

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**WILLIAM ADAMSON SKELLY and ADAMSON BARBECUE
LIMITED**

Applicants

- 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

**FACTUM OF THE RESPONDENT (MOVING PARTY)
HIS MAJESTY THE KING IN RIGHT OF ONTARIO**

August 29, 2023

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PART I – NATURE OF THE MOTION

1. This is a motion by the Respondent, His Majesty the King in Right of Ontario (“Ontario”), for an order for security for costs under Rule 56.01. Ontario seeks an order requiring the Applicants, William Adamson Skelly and Adamson Barbecue Limited, to post security for costs in the amount of \$30,000.
2. Mr. Skelly is ordinarily resident outside of Ontario. Adamson Barbecue Limited no longer carries on any business in Ontario. Moreover, the Applicants’ moot challenge to COVID-19 public health measures that have long since been repealed has no reasonable prospect of success, especially given the many decisions of the Superior Court of Justice and Court of Appeal for Ontario that have dismissed challenges to the constitutional validity of these and other COVID-19 measures. There is therefore good reason to believe that the application is frivolous and vexatious and that the Applicants have insufficient assets in Ontario to pay the costs of the Respondent. The criteria in Rule 56.01(1)(a), (d) and (e) are satisfied.
3. It is just in the circumstances to require the Applicants to post security sufficient to cover Ontario’s costs for the application in this matter. The Applicants’ conduct reveals a pattern of rule-breaking and evasion, including ignoring previous costs orders of this Court in related litigation. There is every likelihood that the Applicants will ignore a future costs order against them if they are unsuccessful in this litigation. The Court should not countenance Mr. Skelly’s “catch me if you can” attitude towards his legal obligations, including his obligations to pay costs where ordered.

PART II – SUMMARY OF FACTS

A. The Applicants’ “open defiance” of public health measures

4. The Applicants used to operate restaurants in Ontario.¹ During the COVID-19 pandemic, restaurants were regulated under a variety of public health measures designed to reduce the spread and impact of COVID-19. For a period of time starting in 2020, restaurants in Toronto were not permitted to offer indoor and patio dining, although they were permitted to operate for take-out, delivery, and drive-through services. These restrictions, which were lifted in 2021, were set out in Ontario Regulation 82/20 under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*, S.O. 2020 c. 17 [“ROA”]. O. Reg. 82/20 was revoked entirely on March 16, 2022.²

5. The Applicants did not agree with these temporary restrictions on indoor restaurant dining, and so continued to offer indoor dining in defiance of the law. The Attorney General of Ontario applied to this Court for an order restraining the Applicants from contravening this important public health measure. Justice Kimmel found that the Applicants “openly disregarded” public health orders, operated “in open defiance of” the rules, and were in “clear breach” of O. Reg. 82/20.³ While the Applicants characterized this defiance of the law as “civil disobedience”, Justice Kimmel held “This court does not

¹ Notice of Application, dated June 30, 2022, Ontario’s Motion Record [“OMR”], Tab 3, para 2 at 54.

² *Rules for Areas in Shutdown Zone and At Stage 1*, O Reg [82/20](#), as repealed by O Reg [168/22](#) on March 16, 2022, ss 1-3.2, Schedule 1 at s 1 and Schedule 2 at s 6 [“O Reg 82/20”]; O Reg [82/20](#) as of November 23, 2020, as amended by O Reg [654/20](#), Schedule 1 at s 1 and Schedule 2 at s 3.

³ Justice Kimmel’s reasons for decision, dated December 4, 2020, OMR, Tab 5, paras 23-25 at 77. [“Kimmel J’s decision”]

condone civil disobedience of public health and welfare regulations.”⁴ She made an order enjoining the Applicants from contravening O. Reg. 82/20. Justice Kimmel fixed costs in the amount of \$15,000, but did not order the Applicants to pay costs at that time. Her order contemplated that the Applicants could bring a “come-back motion” to vary or set aside her injunction.⁵

6. The Applicants brought their “come-back motion” and Notice of Constitutional Question in March 2021, seeking various constitutional relief. Their motion was heard in June 2021. Justice Akbarali of this Court dismissed their motion with costs.⁶ Despite initially serving Ontario with a Notice of Motion for Leave to Appeal from the order of Justice Akbarali, the Applicants ultimately did not attempt to appeal this order or Justice Kimmel’s order.

