; and

e. Keeping schools and child-care centres open.

[3] As the number of cases of COVID-19 in the City of Toronto continued to rise in November 2020, the public health unit of the City of Toronto was placed into the Stage 1 - Lockdown Zone, under Regulation 82/20 on November 23, 2020 (the "Stage 1 Regulation"). This stage imposes the maximum control measures.

[4] While permitted to remain open, the Stage 1 Regulation means that restaurants operating in Toronto can only provide take-out, drive through or delivery services—eating inside or outside on a patio is prohibited. Persons responsible for these businesses are required to ensure the use of masks or face coverings and adherence to physical distancing requirements indoors and to prevent patrons from lining up or congregating indoors or outdoors without proper physical distancing and masks or face coverings. They also are required to have a safety plan. These are collectively the "Stage 1 control measures".

[5] There are three Adamson BBQ restaurants: two located in the City of Toronto, and one located in Aurora.[1] The Aurora location is not in the City of Toronto public health unit and is currently subject to different restrictions under Regulation 82/20.

[6] On November 23, 2020, the day Toronto was made subject to the Stage 1 Regulation, a posting was made to the respondents' Instagram account @adamsonbarbecue with the written caption: "Enough is enough – we're opening.

[1] After commencing this application, the Crown learned that the Leaside location was run by Mr. Skelly, the Etobicoke location was operated through a company called Adamson Bar-B-QUE and the Aurora location was operated through a company called Adamson Barbecue Limited. Mr. Skelly is the sole director and officer of the corporations and operates all three restaurants. They have a shared website and shared social media accounts.

Starting Tuesday, November 24th, the Adamson Barbecue Etobicoke location will be open for dine-in service."

[7] True to their word, the Etobicoke restaurant opened for indoor and patio dining on November 24, 2020. It opened again on November 25 and 26, 2020 despite the various charges that were laid against the respondents under the ROA, the *Toronto Municipal Code*, the *Health Protection and Promotion Act*, R.S.O. 1990, c. H.7 (the "HPPA") and the *Provincial Offences Act*, R.S.O. 1990, c. P.33 over the course of these three days. Eventually, Mr. Skelly was arrested on November 27, 2020 and charged with mischief and obstruction of a police officer pursuant to the *Criminal Code of Canada*, R.S.C. 1985, c. C-46. City staff and police eventually secured the Etobicoke restaurant on November 27, 2020 by boarding up its entrances and windows from the inside and placing fencing around the property. Toronto Police had maintained a continuous presence at the location up until the hearing date.

[8] Following an urgent hearing that was convened before me on December 4, 2020 at the request of the applicant, I signed an order pursuant to s. 9 of the ROA, restraining the respondents and any other corporation under their control or direction (including Adamson Bar-B-Que Limited), their servants, employees, agents, assigns, officers, directors and anyone else acting on their behalf or who has or assumes responsibility for all or part of any business carried on by them in the Province of Ontario, from directly or indirectly, by any means whatsoever, contravening Ontario Regulation 82/20 at any restaurant owned or operated by one or both of the respondents or any corporation under their control or direction (including Adamson Bar-B-Que Limited) that is subject to Ontario Regulation 82/20.

[9] These are the reasons upon which that restraining order was made.

The Statutory Framework

[10] The Court is authorized to grant a restraining order sought by the Crown pursuant to s. 9 of the ROA:

> **Proceedings to restrain contravention of order**
>
> **9** Despite any other remedy or any penalty, the contravention by any person of a continued section 7.0.2 order may be restrained by order of a judge of the Superior Court of Justice upon application without notice by the Crown in right of Ontario or a member of the Executive Council and the judge may make the order and it may be enforced in the same manner as any other order or judgment of the Superior Court of Justice.

[11] The Stage 1 Regulation is a continued s. 7.0.2 order to which s. 9 applies.

Urgency, Notice and the Respondents' Position

[12] The applicant was not required to give notice to the respondents of the order sought, but it did so, albeit with the intention of proceeding on an abbreviated timetable. The Respondents indicated that they were not prepared to respond on the abbreviated timetable proposed and contended that the urgency was alleviated by Mr. Skelly's bail conditions, among other things.

[13] In my December 2, 2020 scheduling endorsement, *Her Majesty the Queen in Right of Ontario v. Adamson Barbecue Limited*, 2020 ONSC 7446, I ordered and directed:

> …the application to proceed on Friday December 4, 2020 as if it was *ex parte*. I have indicated that if an order is made following this hearing, I expect that it will provide for some mechanism for the respondents to come-back on a timely basis to raise their challenges and seek to have it set aside, varied or terminated if they are so inclined (the "come-back provision").
>
> Thus, while the respondents are on notice and have had the option to respond to and participate in the hearing of the application, I am not requiring them to do so within this time frame. If an order is granted following the hearing, the respondents will be given a further opportunity to raise their challenges after having sought further legal advice, so that their challenges can be informed by that advice.

[14] The Respondents advised the court on December 4, 2020 that they were taking no position and did not oppose the order sought by the applicant, save and except in respect of the time for their commencement of any come-back motion and the applicant's request for costs (the "procedural objections").

The Test for a Statutory Injunction and Underlying Rationale

[15] This is the first time a court has been asked to grant a restraining order under s. 9 of the ROA. Statutory injunctions, either mandating or restraining regulated conduct, have been the subject of judicial consideration under other statutes. The test that has developed in the jurisprudence under those other statutes is instructive in this case.

[16] For a statutory injunction to be granted, the applicant must establish on a balance of probabilities a "clear breach" of an enactment.

[17] Although the requirements of irreparable harm and the balance of convenience that animate the test for an equitable injunction have been held not to apply to statutory injunctions, where a breach is established, the Court retains residual discretion to decline to grant an order in "exceptional circumstances". See *Retirement Homes Regulatory Authority v. In Touch Retirement Living for Vegetarians/Vegans Inc.*, 2019 ONSC 3401, at para. 48; see also *Gavin Downing v. Agri-Cultural Renewal Co-operative Inc. O/A Glencolton Farms ("ARC") et al*, 2018 ONSC 128, at para. 110.

[18] However, where a public authority seeks injunctive relief to prevent the contravention of a law, the public interest in having the law obeyed will generally outweigh considerations such as the balance of convenience and irreparable harm. See *York (Regional Municipality) v. DiBlasi*, 2014 ONSC 3259 ("*DiBlasi*"), citing *Vancouver (City) v. Zhang*, 2009 BCSC 84, 92 B.C.L.R. (4th) 131 ("*Zhang*"), at para. 18:

> This is because the legislative authority is presumed to have taken into consideration the various competing interests of the public in enacting the legislation which is being contravened; the public has a direct and substantial interest in the enforcement of the law; and open defiance of the law constitutes irreparable harm to the public interest: *British Columbia (Minister of Forests) v. Okanagan Indian Band* (1999), 37 C.P.C. (4th) 224, B.C.J. No. 2545 (S.C.), aff'd 2000 BCCA 315, 187 D.L.R. (4th) 664; *Attorney-General for Ontario v. Grabarchuk* (1976), 1976 CanLII 574 (ON SC), 11 O.R. (2d) 607, 67 D.L.R. (3d) 31 (Div. Ct.).

[19] This reflects the general view that in dealing with matters of public health and welfare, it is for the policy decision makers in the Ontario legislature, not the court, to weigh the benefits to the public good and determine how to balance the individual rights with the public good: see *Downing,* at para. 102.

[20] The factors to be considered in determining whether to grant a statutory injunction are circumscribed. As summarized in *Retirement Homes Regulatory Authority*, at para. 47, there are many common law or equitable considerations that are not applicable in the context of the court's restraint of regulated conduct:

a) The court's discretion is more fettered. The factors considered by a court when considering equitable relief will have a more limited application;

b) An applicant will not have to prove that damages are inadequate or that irreparable harm will result if the injunction is refused;

c) Proof of damages or proof of harm to the public is not an element of the legal test;

d) There is no need for other enforcement remedies to have been pursued;

e) The court retains a discretion as to whether to grant injunctive relief. Hardship from the imposition and enforcement of an injunction will generally not outweigh the public interest in having the law obeyed. However, an injunction will not issue where it would be of questionable utility or inequitable; and

f) It remains more difficult to obtain a mandatory injunction.

[21] In seeking this type of statutory injunction, the applicant is also not required to:

a. prove actual damages suffered. See *College of Opticians of British Columbia v. Coastal Contacts Inc. and Clearly Contacts Ltd.*, 2009 BCCA 459, 98 B.C.L.R. (4th) 53, at paras. 28 and 30.

b. present "compelling evidence" that an injunction is warranted. See *Newcastle Recycling v. Clarington*, 2005 CanLII 46384 (Ont. C.A.), at para. 32.

Analysis

There Has Been a Clear Breach of the Stage 1 Regulation (82/20)

[22] The respondents were charged with over 20 provincial offences between November 24 and 27, 2020 in relation to violations of the ROA, the HPPA and the *Toronto Municipal Code*.

[23] The Etobicoke restaurant continued to offer indoor and patio dining in defiance of the Stage 1 Regulation from November 24, 2020 until the premises were boarded up and secured by police on November 27, 2020. Furthermore, the Stage 1 control measures were not implemented or enforced by persons responsible for the restaurant business operating at this location, in contravention of the Stage 1 Regulation. Various orders made by the medical officer of health under s. 22 of the HPPA were also openly disregarded at this location.

[24] Adamson Barbecue announced on social media on November 23, 2020 that "Starting Tuesday, November 24th, the Adamson Barbecue Etobicoke location will be open for dine-in service" and re-affirmed on November 25, 2020, "We're not closing." After charges were laid, the social media messaging remained unchanged: "Etobicoke location will continue to open for lunch! Dine-in, take-out or patio. Tuesday to Sunday from 11 am." Even after being locked out of the Etobicoke restaurant on November 26, 2020, the respondents broke in and continued to offer indoor dining services.

[25] It is incontrovertible that there has been a clear breach of the ROA Stage 1 Regulation at the Adamson Barbecue restaurant Etobicoke location. The Stage 1 control measures were not being adhered to and no persons responsible for the business were attempting to ensure compliance.

[26] Section 9 of the ROA provides that the contravention by any person of a continued section 7.0.2 order may be restrained. Section 9 does not require the breach to be continuing or ongoing at the time the injunction is granted. To do so would defeat the purpose of the ROA that is preventative in nature. The restraint is of the contravention. The respondents' intention to defy the Stage 1 Regulation has been made clear and is based on their ideological opposition to it. The past actions of the respondents demonstrate a clear breach of breach of a continued s.7.0.2 order and their express

intentions are an added justification for restraining the future contravention of the continued section 7.0.2 order under s. 9.

