

**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

MOTION RECORD

August 11, 2023

**THE ATTORNEY GENERAL OF
ONTARIO**

Constitutional Law Branch
720 Bay Street, 4th Floor
Toronto, ON M7A 2S9

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Tel: 416 992-2327/ Fax: 416-326-4015
Email: zachary.green@ontario.ca

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

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

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

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

Kirsten Franz (LSO# 459460)
Tel: 416-392-1813
Email: kirsten.franz@toronto.ca

Penelope Ma (LSO# 663670)
Tel: 416-397-7690
Email: penelope.ma@toronto.ca

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

AND TO: PERRYS LLP
1 Eglinton Ave E. Suite 803
Toronto, ON M4P 3A1

Ian J. Perry (LSO# 65670S)
Tel: 416-579-5055
Fax: 416- 955- 0369
Email: ian@perrysllp.com

Counsel for the Applicants

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TAB 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

-
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

NOTICE OF MOTION

The Respondent, His Majesty the King in Right of Ontario, will make a motion to the Court on September 8, 2023 at 10:00 a.m.

PROPOSED METHOD OF HEARING: The motion is to be heard by videoconference before an Associate Judge.

THE MOTION IS FOR:

- (a) An order pursuant to Rule 56 of the *Rules of Civil Procedure* requiring the Applicants to pay security for costs in the amount of \$30,000 or such other amount as the Court considers just;
- (b) The costs of this motion; and

(c) Any further or other order that this Court deems just.

THE GROUNDS FOR THE MOTION ARE:

The Parties

1. The Applicants are William Adamson Skelly, a natural person not residing in Ontario, and Adamson Barbecue Limited (Ontario Corporation Number 2589834), a corporation incorporated in Ontario. Adamson Skelly is the sole director of Adamson Barbecue Limited.

2. His Majesty the King in Right of Ontario (“Ontario”) is a Respondent to an application commenced by the Applicants on June 30, 2022 and the Moving Party on this motion. The other Respondents are the City of Toronto, Board of Health for the City of Toronto and Eileen de Villa (“the Municipal Respondents”).

Prior Proceedings Between Ontario and the Applicants

3. The Applicants previously operated three restaurants in Ontario. The restaurant they operated in Etobicoke violated COVID-19 public health laws in November 2020, which resulted in a number of administrative, civil and penal proceedings against the Applicants.

4. In Superior Court File No. CV-20-652216-0000, Ontario brought an application against the Applicants seeking a restraining order under section 9 of the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* (“ROA”).

5. This restraining order was granted on December 4, 2020 by Justice Kimmel of this Court. The order required the Applicants to comply with O. Reg. 82/20 under ROA,

which was then in effect in Toronto. The Applicants were represented by counsel at the hearing of the Restraining Order Application.

6. In her reasons, Justice Kimmel found that it was incontrovertible that there had been a clear breach of O. Reg. 82/20 at the Applicant's restaurant, and that no persons responsible for the business were attempting to ensure compliance with public health laws. She also found that there were no exceptional circumstances warranting the court to decline to grant the restraining order.

7. Justice Kimmel fixed the costs on the Restraining Order Application at \$15,000.00 but deferred the issue of against whom the costs should be awarded to be dealt with in the context of a subsequent motion to be brought by the Applicants.

8. The Applicants' come-back motion was heard on June 28, 2021 by Justice Akbarali. The Applicants were represented by counsel. Justice Akbarali dismissed the motion.

9. Justice Akbarali noted that the Applicants had not complied with basic civil procedure rules, namely that they had not sought to set aside, vary or terminate Justice Kimmel's Restraining Order but instead sought a final order for damages under s. 24(1) of the *Canadian Charter of Rights and Freedoms*. The motion was dismissed on the basis that the relief being sought was not included in the Applicant's Notice of Motion and, therefore, could not be determined through an interim motion without an originating process making such a claim.

10. Justice Akbarali gave the parties the opportunity to provide submissions on costs. On July 13, 2021, she awarded costs against the Applicants in favour of Ontario in the amount of \$15,000.00 to be paid within 30 days.

11. On February 1, 2022, Justice Akbarali made a separate order awarding Ontario \$15,000.00 on the Restraining Order Application, the amount previously fixed by Justice Kimmel. She ordered that these costs be paid within 30 days.

12. O. Reg. 82/20 was revoked on March 16, 2022 by O. Reg. 168/22. The restraining order therefore has no ongoing legal effect.

13. The Applicants took no appeal against Justice Kimmel's granting of the application, Justice Akbarali's dismissing of the come-back motion, or either of Justice Akbarali's costs orders. The deadline to do so has long since expired.

14. After the 30-day period for paying the costs order dated July 13, 2021 expired, Ontario contacted the Applicants' counsel of record regarding payment of the outstanding costs and was rebuffed or ignored. The same is true after the February 1, 2022 costs order.

15. Instead of paying the costs ordered by the court on July 13, 2021 and February 1, 2022, the Applicants began the present Application on June 30, 2022.

16. Notwithstanding that the Applicants were in default of two costs orders made by the court, they insisted that the present Application be scheduled for a hearing. The parties attended at a case conference before Justice Centa. By endorsement dated September 9, 2022, Justice Centa noted that:

“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.”

17. On January 16, 2023, the Applicants paid the outstanding costs. Counsel for the Applicants refused to provide his available dates to schedule Ontario’s motion for security for costs, and ignored Ontario’s request that, pursuant to Justice Centa’s suggestion, “counsel then meet to explore whether or not they can agree on terms for reasonable security for costs and to schedule the main application.”

An Order for Security for Costs Would be Just in the Circumstances

18. Three independent grounds under Rule 56 for the granting of an order for security for costs are met here.

19. Security for costs is warranted under Rule 56.01(1)(a), as Mr. Skelly has confirmed pursuant to Rule 56.02 that he is not ordinarily resident in Ontario.

20. Security for costs is also warranted under Rule 56.01(1)(d), because Adamson Barbecue Limited is a corporation, and there is good reason to believe that it has insufficient assets in Ontario to pay costs in the Current Application. Adamson Barbecue Limited has no ongoing operations in Ontario after the closure of all three restaurant locations described in the Notice of Application.

21. Security for costs is also warranted under Rule 56.01(1)(e), as there is good reason to believe that the present Application is frivolous and vexatious and that the Applicants have insufficient assets in Ontario to pay Ontario’s costs. The present Application advances meritless constitutional arguments in support of fruitless declarations against public health orders that are no longer in effect. It asks this Court to expend resources determining the validity of a restraining order which has no legal effect against the

Applicants or anyone else, and seeks relief against administrative orders which must be challenged through statutory appeals or judicial reviews instead of collaterally attacked.

22. The Applicants have a long history of not complying with rules with which they disagree or that they consider inconvenient. Justice Kimmel found that it was “incontrovertible” that the Applicants had breached the applicable public health regulations, and that their “intention to defy the Stage 1 Regulation has been made clear and is based on their ideological opposition to it.” The Applicants operated their restaurants for years without a business licence, and Mr. Skelly admitted that he refused to obtain a food truck licence “out of principle”, stating “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.” The Applicants ignored the two costs orders of the court for many months until this defiance proved to be an obstacle to scheduling the present Application. The Applicants’ history of non-compliance offers no reason to believe that the Applicants will willingly pay costs of the present Application if they are ordered by the court to do so.

23. The frivolous and vexatious purpose of the present Application appears to be to delay the resolution of related proceedings against the Applicants: the Board of Health’s civil action and the prosecutions Mr. Skelly faces under *ROA*, *HPPA* and the *Criminal Code*.

24. Requiring security for costs would deter the Applicants from using the present Application as a means to resist the consequences they face for flagrantly violating important public health laws during a global pandemic. This is what they were able to do in the Restraining Order Application, where the Applicants resisted an order simply

requiring them to obey the law at multiple stages and then ignored the resulting costs awards requiring them to re-pay the public resources that were expended due to their actions.

25. The Applicants would remain free to raise constitutional arguments in their defence in the other proceedings brought against them. They would also remain free to pursue the current Application by paying into court a modest security of \$30,000, which will be returned to them if their argument succeeds or the Court orders a lower amount of costs.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The Notice of Application dated June 30, 2022.
- (b) The order of Justice Kimmel dated December 4, 2020.
- (c) The order of Justice Akbarali dated July 13, 2021.
- (d) The order of Justice Akbarali dated February 1, 2022.
- (e) Transcript of the examination of William Adamson Skelly on May 31, 2021 in CV-20-652216-0000.
- (f) An affidavit to be affirmed.
- (g) Such further and other evidence as counsel may advise and this Court may deem just.

ESTIMATED TIME FOR ORAL ARGUMENT: Two hours.

June 14, 2023

THE ATTORNEY GENERAL OF ONTARIO

Constitutional Law Branch
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Email: priscila.atkinson@ontario.ca

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

TO: PERRYS LLP

1 Eglinton Ave E. Suite 803
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Counsel for the Applicants

AND TO: CITY SOLICITOR'S OFFICE

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Email: penelope.ma@toronto.ca

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

**WILLIAM ADAMSON SKELLY and
ADAMSON BARBECUE LIMITED**

Applicants

-and -

HIS MAJESTY THE KING IN RIGHT OF ONTARIO ET AL.

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDINGS COMMENCED AT
TORONTO

NOTICE OF MOTION

ATTORNEY GENERAL OF ONTARIO

Constitutional Law Branch
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Toronto, ON M7A 2S9

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Tel: 647 534-5802 / Fax: 416-326-4015
Email: priscila.atkinson@ontario.ca

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

TAB 2

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 CASEY MASSARI
(Affirmed on August 11, 2023)**

I, **CASEY MASSARI**, of the City of Toronto, in the Province of Ontario, AFFIRM AND SAY:

1. I am a Legal Assistant employed by the Ontario Ministry of the Attorney General, working in the Constitutional Law Branch at the Ministry's Civil Law Division. This affidavit attaches a true copy of each of the documents described herein.
2. Attached hereto as **Exhibit "A"** is a true copy of an e-mail sent by Michael Swinwood, counsel for the Applicants, dated July 19, 2021.
3. Attached hereto as **Exhibit "B"** is a true copy of e-mails exchanged between Zachary Green, counsel for Ontario, and Justice Akbarali's Judicial Assistant, dated February 15, 2022.

4. Attached hereto as **Exhibit "C"** is a true copy of e-mails exchanged between Zachary Green and Padraic Ryan, counsel for Ontario, and Ian Perry, counsel for the Applicants, dated July 12 and August 15, 2022.
5. Attached hereto as **Exhibit "D"** is a true copy of an e-mail sent by Ian Perry, counsel for the Applicants, dated February 2, 2023.
6. Attached hereto as **Exhibit "E"** is a true copy of e-mails exchanged between Ian Perry, counsel for the Applicants, and Zachary Green, counsel for Ontario, dated April 4, 2023.

AFFIRMED BEFORE ME by
Casey Massari at the City of Toronto in the
Province of Ontario, on August 11, 2023.



A commissioner for the Taking of Affidavits
S. ZACHARY GREEN (LSO# 48066K)



Casey Massari

This is **Exhibit "A"** referred to in the
affidavit of Casey Massari
affirmed before me, this 11th
day of August, 2023



A commissioner for taking affidavits

S. Zachary Green (LSO# 48066K)

Green, Zachary (MAG)

From: Michael Swinwood <spiritualelders@gmail.com>
Sent: July 19, 2021 8:21 AM
To: Ryan, Padraic (MAG)
Cc: Liza Swale; Green, Zachary (MAG)
Subject: Re: FW: CV-20-652216-0000 - Ontario v. Adamson Barbecue Limited and Skelly - costs

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

Good Morning Counsel,

I approve of the Order as to form and content. You may endorse our consent on the Order. Thank you, Michael.

On Tue, Jul 13, 2021 at 2:59 PM Ryan, Padraic (MAG) <Padraic.Ryan@ontario.ca> wrote:

Michael, please see attached our draft order reflecting Justice Akbarali's decision on costs. Let us know if you consent to the form and content of the order.

Thank you,

Padraic

From: Evans, Pam (Yomattie) (MAG) <Yomattie.Evans@ontario.ca>
Sent: Tuesday, July 13, 2021 11:55 AM
To: Green, Zachary (MAG) <Zachary.Green@ontario.ca>; Ryan, Padraic (MAG) <Padraic.Ryan@ontario.ca>; lizaswale@gmail.com; spiritualelders@gmail.com
Subject: CV-20-652216-0000 - Ontario v. Adamson Barbecue Limited and Skelly - costs

Good morning:

Please see the endorsement attached from Justice Akbarali and acknowledge receipt.

Thank you.