7. On cross-examination on the “come-back” motion, the evidence revealed that, in addition to not complying with the COVID-19 measures, the Applicants did not comply with their obligations to hold business licences either. Mr. Skelly gave the following explanation for why he did not wish to pay for a licence:

I said, 'Fuck you. I'm not buying your licence.' Like, the -- just out of principle, right? It's like a \$700.00, \$800.00 licence, but they've spent the last six months just surrounding my place with their authorities trying to find all these violations. As if I'm going to give you \$700.00. There's not a chance. [...]

No way. I'm not supporting this establishment anymore. The same establishment that's trying to put me out of business, I'm not giving them any money. Not a chance. Never again.⁷

⁴ Kimmel J’s decision, OMR, Tab 5, para 31 at 78.

⁵ Kimmel J’s decision, OMR, Tab 5, para 30 at 78.

⁶ *Ontario v Adamson Barbecue Limited and Skelly*, 2021 ONSC 4660 at paras [46-47](#).

⁷ Transcript of cross-examination of Mr. Skelly, dated May 31, 2021, OMR, Tab 6, Q 26 at 101-102 [“Skelly Cross”].

8. Instead of paying for a business licence that would permit him to operate his business lawfully, Mr. Skelly sought to raise money with a webpage titled “Support the BBQ Rebellion”.⁸ A GoFundMe fundraising webpage titled “Adamson BBQ Legal Defence Fund” and listing Adam Skelly as the beneficiary raised \$337,622.00.⁹

B. The Applicants ignored two costs orders of this Court

9. On July 13, 2021, Justice Akbarali released an endorsement ordering the Applicants to pay costs of their unsuccessful constitutional motion in the amount of \$15,000 to Ontario within 30 days.¹⁰ The Applicants ignored this order.

10. On February 1, 2022, Justice Akbarali made a second costs order for the costs of the Ontario’s application for an injunction, which had earlier been fixed by Justice Kimmel. That order required payment of \$15,000 to Ontario within 30 days.¹¹ The Applicants ignored this order too.

C. The Applicants’ newest challenge to long-revoked COVID-19 measures

11. On June 30, 2022, the Applicants issued a Notice of Application in the present matter. The Application seeks, inter alia, a variety of constitutional relief against O. Reg. 82/20. That Regulation was revoked in its entirety on March 16, 2022.¹² The Application also seeks to vary or set aside Justice Kimmel’s injunction, even though that injunction is now

⁸ Skelly Cross OMR, Tab 6, Q 30 at 104.

⁹ Skelly Cross OMR, Tab 6, Q 38 at 106. See also Exhibit A to Skelly Cross, OMR, Tab 6 at 108.

¹⁰ Justice Akbarali’s endorsement, dated July 13, 2021, OMR, Tab 7, para 14 at 112.

¹¹ Justice Akbarali’s costs order, dated February 1, 2022, OMR, Tab 10, para 1 at 119.

¹² O Reg [82/20](#), as repealed by O Reg [168/22](#) on March 16, 2022, ss 1-3.2, Schedule 1 at s 1 and Schedule 2 at s 6.

spent, since it ordered no more than that any restaurant operated by the Applicants comply with O. Reg. 82/20, which was itself revoked.¹³

12. The Notice of Application pleads that the Applicants have closed their restaurants in Ontario.¹⁴ The Applicants' lawyer has confirmed as required by Rule 56.02 that Mr. Skelly is not ordinarily resident in Ontario.¹⁵

13. The Applicants attempted to have their new application scheduled for a hearing. Justice Centa of this Court, sitting in Civil Practice Court, declined to schedule the application, noting that the Applicants had not complied with the two outstanding costs orders of Justice Akbarali. Justice Centa's endorsement of September 6, 2022 provided as follows:

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.¹⁶

14. Having exhausted their attempts to avoid paying costs, the Applicants eventually paid the two outstanding costs orders in January 2023. The Application has accordingly been scheduled to be heard in October 2024. Despite Justice Centa's suggestion that "If the

¹³ Notice of Application, dated June 30, 2022, OMR, Tab 3, para 1(t) at 52-53; O Reg [82/20](#), as repealed by O Reg [168/22](#) on March 16, 2022, ss 1-3.2, Schedule 1 at s 1 and Schedule 2 at s 6.