[27] Section 9 of the ROA is an additional tool, over and above other legislative and non-legislative recourse, to ensure compliance with the ROA, providing for the issuance of a restraining order "[d]espite any other remedy or penalty" available. The Crown is not required to demonstrate that other remedies have proven to be ineffective, although that has been established here. The open defiance of the Stage 1 Regulation and the various enforcement efforts of the medical officer of health under the HPPA, and apparent lack of any deterrent effect of the charges and penalties faced as a result of that defiance, makes this an exemplary case for s. 9 injunctive relief.

[28] Some courts in Ontario and British Columbia have allowed respondents opposing the grant of a statutory injunction to answer the applicant's contention of a clear breach by showing an "arguable case" or "arguable defence" as to why they are not in breach. See *DiBlasi*, at para. 63; *Saanich (District) v. Island Berry Co.*, 2008 BCSC 614, 82 B.C.L.R. (4th) 390, at para. 12.

[29] The Crown argues that those cases are distinguishable from this one on various grounds but, in any event, the flagrant, intentional and blatant defiance of the Stage 1 Regulation, recorded in public statements on social media, renders any prospect of an arguable defence academic in this case.

[30] The onus of raising an arguable defence, if available, is on the respondents. They have been told that they will have the opportunity to bring a motion to vary or discharge any injunction that is granted at a come-back hearing. They will bear the onus of overcoming the finding of the clear breaches of the Stage 1 Regulation if they seek to argue at the come-back hearing that they have an arguable defence. The Crown will be at liberty to argue that this is not an available answer in the circumstances of this case.

[31] It is not a defence for a respondent to state that their contravention is in pursuit of delivering an important message to the public: see *Zhang*, at para. 20. Counsel for the respondents characterize their conduct as an act of civil disobedience to challenge the legislation. This court does not condone civil disobedience of public health and welfare regulations.

[32] The respondents did not challenge the constitutionality, validity, necessity or policies underlying the Stage 1 Regulation at the hearing before me on December 4, 2020. They say that they are considering whether to do so. For immediate purposes, the court is in a similar position to what was observed in *Downing*, at paras. 89-90:

> As the Ontario Court of Appeal stated in *R. v. Schmidt*:
>
> ... However, provided that the legislature has acted within the limits imposed by the constitution, the legislature's decision to ban the sale and distribution of unpasteurized milk to protect and

> promote the public health in Ontario is one that must be respected by this court.
>
> The question of whether either or both statutes violate one or more Ontarians of a constitutionally protected right or freedom is not before this court.

[33] No arguable defence was raised that could detract from my finding that there has been a clear breach of the Stage 1 Regulation for purposes of the injunction I granted on December 4, 2020.

No Exceptional Circumstances

[34] If a clear breach of an enactment has been established, the court has residual discretion to refuse to grant the injunction in "exceptional circumstances". These circumstances, outlined in *Downing* at para. 113, may include:

a. The offending party has ceased the activity and/or has provided clear and unequivocal evidence that the unlawful conduct will cease;

b. The injunction is moot and would serve no purpose;

c. There is a right that pre-existed the enactment that was breached;

d. There is uncertainty regarding whether the offending party is flouting the law;

e. The conduct at issue is not the type of conduct that the enactment was intended to prevent.

[35] The court in *Zhang*, at para. 19, described the relevant factors to consider in the exercise of the court's discretion to refuse an injunction to enforce public rights slightly differently to include:

> …the willingness of the party to refrain from the unlawful act; the fact that there may not be a clear case of "flouting" the law because the party has ceased the unlawful activity; and whether there is an absence of proof that the activity was related to the mischief the statute was designed to address: *British Columbia (Minister of Environment, Lands & Parks) v. Alpha Manufacturing Inc.* (1997), 1997 CanLII 4598 (BC CA), 150 D.L.R. (4th) 193, 96 B.C.A.C. 193.

[36] The onus and exceptional nature of this residual discretion was emphasised by Perell J. in *College of Physicians and Surgeons of Ontario*, 2018 ONSC 4815, at para. 43:

> Where a public authority applies to the court to enforce legislation, and a clear breach of the legislation is established, only in exceptional circumstances will the court refuse an injunction to restrain the continued breach. The onus to raise the exceptional circumstances lies with the respondent, and those circumstances are limited; for example, to where there was a right that pre-existed the enactment contravened or where the events do not give rise to the mischief the enactment was intended to preclude.

[37] The respondents have not attempted at this stage to demonstrate any exceptional circumstances. The Crown appropriately raised them for my consideration since I had directed that the application proceed as if it was *ex parte*. While they are not all relevant in this case, I will address the types of exceptional circumstances that have been considered in other cases briefly, in turn. I am satisfied that none of them would cause me to exercise my residual discretion to refuse to grant the restraining order in this case:

a. The respondents have not demonstrated a willingness to voluntarily cease or refrain from their offending activities. The breaches of the Stage 1 Regulation at the Etobicoke Adamson Barbecue location only stopped when the police forcibly took control of, secured and surrounded the premises. That was not voluntary. Nor are the bail conditions for Mr. Skelly, which cover some but not all of the offending activities, voluntary or permanent. The respondents have not provided any indication that their activities in breach of the Stage 1 Regulation will cease; their past conduct and statements are to the contrary.

b. As long as Regulation 82/30 and Ontario's Response Framework to the COVID-19 pandemic remain in place, the injunction cannot be said to be moot. This Framework requires compliance with the control measures applicable to whichever stage the Adamson Barbecue locations in Ontario have been designated under Regulation 82/20, which may change from time to time.

c. This is not a case about a pre-existing right that was breached.

d. There is no uncertainty about the respondents' flouting of the Stage 1 Regulation – their social media statements are clear and unequivocal; their own lawyer describes their conduct as acts of civil disobedience.

e. Disregarding the Stage 1 control measures is precisely the conduct that the ROA and Stage 1 Regulation was intended to prevent. More importantly, the spread of COVID-19 is the harm the Stage 1 Regulation is attempting to prevent and disregarding the Stage 1 Control Measures undermines that objective. The Crown argues that proof of the spread of COVID-19 from these breaches is not required; rather it can be inferred that there were transmissions of COVID-19, given the crowds of people who attended the Etobicoke Adamson Barbecue location on November 24, 25, 26 and 27, 2020 and that most were observed not to be wearing masks or keeping 2 metres apart, contrary to all municipal, Provincial and Federal public health directives. I am satisfied that at least the risk of transmission was increased by this conduct, and that is the harm that the Stage 1 Regulation is intended to prevent.

[38] The public health objectives of both the ROA and the HPPA are clear and obvious.

[39] There is evidence in the record before me about the epidemiological and other bases for the Stage 1 Regulation under the ROA. Many of the charges laid were as a result of, or in conjunction with, the respondents' failure to comply with orders and directions made under ss. 22 and 24 of the HPPA. A medical officer of health can only make such orders and directions based on a medical opinion that there is a health risk due to a communicable disease necessitating the specified requirements, which were ignored by the respondents in this case.

[40] In considering whether to grant a statutory injunction under public welfare legislation, the court is mandated to give a broad and purposeful statutory interpretation that facilitates the intention and purpose of the legislation. See *Downing*, at para. 100.

[41] I have no hesitation in granting the injunction in this case, having regard to the public health objectives of the ROA.

The Order Granted

[42] On December 4, 2020 I signed an order pursuant to s. 9 of the ROA, restraining the respondents and any other corporation under their control or direction (including Adamson Bar-B-Que Limited), their servants, employees, agents, assigns, officers, directors and anyone else acting on their behalf or who has or assumes responsibility for all or part of any business carried on by them in the Province of Ontario, from directly or indirectly, by any means whatsoever, contravening Ontario Regulation 82/20 at any restaurant owned or operated by one or both of the respondents or any corporation under their control or direction (including Adamson Bar-B-Que Limited) that is subject to Ontario Regulation 82/20.

[43] The Stage 1 Regulation places the responsibility on those persons responsible for a business, or part of a business, to ensure that the Stage 1 control measures are complied

with. The Adamson Barbecue restaurants operate through other individuals, beyond Mr. Skelly. The regulation extends to the class of persons responsible for the business and my injunction extends to that same class of prospective persons who may be responsible for any part of the business carried on at the Adamson Barbecue restaurants. The Crown sought a broader order that could have been read to extend to patrons of the restaurants, which I was not persuaded was justified or supported by the language of the regulation.

[44] The come-back hearing will be scheduled if, and after, the respondents deliver a notice of motion to vary or discharge the restraining order that I granted on December 4, 2020. The respondents had originally asked for the hearing to be held the week of December 14, 2020 to allow time for their response. At the December 4, 2020 hearing they asked for a deadline of January 15, 2021 for their notice of motion, with a hearing to be scheduled at some point thereafter. In the alternative they suggested 21 days from December 4, 2020 which landed on Christmas Eve so that was revised to December 29, 2020, the day after Boxing Day.

[45] While the injunction is in place in the meantime, I agree with the Crown that, if there is going to be a motion to vary or discharge the injunction, it needs to move forward in a timely manner. If there is to be a legal or constitutional challenge to the ROA, it is not in the public interest for that to be drawn out. Taking six weeks to prepare a notice of motion is not timely, in my view. Thus, I have directed the respondents to deliver their notice of motion by December 29, 2020, after which a hearing date and timetable will be set for their come-back motion. Both sides agree that the first step should be the delivery of a Notice of Motion so that the issues can be identified before a full briefing schedule and hearing date are set.

[46] The applicant asked for its costs. The Crown argued that this was not actually an *ex parte* motion because they had provided notice, even though the court, by an earlier endorsement, had permitted the respondents not to respond. The respondents did not oppose the relief sought (except to raise procedural objections). The Crown had an onus to meet, irrespective of any position of the respondents. If the Crown had proceeded *ex parte*, it concedes that it would not have been entitled to costs by virtue of Rule 57.03(3).

[47] Although the Crown did provide notice, the respondents' participation has been deferred until the come-back motion. I have determined that any costs that might be recoverable by the applicant for this motion should be addressed in the context of that come-back motion if it proceeds.

[48] The court's practice is to fix the costs of each step in a proceeding if possible. The applicant represented to the court that its bill of costs on a partial indemnity scale for the application amounted to $19,675.00. I can appreciate that there was a need for three counsel on a file such as this. This amount is within the realm of expected costs for an urgent application of this nature, although perhaps a little on the high side having regard to comparable cost awards that I was directed to in contested proceedings.

