

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

**FACTUM OF THE MOVING PARTY
ROBERT LALLI, in his capacity as CHIEF BUILDING OFFICIAL
OF THE CITY OF HAMILTON**

December 22, 2025

AIRD & BERLIS LLP
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Brian Chung (LSO #66232Q)
Tel: (416) 865-3426
Email: bchung@airdberlis.com

Counsel for the Applicant

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

c/o James A. Brown (LSO No. 60941Q),
Lawyer for the Respondent, Andrea
Horwath

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

c/o Raymond Di Gregorio (LSO No. 39420W),
Lawyer for the Respondent, Beniamino
Leonetti

TABLE OF CONTENTS

PART I: OVERVIEW 3

PART II: FACTS 4

PART III: ISSUES 7

PART IV: THE LAW AND ARGUMENT 7

PART V: ORDER REQUESTED 10

SCHEDULE “A” 11

LIST OF AUTHORITIES 11

PART I: OVERVIEW

1. The applicant, Robert Lalli, in his capacity as Chief Building Official of the City of Hamilton (the “**CBO**”), seeks an order under section 38 of the *Building Code Act, 1992, S.O. 1992, c. 23* (the “**BCA**”) prohibiting the respondent, Beniamino Leonetti (“**Mr. Leonetti**”), from hindering or obstructing him during the course of completing emergency repairs to the subject property located at 76 West Avenue North, in Hamilton (the “**Property**”). Those emergency repairs are being done pursuant to an emergency order issued under section 15.10 of the BCA (the “**Emergency Order**”), which states that the subject building poses an immediate danger to the health and safety of any person.
2. Following an inspection of the Property by Building Inspector’s from the City’s Building Division and a report from a professional engineer who also inspected the Property, the CBO issued the Emergency Order requiring certain urgent repairs to be completed immediately to terminate the danger to the occupants and the public, or to demolish the building.
3. As the Owner did not complete the required repairs or demolish the building immediately as indicated in the Emergency Order, the CBO directed a contractor to undertake the necessary work. After a number of attempts by the City’s Inspectors and its contractors to commence work at the Property in accordance with the Emergency Order, Mr. Leonetti, on December 16, 2025 allowed the City to enter the Property to complete some of the urgent repairs to the interior of the Property, Mr. Leonetti has obstructed, and continues to obstruct and hinder the

contractor from completing the remaining work needed to terminate the danger.

4. Section 38 of the BCA provides that where it appears to a CBO that a person does not comply with the BCA, the regulations or an order made under the BCA, the CBO may apply to the Superior Court of Justice for an order directing that person to comply.¹
5. Simply put, Mr. Leonetti is not in compliance with the BCA by obstructing and hindering the CBO and his agents in taking measures to terminate the danger pursuant to the Emergency Order. Accordingly, the CBO seeks assistance from this Court.

PART II: FACTS

6. The Property is a two-storey semi-detached dwelling sharing a wall with a multi-unit residential structure to the south. It is owned by the respondent, Andrea Horwath (“**Owner**”), and occupied by the respondent, Mr. Leonetti.²
7. On December 11, 2025, two Building Inspectors and an independent third party forensic structural engineer inspected the Property and identified several issues which posed an immediate danger to health and safety. Subsequently, on December 12, 2025, the engineer provided a report to the CBO identifying several structural and other issues which posed an immediate danger to the occupants and public, including:

¹ [*Building Code Act, 1992, SO 1992, c 23 at s. 38.*](#)

² Affidavit of Robert Lalli sworn December 22, 2025 (“**Lalli Affidavit**”), in the Application Record dated December 22, 2025 (“**Application Record**”), Tab 2, at para 6.

- (a) Exposed and fractured sewer pipe with effluent and sewer gas (methane);
 - (b) Deteriorated basement load-bearing wall;
 - (c) Severely compromised two-tier rear deck;
 - (d) Partially collapsed shed wall; and
 - (e) Deflected front porch steps and compromised roof structure.³
8. Based on these findings, on December 12, 2025, the Applicant issued an Emergency Order pursuant to section 15.10 of the BCA providing for the:
- (a) Immediate repair of the exposed sewer system by the services of a professional plumber;
 - (b) Immediate demolition of the two-tier raised deck/stair structure, and to stabilize the main building as required, namely the west perimeter of the attached shed structure;
 - (c) Immediate cordoning off the front porch, pending additional structural review of the roof structure; and
 - (d) Immediate localized repairs to the front porch.
9. The Emergency Order was served on the Owner and Mr. Leonetti.⁴
10. As the work prescribed under the Emergency Order was not completed by the

³ Lalli Affidavit, *ibid*, Application Record, Tab 2, at paras 13 to 14.

⁴ Lalli Affidavit, *ibid*, Application Record, Tab 2, at paras 17 to 18.

Owner, on December 16, 2025 the CBO exercised his powers under section 15.10(3) of the BCA and directed the City's emergency contractor, Power Property Contracting (the "**Contractor**"), to attend at the Property to commence work to terminate the immediate danger. Between December 16–18, 2025, the Contractor attempted to carry out emergency work to terminate the danger.