¹⁴ Notice of Application, dated June 30, 2022, OMR, Tab 3, para 2 at 54.

¹⁵ Exhibit C to Affidavit of Casey Massari, Affirmed on August 11, 2023 ["Massari Affidavit"], OMR, Tab 2 at 22.

¹⁶ Justice Centa's endorsement, dated September 6, 2022, OMR, Tab 11 at 123.

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”, the Applicants have ignored Ontario’s invitation to discuss terms for reasonable security for costs.¹⁷ The Applicants’ counsel also refused to provide his available dates for a motion for security for costs, thus delaying the scheduling of the present motion.¹⁸

PART III – ISSUES AND THE LAW

15. The only issue on this motion is whether the Court should order the Applicants to post security for costs. Ontario submits that it would be just for this Court to order the Applicants to post security for costs in the amount of \$30,000.

A. The test for security for costs

16. Rule 56.01(1) provides in part as follows:

The court, on motion by the defendant or respondent in a proceeding, may make such order for security for costs as is just where it appears that,

- (a) the plaintiff or applicant is ordinarily resident outside Ontario; ...
- (d) the plaintiff or applicant is a corporation or a nominal plaintiff or applicant, and there is good reason to believe that the plaintiff or applicant has insufficient assets in Ontario to pay the costs of the defendant or respondent; [or]
- (e) there is good reason to believe that the action or application is frivolous and vexatious and that the plaintiff or applicant has insufficient assets in Ontario to pay the costs of the defendant or respondent;

¹⁷ Justice Centa’s endorsement, dated September 6, 2022, OMR, Tab 11 at 123; Exhibit E to Massari Affidavit, OMR, Tab 2 at 40.

¹⁸ Exhibit D to Massari Affidavit, OMR, Tab 2 at 26-36.

17. On a motion for security for costs, a court must first determine whether the requirements of the rule are met, and then assess whether to exercise its discretion to make such an order, given the circumstances of the case.¹⁹

18. The initial onus is on Ontario, as the moving party, to satisfy the court that there appears to be good reason to believe that one or more of the circumstances identified in Rule 56.01 is present. This is a low threshold.²⁰ The onus then shifts to the Applicants to lead evidence to demonstrate either that they have sufficient assets in Ontario to pay a costs order, or that they are impecunious and an injustice would result if it were not allowed to proceed with their litigation.²¹ In response to the Rule 56.01(1)(e) ground, the Applicants must lead some evidence to satisfy the court that the claim is not devoid of merit and frivolous.²² If the Applicants fail to meet their onus, the Court should then consider the justness of the order, as discussed further below.²³

B. The criteria in Rule 56.01(a), (d) and (e) are met

19. Ontario does not have to prove to a certainty that the criteria in Rules 56.01(a), (d) and (e) are met, but only that there “appears to be good reason to believe” that they are met.²⁴ That relatively low onus is amply met here.

¹⁹ *Yaiguaje v Chevron Corp*, 2017 ONCA 827 at para [22](#) [*Yaiguaje*].

²⁰ *Health Genetic Center Corp v Reed Business Information Ltd*, 2014 ONSC 6449 at paras [4](#), [16](#) [*Health Genetic*]; *Radmanish v Sulaimankhail*, 2009 CanLII 71011 (ONSC) at para [4](#) [*Radmanish*]; *Treasure Traders International Corporation v Canadian Diamond Traders Inc*, 2006 CanLII 15758 (ONSC) at para [4](#) [*Treasure Traders*].

²¹ *Know Your City Inc v The Corporation of the City of Brantford*, 2020 ONSC 7364 at paras [14-19](#).

²² *Radmanish* at para [9](#).

²³ *Yaiguaje* at paras [22-25](#); *Coastline Corporation Capital v Canaccord Capital Corp*, 2009 CanLII 21758 at para [7](#).

²⁴ *Health Genetic* at paras [4](#), [16](#); *Radmanish* at para [4](#).

