

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**WILLIAM ADAMSON SKELLY and ADAMSON BARBECUE  
LIMITED**

Applicants

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

Respondents

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**NOTICE OF MOTION**

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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

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**WILLIAM ADAMSON SKELLY and  
ADAMSON BARBECUE LIMITED**

Applicants

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**HIS MAJESTY THE KING IN RIGHT OF ONTARIO ET AL.**

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

**NOTICE OF MOTION**

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