

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

WILLIAM ADAMSON SKELLY and ~~ADAMSON BARBECUE LIMITED~~

Applicants

-and-

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

Respondents

APPLICATION UNDER RULES 14.05 (3) (d) and (g.1) of the *Rules of Civil Procedure* and
Canadian Charter of Rights and Freedom, ss 2(b), 2(c), 7, 8, 9, 15(1), 24 and *Constitution Act, 1982*, S. 52 AND *Constitution Act, 1867*, s. 91 and 92.

FACTUM OF THE RESPONDENTS
CITY OF TORONTO, BOARD OF HEALTH FOR THE CITY OF
TORONTO, and EILEEN DE VILLA
(Returnable February 25-27, 2026)

February 9, 2026

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PART I – OVERVIEW

1. This Application challenges three discrete measures taken by Toronto’s Medical Officer of Health (“MOH”) over the course of three days (November 24, 25, and 26, 2020) when Mr. Skelly opened his restaurant for dine-in service contrary to Provincial regulation. This was amid a global pandemic when the public health risks of COVID-19 were significant.
2. The three measures – a Section 22 Order, Section 24 Direction, and Trespass Notice (together, the “MOH Measures”) – were issued by Dr. De Villa pursuant to her authority under the *Health Protection and Promotion Act*. The Section 22 Order required Mr. Skelly to close his Etobicoke Restaurant, while the Section 24 Direction and Trespass Notice were mechanisms employed to enforce such closure.
3. The MOH Measures were in place for less than two weeks and ceased to be in effect on December 14, 2020 (over 5 years ago).
4. The challenge to the Section 22 Order ought to be dismissed because it is a collateral attack and an abuse of process. Mr. Skelly already appealed the order to the Health Services Appeal and Review Board (HSARB) and chose not to appeal the HSARB decision to the Divisional Court. He cannot now attempt to re-litigate the Section 22 Order in Superior Court.
5. The challenges to the Section 24 Direction and Trespass Notice are applications for judicial review that have been brought in the wrong court. Mr. Skelly has not sought nor obtained leave to have his judicial review heard by the Superior Court, and furthermore, he is out of time to bring them.

6. If this Honourable Court is inclined to hear any of Mr. Skelly's challenges on the merits, then the Application ought to be dismissed on the basis that Mr. Skelly has failed to establish that his *Charter* rights were engaged nor infringed. In the alternative and in any event, any infringements to Mr. Skelly's *Charter* rights are justified.

7. Mr. Skelly intentionally opened his Etobicoke Restaurant for indoor dining against provincial law amid a public health emergency. His restaurant was the site of flagrant public health contraventions. The MOH exercised her statutory authority to order and effect closure of the Etobicoke Restaurant to protect public health and to decrease the risk to health presented by COVID-19 in Toronto. The MOH Measures were time-limited and specific to the one restaurant location. They did not prevent Mr. Skelly from protesting outside the restaurant, or from selling barbecue lawfully at his other Toronto location.

PART II – FACTS

A. The City Respondents

8. The City of Toronto (the "City") is a municipality that has staff employed in various divisions, including Toronto Public Health ("TPH") and Municipal Licensing & Standards ("MLS").

9. The Board of Health for the City of Toronto Health Unit (the "Board") is a board of health established under the *Health Protection and Promotion Act*¹ ("HPPA") that serves the City of Toronto Health Unit.

¹ [RSO 1990, c H7](#) (historical version for the period July 8, 2020 to March 31, 2021) [HPPA].

10. Dr. Eileen de Villa was the Medical Officer of Health for the City of Toronto Health Unit at all material times (the "MOH"). The MOH is appointed by the Board and reports to the Board on matters of public health and public health programs and services. However, the MOH exercises the powers and duties specifically assigned to her under the *HPPA* independently of the Board.²

B. Health Protection and Promotion Act

11. The *HPPA* is a statute with the purpose of providing for the organization and delivery of public health programs and services, the prevention of the spread of disease and the promotion and protection of the health of the people of Ontario.³

12. Section 22 of the *HPPA*, which is contained within Part IV ("Communicable Diseases"), provides the MOH with authority, under certain circumstances, to make an order requiring a person to take or to refrain from taking any action that is specified in the order in respect of a communicable disease.⁴ At all material times, COVID-19 was designated as a communicable disease.⁵

13. Where the MOH is of the opinion that the person to whom an order is or would be directed under section 22, has refused to or is not complying with the order, or is not likely to comply with the order promptly, section 24 of the *HPPA* provides the MOH with authority to give directions to persons to take such action as is specified in the directions.⁶

² *Ibid* at [s. 67](#).

³ *Ibid* at [s. 2](#).

⁴ *Ibid* at [s. 22](#).

⁵ [Ontario Regulation 135/18](#) "Designation of Diseases" (historical version for the period January 22, 2020 to December 10, 2020).

⁶ *HPPA*, supra note 1 at [s. 24](#).

C. COVID-19 pandemic in Toronto – Fall 2020 (The Second Wave)

14. In March 2020, the outbreak of COVID-19 was declared a global pandemic and the novel coronavirus was in Toronto.⁷

15. By September 2020, the second wave of the pandemic began in Toronto, and it continued into November 2020. During that time, Toronto was seeing an increase in the amount of COVID-19 activity happening in the city, with hundreds of new cases per day.⁸ The healthcare system was overwhelmed and struggling.⁹ Meanwhile, no vaccine was available yet.¹⁰

16. While the elderly and immunocompromised population were at highest risk for the most serious outcomes associated with COVID-19 infection, there were also younger, otherwise healthy, populations that were being impacted and sometimes being hospitalized.¹¹

17. Restaurants, bars and clubs were of particular concern with respect to virus transmission. From September 20-26, 2020, of 45 active outbreaks in workplace settings investigated by TPH, 20 of them (44%) were at restaurants, bars, or clubs. Of those 20 outbreaks, 18 were at restaurants and bars, and 2 were at clubs.¹²

⁷ Affidavit of Paul Di Salvo (sworn September 26, 2024) [Di Salvo Affidavit] at paras 17-19, Responding Application Record [RR], Tab 1, **Case Centre B-#-#**

⁸ Certified Transcript of Eileen De Villa's Examination (September 29, 2025) [De Villa Transcript] at p 12-13, Q 25, Application Record [AR], Tab 12, **Case Centre A-#-#**.

⁹ De Villa Transcript at p 118-119, Q 344, AR, Tab 12, **Case Centre A-#-#**.

¹⁰ De Villa Transcript at p 12-13, Q 25, AR, Tab 12, **Case Centre A-#-#**.

¹¹ De Villa Transcript at p 119-120, Q 345, AR, Tab 12, **Case Centre A-#-#**.

¹² "Restaurants Nov 13" at tab "AZ", Documentary Productions for Dr. De Villa Examination (served September 25, 2025) [De Villa Productions], Supplementary Application Record [SAR], Tab __, **Case Centre A-#-#**; "Letter to Chief MOH Dr. Williams (October 2, 2020)" [Letter to Dr. Williams] at p 2, Undertakings, Under Advisement, and Refusals Chart of Dr. De Villa (December 5, 2025) [De Villa Undertakings Chart], AR, Tab __, **Case Centre A-#-#**.

18. On November 14, 2020, the Province moved the City of Toronto Health Unit into the “Red – Control” zone of their response framework (the “Red Zone”), which permitted indoor dining of up to 10 patrons at restaurants.¹³

19. In just a little over one week, on November 23, 2020, the Province moved the City of Toronto Health Unit from the Red Zone to the more restrictive “Grey – Lockdown” zone or “Stage 1” (“Stage 1 Regulation”).¹⁴ Under the Stage 1 Regulation, indoor dining was prohibited.¹⁵

D. Mr. Skelly’s intentional defiance of public health measures

20. Mr. Skelly operated a barbecue restaurant in Etobicoke (the “Etobicoke Restaurant”), which was located at 7 Queen Elizabeth Boulevard within the City of Toronto Health Unit.¹⁶ It was therefore subject to the Stage 1 Regulation.

21. On November 23, 2020, the day that Toronto was made subject to the Stage 1 Regulation, Mr. Skelly publicly announced on social media of his intention to open the Etobicoke Restaurant for dine-in service “against provincial orders” the next day (on November 24, 2020).¹⁷

22. The City received 121 complaints from the public on November 23rd regarding the Etobicoke Restaurant, many of which were to notify the City of Mr. Skelly’s social media post.¹⁸

¹³ [Ontario Regulation 263/20](#), “Rules for Areas in Stage 2” (historical version for the period November 14, 2020 to November 21, 2020) at Schedule 2, s. 1.

¹⁴ [Ontario Regulation 82/20](#), “Rules for Areas in Stage 1” (historical version for the period November 23, 2020 to November 26, 2020).

¹⁵ *Ibid* at Schedule 2, s. 3.

¹⁶ Di Salvo Affidavit at paras 31-32, RR, Tab 1, [Case Centre B-##](#).

