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~~

Applicant~~s~~

- and -

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

Respondents

FACTUM OF THE APPLICANT
(Returnable February 25, 26, 27, 2026)

January 19, 2026

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I - OVERVIEW

1. This constitutional challenge is a reckoning with the unchecked exercise of state power that devastated small business owners, silenced peaceful dissent, and trampled core constitutional protections, all without a shred of cogent evidence to justify the destruction.

2. In November 2020, the Applicant, William Adamson Skelly, the sole owner and operator of Adamson Barbecue Limited, made a deliberate decision to open his Etobicoke restaurant for in-person dining in peaceful protest of escalating COVID-19 restrictions. His purpose was twofold: to begin a public conversation about lockdown measures he believed were disproportionate, unscientific, and ruinous to small businesses, and to invite legal scrutiny of their lawfulness.

3. What followed was not measured enforcement, but a coordinated and vicious response by the Respondents, which included the illegal seizure of the restaurant premises by the City's then Medical Officer of Health, Dr. Eileen de Villa (which she has admitted on cross was unprecedented); the attendance of hundreds of police officers (who ultimately formed a human barricade around the BBQ restaurant and forced people off the property to quash the protest), the arrest and detention of Mr. Skelly, and the imposition of extraordinary civil and criminal consequences. Sentencing for Mr. Skelly's criminal charges and the outcome of a civil action brought by the City of Toronto have been stayed, pending the resolution of this Application.

4. The Applicant seeks declarations that these legislative and enforcement measures were unlawful, unconstitutional, *ultra vires,* and of no force or effect under s. 52(1) of the *Constitution Act,* 1982. They violated Mr. Skelly's fundamental *Charter* rights. Those being, *inter alia,* freedom of expression (s. 2(b)) and peaceful assembly (s. 2(c)) through the suppression of the protest; security of the person and liberty (s. 7) through the arbitrary destruction of his livelihood and the unlawful seizure of his property; protection against unreasonable search and seizure (s. 8) and arbitrary detention (s. 9) via the unlawful occupation of the premises and his subsequent arrest; and equality rights (s. 15(1)) by the disproportionate targeting of a single small business owner who dared to question the narrative by serving food to patrons.

5. The Respondents bear the burden under s. 1 of the *Charter* to prove that these grave infringements were reasonable limits demonstrably justified in a free and democratic society. After more than five years of litigation, exhaustive prehearing procedures, and cross-examinations of the City's then Medical Officer of Health, Dr. Eileen de Villa, and the sole provincial witness, Dr. Matthew Hodge, the record of the Respondent's evidence is alarmingly thin.

6. The record discloses no evidence that closing restaurants or prohibiting peaceful assembly would have meaningfully reduced COVID-19 transmission. Dr. de Villa conceded under oath that she performed no site-specific investigation of the restaurant, identified no outbreak or transmission event at the premises, relied exclusively on generalized data, failed to consider less intrusive measures, and outright refused to answer basic questions concerning the grounds for the restrictions on restaurants, or the basis for treating Mr. Skelly's protest differently from the many others that occurred throughout the summer and fall of 2020.

7. In contrast, the Applicants' expert evidence stands largely unrebutted. Six highly qualified experts have provided detailed, evidence-based opinions demonstrating the scientific and logical flaws in the restrictions, the absence of any meaningful public health benefit from restaurant closures, the disproportionate economic devastation inflicted on small businesses, and the immunological and clinical realities of COVID-19 that were ignored by decision-makers. The Respondents chose not to cross-examine a single one of these experts and filed no compelling contradictory evidence on the core issues of efficacy, proportionality, or justification.

8. This evidentiary vacuum is fatal. Moreover, it is plainly apparent from the record that neither the provincial nor municipal Respondents even considered constitutionally protected rights when enacting the impugned legislation or issuing the City's site-specific orders which destroyed not just Mr. Skelly's livelihood, but the livelihoods of the untold sums of Ontario's small business owners. These Respondents did not explore less impairing alternatives. They did not balance harms. They simply acted, assuring the Applicant, this Court, and the public at large that these crippling restrictions on businesses were justified. Now, when challenged, it seems they have nothing behind the curtain.

9. The Ontario Court of Appeal's recent decision in *Hillier v. Ontario*, 2025 ONCA 259, confirms that such a failure is decisive. In that unanimous decision, the very same *ROA* restrictions being challenged in this Application were found to unjustifiably violate s. 2(c) of the *Charter*, precisely because the government could not demonstrate that it even considered accommodating peaceful assembly, let alone prove that such accommodations would materially increase the risk of COVID-19 transmission.

10. The Respondents will ask this Court to accept on faith that their actions were necessary and proportionate. The record demands the opposite conclusion. The measures were not justified; they were not even rationally supported. They were a gross overreaction that decimated restaurants, crushed a peaceful assembly, destroyed a family business, and eroded the rule of law. Worse, these Respondents have offered no proof that the devastation served any legitimate public health purpose. The time has come to restore a constitutional balance and affirm that, even in times of panic, government action must be tethered to evidence, reason, and the rule of law.

11. The Applicants will ask this Honourable Court to declare the impugned provisions of the *Reopening Ontario Act*, O. Reg. 82/20, and the related *HPPA* orders and Trespass Notice used to cease the protest and close the restaurant of no force or effect.

II – FACTS

A. The Parties

12. The Applicant William Adamson Skelly is an entrepreneur and was the sole director of Adamson Barbecue Limited (Adamson BBQ), a once thriving barbecue restaurant operating three Greater Toronto Area restaurants known for authentic Texas-style barbecue in bright, communal spaces.[1] The Respondents enforcement of strict COVID-19 measures have since sent the restaurants into bankruptcy.[2]

[1] Application Record of the Applicant, William Adamson Skelly, at Tab 3, Affidavit of William Adamson Skelly, sworn September 20, 2024, [*Skelly Affidavit*], at paras 1, 8-12, and 14-22 and Exhibits A-H.
[2] Transcript from the Cross-Examination of Adam Skelly at Q21, Pg. 8.

13. Mr. Skelly's affidavit, sworn September 20, 2024, details his personal knowledge of the matters at issue. After the considerable media attention his peaceful protest generated, Mr. Skelly received more than $300,000.00 in charitable donations for his legal costs, from members of the public who supported his cause, via the online fundraising platform, *GoFundMe*.[3] With these funds, Mr. Skelly was able to retain and proffer the expert evidence of six highly qualified experts: Drs. William Briggs (statistics and model uncertainty), Harvey Risch (epidemiology), Douglas Allen (economic analysis), Byram Bridle (viral immunology), Mark Trozzi (emergency medicine), and Gilbert Berdine (pulmonary diseases).

14. The Respondents include His Majesty the King in Right of Ontario (the "Province" or "Ontario"), the City of Toronto (the "City"), the Board of Health for the City of Toronto Health Unit (the "Board"), and Dr. Eileen de Villa, who served as the City's Medical Officer of Health until December 31, 2024.

15. Ontario's responding record is limited to one expert, Dr. Matthew Hodge, who was cross-examined by the Applicant's counsel. The City's record contains a single affidavit from City health inspector, Mr. Paul Di Salvo. The City declined to file an affidavit from Dr. Eileen de Villa, but she was nonetheless summoned to cross-examination by the Applicant's counsel in the lead up to this hearing.

16. Both the Province and the City's witnesses offer no contemporaneous public health data justifying the measures which restricted restaurants and peaceful assembly. In fact, Dr. de Villa—who would arguably be the most informed on the validity of the measures—refused the most basic questions concerning the grounds for the restrictions now being challenged.[4]

[3] *Ibid.* at para 66 and Exhibit X.
[4] Certified Transcript of Dr. Eileen de Villa, dated September 29, 2025, pg. 39, 1.4-25, pg. 57, 1.4-16, pg. 64, 1.8-17, pg. 66, 1.3 – pg. 68, 1.5, pg. 76, 1.8 -pg. 77, 1.7, pg. 81, 1.12 – pg. 82, 1.13, pg. 90, 1.4-16, pg. 92, 1.18 – pg. 93, 1.3, pg. 96, 1.20 – pg. 99, 1.10, pg. 104, 1.13 – pg. 105, 1.1 [*de Villa Transcript*].

B. The Legislative Apparatus

(i) Emergency Management and Civil Protection Act

17. On March 17, 2020, the Government of Ontario invoked the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9 (the "*EMCPA*"). A Declaration of Emergency was issued 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".[5] Premier Doug Ford declared a provincial state of emergency pursuant to s. 7.0.1 of the *EMCPA* and announced immediate restrictions on restaurants and other businesses throughout Ontario. These initial measures included a complete prohibition on indoor dining. [6]

18. On March 23, 2020, the Lieutenant Governor in Council made a series of Emergency Orders under O. Reg. 51/20,[7] 52/20,[8] and 82/20[9] (collectively, the "Regulations"). These Orders classified businesses as "essential" or "non-essential", imposed substantial restrictions on commercial activity, and limited the movement of members of the public. The Orders came into force at 11:59 p.m. on March 23, 2020, initiating what became known as the first province-wide lockdown (the "First Lockdown").

19. In lockstep with the Province, on the same day the First Lockdown took effect, Mayor John Tory (as he then was), declared a municipal state of emergency under Chapter 59 of the *City of Toronto Municipal Code*, citing the outbreak of COVID-19.[10]

20. Between June 11 and 17, 2020, the First Lockdown transitioned to a regional reopening framework through a series of subsequent Orders. Ultimately, indoor facilities and businesses were

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[5] O. Reg. 50/20: DECLARATION OF EMERGENCY.
[6] *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, s 7.0.1 [*EMCPA*].
[7] O. Reg. 51/20: ORDER UNDER SUBSECTION 7.0.2 (4) OF THE ACT - CLOSURE OF ESTABLISHMENTS.
[8] O. Reg. 52/20: ORDER UNDER SUBSECTION 7.0.2 (4) OF THE ACT - ORGANIZED PUBLIC EVENTS, CERTAIN GATHERINGS.
[9] O. Reg. 82/20: ORDER UNDER SUBSECTION 7.0.2 (4) - CLOSURE OF PLACES OF NON-ESSENTIAL BUSINESSES.
[10] City of Toronto, by-law No 606-2009, TORONTO MUNICIPAL CODE CHAPTER 59, EMERGENCY MANAGEMENT (May 27, 2009).

permitted to reopen on July 13, 2020, pursuant to Ontario Regulation 364/20, which came into force on July 17, 2020.