20. There is no dispute that Mr. Skelly is not ordinarily resident in Ontario.²⁵ Moreover, according to their own pleadings, the Applicants no longer operate restaurants in Ontario. The Applicants' restaurants in Ontario have been closed for years. There is therefore good reason to believe that the Applicants have no assets in Ontario to pay Ontario's costs.²⁶

21. There is also good reason to believe that the Application is frivolous and vexatious, at least as against Ontario. The Application seeks declaratory relief against *ROA*, which is spent, and against O. Reg. 82/20, which was revoked. Today there are no COVID-19 restrictions on restaurants in Ontario. Accordingly, the declaratory relief sought is moot. So too is the request for relief against Justice Kimmel's injunction. That injunction restrained the Applicants from "contravening Ontario Regulation 82/20 at any restaurant owned or operated by one or both of the [Applicants] or any corporation under their control or direction." But the Applicants do not operate any restaurants in Ontario, and in any event, they can no longer contravene O. Reg. 82/20 because it has been revoked.

22. The Applicants had their opportunity to challenge the validity of O. Reg. 82/20 and to seek to vary or set aside Justice Kimmel's order; that was the entire purpose of the "come-back" motion in 2021. Justice Akbarali dismissed that motion. In her reasons for decision, Justice Akbarali even gave the Applicants advice on how to properly reconstitute their motion and offered to convene a case conference to assist them; her advice was ignored.²⁷ Nor did the Applicants seek leave to appeal either Justice Kimmel's order or Justice Akbarali's decision.

²⁵ See para 12 above.

²⁶ *Treasure Traders* at para 4.

²⁷ *Ontario v Adamson Barbecue Limited and Skelly*, 2021 ONSC 4660 at paras [41-46](#).

23. Now, more than a year after the restrictions they objected to have been revoked, and with no ongoing restaurant operations in the Province, the Applicants seek once again to challenge the constitutional validity of the COVID-19 measures that used to apply to restaurants. Their efforts are certain to fail. Ontario’s courts have rejected every constitutional challenge to the Province’s COVID-19 measures, including the rules respecting restaurants.²⁸ There is no reasonable prospect that the Applicants’ moot challenge will succeed where every other constitutional challenge has failed.

24. In any event, there is no *Charter* right to operate a barbecue restaurant that provides indoor dining in contravention of applicable public health measures. To suggest otherwise is to trivialize the *Charter*. The Supreme Court of Canada and the Court of Appeal for Ontario have held that the “ability to generate business revenue by one’s chosen means is not a right that is protected”²⁹ by the *Charter*, and that the *Charter* does not protect “the right to engage in the economic activity of [one’s] choice.”³⁰ This simple fact is fatal to all of the Applicants’ frivolous and vexatious constitutional claims.

25. Since Ontario has shown that there appears to be good reason to believe that the criteria in Rule 56.01(1) are met, the onus shifts to the Applicants to rebut these criteria with evidence. The Applicants have not even attempted to satisfy this step. They have not led any evidence about their financial circumstances at all, let alone the kind of complete

²⁸ *Banas v HMTQ*, [2022 ONSC 999](#); *Ontario v Trinity Bible Chapel et al*, [2022 ONSC 1344](#) (aff’d [2023 ONCA 134](#), leave to appeal to SCC refused, [40711](#) (10 August 2023)); *Work Safe Twerk Safe v Ontario (Solicitor General)*, [2021 ONSC 6736](#); *Baber v Ontario (Attorney General)*, [2022 ONCA 345](#).

²⁹ *Siemens v Manitoba (Attorney General)*, 2003 SCC 3 at para 46.

³⁰ *Mussani v College of Physicians and Surgeons of Ontario*, [2004] OJ No 5176 (ONCA) at paras [39-43](#); *R v Schmidt*, 2014 ONCA 188 at para [38](#); *Tanase v College of Dental Hygienists of Ontario*, 2021 ONCA 482 at paras [35-41](#).

and accurate disclosure of income, assets, expenses, liabilities, and borrowing ability, together with robust supporting documentation, that the case law demands.³¹ There is, for example, no evidence that the Applicants could not post security for costs if they were ordered to do so.

C. Ordering security for costs is just in the circumstances

26. Ontario has shown that there is good reason to believe that the criteria in Rule 56.01(1)(a), (d) and (e) are satisfied. Accordingly, there is a *prima facie* right to security for costs.³² The Court must go on to consider whether an order for security for costs is just in the circumstances. Each case must be considered on its own facts, and “it is not helpful nor just to compose a static list of factors to be used in all cases in determining the justness of a security for costs order.”³³

27. The most compelling reason supporting an order for security for costs is Mr. Skelly’s history of defying or ignoring legal obligations that are inconvenient to him. These include not only his open defiance of the temporary restrictions on indoor restaurant dining, but also his refusal to obtain business licences for his restaurants, and his longstanding failure to comply with the two costs orders made by Justice Akbarali.