¹⁷ Di Salvo Affidavit at paras 28-30, RR, Tab 1, [Case Centre B-##](#); Skelly Instagram Video, Exhibit “E” of Di Salvo Affidavit, RR, Tab 1, [Case Centre B-##](#).

E. November 24, 2020 – Section 22 Order

23. On November 24, 2020, Mr. Skelly opened the Etobicoke Restaurant for indoor dining. A public health inspector attended and observed that the Etobicoke Restaurant was operating in contravention of the Stage 1 Regulation and required COVID-19 measures. Among other infractions, the inspector observed indoor dining, inadequate physical distancing inside the restaurant, and masks and personal protective equipment not being worn.¹⁹ Mr. Skelly’s non-compliance was intentional, and there was a need to act expeditiously to address the public health concerns at the location.²⁰

24. Pursuant to her authority under the *HPPA*, the MOH issued a Section 22 Order to Mr. Skelly and Adamson Barbecue Limited (the “Section 22 Order”) on November 24, 2020, requiring them to, *inter alia*, “Immediately close the [Etobicoke Restaurant] and keep it closed until [they] are authorized in writing to reopen by Toronto Public Health”.²¹

F. November 25, 2020 – Section 24 Direction

25. Notwithstanding the Stage 1 Regulation and now the Section 22 Order, the next day (November 25th) the Etobicoke Restaurant was once again open, and it was observed that 30-40 people were inside with another approximately 50 people outside; people were in line ordering

¹⁸ “Email from Dine Safe (November 27, 2020)”, Exhibit “M” of Di Salvo Affidavit, RR, Tab 1, **Case Centre B-#-#**; “Complaints Against Adamson BBQ”, De Villa Productions at tab “K”, SAR, Tab __, **Case Centre A-#-#**.

¹⁹ Di Salvo Affidavit at para 34, RR, Tab 1, **Case Centre B-#-#**; “Inspection report of PHI John Fernando”, Exhibit “G” of Di Salvo Affidavit, RR, Tab 1, **Case Centre B-#-#**; “Photos taken on November 24, 2020”, De Villa Productions at tab “I”, SAR, Tab __, **Case Centre A-#-#**.

²⁰ Di Salvo Affidavit at para 36, RR, Tab 1, **Case Centre B-#-#**.

²¹ “Section 22 Order”, Exhibit “I” of Di Salvo Affidavit, RR, Tab 1, **Case Centre B-#-#**.

food, not physically distanced and not wearing masks; and people were seated at tables eating their food.²²

26. Pursuant to her authority under section 24 of the *HPPA*, on November 25, 2020 the MOH issued directions (the "Section 24 Direction") to MLS, TPH, and Toronto Police Services "to take actions necessary to ensure that the [Etobicoke Restaurant] is and remains closed, and that access to the [Etobicoke Restaurant] is restricted until such time as the Order has been lifted. These actions include the engagement of third party services to remove existing locks and secure a magnetic lock, padlock, or other similar mechanism on all doors to the [Etobicoke Restaurant], the installation of cinder blocks or other blockades to prevent entry, and the posting of notices to notify members of the public about the Order".²³

G. November 26, 2020 – Trespass Notice

27. On the morning of November 26, 2020, further to the Section 24 Direction, a locksmith company was engaged to replace the existing locking mechanisms at the Etobicoke Restaurant and install magnetic locking mechanism on one of the entrances.²⁴

28. Mr. Skelly kicked through a portion of the wall, accessed the interior of the Etobicoke Restaurant, and repeatedly kicked the door of the restaurant until it gave way allowing a crowd of people to enter the restaurant.²⁵

²² Di Salvo Affidavit at para 41, RR, Tab 1, [Case Centre B-#-#](#).

²³ "Section 24 Direction", Exhibit "K" of Di Salvo Affidavit, RR, Tab 1, [Case Centre B-#-#](#).

²⁴ Di Salvo Affidavit at para 46, RR, Tab 1, [Case Centre B-#-#](#).

²⁵ Di Salvo Affidavit at paras 50-53, RR, Tab 1, [Case Centre B-#-#](#); "Video of Skelly tweeted by @kamilkaramali", Exhibit "L" of Di Salvo Affidavit, RR, Tab 1, [Case Centre B-#-#](#).

29. Pursuant to the Section 22 Order (which established that the MOH had control over the Etobicoke Restaurant including the authority to determine which persons would be allowed to enter it), the MOH was an occupier of the Etobicoke Restaurant for the duration that the Section 22 Order was in effect. On November 26, 2020, pursuant to the *Trespass to Property Act*²⁶ (the “TPA”), the MOH issued a notice to Mr. Skelly (the “Trespass Notice”) as well as to all persons.

30. The Trespass Notice stated, *inter alia*, that Mr. Skelly was “not permitted to access, enter in or be on the [Etobicoke Restaurant]”.²⁷

H. Section 22 Order lifted on December 14, 2020

31. Between November 27, 2020 and December 14, 2020, the City continued to monitor the Etobicoke Restaurant.²⁸

32. On December 14, 2020, the MOH lifted the Section 22 Order, based on available information, including information from TPH inspectors that there had been recent and ongoing compliance with the Section 22 Order at the Etobicoke Restaurant.²⁹ At that time, the Section 24 Direction and Trespass Notice ceased to be in effect.

²⁶ [RSO 1990, c T21](#) (historical version for the period September 1, 2016 to June 4, 2025) [TPA].

²⁷ “Trespass Notice”, De Villa Undertakings Chart at p __, SAR, Tab __, **Case Centre A-#-#**.

²⁸ See:

“Email dated November 27, 2020”, De Villa Productions at tab “AS”, SAR, Tab __, **Case Centre A-#-#**;
“Email dated November 29, 2020”, De Villa Productions at tab “A”, SAR, Tab __, **Case Centre A-#-#**;
“Emails dated November 26-29, 2020”, De Villa Productions at tab “AW”, SAR, Tab __, **Case Centre A-#-#**;
“Email thread with social media post (November 30, 2020)”, De Villa Productions at tab “O”, SAR, Tab __, **Case Centre A-#-#**;

“Email dated November 30, 2020”, De Villa Productions at tab “AU”, SAR, Tab __, **Case Centre A-#-#**;
“Email dated December 11, 2020”, De Villa Productions at tab “AC”, SAR, Tab __, **Case Centre A-#-#**;
“Email dated December 12, 2020”, De Villa Productions at tab “AV”, SAR, Tab __, **Case Centre A-#-#**.

²⁹ “Letter lifting Section 22 Order”, Exhibit “N” of Di Salvo Affidavit, RR, Tab 1, **Case Centre B-#-#**.

PART III – ISSUES AND THE LAW

33. The City Respondents submit that the issues are:

- A. The challenge to the Section 22 Order is a collateral attack and abuse of process;
- B. The challenges to the Section 24 Direction and Trespass Notice are judicial review applications that have been brought in the wrong court and are out of time;
- C. Mr. Skelly's *Charter* rights have not been engaged nor infringed; and,
- D. In any event, there is no unjustified infringement of any *Charter* rights.

A. The challenge to the Section 22 Order is a collateral attack and abuse of process

34. The *HPPA* contains a comprehensive scheme for reviewing orders made by a medical officer of health. The appeal route for a Section 22 Order is prescribed in the *HPPA* as follows:

1. Hearing by the HSARB, in which the HSARB has the power to confirm, alter, or rescind the order³⁰;
2. Appeal of HSARB decision to the Divisional Court, in which the Divisional Court may confirm, alter or rescind the decision of the HSARB³¹.

35. Mr. Skelly has already availed himself of the appeal route in the *HPPA*. He filed an appeal of the Section 22 Order with the HSARB, withdrew the appeal, sought to re-open the appeal, and finally, failed to provide submissions or otherwise engage further with the HSARB.³²

³⁰ *HPPA*, supra note 1 at [s. 44](#).

³¹ *Ibid* at [s. 46](#).

³² “HSARB Order and Reasons (February 22, 2021)” at paras 7-12, Exhibit “P” of Di Salvo Affidavit, RR, Tab 1, Case Centre B-#-#.

The HSARB issued an order and reasons on February 22, 2021 (the “HSARB Decision”) declining to hear the matter due to mootness.³³ Mr. Skelly did not appeal the HSARB Decision to Divisional Court. He cannot now attempt to re-litigate the Section 22 Order by way of application to the Superior Court of Justice.

36. Like the finding in *Spasiw v Law Society of Ontario*³⁴, this Application is a collateral attack on the HSARB Decision and the *HPPA* statutory appeal process. In *Spasiw*, the Superior Court of Justice struck Mr. Spasiw’s application, finding in part that he had already “availed himself of the LSO’s complaints process including a review by the CRC” and that the Rule 14.05 application was “a collateral attack on the LSO’s complaints process and decision”.³⁵

37. The doctrine of abuse of process applies even where issues “could have been determined” but were not.³⁶ All of the relief sought in this Application with respect to the Section 22 Order could have been determined at the HSARB, including the *Charter* remedies sought. The HSARB is a court of competent jurisdiction to consider *Charter* issues and to grant section 24 remedies.³⁷

38. Allowing Mr. Skelly to seek a fresh appeal of the Section 22 Order or circumvent the administrative appeal process would violate principles of judicial economy, consistency, finality, and the integrity of the administration of justice.³⁸ As the Supreme Court of Canada has said, “A

³³ *Ibid* at para 30, [Case Centre B-#-#](#).