(ii) Reopening Ontario (A Flexible Response to COVID-19) Act

21. On July 21, 2020, the Legislature passed Bill 195, which came into force on July 24, 2020, as the *Reopening Ontario (A Flexible Response to COVID-19) Act*, S.O. 2020, c. 17 (the "*ROA*"). The *ROA* formally ended the declared state of emergency. However, by virtue of s. 17, the *ROA* revoked the *EMCPA* while simultaneously preserving a more limited form of emergency authority, incorporating s. 7.0.2 of the *EMCPA* into its statutory framework.[11]

22. The *ROA* authorized ongoing restrictions applicable to members of the public and to businesses classified as "non-essential". One such instrument enacted under the *ROA* was Ontario Regulation 82/20: *Rules for Areas in Shutdown Zone and at Step 1* (the "Lockdown Regulation").[12]

23. The Lockdown Regulation established a tiered system of "control measures", ranging from minimal to severe, applicable whenever the Government of Ontario designated a jurisdiction as being in the "Grey" zone, representing a Stage 1 shutdown. For restaurants, the Stage 1 measures included:

a. Permitting operation solely for take-out, drive-through, or delivery service;

b. Requiring that the person responsible for the business ensures that all persons in the indoor areas of the premises wear a mask or face covering;

c. Requiring that the person responsible for the business limit occupancy to ensure that members of the public could maintain a distance of at least two metres from others;

d. Requiring that the operator prepare and make available a COVID-19 safety plan that described the measures and procedures implemented to reduce transmission risk; and

[11] *Reopening Ontario (A Flexible Response to COVID-19) Act*, S.O. 2020, c. 17, s 17 [*ROA*].
[12] O. Reg. 82/20: RULES FOR AREAS IN SHUTDOWN ZONE AND AT STEP 1.

e. Requiring that the person responsible for the business comply with all specified conditions, failing which the business was required to close.

(iii) Health Protection and Promotion Act

24. The *Health Protection and Promotion Act*, R.S.O. 1990, c. H.7 (the "*HPPA*") governs the organization and delivery of public health programs and services in Ontario and establishes a framework for the promotion and protection of public health. Under the *HPPA*, the province is divided into health units, each overseen by a board of health.[13]

25. Section 22 of the *HPPA* authorizes a Medical Officer of Health (MOH), to issue an order requiring a person to take, or refrain from taking, specified actions (a "Section 22 Order"), and prescribes circumstances in which a MOH may issue such an order, but only where the MOH has reasonable and probable grounds to believe that:

a. A communicable disease presents a risk to the health of persons within the health unit; and

b. The order is necessary to reduce or eliminate that risk.[14]

26. In addition, where a MOH reasonably believes that a Section 22 Order may not be complied with, s. 24 of the *HPPA* authorizes the MOH to issue directions to individuals engaged by, or acting as agents of, the board of health (the "Section 22 Directions") for the purposes of ensuring compliance with a Section 22 Order.[15]

[13] *Health Protection and Promotion Act*, R.S.O. 1990, c. H.7 [*HPPA*].
[14] *Ibid.* at s 22.
[15] *Ibid.* at s 24.

C. The Impact of the Lockdowns and Restrictions

27. By July 24, 2020, the provincial state of emergency declared under the *EMCPA* had been extended six separate times.

28. During the summer of 2020, certain public health restrictions were temporarily lifted, permitting restaurants (including Adamson BBQ) to resume indoor dining.

29. Mr. Skelly complied with all applicable provincial and municipally requirements, including collecting customer contact information, enforcing mask requirements, and implementing social-distancing measures. Although Mr. Skelly disagreed with many of these imposed obligations, he was committed to doing whatever was necessary to keep his business alive and repair the financial harm caused by the First Lockdown.[16]

30. By September 2020, the financial impact of the restrictions had taken a devastating toll. Mr. Skelly's restaurant, and it's dine-in, family style set-up was crippled when limited to take out only. The restrictions had forced Mr. Skelly to lay off more than half of its 56 employees. Many of these individuals were longtime, loyal staff members with families to support, and Mr. Skelly found the layoffs to be among the most difficult decisions he had ever faced as a business owner.[17]

31. Mr. Skelly became increasingly frustrated and confused by what he perceived as inconsistent public messages and an ever-expanding series of restrictions. With growing media discussions about the possibility of a "second wave", he feared that another round of restrictions would be fatal to Adamson BBQ. He watched as large "big box" stores like Home Depot and Wal-Mart remained open for business, while smaller business were shuttered. He began questioning whether the restrictions imposed on small business owners were having any meaningful impact on the transmission and spread of COVID-19.[18]

32. Mr. Skelly attempted to engage elected officials by calling and emailing his local Members of Provincial Parliament to seek clarity on the grounds for the lockdowns, and to express concerns

[16] *Skelly Affidavit* at para 32.
[17] *Ibid.* at para 34.
[18] *Ibid.* at paras 35-36.

regarding the impact of lockdowns on small businesses. He received no substantive response. The absence of meaningful engagement from public officials reinforced Mr. Skelly's concerns about the government's approach to managing COVID-19.[19]

D. The Conflicting Positions of the Province and the City

33. By the Fall of 2020, Mr. Skelly was not the only one questioning the value of tighter restrictions. By this time, a clear divergence emerged between the Province and the City regarding the efficacy and necessity of further lockdowns on small businesses, including restaurants.

34. In various press conferences, the provincial stance articulated by Premier Doug Ford and the provincial Chief Medical Officer of Health, Dr. David Williams, was that the Province doubted the merits of further lockdown measures and would require robust evidence before escalating restrictions or imposing lockdowns again. [20]

35. In contrast, on October 2, 2020, Dr. de Villa held a joint press conference with Mayor John Tory, where she publicly urged Dr. Willams to impose stricter measures on the City, such as prohibiting indoor dining and group fitness classes. During this rather odd press conference, Dr. de Villa explicitly stated that she had "spoken with her lawyers" and was advised that she lacked the authority under the *HPPA* to implement these restrictions herself, emphasizing the need for provincial intervention to avoid a broader lockdown.[21]

36. On October 5, 2020, Ford publicly rejected Dr. de Villa's recommendations to close indoor dining, insisting on the need to see "hard evidence" linking restaurants to outbreaks before taking such steps. Dr. Williams echoed this caution, stating that the province would only reimpose closures upon clear, data-driven proof of risk.[22] During her cross-examination, when questioned on whether Dr. Williams was ever informed of the on Toronto specific data, Dr. de Villa refused to answer.[23]

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[19] *Ibid.* at para 37, and Exhibit L.
[20] *Ibid.* at para 38.
[21] *de Villa Transcript* at pg. 24 1.8-23, pg. 42, 1.2 – pg. 44 1.2, pg. 48, 1.6-20, and Exhibit 2.
[22] *Skelly Affidavit* at Exhibit M.
[23] *de Villa Transcript* at pg. 92, 1.18 – pg. 93, 1.3.

37. Further underscoring the opacity of decision-making, meetings between provincial and City officials in October 2020 required City employees, including Dr. de Villa, to sign non-disclosure agreements before participating.[24] Dr. de Villa refused to answer any questions regarding the non-disclosure agreements or what was discussed at these meetings.[25]

38. Then, in November 2020, the provincial government introduced a new colour-coded "response framework" consisting of five tiers, which once again imposed significant restrictions on restaurants and bars. This framework was widely criticized as confusing and inconsistent with Ontario's earlier assurance it would not impose new lockdowns.[26]

39. On November 23, 2020, the Government of Ontario declared the City of Toronto to be in the "Grey Zone", or "Stage 1 Lockdown", under the *ROA*. This designation prohibited indoor dining and again imposed stringent restrictions on restaurant operations. For Adamson BBQ, the measures eliminated the dine-in experience that formed the core of the business model. Previous experience had already demonstrated that takeout and delivery alone were financially unsustainable.

40. Observing this intergovernmental discord and lack of disclosed evidence, Mr. Skelly reasonably concluded that the proposed lockdowns were not grounded in rational, scientific justification, prompting his decision to engaged in peaceful protest against the measures he viewed as arbitrary and disproportionate to any proven public health benefit.

E. <u>The Peaceful Assembly and Protest: November 23 – 26, 2026</u>

41. On the evening of November 23, 2020, Mr. Skelly announced via Adamson Barbecue's social media accounts that the Etobicoke location would reopen for indoor dining the following day as a deliberate and peaceful act of civil disobedience. Driven by deep concern for the survival of his family business and the broader impact of prolonged restrictions on independent small

[24] *Skelly Affidavit* at para 40 and Exhibit N.
[25] *de Villa Transcript* at pg. 96, 1. 20 – pg. 99, 1.18.
[26] *Skelly Affidavit* at para 42 and Exhibit O.

businesses across Canada, he chose to challenge the measures in a measured and public way, inviting legal scrutiny if charges followed. [27]

42. The announcement quickly gained significant traction, attracting more than half a million views and approximately 20,000 comments, reflecting widespread public unease with the ongoing restrictions on small businesses. Mr. Skelly emerged as one of the earliest small-business owners in Canada to openly question the proportionality of the rules at a moment when media coverage of COVID-19 remained intense and frequently alarmist.