[49] In the exercise of my discretion under Rule 57 and section 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, and having regard to the applicable factors, I fixed the amount of the applicant's costs of this application up to and including December 4, 2020 at $15,000.00.

[50] An order reflecting the above was signed on December 4, 2020.

Kimmel J.

Released: December 11, 2020

CITATION: Her Majesty the Queen in Right of Ontario v. Adamson Barbecue Limited, 2020 ONSC 7679
COURT FILE NO.: CV-20-00652216-0000
DATE: 20201211

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Applicant

– and –

ADAMSON BARBECUE LIMITED AND WILLIAM ADAMSON SKELLY

Respondents

REASONS FOR DECISION
– RESTRAINING ORDER

Kimmel J.

Released: December 11, 2020

6

Court File No. CV-20-00652216-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE	)	FRIDAY, THE 4TH
JUSTICE KIMMEL	)	DAY OF DECEMBER, 2020
	)	

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Applicant

- and -

ADAMSON BARBECUE LIMITED
AND WILLIAM ADAMSON SKELLY

Respondents

ORDER

NOTICE

If you, the respondents, or any other corporation under the control or direction of the respondents (including Adamson Bar-B-Que Limited), or any other person who knows of this Order who has, or assumes, responsibility for all or part of any business carried on at any of the Adamson Barbecue restaurant locations in Ontario, disobey this Order you may be held to be in contempt of court.

THIS APPLICATION by the applicant, Her Majesty the Queen in right of Ontario, for an order under section 9 of *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020,* S.O. 2020, c 17 was heard this day by videoconference in Toronto, Ontario pursuant to this court's

scheduling endorsement of December 2, 2020, *Her Majesty the Queen in Right of Ontario v. Adamson Barbecue Limited*, 2020 ONSC 7446.

ON READING the Notice of Application, issued November 28, 2020; the affidavit of Stefan Prentice, affirmed November 29, 2020; the affidavit of Paul Di Salvo, sworn November 29, 2020; the affidavit of Timothy Crone, affirmed November 29, 2020; and the affidavit of John Fernando, sworn November 29, 2020; together with the exhibits thereto; The Supplementary Application Record containing the supplementary affidavit of Paul Di Salvo affirmed December 3, 2020 together with exhibits thereto, and the Factum of the applicant, and

UPON BEING ADVISED that the respondents take no position and do not oppose the order sought by the applicant today, save and except in respect of the time for their commencement of any come-back motion and the applicant's request for costs (the "procedural objections"), and

ON HEARING the submissions of the lawyers for the applicant and the submission of the lawyers for the respondents on the procedural objections,

1. **THIS COURT ORDERS** that the applicant be granted leave to file its Supplementary Application Record.

2. **THIS COURT ORDERS** that the respondents and any other corporation under their control or direction (including Adamson Bar-B-Que Limited), their servants, employees, agents, assigns, officers, directors and anyone else acting on their behalf or who has or assumes responsibility for all or part of any business carried on by them in the Province of Ontario, are restrained from directly or indirectly, by any means whatsoever, contravening Ontario Regulation 82/20 at any restaurant owned or operated by one or both of the respondents or

any corporation under their control or direction (including Adamson Bar-B-Que Limited) that is subject to Ontario Regulation 82/20.

3. **THIS COURT ORDERS** that the respondents may, on or before December 29, 2020 deliver notice of a motion before this Court seeking to vary or discharge this Order.

4. **THIS COURT ORDERS** that, in the event the respondents bring a motion under paragraph 3, it will be adjudicated pursuant to a timetable endorsed or directed by the Court and this Order remains in force unless and until it is varied or discharged by further order of this Court.

5. **THIS COURT ORDERS** that notwithstanding Rule 59.05, this Order is effective from the date that it is made and is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal Order need be entered and filed unless an appeal is brought to an appellate court. Any party may nonetheless submit a formal Order for original signing, entry and filing when the Court returns to regular operations.

6. **THIS COURT ORDERS** that applicant's costs of this application to date are fixed in the amount of $15,000.00 on a partial indemnity scale. No order as to costs is made today. The applicant's costs are reserved and their request for payment of these, and any other costs, by the respondents may be raised at the return of any motion brought by the respondents under paragraphs 3 and 4 of this Order.

Kimel J.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO Applicant	and	**ADAMSON BARBECUE LIMITED AND WILLIAM ADAMSON SKELLY** Respondents	CV-20-00652216-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings commenced at Toronto

ORDER

ATTORNEY GENERAL FOR ONTARIO
Crown Law Office – Civil
720 Bay Street, 8th Floor
Toronto, ON M7A 2S9
Tel.: 416-326-4008
Fax: 416-326-4181

Ananthan Sinnadurai (LSO No. 60614G)
Email: ananthan.sinnadurai@ontario.ca

Andi Jin (LSO No. 68123E)
Email: andrew.jin@ontario.ca

Adam Mortimer (LSO No. 75618G)
Email: adam.mortimer@ontario.ca

Lawyers for the Applicant
Her Majesty the Queen in right of Ontario

7

Court File No. CV-20-00652216-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE	)	FRIDAY, THE 4TH
JUSTICE KIMMEL	)	DAY OF DECEMBER, 2020
	)	

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Applicant

- and -

ADAMSON BARBECUE LIMITED
AND WILLIAM ADAMSON SKELLY

Respondents

ORDER

NOTICE

If you, the respondents, or any other corporation under the control or direction of the respondents (including Adamson Bar-B-Que Limited), or any other person who knows of this Order who has, or assumes, responsibility for all or part of any business carried on at any of the Adamson Barbecue restaurant locations in Ontario, disobey this Order you may be held to be in contempt of court.

THIS APPLICATION by the applicant, Her Majesty the Queen in right of Ontario, for an order under section 9 of *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020,* S.O. 2020, c 17 was heard this day by videoconference in Toronto, Ontario pursuant to this court's

scheduling endorsement of December 2, 2020, *Her Majesty the Queen in Right of Ontario v. Adamson Barbecue Limited*, 2020 ONSC 7446.

ON READING the Notice of Application, issued November 28, 2020; the affidavit of Stefan Prentice, affirmed November 29, 2020; the affidavit of Paul Di Salvo, sworn November 29, 2020; the affidavit of Timothy Crone, affirmed November 29, 2020; and the affidavit of John Fernando, sworn November 29, 2020; together with the exhibits thereto; The Supplementary Application Record containing the supplementary affidavit of Paul Di Salvo affirmed December 3, 2020 together with exhibits thereto, and the Factum of the applicant, and

UPON BEING ADVISED that the respondents take no position and do not oppose the order sought by the applicant today, save and except in respect of the time for their commencement of any come-back motion and the applicant's request for costs (the "procedural objections"), and

ON HEARING the submissions of the lawyers for the applicant and the submission of the lawyers for the respondents on the procedural objections,

1. **THIS COURT ORDERS** that the applicant be granted leave to file its Supplementary Application Record.

2. **THIS COURT ORDERS** that the respondents and any other corporation under their control or direction (including Adamson Bar-B-Que Limited), their servants, employees, agents, assigns, officers, directors and anyone else acting on their behalf or who has or assumes responsibility for all or part of any business carried on by them in the Province of Ontario, are restrained from directly or indirectly, by any means whatsoever, contravening Ontario Regulation 82/20 at any restaurant owned or operated by one or both of the respondents or

any corporation under their control or direction (including Adamson Bar-B-Que Limited) that is subject to Ontario Regulation 82/20.

3. **THIS COURT ORDERS** that the respondents may, on or before December 29, 2020 deliver notice of a motion before this Court seeking to vary or discharge this Order.

4. **THIS COURT ORDERS** that, in the event the respondents bring a motion under paragraph 3, it will be adjudicated pursuant to a timetable endorsed or directed by the Court and this Order remains in force unless and until it is varied or discharged by further order of this Court.

5. **THIS COURT ORDERS** that notwithstanding Rule 59.05, this Order is effective from the date that it is made and is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal Order need be entered and filed unless an appeal is brought to an appellate court. Any party may nonetheless submit a formal Order for original signing, entry and filing when the Court returns to regular operations.

6. **THIS COURT ORDERS** that applicant's costs of this application to date are fixed in the amount of $15,000.00 on a partial indemnity scale. No order as to costs is made today. The applicant's costs are reserved and their request for payment of these, and any other costs, by the respondents may be raised at the return of any motion brought by the respondents under paragraphs 3 and 4 of this Order.

Kimel J.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO Applicant	and	**ADAMSON BARBECUE LIMITED AND WILLIAM ADAMSON SKELLY** Respondents	CV-20-00652216-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings commenced at Toronto

ORDER

ATTORNEY GENERAL FOR ONTARIO
Crown Law Office – Civil
720 Bay Street, 8th Floor
Toronto, ON M7A 2S9
Tel.: 416-326-4008
Fax: 416-326-4181

Ananthan Sinnadurai (LSO No. 60614G)
Email: ananthan.sinnadurai@ontario.ca

Andi Jin (LSO No. 68123E)
Email: andrew.jin@ontario.ca

Adam Mortimer (LSO No. 75618G)
Email: adam.mortimer@ontario.ca

Lawyers for the Applicant
Her Majesty the Queen in right of Ontario

8

ONTARIO SUPERIOR COURT OF JUSTICE (TORONTO REGION)

CIVIL ENDORSEMENT FORM

(Rule 59.02(2)(c)(i))

BEFORE	**Judge/Case Management Master**	**Court File Number**:
	Myers J	**CV-20-652216**

Title of Proceeding:

Her Majesty the Queen in Right of Ontario v Plaintiff(s)

-v-

Adamson Barbecue Limited et al. Defendants(s)

Case Management: ☐ **Yes** If so, by whom:	**X No**

Participants and Non-Participants:*(Rule 59.02(2)((vii))*

Party	Counsel	E-mail Address	Phone #	Participant (Y/N)
1) **Her Majesty the Queen in Right of Ontario**	**Zachary Green**			**Y**
2) **Adamson Barbecue Limited et al**.	**Michael Swinwood**			**Y**
3)				
4)				
5)				

Date Heard: *(Rule 59.02(2)(c)(iii))* **February 26, 2021**

Nature of Hearing (mark with an "X"): *(Rule 59.02(2)(c)(iv))*

☐ Motion ☐ Appeal ☐ Case Conference ☐ Pre-Trial Conference ☐ Application

Format of Hearing (mark with an "X"): *(Rule 59.02(2)(c)(iv))*

X In Writing ☐ Telephone ☐ Videoconference ☐ In Person

If in person, indicate courthouse address:

Relief Requested: *(Rule. 59.02(2)(c)(v))*

Assignment of Kimmel J. to hear this matter

Disposition made at hearing or conference (operative terms ordered): *(Rule 59.02(2)(c)(vi))*

Dismissed

Costs: On a		indemnity basis, fixed at $	are payable
by	to	[when]	

Brief Reasons, if any: *(Rule 59.02(2)(b))*

Assignment of judges is an administrative act that does not involve the parties. In Toronto, judges are assigned to teams that concentrate on different types of cases such as criminal, civil, family etc. Judges routinely change team assignments. When a judge leaves the Civil Team ongoing matters may be re-assigned. As a Co-team lead for the Civil Team, I have re-assigned this matter to Akbarali J.