³⁴ [2024 ONSC 1486](#) [*Spasiw*], aff’d [2024 ONCA 888 \(CanLII\)](#), leave to appeal dismissed [2025 CanLII 71460 \(SCC\)](#).

³⁵ *Ibid* at [para 21](#).

³⁶ *Winter v Sherman Estate*, [2018 ONCA 703](#) at [para 7](#), leave to appeal dismissed [2020 CanLII 22065 \(SCC\)](#).

³⁷ *R v Conway*, [2010 SCC 22](#) at [paras 78-82](#). See also *Rep Room London Inc. v Summers*, [2021 CanLII 64222](#) (ON HSARB) where the HSARB conducted a *Charter* analysis for a section 22 order and considered whether to grant s. 24 *Charter* damages.

³⁸ *British Columbia (Workers’ Compensation Board) v Figliola*, [2011 SCC 52](#) at [paras 33-34](#), citing *Toronto (City) v CUPE, Local 79*, [2003 SCC 63](#) at para 37.

person should only be vexed once in the same cause. Duplicative litigation, potential inconsistent results, undue costs, and inconclusive proceedings are to be avoided”³⁹.

39. As such, this Court should dismiss Mr. Skelly’s challenge to the Section 22 Order.

B. The challenges to the Section 24 Direction and Trespass Notice are judicial review applications that have been brought in the wrong court and are out of time

40. The Section 24 Direction and Trespass Notice were exercises of a statutory power within the meaning of section 1 of the *Judicial Review Procedure Act* (“*JRPA*”), and as such, they are judicial review applications that should have been made to Divisional Court.⁴⁰

41. Mr. Skelly has not sought nor obtained leave under s. 6(2) of the *JRPA* to have his judicial review heard by the Superior Court of Justice.⁴¹

42. Furthermore, Mr. Skelly commenced this Application beyond the 30-day deadline in s. 5 of the *JRPA*.⁴² His challenge to the Section 24 Direction is out of time by over 1.5 years.⁴³ His challenge to the Trespass Notice is out of time by over 5 years.⁴⁴

43. If this Honourable Court transfers the Application to Divisional Court pursuant to s. 6(3) of the *JRPA*, it is imperative that the matter not be heard without first requiring Mr. Skelly to bring a motion seeking an extension of time pursuant to s. 5(2) of the *JRPA*.⁴⁵

³⁹ *Danyluk v Ainsworth Technologies Inc*, [2001 SCC 44](#) at para 18.

⁴⁰ *Judicial Review Procedure Act*, [RSO 1990, c J1](#) [“*JRPA*”].

⁴¹ *Ibid* at s. 6(2).

⁴² *Ibid* at s. 5.

⁴³ The Section 24 Direction was made on November 25, 2020, and the Notice of Application was issued on June 30, 2022. “Section 24 Direction”, Exhibit “K” of Di Salvo Affidavit, RR, Tab 1, [Case Centre B-#-#](#); “Notice of Application”, AR, Tab , [Case Centre A-#-#](#).

⁴⁴ The Trespass notice was issued on November 26, 2020, and the Notice of Application was recently amended on January 28, 2026 to challenge the *vires* of the Trespass Notice. “Trespass Notice”, De Villa Undertakings Chart at p , SAR, Tab #, [Case Centre A-#-#](#); “Amended Notice of Application” at para 1(r), SAR, Tab , [Case Centre A-#-#](#).

44. If this Honourable Court is inclined to hear Mr. Skelly’s application on the merits, and grants leave pursuant to s. 6(2) of the *JRPA* to hear this judicial review application, then the City Respondents’ arguments are contained in the remainder of this factum.

C. Mr. Skelly’s *Charter* rights not engaged nor infringed

45. In arguing that his Charter rights have been infringed, Mr. Skelly baldly states in his factum, “This Court need not linger on whether *Charter* rights were infringed. That much is apparent on the evidentiary record”⁴⁶. Respectfully, it is not apparent and linger we must.

46. Mr. Skelly has failed to establish that any of his *Charter* rights have been engaged. The burden at this stage lies with Mr. Skelly.

47. Firstly, it is important to note that this Application is not about Mr. Skelly’s arrest, detention, bail, charges, fines, nor police presence. The prosecution of charges against Mr. Skelly is proceeding in the Ontario Court of Justice, and the evidence of Mr. Skelly’s arrest, charges, and fines are not before this Court. The Toronto Police Service Board (“TPSB”) is not a named respondent and as such, police activity is not a subject of this Application, nor is such evidence before this Court.

48. What is this Application about? It is about three discrete decisions made by the MOH in November 2020 to issue a Section 22 Order, Section 24 Direction, and Trespass Notice in relation to the Etobicoke Restaurant.

49. Secondly, the Amended Notice of Application does not include any *Charter* relief sought in relation to the Trespass Notice; it only seeks a declaration on *vires*.⁴⁷ It is the City

⁴⁵ *JRPA*, *supra* note 40 at s. 5(2).

⁴⁶ Applicant’s Factum at para 59, **Case Centre A-#-#**.

Respondents' position that the Applicant has not challenged the constitutionality of the Trespass Notice and it is therefore unnecessary to subject it to *Charter* analysis. We have nonetheless included it in our submissions below, in the alternative.

i. Section 2(b) and (c) of the *Charter*

50. Sections 2(b) and (c) of the *Charter* provide that everyone has freedom of expression and freedom of peaceful assembly.⁴⁸

51. To establish that the MOH Measures infringe the right to freedom of expression under section 2(b) of the *Charter*, Mr. Skelly must first demonstrate that the activity in question has expressive content, thereby bringing it *prima facie* within the scope of s. 2(b) protection. If he can demonstrate that the activity is protected, he must then demonstrate that an infringement of the protected right results from either the purpose or effect of the government action (the “*Irwin Toy Test*”).⁴⁹

52. What was the activity in question? Mr. Skelly opened his restaurant for dine-in when doing so was prohibited by provincial law. This activity is not protected by s. 2(b).

53. Freedom of expression guarantees the right to express disagreement with government regulation; it does not guarantee the right to be free from government regulation with which one disagrees.⁵⁰

54. In *R v Keough*⁵¹, the Provincial Court of Saskatchewan considered whether freedom of expression was infringed in the context of public health orders that mandated wearing of a face

⁴⁷ Amended Notice of Application at para 1(r), SAR, Tab __, [Case Centre A-#-#](#).

⁴⁸ Part 1 of the *Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK)*, 1982, c 11 at [s. 2](#) [*Charter*].

⁴⁹ *Irwin Toy Ltd v Quebec (Attorney General)*, [1989] 1 SCR 927, [1989 CanLII 87](#).

⁵⁰ *Rosen v Ontario (Attorney General)*, [1996 CanLII 443 \(ON CA\)](#) at p 14-15.

covering in specified enclosed settings.⁵² The court applied the *Irwin Toy Test* and found that no infringement of s. 2(b) rights had been established; namely, a face covering was not a form of expression, and even if it was, the second step of the *Irwin Toy Test* (purpose or effect of government action) was not met.⁵³

55. The court in *Keough* noted that the face covering order did not prevent Mr. Keough from voicing his disagreement with the government policies.⁵⁴ Similarly, here, Mr. Skelly was free to continue posting his views on social media and/or protesting outside the Etobicoke Restaurant. The MOH Measures neither had the purpose nor effect of preventing Mr. Skelly from communicating a message.⁵⁵

56. With respect to section 2(c) of the *Charter*, the right to peaceful assembly does not protect a particular physical venue for assembly.⁵⁶ Mr. Skelly cannot open his Etobicoke Restaurant in contravention of public health measures and then rely on the “right to peaceful assembly” to excuse his behaviour and effectively exempt himself from the Stage 1 Regulation.

57. As the Divisional Court stated in *Hussain v Toronto (City)*⁵⁷, “Freedom of assembly simply does not include the right to use City parks without complying with reasonable regulations governing park use and without any regard to public health and safety”.⁵⁸ The same principle applies to Mr. Skelly’s Etobicoke Restaurant.

⁵¹ [2022 SKPC 23 \[Keough\]](#)

⁵² *Ibid* at [para 39](#).

⁵³ *Ibid* at [paras 51-61](#).

⁵⁴ *Ibid* at [para 59](#).

⁵⁵ *Banas v HMTQ*, [2022 ONSC 999](#) at [paras 28-29](#).

⁵⁶ *Attorney General of Ontario v 2192 Dufferin Street*, [2019 ONSC 615](#) at [para 54](#).

