

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

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 Monday, December 8, 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 5, 2025

Issued by Lindsay T Old
Local Registrar

Digitally signed by
Lindsay T Old
Date: 2025.12.05
13:04:14 -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 makes an application for:
 - a) an Order prohibiting the occupancy of the property located at 76 West Avenue North (the "Property") by the Respondents or by any other person;
 - b) in the event that the Respondents, or any other person, should fail to comply with subparagraph (a) above, an Order directing that the Sheriff for the City of Hamilton (the "Sheriff") and the Hamilton Police Service (the "HPS") are authorized to assist the Applicant and their servants, employees, contractors, and agents in removing the Respondents or any other person from the Property and directing that the Sheriff and the HPS are authorized to enter the Property as necessary for this purpose;
 - c) relief from and abridgement of the service and notice provisions, if required; and
 - d) such further and other relief as may be deemed fit by this Honourable Court.
2. The grounds for the Application are:
 - a) The purposes of the *Building Code Act, 1992* (the "BCA") and the Ontario Building Code include ensuring that buildings are structurally safe and suitable for occupancy. The Applicant, Chief Building Official of the City of Hamilton, is responsible for the enforcement of the BCA in Hamilton;

- b) The structure on the Property is a residential home and shares a common wall with separate residential structure located immediately to the south.
- c) The Respondent, Beniamino Leonetti, is the occupant of the Property;
- d) The Respondent, Andrea Horwath, is the registered owner of the Property;
- e) The Respondent owner of the Property, Andrea Horwath, obtained a report from JP Campana, a licensed professional engineer and President of Kalos Engineering Inc., dated November 28, 2025, which assessed the structural integrity and overall condition of the Property (the "Engineering Report");
- f) The Engineering Report was provided to the Applicant by the engineer;
- g) Mr. Campana's Engineering Report stated that the Property was in very poor condition and not suitable for human occupancy. The Report outlined numerous deficiencies, including:
 - compromised floor structures;
 - deterioration in foundation walls;
 - compromised load bearing studs in the basement;
 - collapsing floor structures under the furnace;
 - collapsing brick walls;
 - rotting and significant sagging / bowing of the roof structure;
 - significant sloping in the main floor structure; and
 - water damage and mold throughout the building.

These findings, amongst others, resulted in Mr. Campana recommending that the Property be vacated immediately and demolished imminently;

- h) City of Hamilton Building Inspectors attended at the Property on December 3, 2025, to conduct an inspection of the interior of the building. The Respondent occupant, Beniamino Leonetti, refused entry.
- i) In subsequent communications with the Applicant, the author of the Engineering Report, Mr. Campana, expressed significant concerns over the potential for a collapse of the Property's roof structure with any significant snowfall, and reiterated the need for the Property to be vacated immediately and demolished so as to ensure the safety of both the occupant and the adjacent general public;
- j) On December 3, 2025, the Applicant issued to the Respondents an Emergency Order pursuant to s. 15.10 of the BCA (the "Order") which required the Respondents to: (1) immediately vacate the Property, (2) immediately fence and hoard the Property, and (3) demolish the building on the Property imminently;
- k) The Respondents were served with the Order on December 3, 2025, in compliance with the provisions of the BCA;
- l) Upon being personally served with the Order, the Respondent occupant, Beniamino Leonetti, stated that he would not be vacating the Property;

- m) As of the date of issuance of this Application, the Respondent occupant, Beniamino Leonetti, has not vacated the Property;
 - n) By refusing to vacate the Property, the Respondent occupant, Beniamino Leonetti, is not complying with the BCA or the Order made pursuant thereto;
 - o) Section 15.10 and 38 of the *Building Code Act, 1992*, as amended;
 - p) Rules 1.04 and 14.05(2) of the *Rules of Civil Procedure*, RRO 1990, Reg 194; and
 - q) 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 sworn affidavit of Robert Lalli and attached exhibits; and
 - b) such further and other documentation as the Applicant shall advise and this Honourable Court may permit.

Issued:

CITY OF HAMILTON

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Lawyers for the Applicant

CHIEF BUILDING OFFICIAL OF THE CITY OF HAMILTON
Applicant

-and-

BENIAMINO LEONETTI et al.
Respondents

Court File No. CV-25-00093050-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
HAMILTON

NOTICE OF APPLICATION

CITY OF HAMILTON

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Chief Building Official of the City of Hamilton