Yomattie Evans (Pam)(she/her)

Judicial Assistant

361 University Avenue

Toronto, Ontario

M5G 1T3

Ph: 416-327-5284

--

Michael Swinwood, B.A. LL.B.
Legal Counsel to Elders Without Borders

237 Argyle Avenue
Ottawa, Ontario K2P 1B8
Tel.: (613) 563-7474
Fax: (613)-563-9179
spiritualelders@hotmail.com

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This is **Exhibit "B"** referred to in the
affidavit of Casey Massari
affirmed before me, this 11th
day of August, 2023



A commissioner for taking affidavits

S. Zachary Green (LSO# 48066K)

Green, Zachary (MAG)

From: Evans, Pam (Yomattie) (MAG)
Sent: February 15, 2022 1:56 PM
To: Green, Zachary (MAG); Ryan, Padraic (MAG); Liza Swale; Michael Swinwood
Subject: RE: Ontario v. Adamson Barbecue Limited and Skelly - CV-20-652216-0000 - Costs
Attachments: HMQ v Adamson Barbecue - order on application costs.pdf

Good afternoon:

Justice Akbarali has signed the order, attached.

Thank you.

Yomattie Evans (Pam)(she/her)
Judicial Assistant
361 University Avenue
Toronto, Ontario
M5G 1T3
Ph: 416-327-5284

From: Green, Zachary (MAG) <Zachary.Green@ontario.ca>
Sent: February 15, 2022 1:28 PM
To: Evans, Pam (Yomattie) (MAG) <Yomattie.Evans@ontario.ca>; Ryan, Padraic (MAG) <Padraic.Ryan@ontario.ca>; Liza Swale <lizaswale@gmail.com>; Michael Swinwood <spiritualelders@gmail.com>
Subject: RE: Ontario v. Adamson Barbecue Limited and Skelly - CV-20-652216-0000 - Costs

Dear Ms. Evans,

We have been unable to obtain the approval of the Respondents as to the form and content of the attached draft order giving effect to Justice Akbarali's decision.

In the circumstances, given the lack of response from the Respondents and their non-compliance with Her Honour's previous order as to costs made on July 13, 2021, we request that Her Honour sign the attached draft order without putting the Applicant to the further burden of seeking another attendance, which would only add costs upon costs.

I note that Mr. Swinwood remains counsel of record and has not served a motion to remove himself under Rule 15.04. Accordingly, I have copied him on this message.

We thank the court for considering our request.

Yours very truly,
Zachary Green
Of counsel for the Applicant

From: Evans, Pam (Yomattie) (MAG) <Yomattie.Evans@ontario.ca>

Sent: February 1, 2022 2:08 PM

To: Ryan, Padraic (MAG) <Padraic.Ryan@ontario.ca>; Green, Zachary (MAG) <Zachary.Green@ontario.ca>; Liza Swale <lizaswale@gmail.com>; Michael Swinwood <spiritualelders@gmail.com>

Subject: Ontario v. Adamson Barbecue Limited and Skelly - CV-20-652216-0000 - Costs

Good afternoon:

Please see the cost decision attached from Justice Akbarali and acknowledge receipt.

Thank you.

Yomattie Evans (Pam)(she/her)

Judicial Assistant

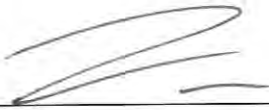
361 University Avenue

Toronto, Ontario

M5G 1T3

Ph: 416-327-5284

This is **Exhibit "C"** referred to in the
affidavit of Casey Massari
affirmed before me, this 11th
day of August, 2023



A commissioner for taking affidavits

S. Zachary Green (LSO# 48066K)

Green, Zachary (MAG)

From: Ian Perry <ian@perrysllp.com>
Sent: August 15, 2022 4:27 PM
To: Ryan, Padraic (MAG); Green, Zachary (MAG)
Cc: kristen.franz@toronto.ca
Subject: Re: William Adam Skelly et al v Her Majesty the Queen in right of Ontario, City of Toronto et al Court File CV-22-00683592-0000

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

Mr. Ryan,

Pursuant to my obligations under Rule 56.02, my answer to your request is no.

Yours very truly,

Ian J. Perry
Office: (416) 579-5055
Email: ian@perrysllp.com

From: Ryan, Padraic (MAG) <Padraic.Ryan@ontario.ca>
Date: Monday, August 15, 2022 at 1:34 PM
To: Green, Zachary (MAG) <Zachary.Green@ontario.ca>, Ian Perry <ian@perrysllp.com>
Cc: kristen.franz@toronto.ca <kristen.franz@toronto.ca>
Subject: RE: William Adam Skelly et al v Her Majesty the Queen in right of Ontario, City of Toronto et al Court File CV-22-00683592-0000

Mr. Perry,

Please consider this email a request under Rule 56.02 for you to declare whether Mr. Skelly is ordinarily resident in Ontario.

Regards,
Padraic Ryan
Of Counsel for the Respondent, Her Majesty the Queen in Right of Ontario

From: Green, Zachary (MAG) <Zachary.Green@ontario.ca>
Sent: Tuesday, July 12, 2022 16:38
To: ian@perrysllp.com
Cc: Ryan, Padraic (MAG) <Padraic.Ryan@ontario.ca>; kristen.franz@toronto.ca
Subject: RE: William Adam Skelly et al v Her Majesty the Queen in right of Ontario, City of Toronto et al Court File CV-22-00683592-0000

Dear Mr. Perry,

Adamson Barbecue Limited and Mr. Skelly have not paid the costs ordered in CV-20-00652216-0000. I attach both costs orders for your attention.

Please direct payment to my attention immediately. We will seek an order for security for costs under Rule 56 in the event that these costs orders remain unpaid.

Yours truly,
S. Zachary Green
Of Counsel for the Respondent, Her Majesty the Queen in Right of Ontario

From: Ward, Chantel (MAG) <Chantel.Ward@ontario.ca>
Sent: July 12, 2022 3:04 PM
To: kristen.franz@toronto.ca; penelope.ma@toronto.ca; ian@perrysllp.com
Cc: Green, Zachary (MAG) <Zachary.Green@ontario.ca>; Ryan, Padraic (MAG) <Padraic.Ryan@ontario.ca>
Subject: William Adam Skelly et al v Her Majesty the Queen in right of Ontario, City of Toronto et al Court File CV-22-00683592-0000

Good Afternoon,

Please see the attached Notice of Appearance which is being sent on behalf of Counsel Padraic Ryan and Zachary Green counsel for the Respondent, Her Majesty the Queen in Right of Ontario.

Thank you,
Chantel Ward (pronouns: she, her, hers)
Litigation Assistant
Constitutional Law Branch
720 Bay Street, 4th Fl
Toronto, Ontario M7A 2S9
Tel: 416-417-6821
Fax: 416.326.4015 | Email: Chantel.Ward@ontario.ca
Currently Working Remotely

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This is **Exhibit "D"** referred to in the
affidavit of Casey Massari
affirmed before me, this 11th
day of August, 2023



A commissioner for taking affidavits

S. Zachary Green (LSO# 48066K)

Green, Zachary (MAG)

From: Ian Perry <ian@perrysllp.com>
Sent: February 2, 2023 4:20 PM
To: Leung, Karlson (MAG)
Cc: Green, Zachary (MAG); Kirsten Franz; Alison Barclay
Subject: Re: Dates

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

Karlson,

No. With the outstanding costs paid, my instructions are to seek a case conference to address scheduling the final hearing.

Our case conference request form is forthcoming.

Thank you,

Ian

Ian Perry
 ian@perrysllp.com
 Office: (416) 579-5055
 Mobile/Text: (416) 420-7242
NEW OFFICE ADDRESS
3817 Bloor Street West,
Toronto, Ontario M9B 1K7

Contents of this email may be confidential and subject to privilege. If you've received this message in error, please notify me and delete it.

From: Leung, Karlson (MAG) <Karlson.Leung@ontario.ca>
Sent: Thursday, February 2, 2023 4:17:43 PM
To: Ian Perry <ian@perrysllp.com>
Cc: Green, Zachary (MAG) <Zachary.Green@ontario.ca>; Kirsten Franz <Kirsten.Franz@toronto.ca>; Alison Barclay <Alison.Barclay@toronto.ca>
Subject: FW: Dates

Hi Ian,

Would any of the below virtual and in-person May 2023 hearing dates work for you?

Thanks,
 Karlson

Karlson Leung (he/him)
Counsel

Ministry of the Attorney General (Ontario)
Constitutional Law Branch
Civil Law Division
720 Bay Street, 4th Floor
Toronto, ON M7A 2S9



Email: karlson.leung@ontario.ca
Phone: 416 906 0738

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From: JUS-G-MAG-CSD-Civil Motions Scheduling <JUS.G.MAG.CSD.CivilMotionsScheduling@ontario.ca>
Sent: February 2, 2023 4:12 PM
To: Leung, Karlson (MAG) <Karlson.Leung@ontario.ca>
Cc: Ian Perry <ian@perrysllp.com>; Kirsten Franz <Kirsten.Franz@toronto.ca>; Alison Barclay <Alison.Barclay@toronto.ca>; Green, Zachary (MAG) <Zachary.Green@ontario.ca>
Subject: RE: Dates

Thank you for your inquiry to schedule an opposed short motion of 15-120 minutes to be heard by an Associate Judge. Please be advised the following dates are currently available:

For motions of 90 – 120 minutes

IN PERSON:

2023 May 1,9,23,29

VIRTUAL:

2023 May 12,15,25,26,30,31

2024 Feb. 21 to 26, 28,29

For motions of 15 – 75 minutes

IN PERSON:

2023 May 1,9,23,29

VIRTUAL:

2023 May 10,11,12,15,18,25,26,30,31

2024 Feb. 16, 21 to 29

ALL MOTIONS FOR REMOVAL OF A PARTY'S OWN SOLICITOR (maximum of 20 minutes) shall be heard virtually on:

2023 May 1,11,19,25,29

NOTE: IF YOU SELECT IN-PERSON, PLEASE BE REMINDED THAT ALL PARTICIPANTS MUST CONSENT TO AN IN-PERSON HEARING. IF IN-PERSON IS NOT ON CONSENT, A NOTICE OF OBJECTION MUST BE FILED WITH Civilurgentmatters-SCJ-Toronto@ontario.ca

COUNSEL ARE REMINDED THAT THEY WILL BE HELD TO THE TIME BOOKED FOR THE MOTION

PLEASE BE REMINDED THAT THE NAMED LAWYER OF RECORD ON THE FILE (AND NOT THE LAWYER ON THE MOTION) WILL RECEIVE THE CASELINES LINK.

COUNSEL ARE REQUIRED TO IMMEDIATELY SHARE THAT LINK WITH ALL RESPONDING PARTIES.

Failure to upload materials to Caselines by the deadline set out in the Practice Direction may result in your matter not being heard and adjourned to a date when the court has had the opportunity to review the motion materials.

From: Leung, Karlson (MAG) <Karlson.Leung@ontario.ca>
Sent: February 2, 2023 11:49 AM
To: JUS-G-MAG-CSD-Civil Motions Scheduling <JUS.G.MAG.CSD.CivilMotionsScheduling@ontario.ca>
Cc: Ian Perry <ian@perrysllp.com>; Kirsten Franz <Kirsten.Franz@toronto.ca>; Alison Barclay <Alison.Barclay@toronto.ca>; Green, Zachary (MAG) <Zachary.Green@ontario.ca>
Subject: RE: Dates

Good morning,

Can you please advise what dates are currently available for opposed short motions (120 minutes) in any format before an associate judge?

Thank you,
 Karlson

Karlson Leung (he/him)
 Counsel

Ministry of the Attorney General (Ontario)
 Constitutional Law Branch
 Civil Law Division
 720 Bay Street, 4th Floor
 Toronto, ON M7A 2S9



Email: karlson.leung@ontario.ca
 Phone: 416 906 0738

Note: The information contained in this email and any attachments may be privileged and confidential. If you are not the intended recipient, do not read, copy, retain or distribute this email or any attachments. Contact the sender immediately and permanently delete the email you have received. Thank you.

From: JUS-G-MAG-CSD-Civil Motions Scheduling <JUS.G.MAG.CSD.CivilMotionsScheduling@ontario.ca>
Sent: Friday, October 21, 2022 10:11
To: Ryan, Padraic (MAG) <Padraic.Ryan@ontario.ca>
Subject: RE: Dates

Thank you for your inquiry to schedule an opposed short motion of 10-120 minutes to be heard by an Associate Judge. Please be advised the following dates are currently available:

For motions of 90 – 120 minutes

VIRTUAL:

May 18

Aug is open except Aug 1

For motions of 10 – 75 minutes

In-person

Jan 9, 16,

Virtual

July 31

Aug is open

Removals

Dec 15, 20, 21

Jan 5, 10, 17, 18, 19, 24,25, 26. 27, 30, 31

NOTE: IF YOU SELECT IN-PERSON, PLEASE BE REMINDED THAT ALL PARTICIPANTS MUST CONSENT TO AN IN-PERSON HEARING. IF IN-PERSON IS NOT ON CONSENT, A NOTICE OF OBJECTION MUST BE FILED WITH Civilurgentmatters-SCJ-Toronto@ontario.ca

PLEASE BE REMINDED THAT THE NAMED LAWYER OF RECORD ON THE FILE (AND NOT THE LAWYER ON THE MOTION) WILL RECEIVE THE CASELINES LINK.