⁵⁷ [2016 ONSC 3504 \[Hussain\]](#).

⁵⁸ *Ibid* at [para 44](#).

58. Mr. Skelly has failed to establish that his section 2 *Charter* rights have been engaged or infringed.

ii. Section 7 of the *Charter*

59. Section 7 of the *Charter* provides that everyone has the right not to be deprived of life, liberty and security except in accordance with the principles of fundamental justice.⁵⁹

60. To show that this *Charter* right has been engaged, Mr. Skelly must first establish that the impugned government action deprives him of life, liberty or security of the person. Then, if there is such a deprivation, Mr. Skelly must show that it is not in accordance with the principles of fundamental justice.⁶⁰ Mr. Skelly has failed to do so.

61. According to Mr. Skelly's chart (in his factum) purporting to summarize the *Charter* infringements, the alleged impugned government actions for s. 7 of the *Charter* are "arrest, detention, bail conditions, prosecution; loss of livelihood".⁶¹ As noted above, the arrest, detention, bail conditions, and prosecution are not part of this Application. As for loss of livelihood, that is not protected by s. 7 of the *Charter*.

62. Pure economic interests are not protected by section 7 of the *Charter*.⁶² In *Siemens v Manitoba (Attorney General)*⁶³, the claimants challenged legislation that prohibited them from operating video lottery terminals (VLTs) at their place of business. In holding that the claimants' section 7 rights were not engaged, the Supreme Court of Canada stated that the ability to

⁵⁹ *Charter*, supra note 48, at [s. 7](#).

⁶⁰ *Canadian Council for Refugees v Canada (Citizenship and Immigration)*, [2023 SCC 17](#) at [para 56](#).

⁶¹ Applicant's Factum at para 60, [Case Centre A-##](#).

⁶² *Siemens v Manitoba (Attorney General)*, [2003 SCC 3](#) at [para 45](#).

⁶³ *Ibid.*

generate business revenue by one's chosen means is not a right that is protected under section 7 of the *Charter*.⁶⁴

63. Furthermore, “liberty” in section 7 of the *Charter* is not synonymous with unconstrained freedom; it does not extend to an unconstrained right to transact business whenever one wishes.⁶⁵ In *R v Edwards Books and Art Ltd.*⁶⁶, the claimants challenged legislation that required retail businesses to close on Sundays. In that case, the Supreme Court of Canada held that “liberty” was not engaged.

64. Pursuant to the Section 22 Order and Section 24 Direction, Mr. Skelly was required to close the Etobicoke Restaurant. Pursuant to the Trespass Notice, Mr. Skelly was not permitted to enter the closed restaurant. Closing the commercial premises did not deprive Mr. Skelly’s life, liberty or security.

65. Even if Mr. Skelly can establish a deprivation, he failed to identify in his Notice of Application which principle(s) of fundamental justice are at question in this proceeding; this defect is fatal to his s. 7 *Charter* claim.⁶⁷

66. In the alternative, and in any event, Mr. Skelly has not established that any of the MOH Measures were arbitrary, overbroad, or grossly disproportionate.⁶⁸

67. The object of the MOH Measures were to protect public health and reduce the risk to public health presented by COVID-19. Closing the Etobicoke Restaurant was directly connected

⁶⁴ *Ibid* at [para 46](#).

⁶⁵ *R v Edwards Books and Art Ltd.*, [1986] 2 SCR 713, [1986 CanLII 12](#) at [para 155](#).

⁶⁶ *Ibid*.

⁶⁷ *Bowman v Ontario*, [2022 ONCA 477](#) at [paras 96-97](#).

⁶⁸ *Carter v Canada (Attorney General)*, 2015 SCC 5 at [paras 83-90](#).

to this objective, as it was the location of ongoing and flagrant contraventions of various public health measures.

68. The MOH Measures were not overbroad. It was location-specific (limited to the location where the contraventions and public health concerns were occurring) and temporary (in effect for less than 2 weeks).

69. The effects of closing the Etobicoke Restaurant were not grossly disproportionate to the public health objective. Closing the restaurant did not prevent Mr. Skelly from protesting outside the restaurant, from posting his views on social media, or from selling barbecue lawfully at his other Toronto location.

70. Mr. Skelly has failed to establish that his section 7 *Charter* rights have been engaged or infringed.

iii. Sections 8, 9, 12 and 15(1) of the *Charter*

71. Mr. Skelly lacks any evidence to establish that his sections 8, 9, 12, or 15(1) *Charter* rights have been engaged or infringed.⁶⁹ Our arguments here are therefore brief, though we wish to highlight the following points:

- a. The City Respondents did not arrest or detain Mr. Skelly;
- b. Closing the Etobicoke Restaurant did not constitute a “seizure” within the meaning of Section 8, which protects one’s reasonable expectation of privacy rather than one’s property rights.⁷⁰

⁶⁹ *Charter*, supra note 48, at ss. [8](#), [9](#), [12](#), and [15\(1\)](#).

c. For Section 15(1), Mr. Skelly has not met the threshold requirement of identifying a distinction based on an enumerated or analogous ground. The MOH Measures were taken in response to Mr. Skelly’s actions which posed a risk to public health; not because of any immutable or constructively immutable personal characteristics.⁷¹

D. Any infringements of *Charter* rights are saved by s. 1 of the *Charter*

72. All of Mr. Skelly’s *Charter* allegations should fail on the basis that no *Charter* rights have been engaged nor infringed. In the alternative, if it is necessary to proceed to justification under section 1 of the *Charter*, any infringements of Mr. Skelly’s *Charter* rights are prescribed by law and are demonstrably justified in a free and democratic society.

i. Context and Deference

73. Section 1 calls for a highly context-sensitive analysis which informs the level of deference to be applied.⁷²

74. The MOH Measures were made in the context of a pandemic where Toronto was seeing illness, hospitalization and deaths because of the spread of the COVID-19 virus.⁷³

75. The MOH is a qualified medical professional with knowledge of public health matters, and her medical opinion in the circumstances at the time ought to be given deference. By virtue of section 64 of the *HPPA*⁷⁴ and the regulation thereunder (“Qualifications of Boards of Health

⁷⁰ *Hunter et al v Southam Inc.*, [1984] 2 SCR 145, [1984 CanLII 33](#) at page 159; *Quebec (Attorney General) v. Laroche*, [2002 SCC 72](#) at para 53.

⁷¹ *Harjee v Ontario*, [2022 ONSC 7033](#) at paras 77-81, appeal dismissed as moot ([2023 ONCA 716](#)).

⁷² *Grandel v Saskatchewan*, [2022 SKKB 209](#) at paras 82-86, aff’d [2024 SKCA 53](#), leave to appeal dismissed [2025 CanLII 17305 \(SCC\)](#).

⁷³ De Villa Transcript at p 12-13, Q 25, AR, Tab 12, **Case Centre A-#-#**.

⁷⁴ *HPPA*, supra note 1 at [s. 64](#).

Staff”)⁷⁵, prerequisites to becoming the MOH include, *inter alia*, to be a physician and meet certain qualifications relating to public health education and/or experience.

76. Greater deference is owed “where public officials are dealing with a complex social problem, balancing the interests of competing groups, or seeking to protect a vulnerable segment of the population”⁷⁶. This was the case here.

77. The MOH was faced with carrying out her role under the *HPPA* in accordance with the purpose of the *HPPA*, which includes protecting public health and preventing the spread of disease.⁷⁷ She was required to make decisions in the context of an evolving situation.

ii. Under the Doré framework the MOH Measures were Reasonable

78. The *Doré* framework applies rather than the Oakes test. In *Doré v Barreau du Quebec*⁷⁸, the Supreme Court of Canada developed a framework to be applied when reviewing administrative decisions for compliance with *Charter* values. The *Doré* framework applies in this instance because the MOH Measures are administrative decisions, and the standard of review is reasonableness.⁷⁹

79. Under the *Doré* framework, “the administrative decision will be reasonable if it reflects a proportionate balancing of the Charter protection with the statutory mandate”⁸⁰. Deference is

⁷⁵ [RRO 1990, Reg 566](#) “Qualifications of Board of Health Staff”.

⁷⁶ *Ontario v Trinity Bible Chapel et al*, [2022 ONSC 1344](#) at [paras 126-129](#), aff’d [2023 ONCA 134](#), leave to appeal dismissed [2023 CanLII 82134 \(SCC\)](#).

⁷⁷ *HPPA*, supra note 1 at [s. 2](#).

⁷⁸ [2012 SCC 12 \[Doré\]](#)

⁷⁹ *Ibid* at [paras 57-58](#); *Canada (Minister of Citizenship and Immigration) v Vavilov*, [2019 SCC 65](#) at [para 57](#).

⁸⁰ *Law Society of British Columbia v Trinity Western University*, [2018 SCC 32](#) at [para 79](#) [TWU].

warranted, and so long as the decision “falls within a range of possible, acceptable outcomes”, it will be reasonable.⁸¹

80. A decision will only be found not to fall within a range of reasonable outcomes if “there was an option or avenue reasonably open to the decision-maker that would reduce the impact on the protected right while still permitting him or her to sufficiently further the relevant statutory objectives”⁸². The reviewing court “must also consider how substantial the limitation on the Charter protection was compared to the benefits to the furtherance of the statutory objectives in this context”⁸³.