28. It was only when his failure to comply with this Court’s previous costs orders proved inconvenient to his efforts to schedule his new Application that the Applicants found sufficient reason to comply with those orders. The next time costs are ordered against

³¹ *2311888 Ontario Inc v Ross*, 2017 ONSC 1295 at paras [18-19](#); *Morton v Canada (Attorney General)*, [2005] OJ No 948 (ONSC) at para [32](#) [“*Morton*”].

³² *Crudo Creative Inc v Marin*, [2007] OJ No 5334 (Div Ct) at para [29](#); *Radmanish* at para [4](#).

³³ *Yaiguaje* at para [25](#).

them, there is no reason to believe they will pay. The Court should take Mr. Skelly at his word when he says “I’m not giving them any money. Not a chance. Never again.”³⁴

29. There is no substantial prejudice to the Applicants in making the order sought. The scheduled hearing of the Application is still more than a year away. Moreover, Mr. Skelly monetized his defiance of public health measures in order to raise money under the slogan “Support the BBQ Rebellion”³⁵ and apparently raised \$337,622.00 for his “Adamson BBQ Legal Defence Fund”.³⁶ He should be able to post modest security for costs in the amount of \$30,000.

30. As this Court has repeatedly observed, “for plaintiffs confident in the merits of their case, an order for security for costs is simply an investment with a modest yield.”³⁷ If the Applicants are sincerely confident in the merits of their claims, they should not hesitate to pay this reasonable sum into court as security against the event – by their assertion unlikely – that they will lose.

³⁴ Skelly Cross, OMR, Tab 6, Q 26 at 102.

³⁵ Skelly Cross, OMR, Tab 6, QQ 29-30 at 104.

³⁶ Skelly Cross, OMR, Tab 6, Q 38 at 106. See also Exhibit A to Skelly Cross, OMR, Tab 6 at 108.

³⁷ *Morton* at para [33](#); *Boudreau v TMS Lighting Ltd*, 2017 ONSC 6188 at para [35](#).

PART IV – ORDER REQUESTED

31. Ontario respectfully requests an order that the Applicants post security for costs in the action in the amount of \$30,000. Ontario also seeks costs of this motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29th day of August, 2023



S. Zachary Green, Padraic J. Ryan
and Priscila Atkinson

Of counsel for the Moving Party,
His Majesty the King in Right of
Ontario

SCHEDULE “A” – LIST OF AUTHORITIES

1. *2311888 Ontario Inc v Ross*, [2017 ONSC 1295](#)
2. *Baber v Ontario (Attorney General)*, [2022 ONCA 345](#)
3. *Banas v HMTQ*, [2022 ONSC 999](#)
4. *Boudreau v TMS Lighting Ltd*, [2017 ONSC 6188](#)
5. *Coastline Corporation Capital v Canaccord Capital Corp*, [2009 CanLII 21758](#)
6. *Crudo Creative Inc v Marin*, [\[2007\] OJ No 5334](#) (Div Ct), 90 OR (3d) 213
7. *Health Genetic Center Corp v Reed Business Information Ltd*, [2014 ONSC 6449](#)
8. *Know Your City Inc v The Corporation of the City of Brantford*, [2020 ONSC 7364](#)
9. *Morton v Canada (Attorney General)*, [\[2005\] OJ No 948](#), 75 OR (3d) 63
10. *Mussani v College of Physicians and Surgeons of Ontario*, [\[2004\] OJ No 5176](#), 248 DLR (4th) 632
11. *Ontario v Adamson Barbecue Limited and Skelly*, [2021 ONSC 4660](#)
12. *Ontario v Trinity Bible Chapel et al*, [2022 ONSC 1344](#)
13. *R v Schmidt*, [2014 ONCA 188](#)
14. *Radmanish v Sulaimankhail*, [2009 CanLII 71011](#) (ONSC)
15. *Siemens v Manitoba (Attorney General)*, at [2003 SCC 3](#)
16. *Tanase v College of Dental Hygienists of Ontario*, [2021 ONCA 482](#)
17. *Treasure Traders International Corporation v Canadian Diamond Traders Inc*, [2006 CanLII 15758](#) (ONSC)
18. *Work Safe Twerk Safe v Ontario (Solicitor General)*, [2021 ONSC 6736](#)
19. *Yaiguaje v. Chevron Corp*, [2017 ONCA 827](#)