COUNSEL ARE REQUIRED TO IMMEDIATELY SHARE THAT LINK WITH ALL RESPONDING PARTIES.

Failure to upload materials to Caselines by the deadline set out in the Practice Direction may result in your matter not being heard and adjourned to a date when the court has had the opportunity to review the motion materials.

From: Ryan, Padraic (MAG) <Padraic.Ryan@ontario.ca>

Sent: October 13, 2022 11:01 AM

To: JUS-G-MAG-CSD-Civil Motions Scheduling <JUS.G.MAG.CSD.CivilMotionsScheduling@ontario.ca>

Cc: Ian Perry <ian@perryslp.com>; Green, Zachary (MAG) <Zachary.Green@ontario.ca>; Kirsten Franz

<Kirsten.Franz@toronto.ca>; Alison Barclay <Alison.Barclay@toronto.ca>

Subject: RE: Dates

Please see the attached form requesting a 2 hour videoconference motion on January 11, 13, 20 or 27.

From: JUS-G-MAG-CSD-Civil Motions Scheduling <JUS.G.MAG.CSD.CivilMotionsScheduling@ontario.ca>

Sent: Thursday, October 13, 2022 10:43

To: Ryan, Padraic (MAG) <Padraic.Ryan@ontario.ca>

Subject: RE: Dates

Thank you for your inquiry to schedule an opposed short motion of 10-120 minutes to be heard by an Associate Judge. Please be advised the following dates are currently available:

For motions of 90 – 120 minutes

In-person

Jan 6, 9, 16, 26

VIRTUAL:

Jan 5, 11, 13, 20, 23, 24, 25, 27, 31

July 21, 24, 26, 27, 28, 31

For motions of 10 – 75 minutes

In-person

Jan 6, 9, 16, 26

VIRTUAL:

Jan 5, 11, 13, 20, 23, 24, 25, 27, 31

2023- July 19, 21, 24, 25, 26, 27, 28, 31

Removals

Dec 2, 6, 7, 12, 13, 14, 15, 20, 21

Jan 5, 10, 17, 18, 19, 24, 25, 26, 27, 30, 31

NOTE: IF YOU SELECT IN-PERSON, PLEASE BE REMINDED THAT ALL PARTICIPANTS MUST CONSENT TO AN IN-PERSON HEARING. IF IN-PERSON IS NOT ON CONSENT, A NOTICE OF OBJECTION MUST BE FILED WITH Civilurgentmatters-SCJ-Toronto@ontario.ca

PLEASE BE REMINDED THAT THE NAMED LAWYER OF RECORD ON THE FILE (AND NOT THE LAWYER ON THE MOTION) WILL RECEIVE THE CASELINES LINK.

COUNSEL ARE REQUIRED TO IMMEDIATELY SHARE THAT LINK WITH ALL RESPONDING PARTIES.

Failure to upload materials to Caselines by the deadline set out in the Practice Direction may result in your matter not being heard and adjourned to a date when the court has had the opportunity to review the motion materials.

Sorry, we don't have anymore 2 hr spots for this year

From: Ryan, Padraic (MAG) <Padraic.Ryan@ontario.ca>
Sent: September 29, 2022 12:58 PM
To: JUS-G-MAG-CSD-Civil Motions Scheduling <JUS.G.MAG.CSD.CivilMotionsScheduling@ontario.ca>
Cc: Green, Zachary (MAG) <Zachary.Green@ontario.ca>; Ian Perry <ian@perrysllp.com>; Alison Barclay <Alison.Barclay@toronto.ca>; Kirsten Franz <Kirsten.Franz@toronto.ca>
Subject: RE: Dates

Please see the attached form requesting the Nov 28 date below. **If it is not available, we request any available date in any format in 2022.**

From: JUS-G-MAG-CSD-Civil Motions Scheduling <JUS.G.MAG.CSD.CivilMotionsScheduling@ontario.ca>
Sent: Thursday, September 29, 2022 10:20
To: Ryan, Padraic (MAG) <Padraic.Ryan@ontario.ca>
Cc: Green, Zachary (MAG) <Zachary.Green@ontario.ca>; Ian Perry <ian@perrysllp.com>; Alison Barclay <Alison.Barclay@toronto.ca>; Kirsten Franz <Kirsten.Franz@toronto.ca>
Subject: RE: Dates

Sorry. Those dates are no longer available. Please see the current available dates below and resubmit your form. Please include more than 3 date choices.

Thank you for your inquiry to schedule an opposed short motion of 10-120 minutes to be heard by an Associate Judge. Please be advised the following dates are currently available:

For motions of 90 – 120 minutes

IN PERSON:

Nothing available at this time

VIRTUAL:

2022 Nov. 28

2023 July – open except July 4,5,6,7,11,12,25

For motions of 10 – 75 minutes**IN PERSON:**

Nothing available at this time

VIRTUAL:

2023 July - open

EXPRESS MOTION DATES (Virtual) – motions that are 10 to 15 minutes only

Nothing available at this time

ALL removal of solicitor dates (maximum of 20 minutes) shall be heard virtually on:

2022 Nov. 7,23,24,25,30

2022 Dec. 1,2,6,7,12,13,14,15,20,21

NOTE: IF YOU SELECT IN-PERSON, PLEASE BE REMINDED THAT ALL PARTICIPANTS MUST CONSENT TO AN IN-PERSON HEARING. IF IN-PERSON IS NOT ON CONSENT, A NOTICE OF OBJECTION MUST BE FILED WITH Civilurgentmatters-SCJ-Toronto@ontario.ca

PLEASE BE REMINDED THAT THE NAMED LAWYER OF RECORD ON THE FILE (AND NOT THE LAWYER ON THE MOTION) WILL RECEIVE THE CASELINES LINK.

COUNSEL ARE REQUIRED TO IMMEDIATELY SHARE THAT LINK WITH ALL RESPONDING PARTIES.

Failure to upload materials to Caselines by the deadline set out in the Practice Direction may result in your matter not being heard and adjourned to a date when the court has had the opportunity to review the motion materials.

From: Ryan, Padraic (MAG) <Padraic.Ryan@ontario.ca>

Sent: September 19, 2022 9:38 AM

To: JUS-G-MAG-CSD-Civil Motions Scheduling <JUS.G.MAG.CSD.CivilMotionsScheduling@ontario.ca>

Cc: Green, Zachary (MAG) <Zachary.Green@ontario.ca>; Ian Perry <ian@perrysllp.com>; Alison Barclay <Alison.Barclay@toronto.ca>; Kirsten Franz <Kirsten.Franz@toronto.ca>

Subject: RE: Dates

Please see the attached form requesting a 120 minute hearing in whatever format is available for December 5, 12, and 16, 2022. In the event that these dates are taken, we would be content to schedule it for any available date in 2022.

Thank you,

Padraic Ryan
Counsel for the moving party

--

Padraic Ryan (he/him)
 Counsel, Constitutional Law Branch
 Civil Law Division, Ministry of the Attorney General
padraic.ryan@ontario.ca
 647-588-2613
 4th Floor, 720 Bay Street, Toronto ON, M7A 2S9

From: JUS-G-MAG-CSD-Civil Motions Scheduling <JUS.G.MAG.CSD.CivilMotionsScheduling@ontario.ca>
Sent: Monday, September 19, 2022 09:19
To: Ryan, Padraic (MAG) <Padraic.Ryan@ontario.ca>
Cc: Green, Zachary (MAG) <Zachary.Green@ontario.ca>; Ian Perry <ian@perrysllp.com>; Alison Barclay <Alison.Barclay@toronto.ca>; Kirsten Franz <Kirsten.Franz@toronto.ca>
Subject: RE: Dates

Sorry. Those dates are no longer available. Please see the current available dates below and resubmit your form. Please include more than 3 date choices.

Thank you for your inquiry to schedule an opposed short motion of 10-120 minutes to be heard by an Associate Judge. Please be advised the following dates are currently available:

For motions of 90 – 120 minutes

IN PERSON:

2022 Dec. 12

VIRTUAL:

2022 Dec. 5,16

2023 July – open except July 6

For motions of 10 – 75 minutes

IN PERSON:

2022 Dec. 12

VIRTUAL:

2022 Dec. 5,16,19

2023 June 20,22,23,27,28,29

2023 July - open

EXPRESS MOTION DATES (Virtual) – motions that are 10 to 15 minutes only

Nothing available at this time

ALL removal of solicitor dates (maximum of 20 minutes) shall be heard virtually on:

2022 Nov. 2,3,4,7,16,21,23,24,25,30

2022 Dec. 1,2,5,6,7,12,13,14,15,20,21

NOTE: IF YOU SELECT IN-PERSON, PLEASE BE REMINDED THAT ALL PARTICIPANTS MUST CONSENT TO AN IN-PERSON HEARING. IF IN-PERSON IS NOT ON CONSENT, A NOTICE OF OBJECTION MUST BE FILED WITH Civilurgentmatters-SCJ-Toronto@ontario.ca

PLEASE BE REMINDED THAT THE NAMED LAWYER OF RECORD ON THE FILE (AND NOT THE LAWYER ON THE MOTION) WILL RECEIVE THE CASELINES LINK.

COUNSEL ARE REQUIRED TO IMMEDIATELY SHARE THAT LINK WITH ALL RESPONDING PARTIES.

Failure to upload materials to Caselines by the deadline set out in the Practice Direction may result in your matter not being heard and adjourned to a date when the court has had the opportunity to review the motion materials.

From: Ryan, Padraic (MAG) <Padraic.Ryan@ontario.ca>
Sent: September 2, 2022 8:32 AM
To: JUS-G-MAG-CSD-Civil Motions Scheduling <JUS.G.MAG.CSD.CivilMotionsScheduling@ontario.ca>
Cc: Green, Zachary (MAG) <Zachary.Green@ontario.ca>; Ian Perry <ian@perrysllp.com>; Alison Barclay <Alison.Barclay@toronto.ca>; Kirsten Franz <Kirsten.Franz@toronto.ca>
Subject: RE: Dates

Thank you. Please see the attached request form to schedule a short opposed virtual motion for the December dates listed below.

Regards,
Padraic Ryan
Counsel for the moving party

--
Padraic Ryan (he/him)
Counsel, Constitutional Law Branch
Civil Law Division, Ministry of the Attorney General
padraic.ryan@ontario.ca
647-588-2613
4th Floor, 720 Bay Street, Toronto ON, M7A 2S9

From: JUS-G-MAG-CSD-Civil Motions Scheduling <JUS.G.MAG.CSD.CivilMotionsScheduling@ontario.ca>
Sent: Thursday, September 1, 2022 14:42
To: Ryan, Padraic (MAG) <Padraic.Ryan@ontario.ca>
Subject: RE: Dates

Thank you for your inquiry to schedule an opposed short motion of 10-120 minutes to be heard by an Associate Judge. Please be advised the following dates are currently available:

For motions of 90 – 120 minutes

IN PERSON:

2022 Dec. 12

VIRTUAL:

2022 Dec. 12,13,15,16,19,20,21

2023 June 22,23,27,28,29

2023 July - open

For motions of 10 – 75 minutes**IN PERSON:**

2022 Dec. 12

VIRTUAL:

2022 Dec. 12,13,15,16,19,20,21

2023 June 8,9,13 to 29

2023 July - open

EXPRESS MOTION DATES (Virtual) – motions that are 10 to 15 minutes only

Nothing available at this time

ALL removal of solicitor dates (maximum of 20 minutes) shall be heard virtually on:**2022 Oct. 21,24,25,26,31****2022 Nov. 2,3,4,7,16,21,23,24,25,30****2022 Dec. 1,2,5,6,7,12,13,14,15,20,21**

NOTE: IF YOU SELECT IN-PERSON, PLEASE BE REMINDED THAT ALL PARTICIPANTS MUST CONSENT TO AN IN-PERSON HEARING. IF IN-PERSON IS NOT ON CONSENT, A NOTICE OF OBJECTION MUST BE FILED WITH Civilurgentmatters-SCJ-Toronto@ontario.ca

PLEASE BE REMINDED THAT THE NAMED LAWYER OF RECORD ON THE FILE (AND NOT THE LAWYER ON THE MOTION) WILL RECEIVE THE CASELINES LINK.

COUNSEL ARE REQUIRED TO IMMEDIATELY SHARE THAT LINK WITH ALL RESPONDING PARTIES.

Failure to upload materials to Caselines by the deadline set out in the Practice Direction may result in your matter not being heard and adjourned to a date when the court has had the opportunity to review the motion materials.

From: Ryan, Padraic (MAG) <Padraic.Ryan@ontario.ca>

Sent: August 16, 2022 11:01 AM

To: JUS-G-MAG-CSD-Civil Motions Scheduling <JUS.G.MAG.CSD.CivilMotionsScheduling@ontario.ca>

Subject: Dates

Hello, can you please advise what dates are currently available for short motions before an associate judge?

