

Court File No. CV-25-00093050-0000

**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 -

BENIAMINO LEONETTI and ANDREA HORWATH

Respondents

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

December 5, 2025

CITY OF HAMILTON

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PART I: OVERVIEW

1. This application relates to a residential property located at 76 West Avenue North, in the City of Hamilton (the “Property”). The Property is a two-storey semi-detached dwelling and is adjoined to the residential structure to the south.¹
2. Upon learning that the Property was an immediate danger to health and safety, the Applicant, Robert Lalli, in his capacity as Chief Building Official of the City of Hamilton, issued an emergency order pursuant to s. 15.10 of the *Building Code Act, 1992*, requiring that the Property be immediately vacated, fenced off, and demolished (the “Emergency Order”).
3. The Respondent, Beniamino Leonetti, is the sole occupier of the Property. Mr. Leonetti refuses to vacate the Property as required by the Emergency Order.
4. Where it appears to a chief building official that a person does not comply with the *Building Code Act* or an order made thereunder, section 38 of the *Building Code Act* permits a chief building official to apply to the Superior Court of Justice for an order directing that person to comply.
5. The Applicant seeks an Order pursuant to section 38 of the *Building Code Act* requiring the Respondents, and any other persons, to vacate the property, and an Order authorizing the Sheriff for the City of Hamilton (the “Sheriff”) and the Hamilton Police Service (the “HPS”) to assist in that regard.

¹ Moving Party’s Application Record, Affidavit of Robert Lalli at para 6 [“Lalli Affidavit”].

PART II: FACTS

6. On November 28, 2025, the Applicant received an engineering report which stated that the Property was structurally unsound and not suitable for human occupancy. The engineering report recommended that the Property be vacated immediately, that it be fenced off to protect the public, and that it be demolished “imminently.”²
7. The Applicant had further communications and written exchanges with the engineer, where the engineer further confirmed a “great risk of collapse/failure with additional snow loading and the compromised roof structure,” and reiterated the need to vacate, secure, and demolish the Property.³
8. The Applicant resultantly issued the Emergency Order, pursuant to s. 15.10 of the *Building Code Act*, on December 3, 2025. The Emergency Order required that:
 - (a) the Property be vacated immediately;
 - (b) fencing and hoarding be installed around the Property to prevent access to the Property; and
 - (c) the Property be demolished imminently under the supervision of a structural engineer.

The Emergency Order was served on the Respondents on December 3, 2025; service was made personally to the Respondent occupant, Mr. Leonetti.⁴

² *Ibid* at paras 8 to 12.

³ *Ibid* at paras 13 and 14.

⁴ *Ibid* at paras 16 to 19.

9. Upon being personally served with the Emergency Order, and during a subsequent site visit by a Building Inspector on December 4, 2025, the Respondent occupant, Mr. Leonetti, advised that he would not be vacating the Property.⁵

PART III: ISSUES

10. The issue on this application is as follows:

Issue 1 Should an Order be granted under section 38 of the *Building Code Act* directing compliance with the Emergency Order?

PART IV: THE LAW AND ARGUMENT

Issue 1 – The Order ought to be granted.

11. 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.”⁶
12. There is precedent for granting the type of relief being sought by the Applicant. In *City of Toronto v. Lambrinos*,⁷ the City of Toronto made an application under s. 38 of the *Building Code Act* for the removal of unauthorized construction. The Order granted by the Court included a prohibition of occupancy, and authorized the local Sheriff and police service to assist in removing any occupants.⁸
13. The evidence is clear that the Property is not safe for occupancy and that it must

⁵ *Ibid* at para 20 and 21.

⁶ [*Building Code Act, 1992, SO 1992, c 23 at s. 38\(2\).*](#)

⁷ *City of Toronto v Lambrinos*, [2016 ONSC 4597](#).

⁸ *Ibid* at [para 38](#).

be vacated immediately. The Property is an immediate threat to the health and safety of the Respondent occupant, to the owners of the residential property immediately to the south that shares a common wall with the Property, and to the general public, in light of the high risk of structural failure and collapse.

14. The Applicant 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

15. The City respectfully requests that the Court grant the following relief:
 - a) An Order 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 removing any persons from the the Property.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 5TH DAY OF DECEMBER, 2025.

SCHEDULE “A” – LIST OF AUTHORITIES

1. *City of Toronto v Lambrinos*, [2016 ONSC 4597](#)

SCHEDULE “B” – STATUTES

1. [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.

Service

(2) The order shall be served on the registered owner and each person apparently in possession of the building and such other persons affected thereby as the chief building official determines and a copy shall be posted on the site of the building in a location visible to the public.

[...]

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.

[...]

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.

Idem

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

Appeal

(3) An appeal lies to the Divisional Court from an order made under subsection (1).

CHIEF BUILDING OFFICIAL OF THE CITY OF HAMILTON
Applicant

-and-

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FACTUM

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