One of the respondents' counsel wrote an unsolicited letter to Kimmel J. advising that it is the respondents' position that she remains seized of the case and it cannot be heard by any other judge. As this matter has been re-assigned, the letter was forwarded to me.

Counsel suggests that the respondents would be prejudiced by the transfer of the case to another judge and would require a full record for consideration and a formal order. That presupposes that the identity of the judge assigned to hear a case is a matter within the purview of the parties. It is not.

Although not determinative, Kimmel J. never seized herself of this matter. There is also no direction appointing Kimmel J as the case management judge under Rule 77.06. In any event, even when judges are seized or appointed as case management judges, matters frequently change hands when the judge changes assignment.

Kimmel J. allowed that the motion being brought by the respondents would be treated as a "comeback" hearing. That is analogous to a practice on the Commercial List whereby cases under the *Companies Creditors Arrangement Act* can be heard but the relief remains open for reconsideration at a later hearing. Although the *Commercial List Practice Direction* favours case management and the assignment of a single judge in all cases, comeback hearings can be heard by a different judge where court scheduling requires it. There is no legal basis for the parties to have input into the identity of the judge hearing a matter whether it is a comeback hearing or otherwise.

Justice Kimmel is no longer sitting on the Civil Team. She is transitioning her remaining cases under the supervision of the Co-team leads. In this case, the parties are now discussing a schedule that will not see this matter heard for many months. This case has therefore been moved to Akbarali J.

Mr. Swinwood is to comply with Rule 1.09 in any future communication with the court.

Additional pages attached: ☐ Yes **X** No

February 26 , 20 **21**

Date of Endorsement *(Rule 59.02(2)(c)(ii))*

Signature of Judge/Case Management Master *(Rule 59.02(2)(c)(i))*

9

FILE/DIRECTION/ORDER

BEFORE JUDGE Akbarali ACTION # CV-20-652216-0000

Her Majesty the Queen in Right of Ontario
Applicant

-v-

Adamson Barbecue Limited and William Adamson Skelly
Respondents

CASE MANAGEMENT: YES [ ] NO [x]

COUNSEL:	Michael Swimwood	PHONE NO.	spiritualelders@gmail.com
	Liza Swale		lizaswale@gmail.com
	Nirmala Armstrong		narmstrong@gmail.com
	Amanda Armstrong		aptarmstrong@gmail.com
COUNSEL:	Zachary Green	PHONE NO.	Zachary.green@ontario.ca
COUNSEL:	Padraic Ryan	PHONE NO.	Padraic.ryan@ontario.ca

[X] ORDER [ ] DIRECTION FOR REGISTRAR

[ ] REPORTED SETTLED ADJOURNED TO TRIAL SCHEDULING COURT

[ ] NO ONE APPEARED ADJOURNED TO BE SPOKEN COURT

The parties attended a case conference today to determine the timetable for the argument of the constitutional issues raised by the respondents.

Timetable to go as follows:

Respondents' affidavits and experts reports (up to five experts) to be delivered by April 5, 2021;

Applicant's responding expert reports and affidavits to be delivered by May 5, 2021;
Respondent's reply affidavits to be delivered by May 17, 2021;
Cross-examinations (respondents) between May 18-25, 2021;
Cross-examinations (applicant) between May 26-31, 2021;
Respondent's factum to be delivered by June 8, 2021;
Applicant's responding factum to be delivered by June 15, 2021;
Respondent's reply factum to be delivered by June 22, 2021;
Hearing to take place on June 28 and 29, 2021.

Materials shall be uploaded into caselines as they become available and filed with the court is the usual manner.

Although I did not discuss factum length with the parties, I direct that the respondent's and applicant's factum shall be limited to 45 pages each, and the reply factum shall be limited to 10 pages. If the parties are of the view that this is insufficient, they may contact my assistant to schedule a case conference to address the length of factum required.

Some of the respondent's material reverses the parties' roles in the style of cause. The material should be filed with the proper style of cause.

The respondents indicated they would share information about their experts, to the extent the experts have been confirmed, with the applicant. They shall do so as early as possible, as each expert is confirmed, in order that the applicant will be in a position to comply with the timetable set out herein with respect to its responding experts.

March 9, 2021
DATE

J.T. Akbarali J.

10

CITATION: Ontario v. Adamson Barbecue Limited and Skelly, 2021 ONSC 4660
COURT FILE NO.: CV-20-652216-0000
DATE: 20210629

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Her Majesty the Queen in Right of Ontario

AND:

Adamson Barbecue Limited and William Adamson Skelly

BEFORE: J.T. Akbarali J.

COUNSEL: *S. Zachary Green and Padraic Ryan*, for the Applicant

Michael Swinwood and Liza Swale, for the Respondents

HEARD: June 28, 2021

ENDORSEMENT

Overview

[1] The applicant, Her Majesty the Queen in Right of Ontario ("Ontario"), issued this application on November 28, 2020, seeking an order restraining the respondents from operating their restaurants in contravention of provincial regulations put in place as a public health measure to limit the spread of COVID-19. The order was granted on notice, in a hearing treated as an *ex parte* hearing, by Kimmel J. on December 4, 2020.

[2] Justice Kimmel's reasons, released on December 11, 2020 (2020 ONSC 7679), contemplated a "come-back motion." The come-back motion was expected to be an opportunity for the respondents to seek to have the restraining order set aside, varied, or terminated on the basis of a challenge to the constitutionality of the legislative scheme.

[3] The respondents argue that what came before me on June 28, 2021 was the come-back motion. However, the motion did not seek to set aside, vary, or terminate Kimmel J.'s order. Rather, the respondents brought an interim motion, without any originating process, seeking a final order for damages under s. 24(1) of *The Constitution Act,1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11 (the "*Charter of Rights and Freedoms*").

[4] Ontario raised a number of threshold objections to the process employed by the respondents. At the outset of the hearing, I asked counsel to address the threshold question of my jurisdiction, given the issues raised by Ontario relating to the deficiencies in the respondents' Notice of Motion and the lack of any originating process from the respondents. Having heard submissions on that issue only, I advised the parties that in my view, I do not have jurisdiction to adjudicate the issues have been raised by the respondents because of the manner in which they

constituted this proceeding. I advised that my reasons for my conclusion would follow. These are those reasons.

Brief Background and Procedural History

[5] The background to Ontario's application is set out in greater detail in Kimmel J.'s reasons of December 11, 2020. In brief, on March 17, 2020, the Premier of Ontario declared a state of emergency under the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9 (the "*EMCPA*") as a result of the COVID-19 pandemic.

[6] As part of its response to the pandemic, the Ontario government enacted the *Reopening Ontario (A Flexible Response to COVID-19) Act*, 2020, S.O. 2020 c. 17 ("*ROA*"). Among other things, the *ROA* was designed to allow a targeted approach to COVID-19-related restrictions for different public health units depending on epidemiological statistics and other factors.

[7] In November 2020, the City of Toronto was placed into the Stage 1 – Lockdown Zone under Regulation 82/20. The control measures required, among other things, that restaurants be closed to indoor or outdoor dining, although they were able to operate for take-out, delivery, and drive-through services. Restaurants were required to ensure masking, physical distancing, and to have a safety plan.

[8] The respondents object to the restrictions that were placed upon them. In what they describe as an act of civil disobedience, they opened their Etobicoke restaurant for indoor and patio dining on November 24, 25, and 26, 2020. Charges were laid against the respondents under various statutes, including the *ROA*, and against the respondent Mr. Skelly under the *Criminal Code of Canada*, R.S.C. 1985, c. C-46.

[9] On November 27, 2020, city staff and police secured the Etobicoke location.

[10] On December 4, 2020, Kimmel J. heard Ontario's urgent request for a restraining order, and granted it the same day. Her reasons for decision were released on December 11, 2020.

[11] In her reasons, Kimmel J. addressed the urgency of the proceeding, the notice given to the respondents, and the respondents' position. She noted that Ontario was not required to give notice of the order it sought, but it had done so, with the intention of proceeding on an abbreviated timetable. The respondents were not prepared to respond on the abbreviated timetable that Ontario had proposed, and argued that Mr. Skelly's bail conditions alleviated the urgency of Ontario's application.

[12] Justice Kimmel referred to her scheduling endorsement dated December 2, 2020 (2020 ONSC 7446) wherein she ordered that the application for the restraining order would proceed as if it were *ex parte*. She quoted from the scheduling endorsement, where she wrote:

> I have indicated that if an order is made following this hearing, I expect that it will provide for some mechanism for the respondents to come-back on a timely basis to raise their challenges and seek to have it set aside, varied or terminated if they are so inclined (the "come-back provision").

> Thus, while the respondents are on notice and have had the option to respond to and participate in the hearing of the application, I am not requiring them to do so within this time frame. If an order is granted following the hearing, the respondents will be given a further opportunity to raise their challenges after having sought further legal advice, so that their challenges can be informed by that advice.

[13] The respondents subsequently prepared a Notice of Motion for hearing on February 1, 2021 by telephone conference, for the following relief:

a. An order staying the within proceedings until the determination of the Notice of Constitutional Question, dated February 1, 2021;

b. A request for a further case conference to establish timelines for the production of materials leading to the determination of the constitutional challenge;

c. A suspension of the s. 9 order [Justice Kimmel's order] due to the revocation of the *EMCPA* enunciated in s. 17 of the *ROA*;

d. Compensation for damages caused by the breaches of the *Canadian Charter of Rights and Freedoms* under s. 24(1) of the *Charter;*

e. Such further or other order as may be requested and the court deems just and proper.