Thank you,
Padraic

--

Padraic Ryan (he/him)
Counsel, Constitutional Law Branch
Civil Law Division, Ministry of the Attorney General
padraic.ryan@ontario.ca
647-588-2613
4th Floor, 720 Bay Street, Toronto ON, M7A 2S9

This is **Exhibit “E”** referred to in the
affidavit of Casey Massari
affirmed before me, this 11th
day of August, 2023

A handwritten signature in black ink, consisting of several overlapping, sweeping strokes, positioned above a horizontal line.

A commissioner for taking affidavits

S. Zachary Green (LSO# 48066K)

Green, Zachary (MAG)

From: Green, Zachary (MAG)
Sent: April 4, 2023 12:26 PM
To: Ian Perry; Alison Barclay; Sarah Thomas; Ryan, Padraic (MAG); Kirsten Franz; Leung, Karlson (MAG)
Cc: Christopher Mearns
Subject: RE: Skelly et al. v His Majesty the King et al - Case Conference Request

Hello,

Of the City's dates below, we're available on June 26 and 28.

Mr. Perry, we do intend to bring a motion for security for costs. We asked you (most recently by email in February) for your availability on the motion dates provided by the court and you refused to provide your available dates. We also previously asked your client to consent to an order for security for costs. Any delay in scheduling the application is the result of your client's decisions.

Justice Centa's civil practice court endorsement provided that "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." Will you now discuss terms for reasonable security for costs? We would agree to Mr. Skelly posting security for costs by paying into court the amount of \$30,000.

Yours truly,
 Zachary Green

From: Ian Perry <ian@perrysllp.com>
Sent: April 3, 2023 4:08 PM
To: Alison Barclay <Alison.B Barclay@toronto.ca>; Sarah Thomas <sarah@perrysllp.com>; Green, Zachary (MAG) <Zachary.Green@ontario.ca>; Ryan, Padraic (MAG) <Padraic.Ryan@ontario.ca>; Kirsten Franz <Kirsten.Franz@toronto.ca>
Cc: Christopher Mearns <christopher@perrysllp.com>
Subject: Re: Skelly et al. v His Majesty the King et al - Case Conference Request

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

Thank you, Ms. Barclay.

Mr. Green, with the outstanding costs now satisfied and having now had the benefit to review our Case Conference Request form, please advise whether the Crown is amenable to foregoing a motion for security for costs. If so, we can forego a case conference and simply attend at the next mutually agreeable CPC.

Let me know your thoughts,

Ian

From: Alison Barclay <Alison.B Barclay@toronto.ca>
Date: Monday, April 3, 2023 at 4:00 PM
To: Sarah Thomas <sarah@perrysllp.com>, Zachary.Green@ontario.ca <Zachary.Green@ontario.ca>, Ryan, Padraic (MAG) <Padraic.Ryan@ontario.ca>, Kirsten Franz <Kirsten.Franz@toronto.ca>

Cc: Ian Perry <ian@perrysllp.com>, Christopher Mearns <christopher@perrysllp.com>
Subject: RE: Skelly et al. v His Majesty the King et al - Case Conference Request

Hello Sarah,

I have crossed off the dates where the City is unavailable. Thanks.

Friday, June 2
~~Friday, June 9~~
Monday, June 12
Wednesday, June 14
~~Wednesday, June 21~~
~~Friday, June 23~~
Monday, June 26
Wednesday, June 28
~~Friday, June 30~~

From: Sarah Thomas [<mailto:sarah@perrysllp.com>]

Sent: April 3, 2023 11:32 AM

To: Zachary.Green@ontario.ca; Ryan, Padraic (MAG) <Padraic.Ryan@ontario.ca>; Kirsten Franz <Kirsten.Franz@toronto.ca>; Alison Barclay <Alison.Barclay@toronto.ca>

Cc: Ian Perry <ian@perrysllp.com>; Christopher Mearns <christopher@perrysllp.com>

Subject: [External Sender] Re: Skelly et al. v His Majesty the King et al - Case Conference Request

Good morning Counsel,

As per the below email response regarding case conference dates, please see below our availability for dates in June. Please advise what dates work for your office and I will resubmit the form.

Friday, June 2
Friday, June 9
Monday, June 12
Wednesday, June 14
Wednesday, June 21
Friday, June 23
Monday, June 26
Wednesday, June 28
Friday, June 30

Thank you,
Sarah

Sarah Thomas | Law Clerk

PERRYS LLP
3817 Bloor St. West
Toronto, Ontario M9B 1K7

T (416) 579-5055
F (416) 955-0369
E sarah@perrysllp.com

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From: Toronto Case Conference Appointments (JUD) <TorontoCaseConferenceAppointments@Ontario.ca>
Date: Monday, April 3, 2023 at 9:27 AM
To: Sarah Thomas <sarah@perrysllp.com>
Cc: Ian Perry <ian@perrysllp.com>, Christopher Mearns <christopher@perrysllp.com>, Green, Zachary (MAG) <Zachary.Green@ontario.ca>, Ryan, Padraic (MAG) <Padraic.Ryan@ontario.ca>, Kirsten Franz <Kirsten.Franz@toronto.ca>, Alison Barclay <Alison.Barclay@toronto.ca>
Subject: RE: Skelly et al. v His Majesty the King et al - Case Conference Request

Good morning,

At this point in time we are booking in June before a judge, so if you were to fill out the request form with June dates, I am sure one of them would be available. Please keep in mind that case conferences are only being booked on Mondays, Wednesdays and Fridays.

From: Sarah Thomas <sarah@perrysllp.com>
Sent: March 31, 2023 5:39 PM
To: Toronto Case Conference Appointments (JUD) <TorontoCaseConferenceAppointments@Ontario.ca>
Cc: Ian Perry <ian@perrysllp.com>; Christopher Mearns <christopher@perrysllp.com>; Green, Zachary (MAG) <Zachary.Green@ontario.ca>; Ryan, Padraic (MAG) <Padraic.Ryan@ontario.ca>; Kirsten Franz <Kirsten.Franz@toronto.ca>; Alison Barclay <Alison.Barclay@toronto.ca>
Subject: Skelly et al. v His Majesty the King et al - Case Conference Request

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

Good afternoon,

Please see attached for our Case Conference Request form. We have also attached the form as a pdf with tabs; the tabs have also been attached separately to this email.

Please let me know if anything else is required on this.

Thank you,
 Sarah

Sarah Thomas | Law Clerk

PERRYS LLP
 3817 Bloor St. West
 Toronto, Ontario M9B 1K7

T (416) 579-5055
F (416) 955-0369
E sarah@perrysllp.com

This email may contain information that is privileged, confidential and/or exempt from disclosure. No waiver whatsoever is intended by sending this e-mail which is intended only for the named recipient(s). Unauthorized use, dissemination or copying is prohibited. If you receive this email in error, please notify the sender and destroy all copies of this email.

**WILLIAM ADAMSON SKELLY and
ADAMSON BARBECUE LIMITED**

Applicants

-and -

HIS MAJESTY THE KING IN RIGHT OF ONTARIO ET AL.

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDINGS COMMENCED AT TORONTO

AFFIDAVIT OF CASEY MASSARI
(Affirmed on August 11, 2023)

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

Email: zachary.green@ontario.ca

Padraic Ryan (LSO# 61667J)

Tel: 647 588-2613 / Fax: 416-326-4015

Email: padraic.ryan@ontario.ca

Priscila Atkinson (LSO# 85500P)

Tel: 647 534-5802 / Fax: 416-326-4015

Email: priscila.atkinson@ontario.ca

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

TAB 3



**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

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

APPLICATION UNDER 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.

NOTICE OF APPLICATION

TO THE RESPONDENTS

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

THIS APPLICATION will come on for a hearing

- In person
- By telephone conference
- By video conference

at the following location

330 University Avenue Toronto ON M5G 1E6

On a day to be set by the registrar.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application, or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicants' lawyer, or, where the applicants do not have a lawyer, serve it on the applicants, and then file it with proof of service in this Court office. You or your lawyer must also appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

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

Date _____ Issued by _____
Local Registrar

Address of Superior Court of Justice
court office: 330 University Avenue
Toronto ON M5G 1E6

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

Mr. Zachary Green (LSO# 48066K)
Tel: 416-326-2220
Email: zachary.green@ontario.ca

Mr. Padraic Ryan (LSO#61667J)
Tel: 416-326-2220
Email: padraic.ryan@ontario.ca

Lawyers for the Respondent,
Her Majesty the Queen in right of Ontario

AND TO: CITY SOLICITOR'S OFFICE

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

Ms. Kirsten Franz (LSO# 459460)

Tel: 416-392-1813
Email: kirsten.franz@toronto.ca

Ms. Penelope Ma (LSO# 663670)

Tel: 416-397-7690
Email: penelope.ma@toronto.ca

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

I. CLAIMS FOR RELIEF

1. The applicants make this application for:
 - (a) A Declaration that sections 2, 4(1), 7, 9.1 and 10 of the *Reopening Ontario (A Flexible Response to COVID-19) Act*, 2020, S.O. 2020, c. 17 (the “ROA”) are unconstitutional, breaching section 91(11) of the *Constitution Act*, 1867.
 - (b) A Declaration that sections 2, 4(1), 7, 9.1 and 10 of the *ROA* are unconstitutional, breaching section 91(27) of the *Constitution Act*, 1867.
 - (c) A Declaration that Ontario Regulation 82/20 of the *ROA*, enacted by the Government of Ontario, is unconstitutional, breaching section 91(11) of the *Constitution Act*, 1867.
 - (d) A Declaration that Ontario Regulation 82/20 of the *ROA*, enacted by the Government of Ontario, is unconstitutional, breaching section 91(27) of the *Constitution Act*, 1867.
 - (e) A Declaration that sections 2, 4(1), 7, 9.1 and 10 and Ontario Regulation 82/20 of the *ROA*, enacted by the Government of Ontario, is unconstitutional, breaching section 36(1) of the *Constitution Act*, 1982.
 - (f) A Declaration that sections 2, 4(1), 7, 9.1 and 10 of the *ROA* and Ontario Regulation 82/20 enacted under the *ROA* are arbitrary, irrational, unreasonable, greatly disproportionate, and not rationally connected to any measurable and demonstrable benefit.

- (g) A Declaration that sections 2, 4(1), 7, 9.1 and 10 of the *ROA* and Ontario Regulation 82/20 enacted under the *ROA* breaches, is inconsistent with, and frustrates the purpose of section 7.0.2 (2)(b) of the *Emergency Management and Civil Protection Act*, RSO 1990, c E.9.
- (h) A Declaration that reasonable alternatives to the emergency measures facilitated via the enactment of sections 2, 4(1), 7, 9.1 and 10 of the *ROA* and Ontario Regulation 82/20 existed at the time of Adamson Barbecue Limited's closure per section 7.0.2(2)(b) of the *Emergency Management and Civil Protection Act*, RSO 1990, c E.9.
- (i) A Declaration that the *Reopening Ontario (A Flexible Response to COVID-19) Act*, 2020, S.O. 2020, c. 17 *Rules for Areas in Stage 1*, O. Reg. 82/20, violates and limits the applicants' rights under sections 2(b), 2(c), 7, 8, 9 and 15(1) of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (UK)* (the "*Charter*").
- (j) A Declaration that sections 2, 4(1), 7, 9.1 and 10 of the *ROA*, enacted by the Government of Ontario, violate and limit the applicants' rights under sections 2(b), 2(c), 7, 8, 9 and 15(1) of the *Charter*.
- (k) A Declaration that the violations and limits of the applicants' *Charter* rights described herein are not reasonable and cannot be demonstrably justified in a free and democratic society.

- (l) A Declaration pursuant to section 52(1) of the *Constitution Act*, 1982, declaring the *Reopening Ontario (A Flexible Response to COVID-19) Act*, 2020, S.O. 2020, c. 17 *Rules for Areas in Stage 1*, O. Reg. 82/20 to be unconstitutional and of no force and effect.
- (m) A Declaration pursuant to section 24(1) of the *Charter* that the *Reopening Ontario (A Flexible Response to COVID-19) Act*, 2020, S.O. 2020, c. 17 *Rules for Areas in Stage 1*, O. Reg. 82/20 unjustifiably violated the applicants' rights and freedoms under ss. 2(b) and (c), 7, 8, 9, and 15.1 of the *Charter* and are thus deserving of such a remedy as the court deems appropriate and just in the circumstances, including *Charter* damages.
- (n) A Declaration pursuant to section 52(1) of the *Constitution Act*, 1982 that the November 24, 2020 section 22 order ("Section 22 Order") and the November 25, 2020 section 24 directions ("Section 24 Directions") (collectively, the "*HPPA* Orders") issued by the respondent, Eileen De Villa, against the applicants, under the guise of the *Health Protection and Promotion Act*, R.S.O. 1990 c. H.7 (the "*HPPA*"), unjustifiably violated and limited the applicants' rights under sections 2(b), 2(c), 7, 8, 9, and 15(1) of the *Charter* and therefore were of "no force or effect", at all material times.
- (o) Alternatively, a Declaration pursuant to subsection 24(1) of the *Charter* that the *HPPA* Orders and the subsequent actions taken by and on behalf of the City of Toronto and the Board of Health for the City of Toronto, in furtherance of the impugned *HPPA* Orders, unjustifiably infringed and violated the applicants'

rights and freedoms under sections 2(b), 2(c), 7, 8, 9, and 15(1) of the *Charter*, and are thus deserving of such a remedy as the court deems appropriate and just in the circumstances, including *Charter* damages.