43. Unable to endure another round of closures that threatened the viability of his enterprise, Mr. Skelly reopened the Etobicoke location for dine-in service from November 24 to 26, 2020. On the first day, hundreds of supporters arrived, many of them ordinary Canadians who viewed the government's approach as arbitrary, opaque, or disproportionate. The gathering remained entirely peaceful and respectful throughout[28]

44. The protest was conducted with attention to safety and compliance.[29] Customers queued outdoors, seating was arranged to maintain distance, and the restaurant's large bay doors were kept fully open despite the late-November cold to maximize ventilation. Many attendees came solely to express solidarity and did not enter to dine. No outbreak, illness, or transmission event was ever linked to the premises.

45. In this way, Mr. Skelly exercised his right to peaceful expression and assembly in a responsible manner, seeking only to foster a reasoned national conversation about the necessity and fairness of the restrictions imposed on small businesses. Mr. Skelly was successful in starting this conversation. The protest attracted hundreds of attendees in support of the protest, was commented on by the Premier, garnered national and international media attention, and in the aftermath, drew more than $300,000.00 in charitable contributions in support of a legal defence for the criminal charges and civil claims that followed.

[27] *Ibid.* at para 43.
[28] *Ibid.* at paras 49 and 52.
[29] *Ibid.* at para 50.

F. Crushing the Protest and Closure of Adamson BBQ

46. The Respondents' response to Mr. Skelly's peaceful three-day protest was swift, coordinated, and disproportionate, deploying an array of municipal and provincial resources to swiftly suppress the demonstration and deter further dissent.

47. On November 24, 2020—the first day of the reopening—Toronto police, bylaw officers, and public health inspectors descended on the Etobicoke location in force. Without conducting any site-specific investigation or identifying an actual health risk at the premises, Dr. de Villa issued an immediate s. 22 order under the *HPPA* mandating closure, citing generalized and unsupported epidemiology claims, rather than any evidence of outbreak or transmission at Adamson Barbecue.

48. The City's efforts intensified on November 25. Mr. Skelly received multiple tickets for non-compliance with the *ROA* and O. Reg. 82/20.[30] Authorities seized control of the premises, changed the locks to bar access, and posted an unauthorized trespass notice under the *Trespass to Property Act* which had been authorized and signed by Dr. de Villa;[31] a measure she would later be unable to provide any support or precedent for.[32] This effectively dispossessed Mr. Skelly of his property without court order or due process, preventing him from retrieving personal and business assets. Dozens of police officers formed a human perimeter around the restaurant, dispersing supporters and ensuring no further assembly could occur, all while the Province supported the enforcement through its overarching *ROA* framework.[33]

49. By November 26, the crackdown culminated in Mr. Skelly's arrest for attempting brief entry to his restaurant, amid a scuffle that led to additional charges against a supporter. Mounted police units were deployed for crowd control, and the operation involved over 200 officers, with the City later seeking more than $187,000.00 from Mr. Skelly in a civil action for policing costs.[34]

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[30] *Skelly Affidavit* at paras 51, 53, and 55, and Exhibit R.
[31] *Ibid.* at paras 57, 58, and 59, and Exhibit S.
[32] *de Villa Transcript* at pg. 180, 1. 18 – pg. 181, 1.3.
[33] *Skelly Affidavit* at para 59.
[34] *Ibid.* at paras 60-62; Record of the Respondents, City of Toronto, Board of Health for the City of Toronto, and Eileen de Villa, Tab 1 Affidavit of Paul Di Salvo, sworn September 26, 2024, at Exhibit Q [*Di Salvo Affidavit*]..

This multi-level assault—lacking any proven public health justification—served not to address a genuine risk but to crush a single citizen's lawful expression of dissent, underscoring the arbitrary and unconstitutional nature of the measures.

50. Mr. Skelly was charged with two criminal offences: Mischief Under $5,000.00, contrary to s. 430(4) of the *Criminal Code*, and Obstruct a Peace Officer, contrary to s. 129(a) of the *Criminal Code*. Upon his arrest, Adam was detained for more than thirty hours before being released on bail with conditions.[35]

51. In addition to the criminal charges, Mr. Skelly was charged with several provincial offences. These included failing to comply with a continued s. 7.0.2 Order under the *ROA*, failing to obey an order made under the *HPPA*, and entering his premises when prohibited contrary to the *Trespass to Property Act*.[36]

52. On November 28, 2020, after the closure of the Etobicoke restaurant, the Province brought an urgent application seeking to restrain Mr. Skelly from operating his business in contravention of the indoor-dining restrictions. Mr. Skelly was short served with the application materials and although he had counsel present, the hearing proceeded on December 4, 2020, effectively *ex-parte*, without Mr. Skelly having an opportunity to file a responding respond.[37]

53. The Honourable Justice Kimmel granted the requested injunctive relief, enjoining Mr. Skelly and Adamson BBQ from contravening O. Reg. 82/20. Her Honour also fixed costs in the amount of $15,000.00, though payment was not ordered immediately. The Order expressly contemplated that Mr. Skelly could bring a "come-back motion" to vary or set aside the injunction.[38]

G. Litigation Chronology

54. The following is a summation of the lengthy history of this litigation:

[35] *Ibid.* at para 64.
[36] *Ibid.* at para 65.
[37] *Ibid.* at para 67.
[38] *Ibid.* at para 68.

a. **November 26, 2020:** Following the peaceful assembly, Mr. Skelly was arrested and was detained for more than 30 hours. He was charged with two criminal offences: Mischief Under $5,000.00 contrary to s. 430(4) of the *Criminal Code,* and Obstruct a Peace Officer, contrary to s. 129(a) of the *Criminal Code*. In additional to the criminal charges, Mr. Skelly was charged with several provincial offences, including failing to comply with a continued s. 7.0.2 Order under the *ROA*, failing to obey and order made under the *HPPA*, and entering premises when prohibited contrary to the *Trespass to Property Act*. On agreement with Criminal Crown Counsel, Mr. Simon King, sentencing for Mr. Skelly's criminal charges have been stayed pending the outcome of this Application.[39]

b. **November 28, 2020**: The Province issues an Urgent Application, seeking to further restrain Mr. Skelly from operating his restaurant. Mr. Skelly was short served with the application materials, which proceeded as though it were *ex-parte* following a hearing that was convened before the Honourable Justice Kimmel.

c. **December 4, 2020:** Justice Kimmel issues the Order sought by the Province, restraining Mr. Skelly from, *inter* alia, operating his restaurant. Given Mr. Skelly had no opportunity to respond to the Application, Justice Kimmel permitted Mr. Skelly with a right to bring a "come-back" motion at a later date to challenge the Province's positions. Her Honour's Reasons for Decision were released on December 10, 2020.[40]

d. **February 1, 2021:** Mr. Skelly's previous counsel files a Notice of Motion in the context of Ontario's earlier Notice of Application, seeking to set aside the *ex-parte* Order issued by Justice Kimmel, among other forms of relief. Over the months that followed, the parties would exchange fulsome materials, including affidavits from many of the witnesses in this proceeding and factums.

[39] Skelly Affidavit, at para 77 at Exhibit "AA"
[40] *Ontario v Adamson Barbecue Limited*, 2020 ONSC 7679

e. **March 10, 2021**: The City of Toronto issues a Statement of Claim against Mr. Skelly and his restaurant, seeking more than $187,000.00 in damages that the City is alleged to have incurred, mostly in staffing from the Toronto Police Service. Mr. Skelly defends the action.

f. **June 28, 2021**: The Honourable Justice Akbarali declines to hear Skelly's initial constitutional challenge brought by his previous counsel, dismissing it on a threshold issue for not having an originating process. Her Honour issues the Endorsement without prejudice to Mr. Skelly commencing his constitutional challenge with a fresh originating process at a later date.[41]

g. **July 13, 2021:** Mr. Skelly is ordered to pay $15,000.00 in costs for his previous counsel's failure to issue an originating process.[42]

h. **February 1, 2022:** Ontario seeks an additional $15,000.00 in costs for the December 2020 appearance before Justice Kimmel. Mr. Skelly's previous counsel fails to respond to inquiries from the Court on his position on this request. An additional $15,000.00 for costs is then ordered against Mr. Skelly.[43] Mr. Skelly has since paid both costs awards in full.

i. **June 30, 2022**: Mr. Skelly issues this constitutional challenge via a Notice of Application and Notice of Constitutional Question, seeking declarations of invalidity under the *Charter* and related remedies. The Notice of Application includes the City Respondents and seeks to address the issues between both levels of government in one proceeding.

j. **September 6, 2022:** The parties appear at Civil Practice Court (CPC) to schedule the hearing of the constitutional challenge. The Province opposes scheduling and

[41] *Ontario v Adamson Barbecue Limited and Skelly* 2021 ONSC 4660
[42] *Ontario v Adamson Barbecue Limited and Skelly*, 2021ONSC 4924
[43] *Ontario v Adamson Barbecue Limited and Skelly*, 2022 ONSC 726

indicates to the Court that it wishes to move for security for costs. The Court declines to schedule the hearing. Progress on the Application comes to a standstill.

k. **August 11, 2023:** Nearly one year after indicating it wanted to move for security for costs at CPC, the Province finally serves its motion record.

l. **September 8, 2023:** Ontario's security for costs motion is heard by Associate Justice McAfee with Her Honour reserving the decision.

m. **November 20, 2023:** Associate Justice McAfee releases her Reasons for Decision, ordering Mr. Skelly to post $30,000.00 in security for costs just to bring this challenge. Her Honour also orders Mr. Skelly to pay an additional $2,000.00 in costs to Ontario for the motion.

n. **July 8, 2024:** Mr. Skelly manages to pay the $30,000.00 in security for costs to the Accounting Clerk of the Ontario Superior Court of Justice and pays the $2,000.00 in costs to Ontario soon after.

o. **July 8, 2024 to August 1, 2025:** There are several appearances before CPC to determine a timetable, to answer an adjournment request made by the Applicant, and to determine the length of time that would be required for a hearing.

p. **August 1, 2025:** The parties attend a Case Conference before the Honourable Justice Chalmers wherein the hearing date of this Application is set for three days, being February 25, 26, and 27, 2026.