[14] Also on February 1, 2021, the respondents delivered a Notice of Constitutional Question in which they indicated that they "intend to question the constitutional validity (*or* applicability) of the [*ROA*] and to claim a remedy under subsection 24(1) of the *Canadian Charter of Rights and Freedoms* in relation to an acts *[sic]* or omissions of the Government of Ontario."

[15] The Notice of Constitutional Question raised three constitutional questions: (i) whether federal, provincial and municipal governments have lawful constitutional authority to unequivocally adopt, adhere and legislate in relation to the international recommendations and guidelines of the World Health Organization to declare a global pandemic without oversight and due process; (ii) whether the legislative scheme is *ultra vires* the province; (iii) whether the respondents' ss. 2, 7, 8, 9, and 15 *Charter* rights were infringed, and if so, if the infringement is justified under s. 1.

[16] Following a case conference with Kimmel J. on February 8, 2021, the respondents delivered an amended Notice of Constitutional Question dated February 19, 2021, which indicated that they "intend to question the constitutional validity and applicability of the [*ROA*] and claim a remedy under subsection 24(1) of the *Canadian Charter of Rights and Freedoms* in relation to acts and omissions of the Government of Ontario." This amended Notice of Constitutional Question raised a fourth issue: whether the federal and provincial governments breached their constitutional commitment to promote equal opportunities pursuant to s. 36(1) of the *Constitution Act, 1982*.

[17] As a result of Justice Kimmel's transfer to another judicial team, I was assigned to this case. On March 9, 2021, I held a case conference with the parties, during which I set a timetable for the come-back motion, and scheduled the motion to be heard over two days on June 28 and 29, 2021.

[18] Subsequently, on March 26, 2021, the respondents delivered a Notice of Motion, indicating that they would move on June 28 and 29, 2021, by way of video conference, for the following relief:

a. An order setting a hearing date for the applicants' amended Notice of Constitutional Question to be heard at a date determined by Justice Kimmel;

b. An order for compensation for damages caused by the breaches of the *Canadian Charter of Rights and Freedoms* under s. 24(1) of the *Charter*;

c. An order for costs of these court proceedings;

d. Such further or other order as may be requested and the court deems just and proper.

[19] Pursuant to the timetable I ordered, the parties exchanged affidavits and held cross-examinations.

[20] The respondents uploaded their motion record to Caselines. The motion record consisted of their Notice of Motion dated March 26, 2021, an affidavit from Mr. Skelly, sworn March 26, 2021, and the amended Notice of Constitutional Question dated February 18, 2021. They also uploaded the affidavits and reply affidavits of their expert witnesses.

[21] An amended amended Notice of Constitutional Question is dated June 8, 2021. This final version of the Notice of Constitutional Question indicates that the respondents "intend to question the constitutional validity and applicability of the [*EMCPA*] and the [*ROA*] and claim a remedy under sections 24(1) of the *Canadian Charter of Rights and Freedoms* and section 52(1) of the *Constitution Act, 1982* in relation to acts and omissions of the Government of Ontario." It raised a fifth, new, constitutional question (20 days before the hearing was scheduled), asking whether certain sections of the *ECMPA* and *ROA* are "unconstitutionally vague and open-ended constituting a constitutionally impermissible delegation of legislative power to public officials rendering the orders invalid and requiring a remedy pursuant to s. 52(1) of the *Constitution Act, 1982*."

[22] Subsequently, on June 18, 2021, Ontario delivered its factum in which, among other things, it took issue with the manner in which the respondents had constituted their claims. Ontario raised issues including (i) the lack of jurisdiction of the court to grant *Charter* damages on an interim motion without an originating process making a claim for such damages; (ii) the failure of the respondents to specify the relief they sought in their Notice of Motion; and (iii) the failure of the respondents to give proper notice under the *Crown Liability and Proceedings Act, 2019*, S.O. 2019, c. 7, Sch. 17, which renders a proceeding a nullity.

[23] Thereafter, on June 24, 2021, the respondents filed a further motion record, including for the first time the February Notice of Motion and the amended amended Notice of Constitutional Question. No affidavits of service were uploaded, so I do not know when the amended amended

Notice of Constitutional Question was provided to Ontario[1]. The parties did not agree on whether the relief claimed in the February Notice of Motion was before me in the motion I was scheduled to hear.

Analysis of Threshold Jurisdictional Question

[24] In these reasons, I restrict my analysis to the question of the proper constitution of the claims that have been made by the respondents, and the attendant jurisdictional and procedural fairness issues that arise. I make no comment on the other threshold issues raised by Ontario[2] in these reasons.

[25] With respect to the constitution of the proceedings before me, Ontario argues that the only substantive relief the respondents sought on their motion was for damages under s. 24(1) of the *Charter*. No other substantive relief - including a declaration of invalidity of the legislative scheme - was sought in the Notice of Motion, although r. 37.06 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 requires that the relief sought be stated "precisely." Ontario argues that, while a motion could have been the proper vehicle to seek to set aside or vary Kimmel J.'s order, the respondents did not seek that relief in their Notice of Motion, nor did they rely on r. 59.06 of the *Rules of Civil Procedure*, as they would be required to do under r. 37.06, were they indeed seeking that relief. Ontario argues it thus did not have proper notice of the relief the respondents now seek. Moreover, there is no originating process claiming relief against Ontario by the respondents. Ontario challenges the court's jurisdiction to grant *Charter* damages to respondents on an interim motion in the context of Ontario's application that does not raise the issue.

[26] The respondents argued that Kimmel J. contemplated a come-back motion, and so they have followed the procedure set out, to which no complaint was raised until Ontario's factum was served. They argue that the Notices of Constitutional Question have made clear throughout what it is they are seeking. They say the question is simple: their constitutional challenge was always clear, and it ought to be heard as intended. They point to their Notice of Motion seeking *Charter* damages, and their February Notice of Motion seeking an order suspending Kimmel J.'s restraining order.

[27] I conclude I have no jurisdiction to proceed with the claims, and that the notice provided by the respondents is deficient, rendering the proceeding procedurally unfair, for the reasons below.

[28] To begin, I do not accept the respondents' argument that the February Notice of Motion is properly before me. First, it is largely moot and seeks relief for which the need has long expired,

---

[1] The Notices of Constitutional Question are also addressed to the Attorney General of Canada, so I assume they were served on Canada as required by s. 109 of the *Courts of Justice Act*, R.S.O. 1990, C. C.43.

[2] These issues include whether notice was given under the *Crown Liability and Proceedings Act, 2019*, and whether Mr. Skelly's affidavit should be struck for failing to at the cross-examination on his affidavit, and failing to answer proper questions on cross-examination when he eventually did attend.

and on its face it was to be heard at a teleconference in February. Presumably that is the teleconference that was held by Kimmel J.

[29] Second, the February Notice of Motion was not placed in the respondents' motion record. Only after Ontario raised the jurisdictional and fairness problems with the constitution of the respondents' motion did the respondents assemble a motion record that included the February Notice of Motion. In my view, doing so was a last-ditch effort to shore up the defects in the constitution of their claims.

[30] Third, to the extent the February Notice of Motion seeks relief relating to the restraining order, that relief is not predicated on any Notice of Constitutional Question, but on the claim that the *EMPCA* was revoked as enunciated in s. 17 of the *ROA*.

[31] Fourth, it is not common practice to have two notices of motion for the same motion that deal with the same substance. If a notice of motion has to be revised, counsel typically prepares an amended Notice of Motion. Indeed, counsel here prepared two amended Notices of Constitutional Question, so presumably they are familiar with the process of amending a document. The fact that only the March Notice of Motion was included in the record, and that it was not an amended Notice of Motion, indicates that it was the motion the respondents were bringing forward for hearing, and that only the relief sought therein is the subject of the proceeding before me.

[32] Fifth, even if the respondents somehow thought the February Notice of Motion formed part of the motion, they did not make that clear to Ontario, which was entitled to proceed on the basis that the March Notice of Motion was the one it had to answer. Why would Ontario think it had to answer to a Notice of Motion that on its face was brought for hearing months earlier, and was not included in the motion record?

[33] In *Zargar v. Zarrabian*, 2018 ONSC 4016 (Div. Ct.), at paras. 15-22, the court held that it is an error of law to grant relief not sought in a Notice of Motion. The court wrote:

> Parties should not have to guess, speculate, or intuitively understand what the issues to be decided are on a motion. In an adversarial litigation system, it is imperative that the litigants are made clearly aware of the case they have to meet.

[34] As I have noted, the only substantive relief sought in the March Notice of Motion is for *Charter* damages. If the respondents seek any relief beyond *Charter* damages on this motion, their Notice of Motion runs afoul of r. 37.06, which requires that every notice of motion shall (i) state the precise relief sought; (ii) state the grounds to be argued, including a reference to any statutory provision or rule to be relied on; and (iii) list the documentary evidence to be used at the hearing of the motion.

[35] Neither Notice of Motion in the respondents' motion records seeks to vary or set aside Kimmel J.'s order based on the alleged unconstitutionality of the legislative scheme under which it was pronounced. Neither Notice of Motion makes reference to r. 59.06, under which the court may amend, set aside, or vary the order in any particular on which the court did not adjudicate. Given that Kimmel J. treated the application before her as an *ex parte* application, reference to r. 59.06 would be appropriate on a motion to vary her order, because it is a rule to be relied on. But it is not set out in either Notice of Motion.

[36] The Notice of Constitutional Question did not raise the spectre of setting aside the legislative scheme on the basis of alleged unconstitutionality until its third iteration, dated June 8, 2021, and not uploaded to Caselines until June 24, 2021. As I have already noted, I have no affidavit of service, so I do not know when it was served on Ontario, but presumably it was served no earlier than its date. That is well after the conclusion of cross-examinations, when the evidentiary record was finalized.

[37] Neither Notice of Motion ever sought an order setting aside the legislative scheme based on its alleged unconstitutionality.

[38] These problems cause due process and fairness issues for Ontario, which is entitled to know the case it has to meet. But even more than that, these problems cause jurisdictional issues for the court, because I cannot hear issues that are not properly raised before me.

[39] All of the problems with the Notices of Motion are compounded by the fact that there is no originating process from the respondents. They delivered no Notice of Application under which they seek *Charter* damages, or a declaration of invalidity of the legislative scheme. They delivered no Statement of Claim under which they seek *Charter* damages, or a declaration of invalidity of the legislative scheme. Neither a Notice of Motion nor a Notice of Constitutional Question is an originating process.

[40] With limited exceptions, a motion, and particularly one brought in the context of an application, is an interlocutory proceeding, in which a court may grant interim relief. Here, the respondents purport to seek final relief in an interlocutory motion.