- (p) In the alternative to the relief claimed at subparagraphs 1(j) and (k), a Declaration that the *HPPA* Orders issued by the respondent, Eileen De Villa are *ultra vires* her authority as a Medical Officer of Health for the City of Toronto, and were therefore of no force or effect, at all material times.
- (q) A Declaration that despite the issuance of the *HPPA* Orders and at all material times, the applicants remained an “occupier” of the premises municipally known as 7 Queen Elizabeth Boulevard, Toronto, Ontario, as that term is defined in the *Trespass to Property Act* R.S.O. 1990.
- (r) An Order staying the Ontario Superior Court of Justice action bearing Court File Number CV-21-658546-0000, and the related third-party action bearing Court File Number CV-21-658546-00A1, until the matters at issue in this notice of application have been heard and conclusively determined by this Honourable Court and the avenues of appeal for all parties have been exhausted.
- (s) An Order for leave of the presiding Judge to examine witnesses at the hearing of this application in the same manner as trial, pursuant to Rule 39.03(4) of the *Rules of Civil Procedure*, but only if requested by the applicants.
- (t) An Order discharging the Order of the Honourable Justice Kimmel, dated December 4th, 2020, issued in Ontario Superior Court File Number CV-20-

00652216-0000, which was previously issued pursuant to section 9 of the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*, S.O. 2020, c. 17 (the “Section 9 Order”).

- (u) An Order extending the applicants deadline to bring a notice of motion to vary or discharge the Section 9 Order, as contemplated at paragraph 3 of the Section 9 Order, if necessary.
- (v) An Order dispensing with the requirement for the applicants to serve and file a notice of motion to vary or discharge the Section 9 Order, and instead continue under this notice of application with the request for relief which was contemplated at paragraph 3 of the Section 9 Order, if necessary.
- (w) An Order abridging the time for the service and filing of this Notice of Application, the Notice of Constitutional Question, and all supporting materials, if necessary.
- (x) An Order for case management, an expedited timetable for the exchange of materials, and a final hearing scheduled on an urgent basis.
- (y) Such further and other relief under section 24 of the *Charter* and 52 of the *Constitution Act* as counsel may request and this Honourable Court permits.
- (z) The costs of this application plus applicable taxes.
- (aa) Such further and other Relief as to this Honourable Court may seem just.

II. THE GROUNDS FOR THE APPLICATION ARE:

A. The Parties

2. The corporate applicant is Adamson Barbecue Limited (“Adamson BBQ”). Adamson BBQ is a corporation incorporated under the laws of the Province of Ontario. Adamson BBQ formerly operated two beloved barbecue restaurants in the City of Toronto, with locations at 7 Queen Elizabeth Boulevard (the “Etobicoke Location”) and 176 Wicksteed Avenue (the “York Location”). There was also a third Adamson BBQ restaurant in Aurora, Ontario, located at 15195 Yonge Street.

3. The individual applicant is William Adamson Skelly. He is better known by his friends and family as Adam Skelly. Adam was the sole owner and operator of all three Adamson BBQ locations.

4. The respondent, Her Majesty the Queen in Right of Ontario (the “Ontario Government”) was responsible for the enactment of the impugned *Reopening Ontario (A Flexible Response to COVID-19) Act*, 2020, S.O. 2020, c. 17.

5. The respondent, City of Toronto, is a municipality in Ontario incorporated pursuant to subsection 2(2) of the *City of Toronto Act*, 1997, S.O. 1997, C. 2, and continued pursuant to section 125(1) of the *City of Toronto Act*, 2006, S.O. 2006, c. 11, Schedule A.

6. The respondent, Board of Health for the City of Toronto Health Unit (the “Board of Health”), is comprised of unelected officials appointed through statute and established pursuant to the *City of Toronto Act*, 1997, S.O. 1997, c. 26 and continued pursuant to s. 405 of the *City of*

Toronto Act, 2006, S.O. 2006, c. 11, Schedule A. The Board of Health has been deemed to be a board of health established under the *HPPA*.

7. The respondent, Eileen De Villa, is the Medical Officer of Health for the City of Toronto. At all material times, Eileen De Villa led and directed the Board of Health.

B. Overview

8. Adamson BBQ was a dine-in restaurant. Both Adamson BBQ locations were bright, open, and airy, with plenty of seating. The Etobicoke Location had large bay doors that opened and allowed both indoor and outdoor dining.

9. On November 23, 2020, the City of Toronto was declared to be in “Stage 1 Lockdown” by the Government of Ontario, subjecting businesses and restaurants in the City of Toronto to the most severe restrictions imposed by the *Reopening Ontario (A Flexible Response to COVID-19) Act*, 2020, S.O. 2020, c. 17 (“*ROA*”), as will be outlined below.

10. The lockdown measures prevented Adamson BBQ from operating profitably. The dine-in experience was the crux of the business. Earlier restrictions had proven takeout and delivery to be unsustainable. The first series of lockdown measures in the spring and summer of 2020 created considerable financial strains on Adam’s restaurants. Adam had to lay off one third of his staff. Sales plummeted, and Adam began to have trouble keeping up with the operating costs of the business.

11. During this period, Adam became increasingly skeptical and concerned about the government actions and policies imposed in response to COVID-19. Adam believed that the drastic restrictions were unjustified.

12. Adam could not afford another lockdown. To secure and protect his livelihood and as a means of peaceful protest of the Stage 1 restrictions, Adam opened his restaurants between November 24th and 26th, 2020, for dine-in service.

13. Adam's protest was met with the might and fury of several arms of the state: the Crown, the Toronto Police Service, the Toronto Board of Health, and Toronto Municipal Licensing and Standards. In the end, Adam was arrested and charged criminally for his peaceful demonstration.

14. On November 28, 2020, the respondent, the Government of Ontario, also brought a civil application against the applicants, seeking an Order pursuant to Section 9 of the *ROA*, restraining the applicants from continuing to operate and protest the restrictions. On December 4, 2020, the Honourable Justice Kimmel granted the Section 9 Order. In September of 2021, the applicants were also sued in a civil action commenced by the City of Toronto and the Board of Health, seeking the recovery of approximately \$168,000.00 in enforcement expenditures.

C. Relevant Statutes

The Emergency Management and Protection Act RSO 1990, c E.9 (the "EMCPA")

15. On March 17, 2020, the *EMCPA* was invoked by the legislature and a Declaration of Emergency was made by the Lieutenant Governor in Council under Ontario Regulation 50/20 on the basis that "...the outbreak of a communicable disease, namely COVID-19 Coronavirus disease, constitutes a danger of major proportions."

16. On March 23, 2020, the Lieutenant Governor in Council made Emergency Orders under O. Reg. 51/20, 52/20, and 82/20 (the "Regulations"), which classified businesses as essential and non-essential, and restricted movement of the public. These orders went into force at 11:59 pm on March 23, 2020 (the "First Lockdown").

17. Under a series of orders, the First Lockdown transitioned to a regional scheme between June 11 and 17, 2020, and was fully lifted for indoor facilities and businesses on July 13, 2020, by Ontario Regulation 364/20, which went into force on July 17, 2020.

18. By July 24, 2020, the state of emergency had been extended on six separate occasions.

Reopening Ontario (A Flexible Response to COVID-19) Act, 2020, S.O. 2020, c. 17 (the “ROA”)

19. On July 21, 2020, Bill 195 was passed by the legislature and came into force on July 24, 2020 as the *ROA*, ending the state of emergency. By virtue of section 17, the *ROA* revoked the *EMCPA*, indicating that there was no longer a declared emergency, but also preserving a lesser state of emergency under s. 7.0.2 of the *EMCPA* within the *ROA*.

20. The *ROA* imposes restrictions that are to be adhered to by members of the public and certain types of businesses deemed “non-essential”. The *ROA* includes a regulation known as *Ontario Regulation 82/20: Rules for Areas in Shutdown Zone and at Step 1* (the “**Lockdown Regulation**”). The Lockdown Regulation sets out a range of control measures, from minor to severe, that are to be adhered to whenever the Government of Ontario feels like declaring a particular jurisdiction in the province as being “Grey” (the colour code indicating a “Stage 1” designation).

21. Specifically, the control measures impose the following restrictions on restaurants during a Stage 1 lockdown:

- a) Restaurants are permitted to open only for the purpose of providing take-out, drive-through or delivery service.

- 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).
- 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.
- d) 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.
- e) Each person responsible for a business that is permitted to open shall ensure that the business meets the specified conditions or is closed.

Health Protection and Promotion Act, R.S.O. 1990 c. H. 7 (the “HPPA”)

22. The *HPPA* provides for organization and delivery of public health programs and services, and the promotion and protection of public health generally. Under the *HPPA*, boards of health have jurisdiction over certain areas, known as Health Units, across the province of Ontario. The respondent, Toronto Public Health, serves as the City of Toronto’s Health Unit.

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

24. Section 22 of the *HPPA* provides the MOH with authority, under strict circumstances, to make an order requiring a person to take or refrain from taking any action that is specified in the

order (a “Section 22 Order”). A Section 22 Order can only be issued when a MOH has “reasonable and probable grounds” to believe a communicable disease presents a risk to the health of persons in the health unit served by the MOH **and** that a Section 22 Order is necessary to decrease or eliminate the risk to health presented by the communicable disease.

25. If a MOH believes a Section 22 Order will not be complied with, section 24 of the *HPPA* provides the MOH with the authority to give directions to persons whose services are engaged by or who are the agents of Toronto Public Health to take actions aimed at ensuring compliance with a Section 22 Order (“Section 22 Directions”).

D. The Applicants Peaceful Assembly in Protest of the Stage 1 Lockdown

26. Since the outset of COVID-19 restrictions in March of 2020, Adam Skelly believed that the local, provincial, and federal response to the virus had been conducted in an arbitrary, excessive, ill fashioned, and coercive manner.

27. As a restaurant owner, Adam was earning his livelihood in an industry that was hardest hit by restrictions. By September of 2020, Adam had to lay off one third of his workforce. Like many Canadians, he was frustrated and confused about the stream of conflicting narratives and the seemingly endless restrictions that were threatening his livelihood and the livelihood of his wife and young children.

28. On November 23, 2020, Toronto and Peel were ordered into another lockdown.

29. Out of a concern for his family’s economic security and, more broadly, a concern for the future of Canada, Adam chose to peacefully protest COVID-19 restrictions and keep his business alive by opening his restaurants for indoor dining.

30. Adam was one of the first Canadian small business owners brave enough to publicly voice dissent against the restrictions on small businesses. It was certainly not easy to do at that time. The media was hysterical. Hyperbolic headlines and sensational stories about the virus filled both newspapers and social media feeds.

31. Adam announced his intentions to open his restaurant via the Adamson BBQ social media account on Instagram. His Instagram post went viral, garnering tens of thousands of views, clicks, comments, and shares. Though Adam's post garnered considerable support, it was also polarizing.

32. Between November 24 and November 26, 2020, Adam opened his dine-in restaurant in protest of the latest enactment of severe COVID-19 restrictions imposed by the Lockdown Regulation under the *ROA*.

33. The Ontario Government and the City of Toronto responded to Adam's protest with a coordinated and extreme show of force. Hundreds of police officers and other city officials were dispatched to Adam's restaurant over the coming days. At one particularly pathetic point of the protest, dozens of Toronto police officers stood shoulder to shoulder to prevent people from entering the Etobicoke Location to order food. Adam was arrested on the third day of the peaceful protest and the premises was then barricaded and seized by the Toronto Police.

34. The intense show of force only underscored the point of Adam's protest. The spectacle garnered the attention of local, national, and international media.

35. The Crown "threw the book" at Adam. He was charged with multiple provincial offences under the *ROA*, the *HPPA*, and the *Trespass to Property Act*.

36. The Ontario Government also obtained an *ex-parte* Order of this Honourable Court pursuant to section 9 of *ROA*, prohibiting both Adam and Adamson BBQ from conducting its business and continuing the peaceful assembly and protest. The Section 9 Order was issued by the Honourable Justice Kimmel.

37. Because the Section 9 Order was granted *ex-parte*, Her Honour expressly provided the applicants with a “come-back” provision in the Order itself, which affords the applicants the right to challenge or discharge the Section 9 Order in a subsequent motion or hearing brought on notice.

38. More recently, the applicants were named as defendants in a lawsuit commenced by the respondents, City of Toronto and the Board of Health, seeking the recovery of approximately \$168,000.00, which the Board of Health needlessly expended as part of the efforts to close the applicants’ restaurants. The claim was issued under Ontario Superior Court File Number CV-20-00652216-0000.

39. The provisions of the *ROA* and the actions and Orders of the Board of Health, under which the respondents’ placed their authority, unjustifiably infringed and violated the applicants’ *Charter* protected rights. These violations then served as a catalyst for a series of court orders, criminal charges, and a civil action being brought against the applicants. If the relief sought in this Notice of Application is granted, such an outcome will be dispositive of the charges, the Section 9 Order, and the civil action. This application is the most expeditious, cost-effective, and efficient means of dealing with the matters at issue between the parties.