55. All records have now been exchanged between the parties, and they are ready to proceed to the hearing scheduled to commence on February 25, 2026.

III - ISSUES

56. The Applicant submits that the following issues are to be determined on this Application:

a. Did the Respondents violate Mr. Skelly's *Charter* rights, and if so, in which manner?

b. Have the Respondents justified the infringements through s. 1 of the *Charter*.

c. Did the Province exceed its constitutional authority or otherwise breach the *Constitution Act* in ways not founded in the *Charter*?

A. Issue 1: Did the Respondents violate Mr. Skelly's *Charter* rights and, if so, in which manner?

(i) Overview

57. The Applicant advances multiple and overlapping *Charter* breaches arising from the Respondents' legislative and enforcement actions, including violations of sections 2(b), 2(c), 7, 8, 9, 12, and 15 of the *Canadian Charter of Rights and Freedoms*. Perhaps the most obvious infringement concerns section 7. and the City's issuance of an unprecedented Notice under the *Trespass to Property Act*—an act undertaken by a public health official who lacked statutory authority to do so. During cross, Dr. de Villa did not assert and could not substantiate any lawful authority for this Notice.

58. In addition, the criminalization of a peaceful assembly, the forced closure and seizure of a restaurant, and the detention of its owner under the auspice of the *ROA* presumptively engage and violate sections 2, 8, and 9 of the *Charter*.

59. This Court need not linger on whether *Charter* rights were infringed. That much is apparent on the evidentiary record. The crux of this issue is whether the Respondents have discharged their burden under section 1 of the *Charter* to justify those infringements as reasonable limits demonstrably justified in a free and democratic society. As will be shown, they have not.

(ii) Summary of Charter Infringements

60. To assist the Court, and to avoid unnecessary repetition of settled constitutional principles, the Applicant summarizes the *Charter* breaches below in tabular form. The table is intended as a navigational aid linking the impugned state actions to the corresponding *Charter* rights engaged, the factual basis for each breach, and the Respondents' inability to justify those infringements under section 1. This approach reflects the reality of the case: the constitutional gravity lies not in establishing breach, but in the Respondents' failure to lawfully justify those breaches on the evidentiary record now before the Court.

Table - Summary of *Charter* Infringements

***Charter* Right**	**Impugned State Action**	**Basis for Infringement (Record-Based)**	**Why Not Saved by s. 1**
s. 2(b) - Freedom of Expression[44]	Closure of restaurant; arrest and prosecution; police suppression of protest.	Operating the restaurant was expressive political protest opposing government policy; enforcement targeted the *manner, location, and content* of dissent.	No evidence linking protest to transmission; no individual risk assessment; enforcement was punitive and selective, not proportionate.
s. 2(c) - Freedom of Peaceful Assembly[45]	Mass police deployment; forced dispersal; physical exclusion from premises.	Peaceful assembly integral to expressive message; police presence and threats eliminated meaningful choice to assemble.	Less intrusive alternatives ignored; suppression of protest cannot be justified absent evidence of necessity.
s. 7 - Life, Liberty, and Security of the Person[46]	Arrest, detention, bail conditions, prosecution; loss of livelihood.	Liberty and security interests engaged through coercive enforcement, detention, and state-imposed jeopardy.	Enforcement was arbitrary, overbroad, and grossly disproportionate; Applicant used as an example.
s. 8 - Unreasonable	Entry, seizure, and dispossession of business premises via	Effective seizure of property through public health and trespass	No transparent evidentiary foundation; executive

[44] *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 SCR 927 at p. 968, *Montreal (City) v. 2952-1366 Quebec Inc.*, 2005 SCC 62 at paras. 56-57, 61.
[45] *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1 at paras. 63-65.
[46] *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44 at paras. 49-57; *R v. Morgentaler*, [1988] 1 SCR 30; *Canada (Attorney General) v. Bedford*, 2013 SCC 72, at paras. 57-60.

Search and Seizure[47]	the *ROA* and unlawful Trespass Notice.	mechanisms without procedural safeguards.	overreach masquerading as regulation.
s. 9 - Arbitrary Detention[48]	Physical arrest; exclusion from property; psychological compulsion via police presence.	Detention was both physical and psychological; Applicant had no reasonable alternative but compliance.	Detention disconnected from demonstrably public safety need; enforcement driven by deterrence, not necessity.
s. 12 - Cruel and Unusual Treatment or Punishment[49]	Forced closure, exclusion from property, extraordinary fines, arrest, prosecution.	Cumulative effect was grossly disproportionate to any proven harm; punitive in intent and effect.	Regulatory label cannot sanitize punishment that is degrading and ruinous in its totality.
s. 15 - Equality Before the Law[50]	Selective enforcement against Applicant.	Comparable protests and gatherings tolerated; Applicant singled out based on viewpoint and expression.	Differential treatment unsupported by evidence; enforcement not neutral or even-handed.

61. Viewed cumulatively, these infringements reflect a profound departure from constitutional norms. While the Respondents may seek to rely on an emergency context, such context does not immunize conduct that repeatedly and deliberately violated the Applicant's *Charter* rights. Whether those violations can be justified under section 1 is addressed next. Before turning to that analysis, however, particular focus should be given to the Dr. de Villa's unlawful Notice of Trespass (the "Notice"), which served as the first and primary enforcement mechanism through which the assembly was quashed and the restaurant was seized.

(iii) The Notice of Trespass Was Unlawful

62. The issuance of the Notice under the *Trespass to Property Act* against Mr. Skelly on November 26, 2020, was unlawful. It was not authorized by the *HPPA,* was unsupported by any

[47] *Hunter et al. v. Southam Inc.*, [1984] 2 SCR 145 at pp. 158-160; *R v. Buhay*, 2003 SCC 30 at paras. 20-23.
[48] *R v. Grant*, 2009 SCC 32 at paras. 30-44; *R v. Le*, 2019 SCC 34 at paras. 50-56.
[49] *R v.* Smith, [1987] 1 SCR 1045 at p. 1072; *R v. Nur*, 2015 SCC 15 at paras. 39-4; *Little Sisters Book and Art Emporium v. Canada*, 2000 SCC 69 at paras. 134-135.
[50] *R v. Sharma*, 2022 SCC 39 at paras. 28-31, 44-46.

valid statutory power, and unlawfully deprived Mr. Skelly of access to his own lawfully leased premises. The Notice was therefore *ultra vires*, invalid, and of no force or effect.

63. This unlawful act flowed directly from the Section 22 Order and Section 24 Directions issued by Dr. de Villa and independently violated Mr. Skelly's rights under sections 7, 8, and 9 of the *Charter*.

The *HPPA* Does Not Authorize a Medical Officer of Health to Issue a Notice of Trespass

64. The *HPPA* is a statute of limited and specific powers. While it authorizes a Medical Officer of Health to issue orders under section 22 and directions under section 24 in narrowly defined circumstances, it does not confer an MOH with occupier status, nor the authority to dispossess the lawful occupier of property or to invoke the *Trespass to Property Act*.[51] A statutory decision-maker may act only within the four corners of their enabling statute, absent express or necessarily implied authority. Dr. de Villa had no jurisdiction to exclude an occupier from his own premises.

65. On cross-examination, Dr. de Villa accepted that:[52]

a. the *HPPA* does not itself grant authority to issue a Notice of Trespass;

b. no legal analysis was undertaken to determine whether Mr. Skelly remained an "occupier" within the meaning of the *Trespass to Property Act*; and

c. the enforcement was carried out through other municipal actors rather than pursuant to an express statutory power vested in her office.

66. These admissions are dispositive. An administrative action taken without statutory authority is unlawful at its source and cannot be validated by downstream enforcement.[53]

[51] *R v. Sharma*, [1993] 1 SCR 650 at pp. 651-652; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 at paras. 26-28.
[52] *de Villa Transcript* at pg. 178, l. 3 - pg. 181, l. 10 and pg. 166, l. 3 - pg. 167, l. 2.
[53] *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 28; *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4 at paras. 51-52.

Mr. Skelly Remained an "Occupier" at All Material Times

67. Even if the *HPPA* orders had been valid (which is denied), they did not extinguish Mr. Skelly's legal status as an occupier of the premises. He held a valid lease, maintained possession and control of the premises throughout the protest, stored personal and business property inside, and had never surrendered occupancy nor been lawfully dispossessed by court order.

68. No legal determination regarding occupier status was made prior to issuing the Notice.[54] The assumption that a public health order could unilaterally convert a lawful occupier into a trespasser finds no support in law.

Derivative Invalidity and *Charter* Consequences

69. The Notice of Trespass did not arise independently. It was the direct enforcement mechanism for the underlying *HPPA* orders,[55] which themselves were issued without site-specific investigation, without evidence of outbreak or transmission, and without engagement with less intrusive alternatives.[56]

70. The practical consequences were severe: Mr. Skelly was physically barred from his premises, surrounded by police, prevented from retrieving property, and ultimately arrested for attempting to re-enter. This conduct constituted an unreasonable seizure under section 8, arbitrary detention under section 9, and a deprivation of liberty and security of the person not in accordance with the principles of fundamental justice under section 7.

71. The unlawful Notice of Trespass was not an incidental defect. It was the first and primary mechanism through which the Respondents seized the premises, escalated enforcement, and triggered the cascade of *Charter* violations that followed at the municipal and provincial level.