11. While Mr. Leonetti was initially cooperative and permitted access to the Contractor and Inspectors from the City Building Division, but only after a number of discussions, to complete some of the interior repairs, he has since obstructed work on the back deck, the shed, and the front porch by:

- a. Putting himself in harm's way by standing in hazardous areas where demolition was to occur;
- b. Incessant verbal attacks towards workers on site; and
- c. Kicking a piece of plywood in the direction of workers which struck a worker in the head and a second in the arm.⁵

12. The CBO requested assistance from the Hamilton Police Service ("**HPS**") to facilitate the Contractor's completion of the emergency work. Despite attending at the Property, the HPS was unable to secure compliance and advised that they could not assist in preventing the obstruction of the work to these areas of the Property without a judicially authorized order.⁶

⁵ Lalli Affidavit, *ibid*, Application Record, Tab 2, at para 30.

⁶ Lalli Affidavit, *ibid*, Application Record, Tab 2, at para 31.

13. Numerous attempts by the City's Building Division Inspectors to seek Mr. Leonetti's cooperation and complete the work necessary to eliminate the dangerous conditions have proven unsuccessful.⁷
14. As a result of Mr. Leonetti's actions, Inspector Black issued a Part 1 Provincial Offence Notice to Mr. Leonetti for obstruction, contrary to section 19(1) of the BCA.⁸
15. The Emergency Order has not been fully complied with and the dangerous conditions remain. The partially demolished deck is approximately 10 feet from ground level and continues to pose an imminent risk of collapse. The front porch, if left in its current condition, is also at risk of imminent collapse.⁹
16. Mr. Leonetti's continued interference and obstruction is preventing the CBO from being able to effectively terminate the danger as set out in the Emergency Order.

PART III: ISSUES

17. The only issue on this application is whether an Order should be granted under section 38 of the BCA prohibiting Mr. Leonetti from hindering or obstructing the CBO and its agents in carrying out measures necessary to terminate the danger pursuant to the Emergency Order.

PART IV: THE LAW AND ARGUMENT

A. Power to restrain under section 38 of the BCA

⁷ Lalli Affidavit, *ibid*, Application Record, Tab 2, at paras 32 and 34 to 36.

⁸ Lalli Affidavit, *ibid*, Application Record, Tab 2, at para 40.

⁹ Lalli Affidavit, *ibid*, Application Record, Tab 2, at paras 37 to 39.

18. The BCA is critical public welfare legislation aimed at protecting public health and safety. There are broad powers contained in the BCA to assist in achieving those objectives, including for instance under section 38 of the BCA.
19. A judge hearing an application under section 38 of the *Building Code Act* has broad discretion to grant the relief sought by virtue of s. 38(2), which provides that the judge may “make the order or such other order as the judge thinks fit.”¹⁰
20. In determining whether to grant relief under section 38 of the Act, the Court’s considerations should include the important public interests that the Act and municipal regulation of construction serve (including public safety and consumer protection), as well as the need to ensure that the provisions of the Building Code and the Act are enforced.¹¹

B. The CBO has powers to terminate the danger

21. Under section 15.10(3) of the BCA, the CBO has the power to take any measures necessary to terminate the danger set out in an emergency order made under section 15.10 of the BCA, and for this purpose the CBO, an inspector and their agents may enter upon the land and into the building in respect of which the order was made without a warrant.¹²
22. In addition, under section 16(1)(b) and (c) of the BCA, the CBO is empowered to enter into a dwelling without the need for a warrant in circumstances where the

¹⁰ [Building Code Act, 1992, SO 1992, c 23 at s. 38\(2\)](#).

¹¹ [Cavan Monaghan \(Township\) v Kings Custom Homes Inc, 2022 ONSC 1888 at para 15](#); and [The Corporation of the Town of Ajax v. 1940475 Ontario Inc., 2025 ONSC 5325](#), at para 51.

¹² [Building Code Act, 1992, SO 1992, c 23 at s. 15.10\(3\)](#).

delay necessary to obtain a warrant or consent of the occupier would result in an immediate danger to the health or safety of any person, and/or the entry is necessary to terminate a danger under section 15.10(3).¹³

23. The CBO has determined that there are conditions at the Property that are an immediate danger to the health and safety to any occupants of the Property, and to anyone visiting the Property.
24. The CBO's efforts in terminating the danger present at the Property have been repeatedly hindered and obstructed by the conduct of Mr. Leonetti, despite significant efforts to seek his cooperation.

C. Mr. Leonetti is not in compliance of the BCA

25. Mr. Leonetti is not in compliance with the BCA in that he has hindered and/or obstructed the CBO and its agents in the exercise of a power or performance of a duty under the BCA, contrary to section 19 of the BCA.¹⁴ Mr. Leonetti has been charged with a Part I Offence for obstruction of an inspector.
26. An Order directing compliance with the BCA — namely, an Order prohibiting any occupant of the Property, or anyone having notice of this Order, from hindering or obstructing the CBO in their efforts to terminate the danger at the Property — accords with the BCA's purpose of promoting public safety, and the need to ensure that the provisions of the BCA are enforced.