40. Adam's life has been forever changed because of this experience. He was ultimately required to close both restaurants soon after his arrest. Adam's decision to exercise his *Charter* protected rights have had a devastating impact on him and his family.

41. This application seeks to rectify these injustices.

E. Constitutional Violations and *Charter* Infringements

Section 91 of the Constitution Act, 1867

42. That the *ROA* and correlating Regulations are *ultra vires* the Ontario Government as the pith and substance of the impugned law contains matters of national and international emergency concerns, quarantine powers and criminal law powers.

43. The objectives and goals to prevent the spread of COVID-19 cannot be captured within the provincial division of powers.

Subsection 36(1) of the Constitution Act, 1982

44. The impugned provisions of the *ROA* and O. Reg 82/20 do not promote equal opportunities for the well-being of Canadians. The emergency measures imposed on the applicants reduce economic development and create disparity in opportunities and represent an abusive and unreasonable provision of public services, in breach of subsection 36(1) of the *Constitution Act*, 1982

Subsection 2(b) Freedom of Expression and 2(c) Freedom of Assembly

45. The *ROA*, O. Reg. 82/20 and government officials denied the applicants and supporting members of the public an essential means by which to convey information about their beliefs,

concerns, and critiques of the government actions. It is well recognized that public manifestations in all types of forms and demonstrations are valid means by which individuals may convey information and raise awareness of the various issues through peaceful demonstrations and protest.

46. *ROA* and government officials restricted freedom of expression by compelling the applicants to express themselves in certain ways. The *ROA* prevents individuals from manifesting in a manner, location, and degree of their choice. Individuals failing to comply with the restrictions are subjected to extraordinary fines and measures.

Section 7 Right to Life, Liberty, and Security of the Person

47. Every Canadian has the right to life, liberty and security of the person, and the right not to be deprived thereof except in accordance with the principles of fundamental justice. The rights afforded under section 7 of the *Charter* touch at the core of what it means to be a human being that is afforded dignity and independence in matters that can be characterized as fundamental or inherently personal.

48. The actions of the respondents have deprived Adam Skelly of his protected rights under section 7 of the *Charter*. The actions include, but are not limited to, the Government actively restricting Mr. Skelly from operating and accessing his privately owned restaurant, fining him for exercising his legally protected rights, and ultimately arresting him and criminally charging him. The government's conduct went far beyond a reasonable scope of action and used coercive measures to heavily and arbitrarily use Mr. Skelly and his business as an example to others. The actions of the respondents cannot be said to accord with the principles of fundamental justice; in fact, the conduct of the respondents offends such principles.

Section 8 Unreasonable Search and Seizure

49. Every individual has a right to reasonable expectation of privacy. The Government action went beyond the reasonable scope of investigation by forcefully entering the restaurant location and seizing the premises under the guise of Eileen De Villa's Section 22 Order and Section 24 Directions.

Section 9 Arbitrarily Detention

50. The Government arbitrarily detained Mr. Skelly both when they arrested him and when they prevented him from accessing and entering his Restaurant. The government conduct that created psychological detention including the series of the orders, fines, and threats of actions, are all captured under section 9. These actions were arbitrarily imposed and were politically motivated.

Section 15 Equality Rights

51. Government officials violated equality rights protected under section 15 (1) by targeting the applicants and implementing arbitrary and severe punishment. Throughout the pandemic, various groups have protested, manifested causes, and engaged in similar conduct that have not been met with such a harsh and strident government response. The applicants did not receive equal treatment under the law.

52. These violations of sections 2(b), 2(c), 7, 8, 9, and 15(1) of the *Charter* do not constitute reasonable limits and are not demonstrably justified in a free and democratic society pursuant to section 1 of the *Charter*.

F. Statutory Provisions

53. *Canadian Charter of Rights and Freedoms*, including ss. 1, 2(b) and (c), 7, 8, 9, 15(1), 24 and 52;
54. *Constitution Act, 1982*, ss. 36(1)
55. *Constitution Act, 1867*, ss. 91 and 92;
56. *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E. 9, including section 7.0.2 2(b);
57. *Health Protection and Promotion Act*, R.S.O. 1990 c. H. 7, including sections 22, 24, and 77.4;
58. *Rules of Civil Procedure*, including Rule 14 and Rule 38; and
59. Such further and other grounds as counsel may advise and this Honourable Court permit

III THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Application:

- (a) The affidavit of Mr. Adam Skelly, to be sworn;
- (b) The affidavit of an accountant, quantifying the applicants' financial losses, to be sworn;
- (c) The expert affidavit of Dr. Byram Bridle, to be sworn;
- (d) The expert affidavit of Dr. Harvey Risch, to be sworn;
- (e) The expert affidavit of Dr. Douglas Allen, to be sworn;

- (f) The expert affidavit of Dr. Gilbert Berdine, to be sworn;
- (g) The expert affidavit of Dr. Joel Kettner, to be sworn;
- (h) The expert affidavit of Dr. William Briggs, to be sworn;
- (i) The affidavit of Dr. Mark Trozzi, to be sworn; and,
- (j) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

June 30, 2022

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William Adamson Skelly

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LIMITED
Applicants

-and- HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO et al
Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO**

NOTICE OF APPLICATION

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Lawyers for the Applicants

TAB 4

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

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

APPLICATION UNDER Rules 14.05(3)(d) and (g.1) of the
Rules of Civil Procedure and *Canadian Charter of Rights and
Freedoms*, ss. 7, 12, 15 and 24 and *Constitution Act, 1982*,
s. 52.

NOTICE OF CONSTITUTIONAL QUESTION

RE: *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020, S.O. 2020, c. 17*

The applicants intend to question the constitutional validity of the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020, S.O. 2020, c. 17*, and the constitutional validity of a public health order, dated November 24, 2020, and public health directions, dated November 25, 2020, both issued by Eileen De Villa, the Medical Officer of Health for the City of Toronto, pursuant to sections 22 and 24 of the *Health Protection and Promotion Act*, R.S.O. 1990 c. H.7, respectively.

The applicants also intend to claim a remedy under subsection 24(1) of the *Canadian Charter of Rights and Freedoms* in relation to the Policy.

The question is to be argued by way of Application on a date and time to be determined by the Registrar of the Ontario Superior Court of Justice at 330 University Avenue Toronto ON M5G 1E6.

The following are the material facts giving rise to the constitutional question:

See the attached Notice of Application, issued June 30, 2022.

The following is the legal basis for the constitutional question:

See the attached Notice of Application, issued June 30, 2022

Dated: July 11, 2022



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AND TO: CITY SOLICITOR'S OFFICE
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and Eileen De Villa

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WILLIAM ADAMSON SKELLY and ADAMSON BARBECUE
LIMITED

Applicants

-and-

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO et al

Respondents

Court File No. CV-22-00683592-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF CONSTITUTIONAL QUESTION

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TAB 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 |) | <i>Ananthan Sinnadurai, Andi Jin and Adam</i> |
| |) | <i>Mortimer, for the Applicant</i> |
| Applicant |) | |
| |) | |
| – and – |) | <i>Geoffrey Pollock, Leo Ermolov, Sam Goldstein</i> |
| |) | <i>and Alexander Wilkes, for the Respondents</i> |
| |) | |
| 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.

Page: 12

[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.

A handwritten signature in black ink that reads "Kimmel J." The signature is written in a cursive, slightly slanted style.

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

TAB 6

Court File No. CV-20-00652216-000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Applicant/Respondent

AND

ADAMSON BARBECUE LIMITED
AND WILLIAM ADAMSON SKELLY

Respondents/Applicants

WILLIAM ADAMSON SKELLY - 2

 This is the Cross-Examination of WILLIAM ADAMSON SKELLY, the Respondent/Applicant herein, on their affidavits sworn on February 18th, 2021 and April 12th, 2021, taken via videoconference with Network Reporting & Mediation, Suite 3600, 100 King Street West, Toronto, Ontario, on the 31st day of May, 2021.

A P P E A R A N C E S:

| | |
|---------------|--|
| ZACHARY GREEN | Solicitor for the Applicant/ Respondent |
| PADRAIC RYAN | |

| | |
|---------------|--|
| PRADEEP CHAND | Solicitor for the Respondents/ Applicants |
|---------------|--|

ALSO PRESENT:

| | |
|--------------|---|
| EMILY GRAHAM | Student-at-Law for the Applicant/ Respondent |
|--------------|---|

| | |
|----------------|---|
| SONYA MOLYNEUX | Student-at-Law for the Applicant/ Respondent |
|----------------|---|

| | |
|------------|--|
| LIZA SWALE | Observing for the Respondents/ Applicants |
|------------|--|

| | |
|----------------|--|
| CARLY BENJAMIN | Observing for the Respondents/ Applicants |
|----------------|--|

| | |
|----------------------|---|
| GAWTAM THARMAKUMARAN | Legal Assistant for the Respondents/Applicants |
|----------------------|---|

| | |
|---------------|---|
| BRYANT GODKIN | Student-at-Law the Respondents/ Applicants |
|---------------|---|

| | |
|--------------|--|
| KARAN LIDDER | Observing for the Respondents/ Applicants |
|--------------|--|

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| CHRIS WEISDORF | Observing for the Respondents/ Applicants |
|----------------|--|

WILLIAM ADAMSON SKELLY - 3

I N D E X O F P R O C E E D I N G S

| DESCRIPTION | PAGE NO. |
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| EXAMINATION BY MR. GREEN: | 5 |

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| | |
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| --- EXHIBIT NO. A: GoFundMe page. | 22 |
|--|----|

WILLIAM ADAMSON SKELLY - 4

I N D E X O F R E F U S A L S

| REFERENCE NO. | PAGE NO. |
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| --- REFUSAL NO. 11 | 22 |

WILLIAM ADAMSON SKELLY - 5

1 --- UPON COMMENCING AT 1:08 P.M.

2 WILLIAM ADAMSON SKELLY; Affirmed

3 EXAMINATION BY MR. GREEN:

4 1. Q. Good afternoon, Mr. Skelly.

5 A. Good afternoon.

6 2. Q. You can hear me okay?

7 A. Yes, I can.

8 3. Q. Mr. Skelly, you sometimes post videos
9 on the Adamson Barbecue Instagram account, correct?

10 A. Yes, that's correct.

11 4. Q. I'm going to show you a video. Hold on
12 one sec while I pull it up. After I show it to you,
13 I'm going to ask you some questions about it.

14 A. Okay.

15 5. Q. Can you see that video on your screen
16 right now?

17 MR. CHAND: For the record, it's not a
18 video. It's a photo -- what it appears to be is a
19 photograph of what appears to be Mr. Adam Skelly. We
20 don't see a video. All we see is a photograph at this
21 time.

22 MR. GREEN: I'm going to ask counsel not to
23 interrupt me in the middle of my cross-examination or
24 give his impressions or evidence about what he thinks
25 he sees. I'm --

WILLIAM ADAMSON SKELLY - 6

1 MR. CHAND: Mr. --

2 MR. GREEN: -- here to --

3 MR. CHAND: -- Green ---

4 MR. GREEN: -- ask the -- I'm here to ask
5 the witness questions.

6 MR. CHAND: Mr. Green, I'm not here to play
7 any games with you. As I said, it appears to be a
8 photo ---

9 MR. GREEN: Mr. Chand --

10 MR. CHAND: Mr. Green ---

11 MR. GREEN: -- don't interrupt ---

12 MR. CHAND: Mr. Green -- no. You don't
13 interrupt me. You got it, Mr. Green? Do you
14 understand? Are --

15 BY MR. GREEN:

16 6. Q. Mr. Skelly ---

17 MR. CHAND: -- you ready?

18 BY MR. GREEN:

19 7. Q. Mr. Skelly, I'm going to show you a
20 video. I want you to tell me whether you recognize it
21 or not. Do you understand that question?

22 A. Yeah, I comprehend.

23 8. Q. Excellent. Is that your face on the
24 screen, Mr. Skelly?

25 A. Yes, it is.

WILLIAM ADAMSON SKELLY - 7

1 9. Q. Do you remember taking this video and
2 posting it to Instagram?

3 A. I don't recall the video. If you play
4 it, it may jog my memory.

5 10. Q. I'll play a few moments of it first and
6 then I'll repeat my question. Here we go.

7 *** VIDEO BEGINS ***

8 "Hello Adamson Barbecue fans. Yeah, been a
9 while since I come on here. The authorities, they
10 finally let me come back and post on social media
11 again. I'm sure you noticed."

12 *** VIDEO ENDS ***

13 BY MR. GREEN:

14 11. Q. I'm just going to pause right there at
15 the 12 second mark. Does that jog your memory as to
16 whether that's you speaking those words, sir?