81. The MOH Measures fall squarely within a range of possible, acceptable outcomes.

82. In Fall 2020, Toronto was experiencing the second wave of the pandemic and was seeing an increase in the amount of COVID-19 activity happening in the city.⁸⁴ At the time, it was known to the MOH that establishments such as restaurants were conducive to COVID-19 transmission.⁸⁵

83. When the MOH issued the Section 22 Order on November 24, 2020, Mr. Skelly was in clear breach of various public health measures at the Etobicoke Restaurant.⁸⁶ He was intentionally flouting the Stage 1 Regulation.⁸⁷

⁸¹ *Ibid.*

⁸² *Ibid* at [para 81](#).

⁸³ *Ibid* at [para 82](#).

⁸⁴ De Villa Transcript at p 159-160, Q 449-451, AR, Tab 12, [Case Centre A-##](#); “Letter to Dr. Williams” at p 1, De Villa Productions, SAR, Tab #, [Case Centre A-##](#).

⁸⁵ “Letter to Dr. Williams” at p 2, De Villa Productions, SAR, Tab #, [Case Centre A-##](#).

⁸⁶ “Inspection report of PHI John Fernando”, Exhibit “G” of Di Salvo Affidavit, RR, Tab 1, [Case Centre B-##](#).

⁸⁷ Di Salvo Affidavit at paras 28-30, RR, Tab 1, [Case Centre B-##](#); “Skelly Instagram Video”, Exhibit “E” of Di Salvo Affidavit, RR, Tab 1, [Case Centre B-##](#).

84. To meet the condition precedent for the Section 22 Order, the MOH needed only be of the opinion, on reasonable and probable grounds, that COVID-19 existed in Toronto, that COVID-19 was a risk to the health of Torontonians, and the requirements in the order were necessary to decrease such risk.⁸⁸

85. The condition precedents were met. The information before the MOH was that numerous infractions were occurring at the Etobicoke Restaurant, including indoor dining, overcapacity, lack of physical distancing, failure to wear PPE and masks, and excessively loud music. It was the MOH's opinion that ordering closure of that specific restaurant was necessary to decrease the COVID-19 health risk.⁸⁹

86. Subsection 22(4) of the *HPPA* specifically contemplates that it will sometimes be necessary to order closure of a premises to address the risks to public health.⁹⁰ The MOH utilized her authority and discretion to do so in this case, and she did so while balancing other rights, including Mr. Skelly's *Charter* rights.⁹¹

87. The Section 22 Order only required Mr. Skelly to close the Etobicoke Restaurant until authorized by TPH to reopen, to post a red "closure" placard, to comply with applicable laws and TPH guidance pertaining to COVID-19, and to comply with further instructions from TPH. In essence, he was ordered to comply with the law (like everyone else) and to close the Etobicoke Restaurant until further notice.

⁸⁸ *HPPA*, supra note 1 at [s. 22\(2\)](#).

⁸⁹ Section 22 Order, Exhibit "I" of Di Salvo Affidavit, RR, Tab 1, **Case Centre B-#**.

⁹⁰ *HPPA*, supra note 1 at [s. 22\(4\)\(a\)](#).

⁹¹ De Villa Transcript at p 7-8, Q 12-14, AR, Tab 12, **Case Centre A-#**.

88. Mr. Skelly was not deterred. Despite being ordered to close the Etobicoke Restaurant, he opened again for indoor dining the next day (November 25, 2020).⁹² Mr. Skelly was in clear non-compliance with the Section 22 Order. Where the person to whom a section 22 order is made does not comply, the MOH has authority under section 24 of the *HPPA* to give directions to other persons to take actions in respect of decreasing the risk to health.

89. Accordingly, the MOH gave directions to MLS, TPH, TPS and third parties to take actions necessary to ensure closure of the Etobicoke Restaurant, including to change the locks of the doors. This was carried out the morning of November 26, 2020.⁹³

90. Mr. Skelly was still not deterred. He found a way to enter the Etobicoke Restaurant by kicking through a portion of wall, and then from the interior he kicked a door until it gave way and opened. He then encouraged a crowd of people to enter the Etobicoke Restaurant through the opened door.⁹⁴

91. To help enforce the Section 22 Order, the MOH issued a Trespass Notice to Mr. Skelly and all persons, pursuant to the *TPA*.⁹⁵

92. Under the *TPA*, an occupier includes a person who has responsibility for and control over the activities carried on a premises, or control over persons allowed to enter a premises.⁹⁶ The MOH was an occupier of the Etobicoke Restaurant by virtue of the Section 22 Order, which

⁹² Di Salvo Affidavit at para 41, RR, Tab 1, *Case Centre B-#-#*.

⁹³ “Email from Paul Di Salvo to Dr. De Villa (November 26, 2020)”, De Villa Productions at tab “AL”, SAR, Tab __, *Case Centre A-#-#*

⁹⁴ Di Salvo Affidavit at paras 50-53, RR, Tab 1, *Case Centre B-#-#*, “Video of Skelly tweeted by @kamilkaramali”, Exhibit “L” of Di Salvo Affidavit, RR, Tab 1, *Case Centre B-#-#*.

⁹⁵ Trespass Notice, De Villa Undertakings Chart at p __, SAR, Tab __, *Case Centre A-#-#*.

⁹⁶ *TPA*, supra note 26 at s 1.

established that she had control over the premises including the authority to determine which persons would be allowed to enter it for the duration that the Section 22 Order was in effect.

93. In the circumstances of the situation, short of ordering and enforcing closure of the Etobicoke Restaurant, there was not any other option or avenue reasonably open to the MOH that would further the public health objective while limiting Mr. Skelly's *Charter* rights any less.

94. The MOH Measures were limited to the contravening actor, being Mr. Skelly. They were limited to the Etobicoke Restaurant location, as that was where contraventions were observed. They were limited in time, as they were in place for less than 2 weeks (until December 14, 2020 when the Section 22 Order was lifted).⁹⁷

95. The MOH Measures did not prevent Mr. Skelly from protesting and assembling peacefully outside the restaurant or elsewhere. They did not prevent Mr. Skelly from selling barbecue lawfully at his other business location in Toronto, at 176 Wicksteed Avenue. They did not prevent Mr. Skelly from continuing to post his views on social media.

96. If any of Mr. Skelly's *Charter* rights were limited by these specific, time-limited, location-limited measures, such limits are minimal in comparison to the benefits of protecting the health of the public.

97. The MOH Measures were reasonable and *intra vires* the MOH's authority.

⁹⁷ "Letter lifting Section 22 Order", Exhibit "N" of Di Salvo Affidavit, RR, Tab 1, **Case Centre B-#-#**.

iii. **In the alternative, the Oakes test would yield the same result**

98. Even if the *Oakes* test were to be applied, it would yield the same result. That is, any *Charter* rights limited by the MOH Measures are reasonable and demonstrably justified.

99. Pressing and Substantial Objective – The objective of the MOH Measures was to protect public health and to decrease the risk to health presented by COVID-19 in Toronto. Such an objective is pressing and substantial, as recognized by courts across Canada on several prior occasions in the context of COVID-19.⁹⁸

100. Rational Connection – The rational connection test is “not particularly onerous”⁹⁹. The government just needs to show that it is “reasonable to suppose” that the limit “may further the goal, not that it will do so”¹⁰⁰. The MOH Measures were issued to address the public health infractions at the Etobicoke Restaurant, which included indoor dining, failure to use masks or face coverings, and failure to maintain physical distancing. The elevated risk of COVID-19 transmission associated with the aforementioned activities is such that ordering and ensuring closure of the restaurant was rationally connected to furthering the objective.¹⁰¹

101. Minimal Impairment – Minimal impairment is met if the means adopted fall within a range of reasonable options to achieve the objective.¹⁰² The precautionary principle is engaged here, which recognizes that “where there are threats of serious, irreversible damage, lack of full

⁹⁸ See:

- *Ontario (Attorney General) v Trinity Bible Chapel*, [2023 ONCA 134](#) at paras 90-92, leave to appeal dismissed [2023 CanLII 82134 \(SCC\)](#);
- *Beaudoin v British Columbia (Attorney General)*, [2022 BCCA 427](#) at para 299, leave to appeal dismissed [2023 CanLII 72139 \(SCC\)](#);
- *Gateway Bible Baptist Church et al. v Manitoba et al.*, [2021 MBQB 219](#) at para 293, aff'd [2023 MBCA 56](#), leave to appeal dismissed [2024 CanLII 202456 \(SCC\)](#).

⁹⁹ *Little Sisters Book and Art Emporium v Canada (Minister of Justice)*, [2000 SCC 69 \(CanLII\)](#) at para 228.