¹³ [*Building Code Act, 1992, SO 1992, c 23 at s. 16\(1\)\(b\), \(c\).*](#)

¹⁴ [*Building Code Act, 1992, SO 1992, c 23 at s. 19\(1\).*](#)

27. The Order sought, if granted, would ensure that the remaining work can be carried out without danger not only to Mr. Leonetti but to the workers on site, and to the general public.
28. The CBO therefore submits that the relief it is seeking in respect of the enforcement of the Emergency Order is necessary, reasonable, and justified.

PART V: ORDER REQUESTED

29. The CBO respectfully requests that the Court grant the relief set out in its Notice of Application, and in accordance with the draft Order submitted by the Moving Party, which includes, but is not limited to, an Order authorizing the Sheriff and the HPS to assist the Applicant in ensuring that no person hinders or obstructs the Applicant in their efforts to terminate the danger at the Property.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 22nd DAY OF DECEMBER, 2025.




Brian Chung

SCHEDULE "A"
LIST OF AUTHORITIES

Tab	Authority
1.	<u><i>Cavan Monaghan (Township) v Kings Custom Homes Inc</i>, 2022 ONSC 1888</u>
2.	<u><i>The Corporation of the Town of Ajax v. 1940475 Ontario Inc.</i>, 2025 ONSC 5325</u>

I certify that I am satisfied as to the authenticity of every authority cited herein.

Date: December 22, 2025



Brian Chung

SCHEDULE “B” TEXT OF STATUTES, REGULATIONS & BY-LAWS

[Building Code Act, 1992, SO 1992, c 23](#)

Emergency order where immediate danger

15.10 (1) If upon inspection of a building an inspector is satisfied that the building poses an immediate danger to the health or safety of any person, the chief building official may make an order containing particulars of the dangerous conditions and requiring remedial repairs or other work to be carried out immediately to terminate the danger. 2002, c. 9, s. 26.

...

Emergency powers

(3) After making an order under subsection (1), the chief building official may, either before or after the order is served, take any measures necessary to terminate the danger and, for this purpose, the chief building official, an inspector and their agents may at any time enter upon the land and into the building in respect of which the order was made without a warrant. 2002, c. 9, s. 26.

Entry to dwellings

16 (1) Despite sections 8, 12, 15, 15.2, 15.4, 15.9, 15.10.1 and 15.10.3, an inspector or officer shall not enter or remain in any room or place actually being used as a dwelling unless,

- (a) the consent of the occupier is obtained, the occupier first having been informed that the right of entry may be refused and entry made only under the authority of a warrant issued under this Act;
 - (a.1) a warrant issued under this Act is obtained;
 - (b) the delay necessary to obtain a warrant or the consent of the occupier would result in an immediate danger to the health or safety of any person;
 - (c) the entry is necessary to terminate a danger under subsection 15.7 (3) or 15.10 (3); or
 - (d) the requirements of subsection (2) are met and the entry is necessary to remove a building or restore a site under subsection 8 (6), to remove an unsafe condition under clause 15.9 (6) (b) or to repair or demolish under subsection 15.4 (1). 1992, c. 23, s. 16 (1); 1997, c. 24, s. 224 (9, 10); 2002, c. 9, s. 30; 2006, c. 19, Sched. O, s. 1 (11); 2006, c. 22, s. 112 (9); 2017, c. 34, Sched. 2, s. 20.
-

Obstruction of inspector, etc.

19 (1) No person shall hinder or obstruct, or attempt to hinder or obstruct, a chief building official, inspector, officer or a person authorized by a registered code agency in the exercise of a power or the performance of a duty under this Act. 1997, c. 24, s. 224 (13); 2002, c. 9, s. 35 (1).

Occupied dwellings

(2) A refusal of consent to enter or remain in a place actually used as a dwelling is not hindering or obstructing within the meaning of subsection (1) unless the inspector, officer or authorized person is acting under a warrant issued under this Act or in the circumstances described in clause 16 (1) (b), (c) or (d). 1997, c. 24, s. 224 (13); 2002, c. 9, s. 35 (2).

Restraining order

38 (1) Where it appears to a chief building official that a person does not comply with this Act, the regulations or an order made under this Act, despite the imposition of any penalty in respect of the non-compliance and in addition to any other rights he or she may have, the chief building official may apply to the Superior Court of Justice for an order directing that person to comply with the provision. 1992, c. 23, s. 38 (1); 2002, c. 9, s. 54.

Idem

(2) Upon the application under subsection (1), the judge may make the order or such other order as the judge thinks fit. 1992, c. 23, s. 38 (2).

CHIEF BUILDING OFFICIAL OF THE CITY OF HAMILTON
Applicant

-and-

ANDREA HORWATH and BENIAMINO LEONETTI
Respondents

Court File No. CV-25-00093239-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
HAMILTON

FACTUM

AIRD & BERLIS LLP

Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Brian Chung (LSO #66232Q)

Tel: (416) 865-3426

Email: bchung@airdberlis.com

Counsel for the Applicant