72. Against this backdrop of clear and cumulative infringement, the constitutional inquiry turns to justification.

[54] *de Villa Transcript* at pg. 178, l. 3 - pg. 181, l. 10.
[55] *Ibid.* at pg. 161, l. 16 - pg. 162, l. 19 and pg. 164, l. 23 to pg. 167, l. 6.
[56] *Ibid.* at pg. 150, l. 16 - pg. 151, l. 2 and pg. 152, l. 11 - pg. 160, l. 16.

B. Issue 2: Have the Respondents justified the *Charter* infringements under section 1?

(i) Overview

73. Section 1 of the *Charter* serves as a constitutional safeguard that requires the state to justify each infringement with cogent, reliable, and proportional evidence. Even in times of emergency, *Charter* rights are not suspended, and deference does not relieve the government of its evidentiary burden. Where the state invokes extraordinary powers that intrude on liberty, expression, property, and bodily autonomy, the justification must be correspondingly strong.

74. The Respondents must therefore establish that the impugned measures:[57]

a. Pursued a pressing and substantial objective;
b. Were rationally connected to that objective;
c. Impaired Charter rights as little as reasonably possible; and
d. Were proportionate in their effects.

75. Failure at any stage is fatal.

COVID-Era Deference to the Government Should Not Prevail in this Case

76. The Respondents will likely rely on prior COVID-19 jurisprudence in which courts upheld public health measures under s. 1. But those cases are distinguishable in a critical respect: none were decided on a record like the one now before this Court.

77. This Application proceeds on an evidentiary foundation that materially exceeds what was available in earlier COVID-19 cases. Here. the Court has the benefit of:

a. Six renowned expert witnesses retained by the Applicant, each addressing different aspects of public health, epidemiology, risk assessment, proportionality, and alternative measures; and

[57] *R v. Oakes*, [1986] 1 SCR 103; *R v. Big M Drug Mart Ltd.*, [1985] 1 SCR 295; *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37 at paras. 53-55.

b. The sworn testimony and cross-examination of Dr. de Villa herself, the very decision-maker whose recommendations and enforcement actions are said to justify the most severe intrusions at issue.

78. The Respondents have not produced empirical data demonstrating the necessity of restaurant closures or the need to forbid peaceful assembly. They have not shown that less intrusive alternatives were considered and rejected. They have not rebutted the Applicant's expert evidence. They have not explained the unprecedented use of coercive tools, including trespass enforcement, seizure, and detention, against a peaceful protester and small business owner.

79. All the remains available in support of the Respondents action is generalized data, anecdote, and conjecture; precisely what s. 1 does not permit as a substitute for justifying *Charter* infringements.

The Respondents Fail at Every Stage of the Section 1 Analysis

80. On the record before the Court:

a. The enforcement against Mr. Skelly was not minimally impairing;
b. The measures were grossly disproportionate in their effects;
c. The Respondents cannot demonstrate a rational connection between the impugned actions and the objectives asserted; and
d. The cumulative impact of the measures undermined, rather than preserved, the values of a free and democratic society.

81. The strength of the Applicant's evidentiary record, coupled with the Respondents' evidentiary void, makes this conclusion unavoidable. Section 1 cannot rescue what was never constitutionally justified.

(ii) The Expert Evidence

The Applicant's Expert Evidence

82. The Applicant has adduced a broad, multidisciplinary body of expert evidence addressing virology, epidemiology, clinical medicine, pharmacology, economics, statistics, and health-system capacity.

83. The Applicant's expert evidence advances four interrelated propositions:

a. COVID-19 risk was highly stratified and declining by November 2020;
b. Restaurant closures were not evidence-based;
c. Public health decision-making ignored costs and alternatives; and
d. The measures were disproportionate to the risk

84. Multiple experts in support of Mr. Skelly (Drs. Bridle, Berdine, Briggs, Allen) conclude that by late 2020, the risk of severe illness and death from SARS-CoV-2 was overwhelmingly concentrated in narrow, well-defined populations, particularly the elderly and residents of long-term-care facilities. Infection fatality rates, once adjusted for widespread undetected infection, were materially lower than initially assumed, and disease dynamics followed a familiar pattern of declining population-level harm over time.[58]

85. Importantly, the Applicant's experts distinguish infection with SARS-CoV-2 from clinical COVID-19 disease, identifying widespread misinterpretation of PCR-based "case" counts as proxies for public health harm.[59]

[58] Application Record of the Applicant, William Adamson Skelly, at Tab 7 Affidavit of Dr. Byram Bridle, sworn September 11, 2024; Application Record of the Applicant, William Adamson Skelly, at Tab 9 Affidavit of Dr. Gilbert Berdine, sworn October 17, 2024; Application Record of the Applicant, William Adamson Skelly, at Tab 4 Affidavit of Dr. William Briggs, sworn August 22, 2024; Application Record of the Applicant, William Adamson Skelly, at Tab 6 Affidavit of Dr. Douglas Allen, Sworn August 22, 2024.
[59] *Ibid*.

86. Across disciplines, the Applicant's experts conclude that there is no reliable empirical evidence demonstrating that restaurant closures materially reduced mortality or prevented health-system collapse. Transmission data consistently shows that:[60]

a. the vast majority of transmission occurred in households and institutional settings;
b. restaurants accounted for a negligible proportion of severe outcomes; and
c. closing restaurants likely displaced social interaction into less regulated private settings.

87. Drs. Allen and Briggs further demonstrate that mandated closures had, at best, marginal effects on transmission relative to voluntary behavioural changes, while imposing substantial economic and social costs.[61]

88. The Applicant's evidence establishes that Ontario's COVID-19 response did not involve any formal cost-benefit analysis, nor a serious evaluation of less intrusive alternatives. Dr. Allen identifies a systematic failure to weigh the downstream harms of lockdowns, while Drs. Risch, Bridle, Gortler, and Berdine identify available outpatient treatments, prophylactic strategies, and focused protection models that were not meaningfully considered.[62]

89. This evidence does not assert that governments must achieve perfect outcomes, but rather that reasonableness requires engagement with available data and alternatives, particularly where fundamental freedoms are curtailed.

90. Taken together, the Applicant's expert evidence supports the conclusion that blanket restrictions on restaurant operations were disproportionate, particularly as applied to low-risk

[60] *Ibid*; Application Record of the Applicant, William Adamson Skelly, at Tab 5 Affidavit of Dr. Harvey Risch, sworn August 22, 2024; Application Record of the Applicant, William Adamson Skelly, at Tab 8 Affidavit of Dr. Mark Trozzi, sworn September 19, 2024; Responding Record of the Applicant, William Adamson Skelly, at Tab 2 Affidavit of Dr. David Gortler, sworn March 4, 2025.
[61] Application Record of the Applicant, William Adamson Skelly, at Tab 6 Affidavit of Dr. Douglas Allen, sworn August 22, 2024; Application Record of the Applicant, William Adamson Skelly, at Tab 4 Affidavit of Dr. William Briggs, sworn August 22, 2024.
[62] *Supra* note 60.

populations and lawful occupiers. The expert evidence demonstrates that the measures imposed real and severe harms while yielding, at best, speculative benefits.

The Province's Expert Evidence: Dr. Matthew Hodge

91. Ontario, on the other hand, has relied on a single public health expert, Dr. Matthew Hodge, in support of its disastrous actions. Dr. Hodge is a government employee on the Province's payroll who, by his own admission, has made a handsome sum of money spending the last 5 years pontificating as an apparent expert on the justification behind Ontario's abuses in multiple forums.[63]

92. Despite the obvious impacts these lockdowns had on the public at large (business closures, bankruptcies, addictions, and suicides), Dr. Hodge refused to make even modest concessions about the validity of Ontario's response to COVID-19. And why would he? His pocketbook has benefitted greatly from these actions; to the tune of more than $500,000.00[64] since COVID-19 began. Dr. Hodge confirms that he continues to hold the opinions expressed in a May 14, 2021, affidavit and that no material aspect of his analysis has changed.[65]

93. Putting aside his issues of bias and credibility, Dr. Hodge does not meaningfully engage with, rebut, or displace any of the Applicant's expert evidence. Instead, he parrots a policy rationale for non-pharmaceutical interventions ("NPIs") while leaving the Applicant's central evidentiary propositions unanswered.

94. Dr. Hodge's evidence rests on three propositions:[66]

a. COVID-19 posed a serious public health threat to *all* members of the public in late 2020 (regardless of age or pre-existing health conditions);
b. Eating food in a restaurant involved elevated transmission risk; and

[63] Cross-examination of Dr. Matthew Hodge, Q6, pg. 5
[64] *Ibid.*
[65] Record of the Respondent, His Majesty the King in Right of Ontario, at Tab 1, Affidavit of Matthew Hodge, affirmed November 19, 2024, at para. 10.
[66] Record of the Respondent, His Majesty the King in Right of Ontario, at Tab 1, Affidavit of Matthew Hodge, affirmed November 19, 2024.

c. the primary purpose of restaurant closures was not to stop the spread amongst the public, but to protect hospital patients and healthcare workers, forming part of a broader "bundle" of NPIs.

95. Dr. Hodge alleges that public health decision-making as of November 2020 (more than eight months since the inception of COVID-19) occurred under conditions of uncertainty and that measures were implemented out of an abundance of caution, rather than on the basis of direct causal proof.[67]

Dr. Hodge's Evidence Does Not Rebut the Applicant's Expert Evidence

96. While Dr. Hodge disagrees with the Applicant's conclusions, he does not rebut the Applicant's expert evidence in any meaningful evidentiary sense.

97. First, Dr. Hodge does not engage with the Applicant's core empirical claims regarding infection fatality rates, risk stratification, declining population-level harm, or misinterpretation of PCR-based case data. These issues are central to proportionality yet remain unaddressed.

98. Second, Dr. Hodge provides no causal analysis linking restaurant closures to reduced mortality or reduced hospital strain. His reliance on outbreak counts and theoretical transmission risk does not answer the Applicant's evidence that restaurant-associated transmission accounted for a negligible share of severe outcomes.