¹⁰⁰ *Alberta v Hutterian Brethren of Wilson Colony*, [2009 SCC 37](#), at para 48 [“Hutterian Brethren”].

¹⁰¹ “Letter to Dr. Williams” at p 2-3, De Villa Productions, AR, Tab #, *Case Centre A-#-#*.

¹⁰² *RJR-MacDonald v Canada (Attorney General)*, [1995] 3 SCR 199, [1995 CanLII 64](#) at para 160.

scientific certainty is not a reason to postpone harm reduction strategies".¹⁰³ The MOH does not need to accept options which are less effective at achieving the objective than the one chosen.¹⁰⁴

The City Respondents rely on its arguments as contained in paragraphs 93 to 96 above.

102. Salutary vs Deleterious Effects – The final proportionality stage of the *Oakes* analysis requires a “broader assessment of whether the benefits of the impugned law are worth the cost of the rights limitations.”¹⁰⁵ The salutary effects of the MOH Measures are many and included protecting the community, including vulnerable groups, from serious risk of illness, hospitalization and death. Such public health benefits outweigh any deleterious effects on Mr. Skelly.

E. Conclusion

103. In sum, the City Respondents’ position is as follows:

- a) The challenge to the Section 22 Order is a collateral attack and an abuse of process;
- b) The challenges to the Section 24 Direction and Trespass Notice are applications for judicial review that have been brought in the wrong court and are out of time;
- c) In the alternative, Mr. Skelly’s *Charter* rights were not engaged nor infringed, and in any event, any infringements are justified.

¹⁰³ *Ontario v Trinity Bible Chapel et al*, [2022 ONSSC 1344](#) at [para 145](#), aff’d [2023 ONCA 134](#) at [para 115](#), leave to appeal dismissed [2023 CanLII 82134 \(SCC\)](#).

¹⁰⁴ *Canada (Attorney General) v JTI-Macdonald Corp*, [2007 SCC 30](#) at [para 137](#).

¹⁰⁵ *Hutterian Brethren*, *supra* note 100 at [para 77](#).

104. The Section 52(1) relief sought by Mr. Skelly is not available as against the City Respondents, as the MOH Measures are not laws for which a section 52(1) remedy can be sought.¹⁰⁶

PART IV – ORDER REQUESTED

105. The City Respondents request an order dismissing the Application with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9th day of February, 2026.

I certify as to the authenticity of every authority cited in this Factum.



CITY SOLICITOR'S OFFICE

Kirsten Franz (LSO #45946O)
Penelope Ma (LSO #66367O)

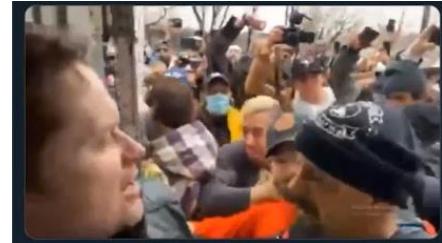
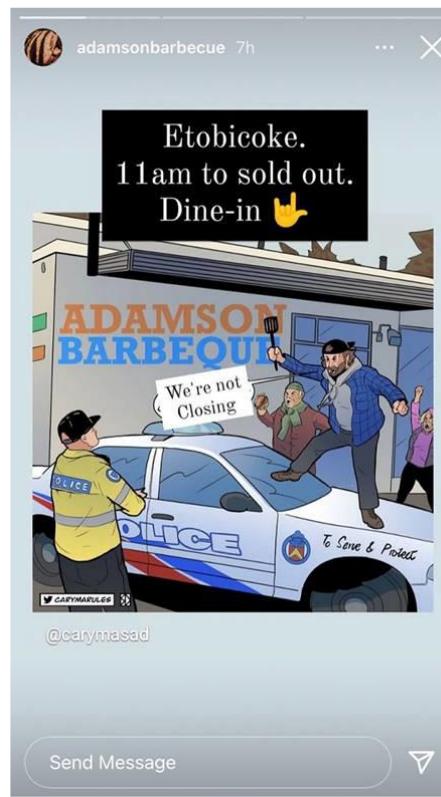
*Lawyers for the Respondents, City of Toronto,
Board of Health for the City of Toronto, and
Eileen De Villa*

¹⁰⁶ *Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11* at [s. 52\(1\)](#).

A free society is a pluralistic one in which individuals are entitled to pursue, within reasonable limits, their individual beliefs. But to live in community is also to acknowledge our interdependence. We share limited collective resources upon which all of us depend, including our healthcare system. We share the environment, the air we breathe, and our susceptibility to transmissible diseases, the burden of which falls disproportionately on the most vulnerable among us.

The COVID-19 pandemic highlighted our interdependence as a community. It forced us to confront the reality that the pursuit of some activities, including the exercise of some constitutionally protected rights, would increase the risk of exponential spread of the disease and the loss of human life...

- British Columbia Court of Appeal in [Beaudoin](#)



“They posted on their Instagram story an hour ago that they will be open today from 11am-4pm. Please do not allow them. This is a safety risk for all.”

“This is getting high profile attention because it’s such an audacious act. As a small business owner myself, they better lose their license!”

“So so so many people coming in and out, no masks, sneezing. Aren’t we ALL supposed to be in lockdown?”

“He opened yesterday and was shut down, he is reopening AGAIN today for indoor dining”

“No masks. Large gathering. Indoor dining. Breaking the law. Endangering our community”

- Reports/complaints made to the City by members of the public (Nov 23-26, 2020)

SCHEDULE “A” – Authorities Cited

1. *Alberta v Hutterian Brethren of Wilson Colony*, [2009 SCC 37 \(CanLII\)](#)
2. *Attorney General of Ontario v 2192 Dufferin Street*, [2019 ONSC 615 \(CanLII\)](#)
3. *Banas v HMTQ*, [2022 ONSC 999 \(CanLII\)](#)
4. *Beaudoin v British Columbia (Attorney General)*, [2022 BCCA 427 \(CanLII\)](#), leave to appeal dismissed [2023 CanLII 72139 \(SCC\)](#)
5. *Bowman v Ontario*, [2022 ONCA 477 \(CanLII\)](#)
6. *British Columbia (Workers’ Compensation Board) v Figliola*, [2011 SCC 52 \(CanLII\)](#)
7. *Canada (Attorney General) v JTI-Macdonald Corp*, [2007 SCC 30 \(CanLII\)](#)
8. *Canada (Minister of Citizenship and Immigration) v Vavilov*, [2019 SCC 65 \(CanLII\)](#)
9. *Canadian Council for Refugees v Canada (Citizenship and Immigration)*, [2023 SCC 17 \(CanLII\)](#)
10. *Carter v Canada (Attorney General)*, [2015 SCC 5 \(CanLII\)](#)
11. *Danyluk v Ainsworth Technologies Inc*, [2001 SCC 44 \(CanLII\)](#)
12. *Doré v. Barreau du Québec*, [2012 SCC 12 \(CanLII\)](#)
13. *Gateway Bible Baptist Church et al. v Manitoba et al.*, [2021 MBQB 219 \(CanLII\)](#), aff’d [2023 MBCA 56](#), leave to appeal dismissed [2024 CanLII 202456 \(SCC\)](#)
14. *Grandel v Saskatchewan*, [2022 SKKB 209 \(CanLII\)](#), aff’d [2024 SKCA 53](#), leave to appeal dismissed [2025 CanLII 17305 \(SCC\)](#)
15. *Harjee v Ontario*, [2022 ONSC 7033 \(CanLII\)](#), appeal dismissed as moot ([2023 ONCA 716](#)).
16. *Hunter et al v Southam Inc.*, [1984] 2 SCR 145, [1984 CanLII 33](#)
17. *Hussain v Toronto (City)*, [2016 ONSC 3504 \(CanLII\)](#)
18. *Irwin Toy Ltd v Quebec (Attorney General)*, [1989] 1 SCR 927, [1989 CanLII 87](#)
19. *Law Society of British Columbia v Trinity Western University*, [2018 SCC 32 \(CanLII\)](#)
20. *Little Sisters Book and Art Emporium v Canada (Minister of Justice)*, [2000 SCC 69 \(CanLII\)](#)

21. *Ontario v Trinity Bible Chapel et al*, [2022 ONSC 1344 \(CanLII\)](#), aff'd [2023 ONCA 134](#), leave to appeal dismissed [2023 CanLII 82134 \(SCC\)](#)
22. *Quebec (Attorney General) v. Laroche*, [2002 SCC 72 \(CanLII\)](#)
23. *R v Conway*, [2010 SCC 22 \(CanLII\)](#)
24. *R v Edwards Books and Art Ltd.*, [1986] 2 SCR 713, [1986 CanLII 12](#)
25. *R v Keough*, [2022 SKPC 23 \(CanLII\)](#)
26. *Rep Room London Inc. v Summers*, [2021 CanLII 64222 \(ON HSARB\)](#)
27. *RJR-MacDonald v Canada (Attorney General)*, [1995] 3 SCR 199, [1995 CanLII 64](#)
28. *Rosen v Ontario (Attorney General)*, [1996 CanLII 443 \(ON CA\)](#)
29. *Siemens v Manitoba (Attorney General)*, [2003 SCC 3 \(CanLII\)](#)
30. *Spasiw v Law Society of Ontario*, [2024 ONSC 1486 \(CanLII\)](#), aff'd [2024 ONCA 888 \(CanLII\)](#), leave to appeal dismissed [2025 CanLII 71460 \(SCC\)](#)
31. *Toronto (City) v CUPE, Local 79*, [2003 SCC 63 \(CanLII\)](#)
32. *Winter v Sherman Estate*, [2018 ONCA 703](#), leave to appeal dismissed [2020 CanLII 22065 \(SCC\)](#)