[41] The come-back motion contemplated by Kimmel J. was a motion to vary her order, which on its own, would not have required an originating process. But once the respondents moved away from seeking to vary or set aside the order in favour of seeking an order for damages and a declaration of invalidity, they had to commence a proceeding.

[42] Without a proceeding claiming damages, I cannot grant damages. I cannot grant final *Charter* damages on an interim motion brought by the respondents to an application. I have no jurisdiction to do so. This is basic civil procedure.

[43] The problems are not minor or technical in nature. They cannot be overlooked. They go to the heart of procedural fairness and the court's jurisdiction.

[44] As to the respondents' counsel's submission that Ontario should have objected earlier, it is not Ontario's job to structure the respondents' case. This is not a case where the respondents are self-represented parties. They were represented at the hearing by two counsel, at least one of whom has been practicing for many years. Earlier in the proceedings, when the Notices of Motion were being prepared, the respondents were represented by four counsel. I cannot explain why none of them considered these very basic issues, or if they did, why they did not address the deficiencies in the proceeding which could have been done easily and efficiently in February or March, 2021, and would have preserved the June 28, and 29 dates for a hearing on the merits.

[45] The respondents will have to make choices about their next steps. I have explained some of the options that may be available to them in these reasons. If a case conference would assist the parties, they may contact my assistant to arrange one with me.

Disposition

[46] The motion is dismissed, without prejudice to the respondents' ability to seek relief against Ontario under the *Charter* or the *Constitution Act, 1982* in a properly constituted proceeding or hearing.

Costs

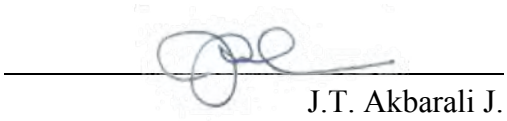
[47] Ontario uploaded a Bill of Costs to Caselines, and indicated it would seek costs of $15,000 with respect to the motion. The respondents sought an opportunity to make written submissions on costs after receiving my endorsement. I agreed to provide them with that opportunity.

[48] Accordingly, I will receive written submissions on costs by way of email to my assistant as follows:

a. Ontario shall deliver written submissions of no more than two pages plus any necessary attachments by July 5, 2021;

b. The respondents shall deliver responding submissions of no more than two pages plus any necessary attachments by July 8, 2021;

c. There shall be no reply submissions.



J.T. Akbarali J.

Date: June 29, 2021

11

CITATION: Ontario v. Adamson Barbecue Limited and Skelly, 2021 ONSC 4924
COURT FILE NO.: CV-20-652216-0000
DATE: 20210713

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Her Majesty the Queen in Right of Ontario

AND:

Adamson Barbecue Limited and William Adamson Skelly

BEFORE: J.T. Akbarali J.

COUNSEL: *S. Zachary Green and Padraic Ryan*, for the Applicant

Michael Swinwood and Liza Swale, for the Respondents

HEARD: In writing

ENDORSEMENT

[1] On June 28, 2021, I dismissed the respondent's motion for *Charter* damages on the basis that I had no jurisdiction to hear it because the respondent never issued an originating process, nor provided appropriate notice of the relief it was seeking: 2021 ONSC 4660.

[2] The applicant seeks costs of $15,000 for the hearing on June 28, 2021. The applicant also seeks $15,000 in partial indemnity costs, fixed by Kimmel J. in her order dated December 4, 2020, arising out of the original hearing of the applicant's application. Justice Kimmel fixed the amount of costs, but did not order them paid at that time. Rather, her order provided that the applicant's costs are reserved, and its request for payment of those costs may be raised at the return of any motion brought by the respondents.

[3] The respondents argue that they qualify as public interest litigants, and as such no costs should be awarded. They state that the costs fixed by Kimmel J. "remains an outstanding issue between the parties," although it is apparent the applicant now seeks to bring that issue to a close in accordance with Kimmel J.'s reasons. In any event, the respondents argue that costs should be postponed until the matter is finally concluded, or that an order for costs in the cause be made.

[4] The three main purposes of modern costs rules are to indemnify successful litigants for the costs of litigation, to encourage settlement, and to discourage and sanction inappropriate behaviour by litigants: *Fong v. Chan* (1999), 46 O.R. (3d) 330, at para. 22.

[5] Costs to the Crown shall not be disallowed or reduced merely because they relate to a lawyer who is salaried officer of the Crown: see s. 131(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and s. 36 of the *Solicitor's Act*, R.S.O. 1990, c. S. 15; see also, for example, *Ontario*

v. Rothmans Inc., 2012 ONSC 1804 at para. 45, and *Campisi v. Ontario*, 2017 ONSC 4189, at para. 6.

[6] Subject to the provisions of an Act or the rules of court, costs are in the discretion of the court, pursuant to s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. The court exercises its discretion taking into account the factors enumerated in r. 57.01 of the *Rules of Civil Procedure*, including the principle of indemnity, the reasonable expectations of the unsuccessful party, and the complexity and importance of the issues. Overall, costs must be fair and reasonable: *Boucher v. Public Accountants' Council for the Province of Ontario*, 2004 CanLII 14579 (Ont. C.A.), 71 O.R. (3d) 291, at paras. 4 and 38. A costs award should reflect what the court views as a fair and reasonable contribution by the unsuccessful party to the successful party rather than any exact measure of the actual costs to the successful litigant: *Zesta Engineering Ltd. v. Cloutier*, 2002 CarswellOnt 4020, 118 A.C.W.S. (3d) 341 (C.A.), at para. 4.

[7] Ontario is the successful party in the respondents' motion that came before me on June 28, 2021. It is presumptively entitled to its costs.

[8] While the respondents may yet take steps towards a hearing on the merits of the constitutional issues they wish to raise, the fact that no hearing on the merits proceeded before me on June 28 and 29, 2021 as anticipated was the result of respondents' counsel's failure to follow basic civil procedure to ensure they had constituted the proceeding in a way that the court would have jurisdiction to address the issues. The respondents' counsel's errors caused delay. The errors caused Ontario (and the respondents) to incur costs that have been wasted. I see no reason why Ontario should have to await the respondents' next steps before seeking its wasted costs of the steps that occurred before me, especially when (i) the respondents may choose to take no further steps; (ii) respondents' counsel's errors have led to costs that are wasted; and (iii) the respondents had ample time to structure their proceeding in a way to give the court jurisdiction and failed.

[9] Assuming, without deciding, that the respondents are public interest litigants, they are still not entitled to cause Ontario to waste costs by making basic errors in the constitution of their proceedings. Being a public interest litigant is not a licence to behave unreasonably in the litigation and cause the other party to have to incur costs unnecessarily.

[10] With respect to the quantum of costs claimed for the proceeding before me, I note the following:

a. Ontario's counsel's claimed hourly rates are reasonable for their experience;

b. Ontario's materials were well-prepared and focused;

c. Ontario had to review the respondents' motion record, which included over 1500 pages, and multiple reports from experts, including reply reports, some of which repeated the original lengthy reports with some additions. The respondents' materials were thus not prepared in a focused manner, increasing the time Ontario had to spend to review them;

d. The respondents' choices in prepared unfocused affidavits and in not properly constituting their proceeding with an originating process – necessary to make a

claim for damages – resulted in wasted costs, and was unreasonable behaviour on the part of the respondents and their counsel;

e. In view of the observations I have just made, the time claimed by Ontario's counsel is more than reasonable. I accept that, in fact, Ontario's counsel must have spent significantly more time on the motion than is claimed on their costs outline.

[11] In my view, it is fair and reasonable to fix Ontario's partial indemnity costs of the June 28, 2021 hearing at $15,000 as requested, and to require the respondents to pay those costs within thirty days.

[12] With respect to the costs fixed by Kimmel J., she anticipated that the costs of the original application and the comeback motion would be dealt with together, once the respondents were able to make their argument on the merits – something they were not prepared to do at the original hearing in December 2020. Due to respondents' counsel's errors, we were unable to deal with the merits on June 28, and 29, 2021 either. However, the question of the merits of the respondents' position remains outstanding, and may be resolved either through a properly constituted comeback motion, or through an action or application originated by the respondents to Ontario's application.

[13] In the circumstances, I am prepared to defer determining whether the costs fixed by Kimmel J. should be ordered paid by the respondents until a determination of the merits of the respondents' constitutional arguments. However, if the proceedings are not reconstituted by the respondents in an appropriate manner within six months, Ontario may contact me to seek directions to allow it to seek to have the costs fixed by Kimmel J. addressed.

[14] Accordingly, I order:

a. The respondents shall pay Ontario's costs of $15,000, all inclusive, for the hearing on June 28, 2021, within thirty days.

b. The determination of whether the respondents are responsible for Ontario's costs of the December 4, 2020 hearing, fixed in the amount of $15,000 on a partial indemnity scale by Kimmel J. in her order of December 4, 2020, shall be deferred until a determination of the merits of the respondents' constitutional arguments. However, if, after six months, the respondents have not properly constituted their proceedings to have the constitutional arguments determined, Ontario may write to me to seek directions to allow it to have the costs fixed by Kimmel J. addressed.

J.T. Akbarali J.

Date: July 13, 2021

12

CITATION: Ontario v. Adamson Barbecue Limited and Skelly, 2022 ONSC 726
COURT FILE NO.: CV-20-652216-0000
DATE: 20220201

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Her Majesty the Queen in Right of Ontario

AND:

Adamson Barbecue Limited and William Adamson Skelly

BEFORE: J.T. Akbarali J.

COUNSEL: *S. Zachary Green and Padraic Ryan*, for the Applicant

Michael Swinwood and Liza Swale, for the Respondents

HEARD: In writing

ENDORSEMENT

[1] The applicant, Ontario, brought an application for injunctive relief relating to the respondents' breach of various public health orders relating to COVID-19. Justice Kimmel granted the injunction in December 2020. At that time, the parties contemplated a come-back motion where the respondents would challenge the constitutionality of the laws and regulations on which the applicant relied for its injunctive relief.

[2] On June 28, 2021, the come-back motion was scheduled to proceed before me, but it was not constituted as anticipated. Rather than seeking an order to vary or set aside Kimmel J.'s order, the respondents, without having issued an originating process, and without having provided proper notice of the relief they were seeking, sought final *Charter* damages. I dismissed the respondent's motion due to lack of jurisdiction because of the foundational procedural flaws in failing to constitute the proceeding so as to give the court the jurisdiction to hear it: 2021 ONSC 4660.