99. Third, Dr. Hodge does not conduct or reference any cost-benefit analysis, nor does he grapple with the economic, social, and constitutional costs identified by the Applicant's experts. His affidavit treats restrictions as inherently justified once a threshold of "burden" is asserted, without examining whether less impairing alternatives were reasonably available.[68]

100. Fourth, Dr. Hodge does not respond substantively to the Applicant's evidence concerning alternatives, including focused protection of vulnerable populations and early outpatient treatment.

[67] Record of the Respondent, His Majesty the King in Right of Ontario, at Tab 1, Affidavit of Matthew Hodge, affirmed November 19, 2024, at paras. 12-14.
[68] Record of the Respondent, His Majesty the King in Right of Ontario, at Tab 1, Affidavit of Matthew Hodge, affirmed November 19, 2024, at para. 17.

Instead, he asserts the absence of randomized controlled trials as dispositive, without addressing the evidentiary standard applicable to emergency public health decision-making or the widespread off-label use of established medications.[69]

101. Finally, Dr. Hodge's opinion is generic rather than particularized. It speaks to population-level risk in the abstract and does not justify the specific enforcement actions taken against the Applicant, nor the necessity of excluding a lawful occupier from his own premises.

Conclusion on Expert Evidence

102. The Applicant has placed before the Court a substantial, multidisciplinary, and internally coherent expert record. The Respondents have not met that record with competing analysis, but with a single well paid expert reaffirming a precautionary policy framework developed at an earlier stage of COVID-19.

103. The Court is not asked to choose between experts based on credentials alone. It is asked to assess whether the Respondents have discharged their burden of justification. On the expert evidence, they have not.

(iii) Dr. de Villa's Evidence Does Not Cure the Respondents' Evidentiary Deficiencies

104. Setting aside the shortcomings of the Respondents' expert record, the Respondents' case under s. 1 fails for another reason: the principal decision-maker whose recommendations and enforcement actions triggered the most severe infringements in the City of Toronto could not, and did not, supply the evidentiary foundation that constitutional justification requires. All that Dr. de Villa could muster, after first refusing to provide it, was generalized data about summer transmission rates in "bars, nightclubs, *and* restaurants". The City has failed to distinguish exactly how many of these transmissions occurred in restaurants, rather than the tightly packed quarters of Toronto's bars and nightclubs.

[69] Record of the Respondent, His Majesty the King in Right of Ontario, at Tab 1, Affidavit of Matthew Hodge, affirmed November 19, 2024, at paras. 21-22.

105. Dr. de Villa was the Chief Medical Officer of Health for the City of Toronto during the relevant period. She authored her October 2, 2020, letter urging the Province's Chief Medical Officer to shut down City down (despite the Province asking for "hard evidence" to justify it), she issued the s. 22 and s. 24 instruments relied upon by the Respondents to end the protest, and personally issued the unprecedented Notice under the *Trespass to Property Act* against Mr. Skelly and seized his restaurant.

106. If the Respondents' actions were proportionate, minimally impairing, and grounded in evidence, that evidence ought to have resided with, or at least passed through, her office. It seems it did not.

Absence of Evidence Supporting Necessity and Proportionality

107. The cross-examination of Dr. de Villa was revealing, not because of what she admitted, but because of what she could not answer. The transcript shows that Dr. de Villa was unable or unwilling to answer or provide:

a. Any evidence used to support her s. 22 Class Order as it related to indoor dining;
b. Any documents demonstrating that less restrictive, non-pharmaceutical alternatives were considered prior to recommending complete closure of indoor dining;
c. Any data, modeling, or analysis sent to the Province or to the Chief Medical Officer of Health in support of her October 2, 2020 recommendations; and
d. Any internal deliberative records, meeting minutes, or correspondence reflecting how the balance between public health objectives and constitutional impacts was assessed.

108. These gaps go directly to the core requirements of s. 1. A limitation on *Charter* rights cannot be justified by assertion alone. Where the state invokes emergency powers to suppress expressive activity, close businesses, seize premises, and detain individuals, the evidentiary burden rests squarely on the Respondents to show why less intrusive means were unavailable. Dr. de Villa's evidence does not do so.

No Evidence of Charter Awareness or Constitutional Deliberation

109. Equally striking is what Dr. de Villa refused to answer or produce concerning duties under the *Charter*. She declined to answer whether:

a. She was advised of the *Charter* implications of her recommendations at the time they were made;
b. She received any legal advice addressing constitutional consequences;
c. *Charter* or constitutional considerations were discussed in meetings with the Province; and
d. The unprecedented nature of the recommendations — or their impact on peaceful protest and expressive activity — was analyzed from a legal perspective.

110. This absence matters. Section 1 justification is not an after-the-fact rationalization.[70] It requires contemporaneous justification grounded in evidence and constitutional awareness. The Respondents cannot rely on deference to public health expertise where the record shows no engagement with constitutional limits at all.

Selective Silence on Comparators and Alternatives

111. Dr. de Villa further refused to address:

a. How Toronto Public Health assessed or handled other contemporaneous protests, including large-scale public demonstrations, in the summer of 2020 which had no interventions from Toronto Public Health (for e.g. the *Black Lives Matter* protests months before Mr. Skelly's protest)
b. Whether public health risks associated with those events were evaluated differently;
c. Whether stakeholders specific to the restaurant industry were consulted on the restrictions; and
d. Whether the political or unprecedented nature of the recommendations was understood or debated.

[70] *Hillier v. Ontario*, 2025 ONCA 259 at para. 7.

112. These refusals undermine any claim that the measures imposed on Mr. Skelly were part of a neutral, evidence-driven framework applied consistently across comparable activities. Section 1 does not tolerate unexplained selectivity.

The Trespass Notice: Authority Without Explanation

113. Finally, as previously discussed, Dr. de Villa took under advisement, and refused to answer directly, the most basic questions concerning her legal authority to issue a Notice under the *Trespass to Property Act*. She could not explain:

a. Why she believed she had authority to issue such a notice;
b. Whether that authority was ever discussed with counsel;
c. Whether she had ever used such authority before or since; and
d. Why no s. 22 Class Order was issued instead.

114. This silence is disastrous to the Respondents' position. An unlawful or unauthorized enforcement action cannot be justified under s. 1 by appealing to downstream public health objectives. Where the legal authority itself is absent or uncertain, justification fails at the threshold.

115. Taken together, Dr. de Villa's cross-examination confirms what the expert record already demonstrates: there is no evidentiary bridge between the Respondents' objectives and the extreme measures imposed on the Applicant. The Court is left with:

a. Extensive expert evidence tendered by the Applicant challenging the necessity, proportionality, and effectiveness of the measures;
b. A Respondents' expert who relies on generalized precautionary assertions rather than engagement with the Applicant's evidence; and
c. A principal decision-maker who could not produce, explain, or defend the factual or legal basis for the most coercive actions at issue.

116. This evidentiary void cannot sustain a s. 1 justification.

(iv) Conclusion on the Section 1 Analysis

117. Section 1 demands justification, not assumption. It requires evidence, not deference.[71] On the full record now before this Court, the Respondents have failed to discharge their burden of demonstrating that the *Charter* infringements established under Issue 1 constitute reasonable limits demonstrably justified in a free and democratic society.

118. The Applicant has adduced a substantial, multidisciplinary, and internally coherent evidentiary record addressing necessity, proportionality, and available alternatives. That evidence was tested, particularized, and directed to the specific measures and enforcement actions taken against Mr. Skelly. In contrast, the Respondents' case rests on generalized precautionary assertions, retrospective rationalizations, and the unexamined premise that emergency conditions alone suffice to justify extraordinary state action. This is unacceptable.

119. At no stage of the section 1 analysis have the Respondents met their burden. They have not demonstrated a rational connection between the impugned enforcement actions and the objectives asserted. They have not established that the measures were minimally impairing. They have not shown that the profound and cumulative effects of those measures were proportionate to any demonstrated public health benefit. Each failure is independently fatal.

120. The Respondents' evidentiary deficiencies are not peripheral but instead go to the core of constitutional justification. Most strikingly, the Respondents' own principal decision-maker was unable or unwilling to produce the contemporaneous evidence said to ground the most coercive actions taken in this case, including the unprecedented use of trespass enforcement, seizure of the premises, and detention of a lawful occupier. Where the state invokes its most intrusive powers, section 1 requires more than belief and hindsight. It requires proof. None was provided.

121. This is not a case in which the Court is asked to second-guess difficult policy choices made in conditions of uncertainty. The Respondents had eight months to understand the risk profile of COVID-19 by the time of Mr. Skelly's protest. With the benefit of a complete evidentiary record,

[71] *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 SCR 199 at paras. 128-135.

including expert testimony and the cross-examination of a key decision-maker herself, it is apparent the Respondents can not justify what was done.

122. The conclusion is unavoidable. The infringements established under Issue 1 cannot be saved under section 1 of the *Charter*. The Respondents' actions were not constitutionally justified. They were disproportionate, insufficiently grounded in evidence, and inconsistent with the requirements of a free and democratic society governed by the rule of law.

C. Issue 3: Did the Province exceed its constitutional authority or otherwise breach the *Constitution Act* in ways not founded in the *Charter*?

(i) The Applicant's Public Interest Standing

123. In this Application, Mr. Skelly seeks public interest standing to permit this Court's consideration of the broader impacts of the impugned measures under the *ROA*, not just those impacts that personally impacted him.

124. Public interest standing is a flexible doctrine that allows courts to hear constitutional challenges from parties who may lack full private standing when it serves the proper administration of justice. The governing test, established by the Supreme Court of Canada[72], requires consideration of three factors applied purposively and flexibly: (1) whether the case raises a serious justiciable issue; (2) whether the applicant has a genuine interest in the litigation; and (3) whether the proceeding is a reasonable and effective means of bringing the issue before the court.