17 MR. CHAND: Refused.

18 --- REFUSAL NO. 1

19 THE DEPONENT: Yes, that's me speak ---

20 MR. CHAND: Refused. Refused.

21 MR. GREEN: No. The witness just --

22 MR. CHAND: I just --

23 MR. GREEN: -- said, 'Yes.'

24 MR. CHAND: -- told you ---

25 MR. GREEN: You can't refuse --

WILLIAM ADAMSON SKELLY - 8

1 MR. CHAND: I just --

2 MR. GREEN: -- his answer ---

3 MR. CHAND: -- told you the question's
4 refused. Move on.

5 MR. GREEN: He just --

6 MR. CHAND: Next --

7 MR. GREEN: -- said, 'Yes.'

8 MR. CHAND: -- subject. I just said, 'Move
9 on.' The question's refused. Move on. Next
10 question.

11 BY MR. GREEN:

12 12. Q. Mr. Skelly --

13 MR. CHAND: Next question, Mr. Green.

14 BY MR. GREEN:

15 13. Q. -- I'm going to --

16 MR. CHAND: Next question --

17 BY MR. GREEN:

18 14. Q. -- ask you a --

19 MR. CHAND: -- Mr. Green.

20 BY MR. GREEN:

21 15. Q. -- a different question.

22 MR. CHAND: Next question, Mr. Green. Go
23 ahead. Go ahead. It's all --

24 BY MR. GREEN:

25 16. Q. Mr. Skelly ---

WILLIAM ADAMSON SKELLY - 9

1 MR. CHAND: -- all yours.

2 MR. GREEN: Okay. In the first place, Mr.
3 Chand, don't interrupt to say, 'Okay. Go ahead. All
4 yours.' That's a waste of the court reporter's --

5 MR. CHAND: No.

6 MR. GREEN: -- time.

7 MR. CHAND: No. No. You know what?

8 MR. GREEN: When you've finished --

9 MR. CHAND: Just ask the --

10 MR. GREEN: -- speaking ---

11 MR. CHAND: -- question and I'll tell you --

12 MR. GREEN: Just be quiet.

13 MR. CHAND: -- if he can answer the -- I'll
14 -- just ask a question and I'll tell you if he's going
15 to answer the question. How does that sound, Mr.
16 Green?

17 BY MR. GREEN:

18 17. Q. Mr. Skelly --

19 MR. CHAND: Go ahead.

20 MR. GREEN: -- I'm now going to play your
21 video in full, and let's all just watch it together.
22 Okay? Madam Reporter, I take it you have no
23 difficulty hearing and recording the video. Is that
24 correct?

25 THE REPORTER: That's correct.

WILLIAM ADAMSON SKELLY - 10

1 MR. GREEN: So, we'll play it into the
2 transcript.

3 *** VIDEO BEGINS ***

4 "Hello Adamson Barbecue fans. Yeah, been a
5 while since I come on here. The authorities, they
6 finally let me come back and post on social media
7 again. I'm sure you noticed. The judge who is
8 proceeding (sic) over the bail variation said that the
9 restrictions on my social media use and access to my
10 restaurant were errors in law. So, that's great news.
11 I can come back on here again. All I can't do is
12 promote or incite breaches of the law. So, I can't be
13 telling anybody to open protest or anything like that.
14 I'll have to save that for anybody else who's willing
15 to do it. I wanted to tell you about a little change
16 to our hours of operations and access to the Leaside
17 restaurant. Since the civil disobedience in November
18 at the Etobicoke location, the authorities have been
19 making it very challenging for me to operate. They're
20 at my place in Leaside almost every single day.
21 Bylaw, police. They've kind of toned it back over the
22 last couple weeks, but they come in, they try to find
23 problems with the place, and they found some stuff,
24 some little electrical and fire issues that we'll be
25 fixing up, but the main thing is operating without a

WILLIAM ADAMSON SKELLY - 11

1 business licence. So, I haven't had a business
2 licence since we opened in 2016. I set up the place
3 as a catering kitchen first, because we had Stoke
4 Stack BBQ, which was a pretty busy catering company.
5 I wanted to open a lunch counter in there, thinking
6 that it could help keep us busy on the weekdays. So,
7 I looked online at the City of Toronto interactive
8 zoning map. You can do this yourself, and you'll see
9 that it's an E1 zone, and in there, there's -- you
10 know, you're allowed to have an eating establishment.
11 There's some rules about how big it can be. That's
12 fine. We fit within the size capacities and
13 everything. So, I built the lunch counter and I
14 didn't get a business licence right away. We just
15 opened. Eventually, the bylaw came by and said, you
16 know, 'You guys need to have a business licence.' So,
17 I applied for it, and one of the first steps is a PPR,
18 preliminary project review. That's where they check
19 your zoning. And it came back declined. And I'm
20 like, 'That's really weird.' It says on the E1 zone
21 that's available online that you can have an eating
22 establishment in this area. I talked to them and they
23 said, 'There's a -- there's another zoning bylaw from
24 50 years ago called the Leaside Industrial Park Zoning
25 Bylaw,' and that one doesn't allow restaurants. So,

WILLIAM ADAMSON SKELLY - 12

1 I'm trying to get my head wrapped around, you know,
2 what's going on with these two different zoning
3 bylaws, and I finally got it out of them that when
4 they amalgamated all the small city zoning bylaws
5 together, there was a whole bunch of appeals made
6 because people didn't like the changes to the zone.
7 So, they went through, like, I think thousands of
8 appeals. Even back in 2016, all the appeals were
9 done. It was that they were waiting for something in
10 their process to strike the old zoning bylaws and
11 fully shift to the new zoning bylaw, which, again,
12 prohibits a restaurant -- sorry, permits a restaurant
13 in our area. So, I went to court, paid some fines for
14 operating without a licence, and it -- they never took
15 enforcement action against me. It was like the fines
16 that I was paying were, you know, about equal or even
17 a little bit less than the cost of the business
18 licence itself, but they never came down on me. They
19 never tried to stop us from operating. This -- it's
20 been the same situation since 2016. It's been four
21 years. They never came and tried to shut us down.
22 But when John Tory said, 'Throw the book at him,' I
23 think that's what they're doing now. So, they want to
24 make it impossible for me to operate. And as of
25 today, it's Wednesday -- what is it? Wednesday,

WILLIAM ADAMSON SKELLY - 13

1 February 3rd. This is our last day that we can
2 operate in Leaside. They said they're going to take
3 legal action against the landlord if we're open
4 tomorrow. Landlord's not willing to take any heat.
5 He doesn't like pushing the limits like I do. So,
6 we've got to comply. This is our last day today for
7 takeout at Leaside, and this has a big impact on our
8 operations. We're going to move to a pre-order
9 delivery only model. So, basically, back to catering,
10 like we did with Stoke Stack BBQ from 2013 to 2016.
11 On Fridays, Saturdays and Sundays we're going to be
12 delivering as usual across the GTA. I've dropped the
13 minimum down from 75 bucks to 50 bucks, so you can
14 buy, like, a pound of brisket and a pound of ribs and
15 we'll deliver it. Or, you know, a pound of brisket
16 and a couple quarts of sides. Yeah, starting
17 tomorrow. Aurora, we're going to reduce -- that one's
18 still legally operating. They don't need business
19 licences up there, which -- by the way, it's just a --
20 like a \$500.00 permit from the city. It's kind of a
21 tax grab, whatever. I don't really have a big issue
22 with business licences one way or another, but in
23 Aurora, they don't even have them. Like, it was
24 nothing to do with health or anything. So, for the
25 people who are like, 'He's been operating without a

WILLIAM ADAMSON SKELLY - 14

1 business licence. Get him, ' you don't know anything
2 about business licences. They don't really mean
3 anything. It's just a little -- a little check by the
4 municipality. You'd think I'm not paying my taxes or
5 contributing to soc -- to the economy because I don't
6 pay this \$500 licence. It's like -- you know, we did
7 over \$1 million in payroll last year, and that means,
8 you know, \$100,000.00 in payroll tax. So, the \$500.00
9 for the little paper, in my opinion, it's -- you know,
10 it's not that serious of a thing, but -- anyway, what
11 -- whatever. Enough said about that. Aurora is going
12 down to lunch only Friday, Saturday and Sunday.
13 Etobicoke is closed for now until we get the building
14 permit and everything figured out over there. And
15 Leaside lunch service is done after today. We'll just
16 be doing deliveries Friday, Saturday and Sunday. Now,
17 there is some light at the end of the tunnel. We have
18 a way to get back operating. You know, hopefully in
19 the next couple of weeks get all these, you know,
20 change of use permits and business licences and
21 everything figured out. That's going to be top
22 priority for the next few weeks. In the meantime,
23 please place a pre-order for delivery if you want to
24 have some of our food in -- anywhere through the GTA.
25 Yeah, I think that's it. Nice chatting with you guys.

WILLIAM ADAMSON SKELLY - 15

1 Hope you make some pre-orders and you enjoy all our
2 anti-lockdown content that I'm going to be posting.
3 Have a great one. Thanks for listening."

4 *** VIDEO ENDS ***

5 BY MR. GREEN:

6 18. Q. Mr. Skelly, are you texting or emailing
7 someone in the middle of your cross-examination?

8 A. No, I am not.

9 19. Q. Very good. Your Leaside --

10 A. May I --

11 20. Q. -- location --

12 A. -- ask what ---

13 21. Q. -- has operated -- pardon me?

14 A. Can I ask what gives you that
15 impression, that I'm texting or emailing?

16 22. Q. No. Your Leaside location has been
17 operating without a business licence for four years,
18 is that correct?

19 MR. CHAND: Refused.

20 --- REFUSAL NO. 2

21 MR. GREEN: What's the legal basis for the
22 refusal?

23 MR. CHAND: It's completely irrelevant.

24 Move on.

25 BY MR. GREEN:

WILLIAM ADAMSON SKELLY - 16

1 23. Q. Mr. Skelly, you said in the video it
2 was no big deal. Why don't you just get a licence?

3 MR. CHAND: Refused.

4 --- REFUSAL NO. 3

5 BY MR. GREEN:

6 24. Q. Mr. Skelly, do you have a licence for
7 your food truck?

8 MR. CHAND: Refused.

9 --- REFUSAL NO. 4

10 BY MR. GREEN:

11 25. Q. Mr. Skelly, I'm going to show you
12 another video. Hold tight. I haven't asked you any
13 questions about it yet. Mr. Skelly, is that your face
14 on the screen there?

15 A. Yes, it is.

16 26. Q. I want you to listen to it. When
17 you're finished listening, I'm going to ask you some
18 questions.

19 *** VIDEO BEGINS ***

20 "My restaurant in Leaside, since that
21 defiance in November, the bylaw, police, fire
22 department, building department, zoning guys have been
23 at my restaurant, like, at least 100 times. It was
24 crazy. The bylaw was pulling up across the street,
25 blocking my neighbour's property, leaving the trucks

WILLIAM ADAMSON SKELLY - 17

1 parked out on the road, leaving their cars idling.
2 Just costing the taxpayers a fortune just monitoring
3 my place, because that one was also operating without
4 a business licence. So, it hasn't been filed yet but
5 we're going to be filing a constitutional challenge
6 regarding all that excess force that was applied at my
7 Leaside location, because that was never an issue.
8 For the last five years we were operating without a
9 business licence. I went to court quite a few times.
10 It was never a big issue for the city until now. So,
11 they went after my landlord and said, 'If this guy
12 keeps operating, we're going to take you to the
13 provincial court.' The landlord said, 'Stand down or
14 you're going to be evicted,' so I said, 'Okay.' So,
15 we put a food truck outside, just so -- to keep some -
16 - the last couple people there employed, right? Just
17 to keep the -- keep the fire burning a little bit.
18 The bylaw came by, said, 'You need a licence for the
19 truck.' I said, 'Fuck you. I'm not buying your
20 licence.' Like, the -- just out of principle, right?
21 It's like a \$700.00, \$800.00 licence, but they've
22 spent the last six months just surrounding my place
23 with their authorities trying to find all these
24 violations. As if I'm going to give you \$700.00.
25 There's not a chance. So, we donated that" ---

WILLIAM ADAMSON SKELLY - 18

1 "Right. The hundreds of thousands of
2 taxpayers' dollars --

3 "Yeah."

4 -- being wasted."