[3] I subsequently ordered the respondents to pay the applicant $15,000 in costs relating to the proceeding that had come before me in June 2021: 2021 ONSC 4924.

[4] However, Kimmel J., in her order dated December 4, 2020, fixed costs in the amount of $15,000 relating to the hearing before her in December 2020. She did not order costs paid at that time, but reserved them to be raised at the return of the motion the respondents intended to bring.

[5] In my decision on costs, I found that it was appropriate to defer dealing with the $15,000 in costs fixed by Kimmel J. because the substantive arguments the respondents had sought to raise had not been addressed on their merits. I thus held that the determination of whether the $15,000 in costs should be ordered would be deferred until a determination of the merits of the respondents'

constitutional arguments. However, I indicated that if, after six months, the respondents had not properly constituted their proceedings to have their constitutional arguments determined, Ontario could write to me to seek directions to allow it to have the costs fixed by Kimmel J. addressed.

[6] Ontario has now written to advise that it has been more than six months, and still no proceeding has been properly constituted. It relies on its earlier written submissions in support of its request for costs.

[7] By email, I asked the respondents about their position on Ontario's request, but they did not respond, neither substantively nor to seek an opportunity to make further submissions. I thus assume they are prepared for me to proceed on the basis of the submissions already filed, as Ontario is.

[8] Rather than repeat what I wrote in my first costs endorsement, I direct the reader to it for the recitation of the relevant law.

[9] Ontario is presumptively entitled to its costs of the attendance before Kimmel J. It was the successful party and obtained the relief it sought. Although her determination on the merits was intended to be revisited in the context of the respondents' constitutional arguments, they have taken no steps to bring a properly constituted proceeding before the court at which to do so. They have had more than enough time to bring forward their arguments. There is no reason to delay the question of the costs fixed by Kimmel J. any longer.

[10] The only question is whether, as the respondents argue, they should be excused from paying costs because they were acting in the public interest.

[11] In *Guelph v. Wellington-Dufferin-Guelph*, 2011 ONSC 7523, at para. 17, the court noted that the normal costs rules apply in public interest litigation, but the rules include a discretion to relieve the loser of the burden of paying the winner's costs, and that discretion has been exercised in favour of public interest litigants.

[12] In *Incredible Electronics Inc. et al. v. Attorney General of Canada et al.*, (2006) 2006 CanLII 17939 (ON SC), at para. 73, Perell J. noted that there are no categorical rules about the exercise of the court's discretion in cases of public interest litigation; each case must be decided on its own facts.

[13] In *The St. James' Preservation Society v. Toronto (City)*, 2007 ONCA 601, at para. 23, the Court of Appeal described the factors that are relevant to considering whether an unsuccessful litigant should be excused from paying costs because it was acting in the public interest:

a. The nature of the unsuccessful litigant;

b. The nature of the successful litigant;

c. The nature of the *lis* and whether it was in the public interest;

d. Whether the litigation had any adverse impact on the public interest; and

e. The financial consequences to the parties.

[14] In this case, the unsuccessful litigants are a private individual and a private business. The successful litigant is Ontario. There is a clear power imbalance between them.

[15] The question about whether the litigation was in the public interest, or had any adverse impact on the public interest, is surely a polarizing one. The respondents had their supporters among the public, who strongly disagreed with the public health regulations put in place in an attempt to control the COVID-19 pandemic. There is no doubt that many Ontarians have suffered due to the restrictions. At the same time, the government's actions were taken in response to a pandemic that has cost many Ontarians their lives, or their health. There has been significant support for the public health measures among the public as well.

[16] In her reasons granting the injunctive relief, Kimmel J. observed that the public health objectives of the *Reopening Ontario (A Flexible Response to COVID-19) Act*, *2020*, S.O. 2020, c. 17 and the *Health Protection and Promotion Act*, R.S.O. 1990, c. H.7 are clear. The public health measures were taken by the government in the public interest to try to prevent COVID-19, and its resultant morbidity and mortality.

[17] Importantly, the respondents here did not seek to challenge the law directly; rather, they disobeyed the law, and intended to raise constitutional arguments in their defence.

[18] As Kimmel J. found, the regulations at issue were designed to be preventative. By choosing to break the law rather than challenge it, the respondents engaged in conduct that Ontario had prohibited in furtherance of the public interest. The respondents have not established any reasonable basis for concluding that their "civil disobedience" (as their counsel characterized their behaviour) was justified in the public interest.

[19] In my view, by choosing to act in breach of preventative public health orders in the midst of a global pandemic, thus causing Ontario to bring this application, the respondents cannot claim that there is a public interest element to the litigation. Rather, the respondents' actions were harmful to the public interest. I might have concluded differently had the respondents challenged the regulations rather than breached them, but that was not the path they took. In so doing, they chose to risk the spread of COVID-19 —something that could have a serious impact on others — because they were ideologically opposed to the regulations. That is a form of self-help that, in my view, disqualifies the respondents from claiming public interest litigant status.

[20] For the sake of completeness, I note that there was some economic benefit to the respondents in opening their restaurant in breach of the public health regulations, but I do not find that to be the motivating factor. Rather, I accept that their actions were ideologically based. The economic incentive to open would be minor when take-out was permitted in any event. I do not rely on this factor in reaching my conclusion that the respondents did not engage in public interest litigation.

[21] In the result, there is no reason why Ontario should not be awarded its costs, fixed by Kimmel J. in the amount of $15,000. I order the respondents to pay $15,000 all inclusive in costs to the applicant within thirty days.

J.T. Akbarali J.

Date: February 1, 2022

13

ONTARIO
SUPERIOR COURT OF JUSTICE
(TORONTO REGION)

CPC#: 10
DATE: August 16, 2022
SECTION: 9:30 a.m.

CIVIL PRACTICE COURT ENDORSEMENT

TITLE OF PROCEEDING:	**WILLIAM ADAMSON SKELLY and ADAMSON BARBECUE LIMITED v. HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, CITY OF TORONTO, BOARD OF HEALTH FOR THE CITY OF TORONTO, and EILEEN DE VILLA**
FILE NUMBER:	**CV-22-00683592-0000**

APPLICANT'S COUNSEL:

NAME: Ian J. Perry
PHONE #: 416-579-5055

EMAIL: ian@perrysllp.com

RESPONDENT'S COUNSEL (HMQ in Right of Ontario):

NAME: Padraic Ryan
PHONE #: 416-326-2220

EMAIL: padraic.ryan@ontario.ca

RESPONDENT'S COUNSEL (City of Toronto, Bd. of Health, De Villa):

NAME: Alison Barclay
PHONE #: 416-392-1813

EMAIL: alison.barclay@toronto.ca

DISPOSITION

The Applicants requested the scheduling of a 2-day hearing of this Application. The Respondent, Her Majesty the Queen in Right of Ontario ("Ontario") objected, and asked that the scheduling of this Application be held down to afford Ontario an opportunity to schedule a motion for security for costs. A motion for security for costs is within the jurisdiction of an Associate Judge, necessitating consultation with scheduling before an Associate Judge.

I will grant the adjournment request to a Civil Practice Court in 2-3 weeks time, in order that the parties can present to the Judge considering the scheduling of the Application all the procedural steps that they intend to advance, and their timing.

I order:

1. This Application is adjourned to the Civil Practice Court of August 30, 2022 and, if it is not able to be added to that list by reason of the number of matters already scheduled to be heard that day, to the Civil Practice Court of September 6, 2022.

2. The Applicants shall deliver, on notice, a fresh "Requisition to Attend Civil Practice Court" on August 30, 2022 or, if unavailable, September 6, 2022

DATE: August 17, 2022 **Justice A.A. Sanfilippo: _____**

14

SUPERIOR COURT OF JUSTICE
CIVIL SCHEDULING UNIT
REQUISITION TO ATTEND CIVIL PRACTICE COURT

330 University Avenue, 8th Floor
Toronto ON M5G 1R7
Email: civilpracticecourt@ontario.ca

☒ **Requisition to Attend Civil Practice Court before a Judge to Schedule (select one of the following):**

☐ **Urgent Hearing** ☒ **Long Motion or Application** ☐ **Summary Judgment Motion** ☐ **Request for Case Management** ☒ **Constitutional Question** ☐ **Appeal from the Consent and Capacity Board**

*** To book a date through Civil Practice Court, please return this completed form in **Microsoft Word format** by email to: civilpracticecourt@ontario.ca.

Court File Number: CV-22-00683592-0000

Full Title of Proceeding (List all Parties in the Title of Proceeding):

WILLIAM ADAMSON SKELLY and ADAMSON BARBECUE LIMITED

Applicants

and

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, CITY OF TORONTO, BOARD OF HEALTH FOR THE CITY OF TORONTO, and EILEEN DE VILLA

Respondents

Moving Party Is:

☒ **Plaintiff/Applicant/Appellant** WILLIAM ADAMSON SKELLY and ADAMSON BARBECUE LIMITED

☐ **Defendant/Respondent**

☐ **Other**

1. Estimated time for oral argument by all parties:	**Two Days**
2. Nature of the action or application (e.g., personal injury, specific tort, contract or other case type identified on Form 14F):	**Constitutional Law**
3. Rule(s) or statutory provisions under which the motion / application is brought:	Rules 14.05(3)(d) and (g.1) of the Rules of Civil Procedure and Canadian Charter of Rights and Freedoms, ss 2(b), 2(c), 7, 8, 9, 15(1), 24 and Constitution Act, 1982, s. 52 and Constitution Act, 1867, s. 91 and 92.
4. May the motion be heard by an associate judge or must it be heard by a judge?	**Judge**
5. Whether a particular judge or associate judge is seized of all motions in the proceeding or of the particular motion?	**N/A**
6. If the proceeding is governed by the Simplified Procedure Rule (Rule 76), does the motion concern undertakings given or refusals made on examination for discovery?	**No**
7. Is the motion seeking summary judgment?	**No**
8. Is the application or motion urgent?	**No**
9. Is any party self-represented?	**No**
10. Is this proceeding under case management?	**No**
11. Does the motion or application require a bilingual Judge or Associate Judge?	**No**

Name of Party and Lawyer Scheduling the Motion:

WILLIAM ADAMSON SKELLY and ADAMSON BARBECUE LIMITED
Ian J. Perry of Perrys LLP
Name and Firm (please type or print clearly)

2022-08-30 or 2022-09-06, as per endorsement of Justice Sanfilippo dated August 17, 2022
Date

Tel: 416-579-5055 E-mail: ian@perrysllp.com
Telephone Number and Email Address

Court File No: CV-22-00683592-0000

Name of Party and Lawyer Responding:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
Zachary Green and Padraic Ryan of Attorney General for Ontario: Constitutional Law Branch
Name and Firm (please type or print clearly)

Tel: 416-326-2220 E-mail: zachary.green@ontario.ca, padraic.ryan@ontario.ca
Telephone Number and Email Address

Name of Party and Lawyer Responding:

CITY OF TORONTO, BOARD OF HEALTH FOR THE CITY OF TORONTO, and EILEEN DE VILLA
Kirsten Franz and Penelope Ma of City Solicitor's Office (City of Toronto, Legal Services)
Name and Firm (please type or print clearly)

Tel: 416-392-1813, 416-397-7690
E-mail: kirsten.franz@toronto.ca, penelope.ma@toronto.ca
Telephone Number and Email Address

Name of Party and Lawyer Responding:

Name and Firm (please type or print clearly)

Telephone Number and Email Address

Name of Party and Lawyer Responding:

Name and Firm (please type or print clearly)

Telephone Number and Email Address

Name of Party and Lawyer Responding:

Name and Firm (please type or print clearly)

Telephone Number and Email Address

ONTARIO SUPERIOR COURT OF JUSTICE (TORONTO REGION)

CIVIL PRACTICE COURT ENDORSEMENT
Court File No.: Error! Reference source not found.