SCHEDULE “B” – LEGISLATION

Rules for Areas in Shutdown Zone and At Stage 1, Ontario Regulation 82/20 under Reopening Ontario (A Flexible Response to COVID-19) Act, 2020, SO 2020, c 17, as repealed by O Reg 168/22 on March 16, 2022, ss 1-3.2, Schedule 1 at 1 and Schedule 2 at s 6.

RULES FOR AREAS IN SHUTDOWN ZONE AND AT STEP 1

Note: This Regulation was revoked on March 16, 2022. (See: O Reg 168/22, s 1)

Last amendment: 168/22.

Terms of Order

1. The terms of this Order are set out in Schedules 1 to 10. O. Reg. 440/21, s. 2.
2. REVOKED: O. Reg. 654/20, s. 2.

Application

3. (1) Subject to subsections (2) and (3), this Order applies to the areas listed in Schedule 1 to Ontario Regulation 363/20 made under the Act. O. Reg. 440/21, s. 3.
- (2) Schedules 1 to 5 apply throughout the Shutdown Zone. O. Reg. 440/21, s. 3.
- (3) Schedules 6 to 10 apply throughout the areas at Step 1. O. Reg. 440/21, s. 3.

Shutdown Zone

3.1 In this Order, a reference to the Shutdown Zone is a reference to all areas listed as being in the Shutdown Zone in section 1 of Schedule 1 to Ontario Regulation 363/20 made under the Act. O. Reg. 440/21, s. 3.

Step 1

3.2 In this Order, a reference to areas at Step 1 is a reference to all areas listed as being at Step 1 in section 2 of Schedule 1 to Ontario Regulation 363/20 made under the Act. O. Reg. 440/21, s. 3.

SHUTDOWN ZONE
SCHEDULE 1
GENERAL RULES FOR SHUTDOWN ZONE

Closures

1. (1) Each person responsible for a business, or a part of a business, that is not listed in Schedule 2 or 3 shall ensure that the business, or part of the business, is closed.

(2) Each person responsible for a business, or part of a business, that is listed in Schedule 2 or 3 subject to conditions shall ensure that the business, or part of the business, either meets those conditions or is closed.

(3) Each person responsible for a place, or a part of a place, that is required to be closed by Schedule 3 shall ensure that the place, or part of the place, is closed in accordance with that Schedule.

(4) Each person responsible for a place, or a part of a place, that is listed in Schedule 3 subject to conditions shall ensure that the place, or part of a place, either meets those conditions or is closed.

(5) Each person responsible for a business or place, or part of a business or place, that does not comply with sections 2 to 10 of this Schedule shall ensure that it is closed.

(6) Despite subsections (1) to (5), temporary access to a business or place, or part of a business or place, that is required to be closed is authorized, unless otherwise prohibited by any applicable law, for the purposes of,

- (a) performing work at the business or place in order to comply with any applicable law;
- (b) preparing the business or place to be reopened;
- (c) allowing for inspections, maintenance or repairs to be carried out at the business or place;
- (d) allowing for security services to be provided at the business or place; and
- (e) attending at the business or place temporarily,
 - (i) to deal with other critical matters relating to the closure of the business or place, if the critical matters cannot be attended to remotely, or
 - (ii) to access materials, goods or supplies that may be necessary for the business or place to be operated remotely.

(7) Nothing in this Order precludes a business or organization from operating remotely for the purpose of,

- (a) providing goods by mail or other forms of delivery or making goods available for pick-up; and

(b) providing services online, by telephone or by other remote means.

(8) Nothing in this Order precludes a business or place from providing access to an outdoor recreational amenity that is permitted to open under section 4 of Schedule 3, including by opening such limited areas of the business or place as are necessary to enable access.

(9) Nothing in this Order precludes operations or delivery of services by the following in Ontario:

1. Any government.
2. Any person or publicly-funded agency or organization that delivers or supports government operations and services, including operations and services of the health care sector.