SCHEDE B – Statutes Cited

Index (Hyperlinked to Excerpts Below)

1. [*Constitution Act, 1982, being Schedule B to the Canada Act 1982 \(UK\), 1982, c 11*](#)
2. [*Health Protection and Promotion Act, RSO 1990, c H7*](#) (historical version for the period July 8, 2020 to March 31, 2021)
3. [*Judicial Review Procedure Act, RSO 1990, c J1*](#)
4. [*Ontario Regulation 135/18, “Designation of Diseases”*](#) (historical version for the period January 22, 2020 to December 10, 2020)
5. [*Ontario Regulation 263/20, “Rules for Areas in Stage 2”*](#) (historical version for the period November 14, 2020 to November 21, 2020).
6. [*Ontario Regulation 82/20, “Rules for Areas in Stage 1”*](#) (historical version for the period November 23, 2020 to November 26, 2020).
7. [*RRO 1990, Reg 566 “Qualifications of Board of Health Staff”*](#)
8. [*Trespass to Property Act, RSO 1990, c T21*](#) (historical version for the period September 1, 2016 to June 4, 2025)

Statute Excerpts

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

PART I

Canadian Charter of Rights and Freedoms

Rights and freedoms in Canada

1 The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Fundamental freedoms

2 Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly; and
- (d) freedom of association.

...

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 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.

...

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.

...

2. **Health Protection and Promotion Act, RSO 1990, c H7** (historical version for the period July 8, 2020 to March 31, 2021)

...

Purpose

2 The purpose of this Act is to provide for the organization and delivery of public health programs and services, the prevention of the spread of disease and the promotion and protection of the health of the people of Ontario. R.S.O. 1990, c. H.7, s. 2.

...

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. R.S.O. 1990, c. H.7, s. 22 (1).

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. R.S.O. 1990, c. H.7, s. 22 (2); 1997, c. 30, Sched. D, s. 3 (1).

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. R.S.O. 1990, c. H.7, s. 22 (3).

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. R.S.O. 1990, c. H.7, s. 22 (4); 1997, c. 30, Sched. D, s. 3 (2).

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. R.S.O. 1990, c. H.7, s. 22 (5).

...

Reasons for order

(7) An order under this section is not effective unless the reasons for the order are set out in the order. R.S.O. 1990, c. H.7, s. 22 (7).

...

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. R.S.O. 1990, c. H.7, s. 24 (1).

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. R.S.O. 1990, c. H.7, s. 24 (2); 1997, c. 30, Sched. D, s. 4 (1).

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. R.S.O. 1990, c. H.7, s. 24 (3); 1997, c. 30, Sched. D, s. 4 (2).

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. R.S.O. 1990, c. H.7, s. 24 (4).

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. R.S.O. 1990, c. H.7, s. 24 (5).

...

Right to hearing

44 (1) An order by a medical officer of health or a public health inspector under this Act shall inform the person to whom it is directed that the person is entitled to a hearing by the Board if the person mails or delivers to the medical officer of health or public health inspector, as the case requires, and to the Board, within fifteen days after a copy of the order is served on the person, notice in writing requiring a hearing and the person may also require such a hearing.

R.S.O. 1990, c. H.7, s. 44 (1).

Oral order

(2) An oral order or an order directed to a person described but not named in the order need not contain the information specified in subsection (1) but a person to whom the order is directed may require a hearing by the Board by giving the notices specified in subsection (1) within fifteen days after the day the person first knows or ought to know the contents of the order. R.S.O. 1990, c. H.7, s. 44 (2).

Effect of order

(3) Although a hearing is required in accordance with this Part, an order under this Act takes effect,

- (a) when it is served on the person to whom it is directed; or
- (b) in the case of an oral order or an order directed to a person described but not named in the order, when the person to whom it is directed first knows or ought to know the contents of the order,

but the Board, upon application with notice, may grant a stay until the proceedings before the Board are disposed of. R.S.O. 1990, c. H.7, s. 44 (3).

Powers of Board

(4) Where the person to whom an order is directed requires a hearing by the Board in accordance with subsection (1) or (2), the Board shall appoint a time and place for and hold the hearing and the Board may by order confirm, alter or rescind the order and for such purposes the Board may substitute its findings for that of the medical officer of health or public health inspector who made the order. R.S.O. 1990, c. H.7, s. 44 (4); 1997, c. 30, Sched. D, s. 6.

Time for hearing

(5) The Board shall hold a hearing under this section within fifteen days after receipt by the Board of the notice in writing requiring the hearing and the Board may, from time to time, at the request or with the consent of the person requiring the hearing, extend the time for holding the hearing for such period or periods of time as the Board considers just. R.S.O. 1990, c. H.7, s. 44 (5).

Extension of time for hearing

(6) The Board may extend the time for the giving of notice requiring a hearing under this section by the person to whom the order of the medical officer of health or public health inspector is directed either before or after the expiration of such time where it is satisfied that there are apparent grounds for granting relief to the person following upon a hearing and that there are reasonable grounds for applying for the extension, and the Board may give such directions as it considers proper consequent upon the extension. R.S.O. 1990, c. H.7, s. 44 (6).

...

Appeal to court

46 (1) Any party to the proceedings before the Board under this Act may appeal from its decision or order to the Divisional Court in accordance with the rules of court. R.S.O. 1990, c. H.7, s. 46 (1); 1998, c. 18, Sched. G, s. 55 (8).

Stay of order

(2) Where an appeal is taken under subsection (1) in respect of an order that was stayed by the Board, a judge of the Superior Court of Justice upon application may grant a further stay until the appeal is disposed of. R.S.O. 1990, c. H.7, s. 46 (2); 2002, c. 18, Sched. I, s. 9 (7).

Record to be filed in court

(3) Where any party appeals from a decision or order of the Board, the Board shall forthwith file with the Divisional Court the record of the proceedings before it in which the decision was made, which, together with the transcript of evidence if it is not part of the Board's record, shall constitute the record in the appeal. R.S.O. 1990, c. H.7, s. 46 (3).

Minister entitled to be heard

(4) The Minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section. R.S.O. 1990, c. H.7, s. 46 (4).

Powers of court on appeal

(5) An appeal under this section may be made on questions of law or fact or both and the court may confirm, alter or rescind the decision of the Board and may exercise all powers of the Board to confirm, alter or rescind the order as the court considers proper, or the court may refer the matter back to the Board for rehearing, in whole or in part, in accordance with such directions as the court considers proper. R.S.O. 1990, c. H.7, s. 46 (5).

...

Eligibility for appointment

64 No person is eligible for appointment as a medical officer of health or an associate medical officer of health unless,

- (a) he or she is a physician;
- (b) he or she possesses the qualifications and requirements prescribed by the regulations for the position; and

(c) the Minister approves the proposed appointment. R.S.O. 1990, c. H.7, s. 64.

...

Medical officer of health

67 (1) The medical officer of health of a board of health reports directly to the board of health on issues relating to public health concerns and to public health programs and services under this or any other Act. 1997, c. 30, Sched. D, s. 7 (1).

Direction of staff

(2) The employees of and the persons whose services are engaged by a board of health are subject to the direction of and are responsible to the medical officer of health of the board if their duties relate to the delivery of public health programs or services under this or any other Act. R.S.O. 1990, c. H.7, s. 67 (2); 1997, c. 30, Sched. D, s. 7 (2).

Management

(3) The medical officer of health of a board of health is responsible to the board for the management of the public health programs and services under this or any other Act. 1997, c. 30, Sched. D, s. 7 (3).

Area of authority

(4) The authority of the medical officer of health of a board of health under this Act and the regulations is limited to the health unit served by the board of health. R.S.O. 1990, c. H.7, s. 67 (4).

...

3. Judicial Review Procedure Act, RSO 1990, c J1

Definitions

1 In this Act,

...

