

Court File No. CV-25- 00093239-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ROBERT LALLI, in his capacity as CHIEF BUILDING OFFICIAL
OF THE CITY OF HAMILTON



Applicant

- and -

ANDREA HORWATH and BENIAMINO LEONETTI

Respondents

APPLICATION UNDER section 38 of the *Building Code Act, 1992*, SO 1992 c 23, as amended.

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing:

- In person
- By telephone conference
- By video conference

at the following location: John Sopinka Courthouse, 45 Main Street East, Hamilton, Ontario, on, December 23, 2025, at 10:00 AM, or as soon after that time as the application can be heard.

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

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

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

December 22, 2025

Issued by Lindsay T Old
Local Registrar

Digitally signed by
Lindsay T Old
Date: 2025.12.22
11:30:34 -05'00'

Address of court office: 45 Main Street East
Hamilton, ON L8N 2B7

TO: **ANDREA HORWATH**
76 West Avenue North
Hamilton, ON
L8L 5C2

AND **BENIAMINO LEONETTI**
TO: 76 West Avenue North
Hamilton, ON
L8L 5C2

APPLICATION

1. The applicant, Robert Lalli, in his capacity as the Chief Building Official of the City of Hamilton (the “**CBO**”), makes this application for:
 - a) an Order prohibiting the Respondent, Beniamino Leonetti (“**Mr. Leonetti**”), any other occupants of the building on the property located at 76 West Avenue North (the “**Property**”), or anyone with notice of the Order sought herein, from hindering or obstructing, or attempting to hinder or obstruct, the CBO and his servants, employees, contractors, and agents from taking measures pursuant to s. 15.10(3) of the *Building Code Act, 1992*, S.O. 1992, c. 23 (the “**BCA**”) to terminate the danger at the Property in accordance with the emergency order issued by the CBO on December 12, 2025, under s. 15.10 of the BCA (the “**Emergency Order**”);
 - b) an Order, if necessary, that if Mr. Leonetti, any other occupants of the Property, or anyone with notice of the Order sought herein should fail to comply with subparagraph 1(a) above, directing that the Sheriff for the City of Hamilton (the “**Sheriff**”) and the Hamilton Police Service (the “**HPS**”) are authorized to take any lawful measures that the Sheriff or the HPS deem necessary to enforce compliance with subparagraph 1(a), above;
 - c) an Order authorizing the Sheriff and the HPS to enter the Property as necessary for the purposes of subparagraph 1(b);
 - d) if necessary, an Order, *nunc pro tunc*, abridging the time for service and filing of this Notice of Application and the Application Record;

- e) if necessary, an Order, *nunc pro tunc*, validating service of this Notice of Application and the Application Record; and
- f) such further and other relief as counsel may request and this Honourable Court may deem just.

2. The grounds for the application are:

- a) The purposes of the BCA and the Ontario Building Code ensuring that buildings are structurally safe and suitable for occupancy;
- b) The CBO is responsible for the enforcement of the BCA in Hamilton;
- c) Located on the Property is a residential detached dwelling that shares a common wall with a separate residential structure located immediately to the south;
- d) The sole occupant of the Property is Mr. Leonetti;
- e) The Respondent, Andrea Horwath, is the registered owner of the Property (the “**Owner**”);
- f) The Owner obtained a report from Kalos Engineering Inc., dated November 28, 2025, (the “**Kalos Report**”), which set out numerous unsafe structural and other issues at the Property, concluding that it was not suitable for human occupancy;
- g) Concerned with state of the Property, Kalos Engineering Inc. provided a copy of the Kalos Report directly to the CBO;

- h) On December 11, 2025, Building Inspectors with the City of Hamilton attended at the Property with an engineer from Element Forensic Engineering where an interior and exterior inspection of the dwelling was conducted;
- i) Element Forensic Engineering subsequently produced a report dated December 12, 2025, which assessed the structural integrity and overall condition of the Property (the “**Element Report**”);
- j) The Element Report identified many of the same deficiencies outlined in the Kalos Report, finding that select structural and building components posed an immediate danger to occupants and the public, and recommended installing emergency measures and performing selective demolition;
- k) On December 12, 2025, the CBO issued an Emergency Order pursuant to s. 15.10 of the BCA, requiring, among other things, the Owner to immediately undertake emergency repairs or to demolish the Property, and requiring Mr. Leonetti to vacate the Property;
- l) The Respondents were served with the Emergency Order on December 12, 2025, in compliance with the provisions of the BCA;
- m) The emergency work required under the Emergency Order has not been completed by the Owner;

- n) Accordingly, on December 16, 2025, the CBO, through its contractors, began to undertake and complete emergency repairs inside of the Property as required by the Order;
- o) Further, the CBO, through its contractors, began demolition of the rear deck structure on December 17, 2025, as required by the Order;
- p) The CBO has been unable to complete the demolition of the rear deck structure, or to continue with those efforts, due to Mr. Leonetti's ongoing interference and obstruction of the contractors;
- q) Mr. Leonetti is hindering and obstructing the CBO's lawful exercise of a power or the performance of a duty under s.15.10(3) the BCA;
- r) As a result of the continuing obstruction, Mr. Leonetti has been issued a Part 1 Provincial Offence Notice under section 19(1) of the BCA;
- s) Despite repeated requests, Mr. Leonetti has refused, and continues to refuse, to comply with the BCA and the Emergency Order;
- t) Sections 15.10, 16(1), 19, and 38 of the *Building Code Act, 1992*, S.O. 1992, c. 23, as amended;
- u) Rules 1.04, 1.05, and 14.05(2) of the *Rules of Civil Procedure*, RRO 1990, Reg 194; and
- v) Such further and other documents as counsel may advise and this Honourable Court may permit.

3. The following documentary evidence will be used at the hearing of the application:
- a) the affidavit of Robert Lalli, to be sworn, and attached exhibits; and
 - b) such further and other documents as counsel may advise and this Honourable Court may permit.

Date: December 22, 2025

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CHIEF BUILDING OFFICIAL OF THE CITY OF HAMILTON
Applicant

-and-

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PROCEEDING COMMENCED AT
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