5 "No way. I'm not supporting this
6 establishment anymore. The same establishment that's
7 trying to put me out of business, I'm not giving them
8 any money. Not a chance. Never again. So, we -- I
9 didn't get the licence. We donated the money to
10 charity. And they tried everything that they could do
11 to -- you know, to stop me from operating that food
12 truck. And again, the only reason for keeping that
13 thing there was just to keep the last five or six guys
14 at my restaurant employed. Like, I figured there'd be
15 a pause in the business until after my court case.
16 So, I said, 'Let's put the food truck there. Let the
17 last couple of guys who want to work work.' These
18 guys could go on CERB. They don't want to. They want
19 to be in there. They want to work. So, the city came
20 by and threatened to impound the vehicle because where
21 it was parked in my parking lot was apparently an
22 encroachment on their property, despite being in my
23 parking lot. So, they drew out some line based on the
24 zoning and said, 'You're over this line. We're going
25 to impound your vehicle.' So, we snug the food truck

WILLIAM ADAMSON SKELLY - 19

1 right up against the building, and they came by the
2 next day and they busted out their tape measure and we
3 were two inches inside the line, so we were allowed to
4 keep going. They couldn't physically remove the
5 vehicle. So, they gave me some summons for not
6 operating with a -- or for operating without a
7 business licence, and that's fine. We'll take that to
8 the provincial courts and deal with it there. Pradeep
9 Chand, my -- one of my lawyers on my team, he's taking
10 care of that for me. So, then they went after the
11 owner of the food truck and said, 'You need to -- you
12 need to make this guy stop or else we're going to
13 repossess the vehicle.' So, he just signed the
14 vehicle over to me. I bought it from him and now they
15 have to go after me for those issues. So, we're kind
16 of operating there. We're selling, like, some
17 sandwiches and chilli and fries and stuff like that at
18 the food truck in Leaside. That's -- yeah, that's
19 where we're at today."

20 *** VIDEO ENDS ***

21 BY MR. GREEN:

22 27. Q. Mr. Skelly, is it not a good enough
23 reason to get a business licence for your food truck
24 that the law requires it?

25 MR. CHAND: Refused.

WILLIAM ADAMSON SKELLY - 20

1 --- REFUSAL NO. 5

2 BY MR. GREEN:

3 28. Q. Mr. Skelly, is it not a good enough
4 reason for you to get a business licence for your
5 Leaside location that the law requires it?

6 MR. CHAND: Refused.

7 --- REFUSAL NO. 6

8 BY MR. GREEN:

9 29. Q. I'm going to show you a webpage, Mr.
10 Skelly. Give me a moment to put it up. Do you
11 recognize this webpage, Mr. Skelly?

12 A. Yes, I do.

13 30. Q. This is the Adamson Barbecue webpage.
14 Under the heading, "Support the BBQ Rebellion," do you
15 see that?

16 A. Yes, I do.

17 31. Q. On this webpage you sell merchandise,
18 like a \$60.00 hoodie that says, "Risk it for the
19 brisket." Correct?

20 MR. CHAND: Refused.

21 --- REFUSAL NO. 7

22 BY MR. GREEN:

23 32. Q. How much profit do you make on the sale
24 of each \$60.00 hoodie, Mr. Skelly? What --

25 MR. CHAND: Refused.

WILLIAM ADAMSON SKELLY - 21

1 --- REFUSAL NO. 8

2 BY MR. GREEN:

3 33. Q. -- does it cost you to acquire that
4 hoodie?

5 MR. CHAND: Refused.

6 --- REFUSAL NO. 9

7 BY MR. GREEN:

8 34. Q. I'm going to show you something else,
9 Mr. Skelly. Just hold on a moment. Mr. Skelly, for
10 someone who is really eager to take on a
11 constitutional challenge, you don't seem willing to
12 answer any questions.

13 MR. CHAND: Don't answer that. Refused.

14 --- REFUSAL NO. 10

15 BY MR. GREEN:

16 35. Q. Don't answer that? Mr. Skelly, you
17 don't want to -- you don't want to tell your side of
18 the story now that you have your platform?

19 MR. CHAND: If you have any questions
20 involving Mr. Skelly's affidavit, please ask them.

21 BY MR. GREEN:

22 36. Q. I'm going to show you another document,
23 Mr. Skelly. Hold on tight. Can you see this GoFundMe
24 page on the screen, Mr. Skelly? Do you see that?

25 A. Yes, I see it.

WILLIAM ADAMSON SKELLY - 22

1 37. Q. It says, "This is a fundraiser
2 organized on behalf of Adam Skelly." That's you,
3 isn't it?

4 A. Indeed.

5 38. Q. Your Adamson Barbecue legal defence
6 fund raised \$337,622.00, correct?

7 MR. CHAND: Refused.

8 --- REFUSAL NO. 11

9 MR. GREEN: What possible legal basis could
10 there be for refusing that question?

11 MR. CHAND: I'm not going to educate you on
12 your remedies. I've refused the question. If you
13 wish to bring a motion to have him compel his -- the
14 questions that you've asked, please do so. You have
15 my answer. He's refused the question. Move on.

16 MR. GREEN: We'll mark this as Exhibit A to
17 this examination.

18 --- EXHIBIT NO. A: GoFundMe page.

19 BY MR. GREEN:

20 39. Q. Mr. Skelly, I have to say, I'm
21 surprised that you refuse all the questions, and you
22 have a lot to say to your Instagram followers but to
23 the court you don't have anything to say.

24 MR. CHAND: Is that a question or a
25 submission, sir? Which is ---

WILLIAM ADAMSON SKELLY - 23

1 MR. GREEN: I've concluded my cross-
2 examination. I have no more questions for the
3 witness. Thank you.

4 MR. CHAND: Thank you, sir.

5

6 --- WHEREUPON THE EXAMINATION WAS ADJOURNED AT 1:27 P.M.

7

8

9 I hereby certify that this is the
10 examination of WILLIAM ADAMSON SKELLY, taken
11 before me to the best of my skill and
12 ability on the 31st day of May, 2021.

13

14

Emily Pennacchio - Court Reporter

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January 1, 1990 and are not certified without the
original signature of the Court Reporter

Adamson BBQ Legal Defence Fund

EXHIBIT No. A
 EXAMINATION OF
William Adamson Skelly
 HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO **VS** ADAMSON BARBECUE LIMITED ET AL.
 DATE 5/31/21
 NETWORK COURT REPORTING

\$337,622 raised

This fundraiser is no longer accepting donations. If you are the organizer, beneficiary, team member, or donor, [sign in](#) to see additional information.

<https://gofund.me/adab01f7>



Barry McNamar is organizing this fundraiser on behalf of Adam Skelly.

Created November 25, 2020

Accidents & Emergencies

Organizer and beneficiary



Barry McNamar
Organizer



Adam Skelly
Beneficiary

Contact

Created November 25, 2020

Accidents & Emergencies



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TAB 7

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

TAB 8

Court File No. CV-20-00652216-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

| | | |
|-----------------------|---|-------------------|
| THE HONOURABLE |) | TUESDAY, THE 13TH |
| |) | |
| JUSTICE J.T. AKBARALI |) | DAY OF JULY, 2021 |

B E T W E E N:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Applicant

and

**ADAMSON BARBECUE LIMITED AND WILLIAM
ADAMSON SKELLY**

Respondents

ORDER

THIS MOTION, made by the Respondents, was heard on June 28, 2021 via videoconference and dismissed for the reasons reported at *Ontario v. Adamson Barbecue Limited and Skelly*, 2021 ONSC 4660.

ON READING the costs submissions of both parties,

1. **THIS COURT ORDERS** that the Respondents shall pay to the Applicant the amount of \$15,000.00 inclusive within 30 days.
2. **THIS COURT ORDERS** that the determination of whether the Respondents are responsible for the Applicant'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, the Applicant may write to the Court to seek directions to allow it to have the costs fixed by Kimmel J. addressed.

K. Lesko

Digitally signed by K. Lesko
DN: cn=K. Lesko, o=Ministry of the
Attorney General, ou=Civil Intake,
email=katarina.lesko@ontario.ca, c=CA
Date: 2021.08.03 09:06:38 -04'00'

(Signature of judge, officer or registrar)

**HMQ IN RIGHT
OF ONTARIO**
Applicant

- and - **ADAMSON BARBECUE LIMITED AND WILLIAM
ADAMSON SKELLY**
Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

ORDER

ATTORNEY GENERAL OF ONTARIO
Civil Law Division, Constitutional Law Branch
720 Bay Street, 4th Floor
Toronto, ON M7A 2S9

Padraic Ryan (LSO#
61687J)

Tel: 647-588-2613

padraic.ryan@Ontario.ca
Counsel for the Respondent

TAB 9

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

TAB 10

Court File No. CV-20-00652216-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

| | | |
|-----------------------|---|-----------------------------|
| THE HONOURABLE |) | TUESDAY the 1 st |
| |) | |
| JUSTICE J.T. AKBARALI |) | DAY OF FEBRUARY, 2022 |

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Applicant

and

**ADAMSON BARBECUE LIMITED AND WILLIAM
ADAMSON SKELLY**

Respondents

ORDER

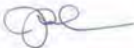
THIS APPLICATION, made by the Applicant, was heard on December 4, 2020 via videoconference and granted for the reasons reported at *Her Majesty the Queen in Right of Ontario v. Adamson Barbecue Limited and Skelly*, 2021 ONSC 4660. The Court fixed costs on the application at \$15,000.00.

A MOTION made by the Respondents was heard on June 28, 2021 via videoconference and dismissed for the reasons reported at *Ontario v. Adamson Barbecue Limited and Skelly*, 2021 ONSC 4660. The Court deferred the issue of awarding the costs of the application.

For the reasons reported at *Ontario v. Adamson Barbecue Limited and Skelly*, 2022 ONSC 726, the Court has now awarded the costs fixed on the application.

ON READING the correspondence from the Applicant,

1. **THIS COURT ORDERS** that the Respondents shall pay to the Applicant the amount of \$15,000.00 inclusive within 30 days. This amount is in addition to the costs awarded in this Court's order dated July 13, 2021.



 (Signature of judge, officer or registrar)

**HMQ IN RIGHT
OF ONTARIO**
Applicant

- and - **ADAMSON BARBECUE LIMITED AND WILLIAM
ADAMSON SKELLY**
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

ORDER

ATTORNEY GENERAL OF ONTARIO
Civil Law Division, Constitutional Law Branch
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Toronto, ON M7A 2S9

Padraic Ryan (LSO#
61687J)

Tel: 647-588-2613

padraic.ryan@Ontario.ca

Counsel for the Respondent

TAB 11

**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 |

WILLIAM ADAMSON SKELLY and ADAMSON BARBECUE LIMITED

Ian J. Perry of Perrys LLP

Name and Firm (please type or print clearly)

Tel: 416-579-5055 E-mail: ian@perrysllp.com

Telephone Number and Email Address

Name of Party and Lawyer Scheduling the Motion:

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

Date

Court File No: CV-22-00683592-0000

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 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

For Court Use Only**ONTARIO SUPERIOR COURT OF
JUSTICE (TORONTO REGION)****CIVIL PRACTICE COURT ENDORSEMENT**
Court File No.: Error! Reference source not found.

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Presiding Judge:**JUSTICE CENTA****CPC#: 14****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 DELIVERED¹ 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 | <p>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></p> <p>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 <i>Consolidated Notice to the Profession, Litigants, Accused Persons, Public and the Media</i> at: https://www.ontariocourts.ca/scj/notices-and-orders-covid-19/consolidated-notice/#8 Standard document naming protocol.</p> <p>See new Rule 4.05.2.</p> <p>Ensure your email address is on all documents filed.</p> | <input type="checkbox"/> |
| 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 . | <input type="checkbox"/> |
| AT LEAST ONE WEEK BEFORE HEARING | | |
| <p>Upload materials to CaseLines including all Motion Records, Factums, and the requested Draft Order or Judgment.</p> <p>Upload your factum and draft Order or Judgment in WORD format.</p> | <p>See new Rule 4.05.3.</p> <p>Ensure you email address is on all documents filed.</p> <p>For more information about CaseLines, including answers to frequently asked questions, refer to <i>Supplementary Notice to the Profession and Litigants in Civil and Family Matters – Including Electronic Filings and Document Sharing (CaseLines Pilot)</i> September 2, 2020; updated December 17, 2020 found at https://www.ontariocourts.ca/scj/notices-and-orders-covid-19/supplementary-notice-september-2-2020/.</p> | <input type="checkbox"/> |

Court File No: **Error! Reference source not found.**

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| | | |
|---|--|--------------------------|
| <p>Confer with opposing counsel and email Motion Confirmation form to Motions Coordinator.</p> | <p>For motions, see: Rule 37.10.1 and Form 37B.</p> <p>For applications, see: Rule 38.09.1(1) and Form 38B.</p> <p>Send email to:</p> <p>LongMotionsStatus.Judge@ontario.ca.</p> | <input type="checkbox"/> |
| SHORTLY BEFORE HEARING | | |
| <p>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.</p> <p>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.</p> | <p>See email from CaseLines.</p> | <input type="checkbox"/> |
| <p>Upload any amended requested Draft Order or Judgment into CaseLines.</p> | <p>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/.</p> | <input type="checkbox"/> |
| <p>Exchange costs outlines not exceeding 3 pages in length.</p> | <p>See Rule 57.01(6) and Form 57B.</p> | <input type="checkbox"/> |
| AFTER THE HEARING | | |
| <p>Upload the costs outlines to CaseLines <u>if there have been no Rule 49 Offers to Settle</u>. 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.</p> | | <input type="checkbox"/> |

WILLIAM ADAMSON SKELLY
and
ADAMSON BARBECUE LIMITED Applicants

-and - HIS MAJESTY THE KING IN RIGHT OF ONTARIO ET AL.

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDINGS COMMENCED AT
TORONTO

MOTION RECORD

ATTORNEY GENERAL OF ONTARIO

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