“statutory power” means a power or right conferred by or under a statute,

- (a) to make any regulation, rule, by-law or order, or to give any other direction having force as subordinate legislation,
- (b) to exercise a statutory power of decision,
- (c) to require any person or party to do or to refrain from doing any act or thing that, but for such requirement, such person or party would not be required by law to do or to refrain from doing,
- (d) to do any act or thing that would, but for such power or right, be a breach of the legal rights of any person or party; (“compétence légale”)

“statutory power of decision” means a power or right conferred by or under a statute to make a decision deciding or prescribing,

- (a) the legal rights, powers, privileges, immunities, duties or liabilities of any person or party, or
- (b) the eligibility of any person or party to receive, or to the continuation of, a benefit or licence, whether the person or party is legally entitled thereto or not,

and includes the powers of an inferior court. (“compétence légale de décision”) R.S.O. 1990, c. J.1, s. 1; 2002, c. 17, Sched. F, Table; 2006, c. 19, Sched. C, s. 1 (1).

Applications for judicial review

2 (1) On an application by way of originating notice, which may be styled “Notice of Application for Judicial Review”, the court may, despite any right of appeal, by order grant any relief that the applicant would be entitled to in any one or more of the following:

1. Proceedings by way of application for an order in the nature of mandamus, prohibition or certiorari.
2. Proceedings by way of an action for a declaration or for an injunction, or both, in relation to the exercise, refusal to exercise or proposed or purported exercise of a statutory power. R.S.O. 1990, c. J.1, s. 2 (1).

...

Time for bringing application

5 (1) Unless another Act provides otherwise, an application for judicial review shall be made no later than 30 days after the date the decision or matter for which judicial review is being sought was made or occurred, subject to subsection (2). 2020, c. 11, Sched. 10, s. 2.

Extension

(2) The court may, on such terms as it considers proper, extend the time for making an application for judicial review if it is satisfied that there are apparent grounds for relief and that no substantial prejudice or hardship will result to any person affected by reason of the delay. 2020, c. 11, Sched. 10, s. 2.

Same, other Acts

(3) Subsection (2) applies with respect to any limitation of time for the bringing of an application for judicial review under any other Act, unless that Act expressly provides otherwise. 2020, c. 11, Sched. 10, s. 2.

Transition

(4) Subsection (1) applies with respect to the judicial review of a decision that is made or of a matter that occurs on or after the day section 2 of Schedule 10 to the *Smarter and Stronger Justice Act, 2020* comes into force. 2020, c. 11, Sched. 10, s. 2.

Application to Divisional Court

6 (1) Subject to subsection (2), an application for judicial review shall be made to the Divisional Court. R.S.O. 1990, c. J.1, s. 6 (1).

Application to judge of Superior Court of Justice

(2) An application for judicial review may be made to the Superior Court of Justice with leave of a judge thereof, which may be granted at the hearing of the application, where it is made to appear to the judge that the case is one of urgency and that the delay required for an application to the Divisional Court is likely to involve a failure of justice. R.S.O. 1990, c. J.1, s. 6 (2); 2006, c. 19, Sched. C, s. 1 (1).

Transfer to Divisional Court

(3) Where a judge refuses leave for an application under subsection (2), he or she may order that the application be transferred to the Divisional Court. R.S.O. 1990, c. J.1, s. 6 (3).

Appeal to Court of Appeal

(4) An appeal lies to the Court of Appeal, with leave of the Court of Appeal, from a final order of the Superior Court of Justice disposing of an application for judicial review pursuant to leave granted under subsection (2). R.S.O. 1990, c. J.1, s. 6 (4); 2006, c. 19, Sched. C, s. 1 (1).

...

4. **Ontario Regulation 135/18, “Designation of Diseases” (historical version for the period January 22, 2020 to December 10, 2020)**

Designated diseases

1. For the purposes of the Act, a disease set out in Column 1 of the Table is designated as a disease of public health significance and,

- (a) a communicable disease, if it is identified as such in Column 2 of the Table; and
- (b) a virulent disease, if it is identified as such in Column 3 of the Table.

...

18.1	Diseases caused by a novel coronavirus, including Severe Acute Respiratory Syndrome (SARS) and Middle East Respiratory Syndrome (MERS)	Yes	No
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5. **Ontario Regulation 263/20, “Rules for Areas in Stage 2”** (historical version for the period November 14, 2020 to November 21, 2020)

Schedule 2

Specific Rules

Food and drink

Restaurants, bars, etc.

1. (1) Restaurants, bars, food trucks, concession stands and other food or drink establishments may open if they comply with the following conditions:

1. No buffet-style service may be provided.
2. Patrons must be seated at all times in any area of the establishment in which food or drink is permitted except,
 - i. while entering the area and while moving to their table,
 - ii. while placing or picking up an order,
 - iii. while paying for an order,
 - iv. while exiting the area,
 - v. while going to or returning from a washroom,
 - vi. while lining up to do anything described in subparagraphs i to v, or
 - vii. where necessary for the purposes of health and safety.
3. The establishment must be configured so that patrons seated at different tables are separated by,
 - i. a distance of at least two metres, or
 - ii. plexiglass or some other impermeable barrier.
4. The person responsible for the establishment must,
 - i. record the name and contact information of every patron that enters an area of the establishment, unless the patron temporarily enters the area to place, pick up or pay for a takeout order,
 - ii. maintain the records for a period of at least one month, and
 - iii. only disclose the records to a medical officer of health or an inspector under the *Health Protection and Promotion Act* on request for a purpose specified in section 2 of that Act or as otherwise required by law.
5. The establishment must be closed to the public between the hours of 10 p.m. and 5 a.m., except as may be necessary to,
 - i. allow patrons to temporarily enter the establishment to place, pick up or pay for a takeout order,
 - ii. provide drive-through or delivery service,

- iii. provide dine-in service only for persons who are performing work for the business or place in which the establishment is located, or
- iv. provide access to washrooms.

6. No patron may be permitted to line up or congregate outside of the establishment unless they are,

- i. maintaining a physical distance of at least two metres from other groups of persons outside the establishment, and
- ii. wearing a mask or face covering in a manner that covers their mouth, nose and chin, unless they are entitled to any of the exceptions set out in subsection 2 (4) of Schedule 1.

7. The total number of patrons permitted to be seated indoors in the establishment must be limited to the number that can maintain a physical distance of at least two metres from every other person in the establishment, and in any event cannot exceed 10 patrons.

8. No more than four people may be seated together at a table in the establishment.

9. Music must not be played at a decibel level that exceeds the level at which normal conversation is possible.

10. Dancing, singing and the live performance of brass or wind instruments are prohibited.

11. The person responsible for the establishment must ensure that a safety plan is prepared and made available in accordance with section 5 of this Order.

12. If an outdoor dining area at the establishment is covered by a roof, canopy, tent, awning or other element, at least two full sides of the entire outdoor dining area must be open to the outdoors and must not be substantially blocked by any walls or other impermeable physical barriers.

13. If an outdoor dining area at the establishment is equipped with a retractable roof and the roof is retracted, at least one full side of the outdoor dining area must be open to the outdoors and must not be substantially blocked by any walls or other impermeable physical barriers.

...

6. [Ontario Regulation 82/20, “Rules for Areas in Stage 1” \(historical version for the period November 23, 2020 to November 26, 2020\).](#)

...

SCHEDULE 1

General Rules

Closures

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

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

...

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

...

Schedule 2
Businesses that may Open

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

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

...

7. **RRO 1990, Reg 566 “Qualifications of Board of Health Staff”**

1. (1) The requirements for employment as a medical officer of health or an associate medical officer of health in addition to those set out in section 64 of the Act are that the person be the holder of,

(a) a fellowship in public health and preventive medicine from The Royal College of Physicians and Surgeons of Canada;

(b) a certificate, diploma or degree from a university in Canada that is granted after not less than one academic year of full time post graduate studies or its equivalent in public health comprising,

- (i) epidemiology,
- (ii) quantitative methods,
- (iii) management and administration, and
- (iv) disease prevention and health promotion; or

(c) a qualification from a university outside Canada that is considered by the Minister to be equivalent to the qualifications set out in clause (b). R.R.O. 1990, Reg. 566, s. 1 (1); O. Reg. 496/17, s. 1; O. Reg. 140/18, s. 1.

8. **Trespass to Property Act, RSO 1990, c T21** (historical version for the period September 1, 2016 to June 4, 2025)

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”)

“premises” means lands and structures, or either of them, and includes,

- (a) water,
- (b) ships and vessels,
- (c) trailers and portable structures designed or used for residence, business or shelter,
- (d) trains, railway cars, vehicles and aircraft, except while in operation.

(“lieux”) R.S.O. 1990, c. T.21, s. 1 (1).

...

Method of giving notice

5 (1) A notice under this Act may be given,

- (a) orally or in writing;
- (b) by means of signs posted so that a sign is clearly visible in daylight under normal conditions from the approach to each ordinary point of access to the premises to which it applies; or
- (c) by means of the marking system set out in section 7. R.S.O. 1990, c. T.21, s. 5 (1).

Substantial compliance

(2) Substantial compliance with clause (1) (b) or (c) is sufficient notice. R.S.O. 1990, c. T.21, s. 5 (2).

B E T W E E N :

WILLIAM ADAMSON SKELLY

Applicant

- and -

HIS MAJESTY THE KING IN RIGHT OF ONTARIO *et al*

Respondents

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

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