125. This application satisfies and exceeds each branch of the test. It raises serious, non-frivolous constitutional questions concerning the validity of the *ROA*; breaches of unwritten constitutional principles and s. 36(1) of the *Constitution Act, 1982*; and violations of *Charter* ss. 2(b), 2(c), 7, 8, 9, 12, and 15(1) through the cumulative enforcement response to Mr. Skelly's peaceful assembly.

[72] *Attorney General v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45

126. These issues engage the limits of emergency powers, the role of protest, and the balance between public health authority and fundamental freedoms, which is precisely the type of questions warranting adjudication in the public interest.

127. Mr. Skelly has a genuine and continuing interest. He is directly affected by the measures and remains subject to ongoing criminal and provincial proceedings, faces civil liability, and has endured substantial financial and personal consequences from the Province's actions. His pursuit of this challenge has been sustained over years, funded largely by public crowdfunding and charitable donations, and maintained despite significant personal hardship and procedural obstacles, as detailed in the lengthy history of this litigation. There is perhaps no better-positioned alternative litigant in existence. Many affected parties complied with these measures under protest, lacked resources to properly bring their grievances before this Court, or faced findings of mootness once measures expired. This proceeding consolidates *Charter*, division-of-powers, and enforcement challenges in a single, concrete factual matrix, avoiding piecemeal litigation. Denying standing would insulate broad emergency powers from meaningful review, inconsistent with the rule of law.

128. Procedural fairness further supports standing. Earlier proceedings deprived Mr. Skelly of the opportunity to be heard on matters affecting his standing and costs, as set out in his supplementary affidavit. Granting standing now ensures serious constitutional claims are decided, in full, on their merits.

129. Mr. Skelly relies on personal standing for *Charter* claims tied to enforcement actions against him and seeks public interest standing for systemic challenges to the *ROA*, its regulations, and related non-Charter breaches.

130. In this exceptional case, public interest standing should be granted to promote access to justice, accountability, and the rule of law.

(ii) A Violation of the Division of Powers (s. 91 and 92)

131. With the public interest in mind, the Applicant submits that the *ROA* and the *EMCPA* are *ultra vires* Ontario's legislative authority. Their pith and substance is not provincial public health, but national emergency management, national security, quarantine, and criminal law—matters falling within exclusive federal jurisdiction under ss. 91(11) (quarantine and marine hospitals), 91(27) (criminal law), and the residual peace, order, and good government (POGG) power.

132. In reconciling the division of powers, the first step is to characterize the legislation's true nature and character by examining its purpose and legal effects.[73] In other words, its pith and substance. Purpose is determined from intrinsic evidence (text, preambles) and extrinsic evidence (legislative debates), while effects include both legal consequences and practical outcomes. The *EMCPA* and *ROA* originate from the Ministry of the Solicitor General, which oversees policing, corrections, safety, and security—not healthcare. This structural alignment, coupled with the legislation's focus on mass compliance, enforcement, and quarantine-like restrictions (lockdowns, stay-at-home orders, gathering limits), reveals a core purpose of national emergency response and public order rather than localized health regulation.

133. The legal effects reinforce this: the *ROA* created new offences with penal sanctions (including imprisonment) for non-compliance, presuming liability for owners present at prohibited gatherings. Such criminalization is paradigmatically federal under s. 91(27). The practical effects, including widespread suspension of fundamental rights through repeated emergency orders (some revised nearly 40 times, and O. Reg. 82/20 over 70), amount to quarantine and national containment measures, encroaching on s. 91(11) and (27) and the POGG national concern doctrine.

134. The Applicants' unrebutted expert evidence further questions the scientific foundation of the modelling that drove these revisions, underscoring that the measures were not rooted in provincial health but in broad emergency control.

[73] *Canada Post Corp. v. Hamilton (City),* 2016 ONCA 767 at paras 31-45.

135. Ontario cannot suspend *Charter*-protected rights under the guise of public health when the true character of the legislation invades federal domains. The *ROA* and *EMCPA* are therefore *ultra vires* and ought to be declared of no force or effect under s. 52(1) of the *Constitution Act*, 1982.

IV – RELIEF REQUESTED

(i) Charter Damages

136. In his Notice of Application, Mr. Skelly seeks *Charter* damages under s. 24(1); however, the evolution of this Application and the limited time with which the Court would have to consider this issue in argument makes its assessment impractical and perhaps premature at this stage. That said, Mr. Skelly in no way waives his right to *Charter* damages. In the event this Court finds that Mr. Skelly's *Charter* rights were infringed in a manner not justified under section 1, he respectfully requests that such a finding be made without prejudice to his rights to request those damages in a subsequent proceeding.

(ii) Remedies Sought

137. The Applicant respectfully requests that this Honourable Court grant the following relief:

a. A Declaration that the impugned provisions of the *ROA* and the enforcement actions of one or more of the Respondents unjustifiably infringed and violated the Applicant's rights under sections 2(b), 2(c), 7, 8, 9, 12, and 15(1) of the *Canadian Charter of Rights and Freedoms*;

b. A Declaration that the infringements and limits of the Applicant's Charter rights were not reasonable limits prescribed by law and cannot be demonstrably justified in a free and democratic society within the meaning of section 1 of the *Charter*;

c. A Declaration, pursuant to subsection 52(1) of the *Constitution Act*, 1982, that Ontario Regulation 82/20 made under the *ROA* is unconstitutional and of no force or effect;

d. Alternatively, a Declaration pursuant to subsection 24(1) of the Charter that Ontario Regulation 82/20 and the actions taken pursuant to it unjustifiably infringed the Applicant's Charter rights, together with such further relief as this Honourable Court considers appropriate and just in the circumstances.

e. A Declaration that sections 2, 4(1), 7, 9.1 and 10 of the *ROA* and Ontario Regulation 82/20 enacted thereunder, are *ultra vires* the legislative authority of the Province of Ontario under the division of powers, and therefore of no force or effect.

f. A Declaration that the impugned legislative and regulatory scheme breaches subsection 36(1) of the *Constitution Act, 1982.*

g. A Declaration that, at all material times, the Applicant remained an "occupier" of the premises municipally known as 7 Queen Elizabeth Boulevard, Toronto, Ontario, within the meaning of the Trespass to Property Act.

h. A Declaration that Dr. de Villa, who was never an occupier of the premises, exercised public power without lawful authority by issuing a notice under the *Trespass to Property Act*, an *ultra vires* act that foreseeably resulted in the Applicant's exclusion from his restaurant, his arrest, and criminal prosecution.

i. Alternative to (h), a Declaration, pursuant to subsection 52(1) of the Constitution Act, 1982, that the Trespass Notice and *HPPA* orders issued by Dr. Eileen de Villa exceeded her authority, was unconstitutional, violated the Applicant's *Charter* protected rights, and are of no force or effect;

j. Alternatively to (h) or (i), a Declaration pursuant to subsection 24(1) of the Charter that the issuance and enforcement of the Trespass Notice and the *HPPA* Orders unjustifiably infringed the Applicant's Charter rights and are set aside;

k. An Order granting the Applicant public interest standing to advance some or all of the constitutional claims raised in this Application, including claims founded in the *Canadian Charter of Rights and Freedoms* and the *Constitution Act,* 1867 and 1982;

l. The costs of this Application, on a basis to be determined by this Honourable Court, together with applicable taxes; and,

m. Such further and other relief as this Honourable Court deems just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of January 2026.

Ian J. Perry
Lawyer for the Applicant

SCHEDULE "A"

1. *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37.
2. *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4.
3. *Attorney General v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45
4. *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42.
5. *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44.
6. *Canada (Attorney General) v. Bedford*, 2013 SCC 72.
7. *Canada (Attorney General) v. Canadian Civil Liberties Association*, 2026 FCA 6
8. *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45.
9. *Canada Post Corp. v. Hamilton (City),* 2016 ONCA 767
10. *Canadian Western Bank v. Alberta,* 2007 SCC 22
11. *Dunsmuir v. New Brunswick*, 2008 SCC 9.
12. *Hillier v. Ontario*, 2025 ONCA 259.
13. *Hunter et al. v. Southam Inc.*, 1984 CanLII 33 (SCC) .
14. *Irwin Toy Ltd. v. Quebec (Attorney General)*, 1989 CanLII 87 (SCC).
15. *Little Sisters Book and Art Emporium v. Canada*, 2000 SCC 69.
16. *Montreal (City) v. 2952-1366 Quebec Inc.*, 2005 SCC 62.
17. *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1.
18. *Ontario v. Adamson Barbecue Limited and Skelly*, 2022 ONSC 726.
19. *R v. Big M Drug Mart Ltd.*, 1985 CanLII 69 (SCC).
20. *R v. Buhay*, 2003 SCC 30.
21. *R v. Grant*, 2009 SCC 32.

22. *R v. Le*, 2019 SCC 34.

23. *R v. Morgentaler*, 1988 CanLII 90 (SCC).

24. *R v. Nur*, 2015 SCC 15.

25. *R v. Oakes*, 1986 CanLII 46 (SCC).

26. *R v. Sharma*, 2022 SCC 39.

27. *R v.* Smith, 1987 CanLII 64 (SCC).

28. *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1995 CanLII 64 (SCC).

SCHEDULE "B"

1. City of Toronto, by-law No 606-2009, TORONTO MUNICIPAL CODE CHAPTER 59, EMERGENCY MANAGEMENT (May 27, 2009).

2. *The Constitution Act*, 1867, 30 & 31 Vict, c 3.

3. *The Constitution Act*, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.