Error! Reference source not found.

Presiding Judge: **CPC#: 14**

JUSTICE CENTA **DATE:** 2022-09-06

Counsel attending (if different than listed above):

Plaintiff:

Defendant:

Other:

ENDORSEMENT

The applicants appeared today seeking to schedule a two-day application predicated on constitutional law grounds. The record is complete. This matter originally came before Akbarali J. on June 28, 2021. Justice Akbarali determined that she did not have jurisdiction to hear the matter as there was no originating process, among other deficiencies: 2021 ONSC 4660. She ordered that the applicant pay Ontario's costs of $15,000 within 30 days. The applicant has not complied with that order.

Ontario submitted that it was premature to schedule the application because it is scheduling a motion for security for costs. Ontario advised that the applicant no longer lives in the province and that the corporate applicant is not carrying on business. Ontario's motion properly lies to an associate judge of the Superior Court. Ontario says that because the costs order of Akbarali J. has not been paid, and because there is another unpaid costs order of $15,000 arising from related proceedings, this matter should not be scheduled until after the question of security for costs is determined.

Counsel for the applicant indicated that the applicant is attempting to raise money to pay the outstanding costs order.

Because the applicant has not paid the $30,000 in prior costs orders, I am not prepared to schedule the application before Ontario's motion for security for costs is determined. Ontario should promptly proceed to schedule and argue its motion.

If the applicant pays the costs orders, I suggest counsel then meet to explore whether or not they can agree on terms for reasonable security for costs and to schedule the main application.

DATE: Error! Reference source not found. **Judge's Signature** 

SCHEDULE

TIMETABLE

- **MOVING PARTY'S MOTION RECORD, APPLICATION RECORD, OR APPEAL BOOK TO BE DELIVERED[1] BY:**
- **RESPONDING PARTY RECORD TO BE DELIVERED BY:**
- **REPLY RECORD, IF ANY, TO BE DELIVERED BY:**
- **CROSS-EXAMINATIONS TO BE COMPLETED BY:**
- **UNDERTAKINGS TO BE ANSWERED BY:**
- **MOTION FOR REFUSALS BY:**
- **CASE CONFERENCE TO BE CONDUCTED BY:**
- **MOVING PARTY OR APPLICANT'S FACTUM TO BE DELIVERED BY:**
- **RESPONDING PARTY FACTUM TO BE DELIVERED BY:**
- **APPROVED HEARING DATE:**
- **ANY ADDITIONAL TIMETABLE ITEMS:**

THE PARTIES SHALL COMPLY WITH ALL PRACTICE DIRECTIONS ISSUED FOR THE TORONTO REGION APPLICABLE TO THIS MOTION OR APPLICATION, INCLUDING THE REQUIREMENTS FOR FILING DOCUMENTS AND UPLOADING THEM TO CASELINES AS SUMMARIZED IN THE TABLE BELOW.

[1] *Rule* 1.01: "deliver" means serve and file with proof of service, and "delivery" has a corresponding meaning.

REQUIRED STEPS CHECKLIST

STEP	HOW	CHECK IF DONE
File documents and pay all fees	File your documents and pay fees using the Civil Submissions Online portal https://www.ontario.ca/page/file-civil-claim-online. **If your matter is urgent or you are filing documents for a court date or deadline that is fewer than 5 business days away**, email your documents to the court office at : Civil Urgent Matters-SCJ-Toronto <CivilUrgentMatters-SCJ-Toronto@ontario.ca.> Documents submitted to the court in electronic format must be named in accordance with the Superior Court's Standard Document Naming Protocol, which can be found in section C.8 of the *Consolidated Notice to the Profession, Litigants, Accused Persons, Public and the Media* at: https://www.ontariocourts.ca/scj/notices-and-orders-covid-19/consolidated-notice/#8_Standard_document_naming_protocol. See new Rule 4.05.2. Ensure your email address is on all documents filed.	☐
30 DAYS BEFORE HEARING		
Email Motions Coordinator 30 days prior to the motion or application hearing date about the status of the motion or application including names, telephone numbers, and email addresses of all counsel and/or self-represented parties. After this is done, the parties will receive an email from CaseLines saying it is ready to use.	Send email to: LongMotionsStatus.Judge@ontario.ca.	☐
AT LEAST ONE WEEK BEFORE HEARING		
Upload materials to CaseLines including all Motion Records, Factums, and the requested Draft Order or Judgment. Upload your factum and draft Order or Judgment in WORD format.	See new Rule 4.05.3. Ensure you email address is on all documents filed. For more information about CaseLines, including answers to frequently asked questions, refer to *Supplementary Notice to the Profession and Litigants in Civil and Family Matters – Including Electronic Filings and Document Sharing (CaseLines Pilot)* September 2, 2020; updated December 17, 2020 found at https://www.ontariocourts.ca/scj/notices-and-orders-covid-19/supplementary-notice-september-2-2020/.	☐

Confer with opposing counsel and email Motion Confirmation form to Motions Coordinator.	For motions, see: Rule 37.10.1 and Form 37B. For applications, see: Rule 38.09.1(1) and Form 38B. Send email to: LongMotionsStatus.Judge@ontario.ca.	☐
SHORTLY BEFORE HEARING		
Upload Compendiums. For all oral motions and applications upload a Compendium to CaseLines at any time before the hearing which contain the excerpted portions of the cases and evidence which the parties intend to rely upon. Counsel and self-represented parties should familiarize themselves with the CaseLines-generated page numbering on uploaded documents for ease in directing the judge to specific pages.	See email from CaseLines.	☐
Upload any amended requested Draft Order or Judgment into CaseLines.	See uploading instructions in the Frequently Asked Questions About CaseLines at: https://www.ontariocourts.ca/scj/notices-and-orders-covid-19/supplementary-notice-september-2-2020/faq-caselines/.	☐
Exchange costs outlines not exceeding 3 pages in length.	See Rule 57.01(6) and Form 57B.	☐
AFTER THE HEARING		
Upload the costs outlines to CaseLines if there have been no Rule 49 Offers to Settle. If there have been Rule 49 Offers to Settle, then costs outlines should be dealt with in the manner directed by the Motions or Applications Judge.		☐

15

ENDORSEMENT/DIRECTION/ORDER

BEFORE: **Justice E.M. Morgan** COURT FILE NO.: CV-22-00683592-0000

WILLIAM ADAMSON SKELLY and ADAMSON BARBECUE LIMITED

Plaintiff(s)/Applicant(s)

·v·

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, CITY OF TORONTO, BOARD OF HEALTH FOR THE CITY OF TORONTO, and EILEEN DE VILLA

Defendant(s)/Respondent(s)

COUNSEL/PARTIES:

Ian J. Perry [ian@perrysllpl.com]], for the Applicants

Zachary Green [zachary.green@ontario.ca], *Padriac Ryan* [padriac.ryan@ontario.ca], and *Priscila Atkinson* [priscila.atkinson@ontario.ca], for the Respondent, Ontario

Penelope Ma [penelope.ma@toronto.ca], for the Respondents, City of Toronto, Board of Health, and Eileen De Villa

CASE CONFERENCE

Until now this Application has not been scheduled because the Applicants had costs outstanding against the Crown. Those costs are now paid in full and the date can be set.

The Application will be heard for 3 full days, from September 30, 2024 to October 2, 2024. I am not seized.

DATE: June 28, 2023

Morgan

16

Ontario
Superior Court of Justice

ENDORSEMENT/DIRECTION/ORDER

Before: Justice E.M. Morgan **Court File No.:** CV-22-00683592-0000

WILLIAM ADAMSON SKELLY and ADAMSON BARBECUE LIMITED

Applicants

·v·

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, CITY OF TORONTO, BOARD OF HEALTH FOR THE CITY OF TORONTO, and EILEEN DE VILLA

Respondents

Counsel:

Ian J. Perry [ian@perrysllpl.com]], for the Applicants

Zachary Green [zachary.green@ontario.ca], *Padriac Ryan* [padriac.ryan@ontario.ca], and *Priscila Atkinson* [priscila.atkinson@ontario.ca], for the Respondent, Ontario

Penelope Ma [penelope.ma@toronto.ca], for the Respondents, City of Toronto, Board of Health, and Eileen De Villa

SUPPLEMENTARY CASE CONFERENCE ENDORSEMENT

At the case conference this week, the Application was scheduled to be heard for three days in September/October 2024. Inadvertently, one of the selected days is a court holiday. The hearing schedule is therefore amended as follows:

The Application will be heard on October 1, 2, and 7, 2024.

Dated: February 24, 2023

Morgan J.

WILLIAM ADAMSON SKELLY et al. Plaintiffs (Responding Party)	-and-	HIS MAJESTY THE KING IN RIGHT OF ONTARIO et al. Defendants (Moving Party)

Court File No. CV-22-00683592-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

RESPONDING RECORD OF THE APPLICANTS, WILLIAM ADAMSON SKELLY and ADAMSON BARBECUE LIMITED

(Returnable September 8, 2023)

PERRYS LLP
3817 Bloor Street West
Toronto ON M9B 1K7

Ian J. Perry (LSO# 65670S)
ian@perrysllp.com

Tel: 416-579-5055
Fax: 416-955-0369

Lawyers for the Applicants