SCHEDULE 2 BUSINESSES THAT MAY OPEN IN SHUTDOWN ZONE

6. (1) Restaurants, bars, food trucks, concession stands and other food or drink establishments that meet the conditions set out in subsection (2).

(2) A business described in subsection (1) may open only for the purpose of providing take-out, drive-through or delivery service.

(3) Despite subsection (2), the following establishments may provide in-person dining if they meet the conditions set out in paragraphs 1, 2, 3, 4, 6, 9, 10, 12, and 13 of subsection 1 (1) of Schedule 2 to Ontario Regulation 263/20:

1. Establishments on hospital premises.
2. Establishments in airports.
3. Establishments located within a business or place where the only patrons permitted at the establishment are persons who perform work for the business or place in which the establishment is located.

Rules for Areas in Shutdown Zone and At Stage 1, Ontario Regulation 82/20 under Reopening Ontario (A Flexible Response to COVID-19) Act, 2020, SO 2020, c 17, as of November 23, 2020, as amended by O Reg 654/20, Schedule 1 at s 1 and Schedule 2 at s 3

SCHEDULE 1
GENERAL RULES

Closures

1. (1) Each person responsible for a business, or a part of a business, that is not listed in Schedule 2 or 3 shall ensure that the business, or part of the business, is closed.
- (2) Each person responsible for a business, or part of a business, that is listed in Schedule 2 or 3 subject to conditions shall ensure that the business, or part of the business, either meets those conditions or is closed.
- (3) Each person responsible for a place, or a part of a place, that is required to be closed by Schedule 3 shall ensure that the place, or part of the place, is closed in accordance with that Schedule.
- (4) Each person responsible for a place, or a part of a place, that is listed in Schedule 3 subject to conditions shall ensure that the place, or part of a place, either meets those conditions or is closed.
- (5) Each person responsible for a business or place, or part of a business or place, that does not comply with sections 2 to 10 of this Schedule shall ensure that it is closed.
- (6) Despite subsections (1) to (5), temporary access to a business or place, or part of a business or place, that is required to be closed is authorized, unless otherwise prohibited by any applicable law, for the purposes of,
 - (a) performing work at the business or place in order to comply with any applicable law;
 - (b) preparing the business or place to be reopened;
 - (c) allowing for inspections, maintenance or repairs to be carried out at the business or place;
 - (d) allowing for security services to be provided at the business or place; and
 - (e) attending at the business or place temporarily,
 - (i) to deal with other critical matters relating to the closure of the business or place, if the critical matters cannot be attended to remotely, or
 - (ii) to access materials, goods or supplies that may be necessary for the business or place to be operated remotely.

(7) Nothing in this Order precludes a business or organization from operating remotely for the purpose of,

- (a) providing goods by mail or other forms of delivery; and
- (b) providing services online, by telephone or by other remote means.

(8) Nothing in this Order precludes a business or place from providing access to an outdoor recreational amenity that is permitted to open under section 4 of Schedule 3, including by opening such limited areas of the business or place as are necessary to enable access.

(9) Nothing in this Order precludes operations or delivery of services by the following in Ontario:

- 1. Any government.
- 2. Any person or publicly-funded agency or organization that delivers or supports government operations and services, including operations and services of the health care sector.

SCHEDULE 2 BUSINESSES THAT MAY OPEN

3. (1) Restaurants, bars, food trucks, concession stands and other food or drink establishments that meet the conditions set out in subsection (2).

(2) A business described in subsection (1) may open only for the purpose of providing take-out, drive-through or delivery service.

(3) Despite subsection (2), the following establishments may provide in-person dining if they meet the conditions set out in paragraphs 1, 2, 3, 4, 6, 8, 9, 10, 12, and 13 of subsection 1 (1) of Schedule 2 to Ontario Regulation 263/20 (Rules for Areas in Stage 2):

- 1. Establishments on hospital premises.
- 2. Establishments in airports.
- 3. Establishments located within a business or place where the only patrons permitted at the establishment are persons who perform work for the business or place in which the establishment is located.

**WILLIAM ADAMSON SKELLY and ADAMSON BARBECUE
LIMITED**

Applicants (Responding Party)

HIS MAJESTY THE KING IN RIGHT OF ONTARIO et al.

Respondent (Moving Party)

ONTARIO
SUPERIOR COURT OF JUSTICE
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FACTUM OF THE RESPONDENT (MOVING PARTY)
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