FUNDAMENTAL FREEDOMS
Fundamental Freedoms

2 Everyone has the following fundamental freedoms:

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

(c) freedom of peaceful assembly; and

LEGAL RIGHTS
Life, liberty and security of person

7 Everyone 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.

Search or seizure

8 Everyone has the right to be secure against unreasonable search or seizure.

Detention or imprisonment

9 Everyone has the right not to be arbitrarily detained or imprisoned.

Treatment or punishment

12 Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

EQUALITY RIGHTS
Equality before and under law and equal protection and benefit of law

15 (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Affirmative action programs

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Equalization and Regional Disparities
Commitment to promote equal opportunities

36 (1) Without altering the legislative authority of Parliament or of the provincial legislatures, or the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the government of Canada and the provincial governments, are committed to

(a) promoting equal opportunities for the well-being of Canadians;

(b) furthering economic development to reduce disparity in opportunities; and

(c) providing essential public services of reasonable quality to all Canadians.

Commitment respecting public services

(2) Parliament and the government of Canada are committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.

General

Primacy of Constitution of Canada

52 (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

Constitution of Canada

(2) The Constitution of Canada includes

(a) the Canada Act 1982, including this Act;

(b) the Acts and orders referred to in the schedule; and

(c) any amendment to any Act or order referred to in paragraph (a) or (b).

Amendments to Constitution of Canada

(3) Amendments to the Constitution of Canada shall be made only in accordance with the authority contained in the Constitution of Canada.

4. *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9.

Declaration of emergency

7.0.1 (1) Subject to subsection (3), the Lieutenant Governor in Council or the Premier, if in the Premier's opinion the urgency of the situation requires that an order be made immediately, may by order declare that an emergency exists throughout Ontario or in any part of Ontario.

Confirmation of urgent declaration

(2) An order of the Premier that declares an emergency is terminated after 72 hours unless the order is confirmed by order of the Lieutenant Governor in Council before it terminates.

Criteria for declaration

(3) An order declaring that an emergency exists throughout Ontario or any part of it may be made under this section if, in the opinion of the Lieutenant Governor in Council or the Premier, as the case may be, the following criteria are satisfied:

1. There is an emergency that requires immediate action to prevent, reduce or mitigate a danger of major proportions that could result in serious harm to persons or substantial damage to property.
2. One of the following circumstances exists:
   i. The resources normally available to a ministry of the Government of Ontario or an agency, board or commission or other branch of the government, including existing legislation, cannot be relied upon without the risk of serious delay.
   ii. The resources referred to in subparagraph i may be insufficiently effective to address the emergency.
   iii. It is not possible, without the risk of serious delay, to ascertain whether the resources referred to in subparagraph i can be relied upon.

5. *Health Protection and Promotion Act*, R.S.O. 1990, c. H.7.

Order by M.O.H. re communicable disease

22 (1) A medical officer of health, in the circumstances mentioned in subsection (2), by a written order may require a person to take or to refrain from taking any action that is specified in the order in respect of a communicable disease.

Condition precedent to order

(2) A medical officer of health may make an order under this section where he or she is of the opinion, upon reasonable and probable grounds,

(a) that a communicable disease exists or may exist or that there is an immediate risk of an outbreak of a communicable disease in the health unit served by the medical officer of health;

(b) that the communicable disease presents a risk to the health of persons in the health unit served by the medical officer of health; and

(c) that the requirements specified in the order are necessary in order to decrease or eliminate the risk to health presented by the communicable disease.

Time

(3) In an order under this section, a medical officer of health may specify the time or times when or the period or periods of time within which the person to whom the order is directed must comply with the order.

What may be included in order

(4) An order under this section may include, but is not limited to,

(a) requiring the owner or occupier of premises to close the premises or a specific part of the premises;

(b) requiring the placarding of premises to give notice of an order requiring the closing of the premises;

(c) requiring any person that the order states has or may have a communicable disease or is or may be infected with an agent of a communicable disease to isolate himself or herself and remain in isolation from other persons;
(d) requiring the cleaning or disinfecting, or both, of the premises or the thing specified in the order;
(e) requiring the destruction of the matter or thing specified in the order;
(f) requiring the person to whom the order is directed to submit to an examination by a physician and to deliver to the medical officer of health a report by the physician as to whether or not the person has a communicable disease or is or is not infected with an agent of a communicable disease;
(g) requiring the person to whom the order is directed in respect of a communicable disease that is a virulent disease to place himself or herself forthwith under the care and treatment of a physician;
(h) requiring the person to whom the order is directed to conduct himself or herself in such a manner as not to expose another person to infection.

Person directed

(5) An order under this section may be directed to a person,
(a) who resides or is present;
(b) who owns or is the occupier of any premises;
(c) who owns or is in charge of any thing; or
(d) who is engaged in or administers an enterprise or activity,

in the health unit served by the medical officer of health.

Class orders

(5.0.1) An order under this section may be directed to a class of persons who reside or are present in the health unit served by the medical officer of health only if,
(a) the medical officer of health gives notice of the proposed class order to the Chief Medical Officer of Health; and
(b) the Chief Medical Officer of Health approves the proposed class order in writing.

Notice to class

(5.0.2) If a class of persons is the subject of an order under subsection (5.0.1), notice of the order shall be delivered to each member of the class where it is practicable to do so in a reasonable amount of time.

Same, general notice

(5.0.3) If delivery of the notice to each member of a class of persons is likely to cause a delay that could, in the opinion of the medical officer of health, significantly increase the risk to the health of any person, the medical officer of health may deliver a general notice to the class through any communications media that seem appropriate to him or her, and he or she shall post the order at an address or at addresses that is or are most likely to bring the notice to the attention of the members of the class.

Information in notice

(5.0.4) A notice under subsection (5.0.3) shall contain sufficient information to allow members of the class to understand to whom the order is directed, the terms of the order, and where to direct inquiries.

Hearing for class member

(5.0.5) Where a class of persons is the subject of an order under subsection (5.0.1), any member of the class may apply to the Board for the purposes of requiring a hearing under section 44 respecting that member.

Health Care Consent Act, 1996

(5.1) The Health Care Consent Act, 1996 does not apply to,

(a) a physician's examination of a person pursuant to an order under this section requiring the person to submit to an examination by a physician;

(b) a physician's care and treatment of a person pursuant to an order under this section requiring the person to place himself or herself under the care and treatment of a physician.

Additional contents of order

(6) In an order under this section, a medical officer of health,

(a) may specify that a report will not be accepted as complying with the order unless it is a report by a physician specified or approved by the medical officer of health;

(b) may specify the period of time within which the report mentioned in this subsection must be delivered to the medical officer of health.

Reasons for order

(7) An order under this section is not effective unless the reasons for the order are set out in the order.

Directions by M.O.H.

24 (1) A medical officer of health, in the circumstances specified in subsection (2), may give directions in accordance with subsection (3) to the persons whose services are engaged by or to agents of the board of health of the health unit served by the medical officer of health.

When M.O.H. may give directions

(2) A medical officer of health may give directions in accordance with subsection (3) where the medical officer of health is of the opinion, upon reasonable and probable grounds, that a communicable disease exists in the health unit and the person to whom an order is or would be directed under section 22,

(a) has refused to or is not complying with the order;

(b) is not likely to comply with the order promptly;

(c) cannot be readily identified or located and as a result the order would not be carried out promptly; or

(d) requests the assistance of the medical officer of health in eliminating or decreasing the risk to health presented by the communicable disease.

Contents of directions

(3) Under this section, a medical officer of health may direct the persons whose services are engaged by or who are the agents of the board of health of the health unit served by the medical officer of health to take such action as is specified in the directions in respect of eliminating or decreasing the risk to health presented by the communicable disease.

Idem

(4) Directions under this section may include, but are not limited to,

(a) authorizing and requiring the placarding of premises specified in the directions to give notice of the existence of a communicable disease or of an order made under this Act, or both;

(b) requiring the cleaning or disinfecting, or both, of any thing or any premises specified in the directions;

(c) requiring the destruction of any thing specified in the directions.

Recovery of expenses

(5) The expenses incurred by a board of health in carrying out directions given by a medical officer of health in respect of a communicable disease may be recovered with costs by the board of health from the person to whom an order is or would be directed under section 22 in respect of the communicable disease by action in a court of competent jurisdiction.

6. O. Reg. 50/20: DECLARATION OF EMERGENCY.

7. O. Reg. 51/20: ORDER UNDER SUBSECTION 7.0.2 (4) OF THE ACT - CLOSURE OF ESTABLISHMENTS.

8. O. Reg. 52/20: ORDER UNDER SUBSECTION 7.0.2 (4) OF THE ACT - ORGANIZED PUBLIC EVENTS, CERTAIN GATHERINGS.

9. O. Reg. 82/20: ORDER UNDER SUBSECTION 7.0.2 (4) - CLOSURE OF PLACES OF NON-ESSENTIAL BUSINESSES.

10. O. Reg. 82/20: RULES FOR AREAS IN SHUTDOWN ZONE AND AT STEP 1.

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

Termination of COVID-19 declared emergency

17 Unless it has been terminated before this section comes into force, the COVID-19 declared emergency is terminated and Ontario Regulation 50/20 (Declaration of Emergency) is revoked.

12. *Trespass to Property Act*, R.S.O. 1990, c. T.21.

Definitions

1 (1) In this Act,

"occupier" includes,

(a) a person who is in physical possession of premises, or

(b) a person who has responsibility for and control over the condition of premises or the activities there carried on, or control over persons allowed to enter the premises, even if there is more than one occupier of the same premises; ("occupant")

Notice applicable to part of premises

8 A notice or permission under this Act may be given in respect of any part of the premises of an occupier.

WILLIAM ADAMSON SKELLY
Applicant

-and-

HIS MAJESTY THE KING IN RIGHT OF ONTARIO et al.
Respondents

Court File No. CV-22-00683592-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

FACTUM OF THE APPLICANT
(Returnable February 25, 26, 27, 2026)

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