

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

ANDREA HORWATH

Applicant

-and-

**BENIAMINO LEONETTI and
THE CITY OF HAMILTON**

Respondents

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, March 3, 2026, 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 EXAMIN OR CROSS-EXAMIN 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.

February 13, 2026

Issued by _____
Local Registrar

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

To: **Beniamino Leonetti**
76 West Avenue North
Hamilton, Ontario L8L 5C2

To: **The City of Hamilton**
Secretary of the Property
Standards Committee
71 Main Street West,
1st floor.
Hamilton, Ontario L8P 4Y5

APPLICATION

1. THE APPLICANT MAKES APPLICATION FOR AN ORDER:

- a. An Order prohibiting the occupancy of the property located at 76 West Avenue North (the "Property") by the Respondent, Beniamino Leonetti ("**Mr. Leonetti**") or by any other person;
- b. In the event that Mr. Leonetti should fail to comply with sub-paragraph (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 her servants, employees, contractors, and agents in removing Mr. Leonetti 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 abridgment of the service and notice provisions, if required; and
- d. Such further and other relief as may be deemed fit by this honourable court.

THE GROUNDS FOR THE APPLICATION ARE:

- a. The Applicant, Andrea Horwath, is the registered owner of the property;
- b. The Respondent, Mr. Leonetti, is the sole occupant of the property;
- c. The Applicant and Mr. Leonetti, were in a relationship since 1986 and separated on January 1, 2010;

- d. Upon separation, the Applicant provided Mr. Leonetti, with tenancy of a unit for the property municipally described as 76 West Avenue, Hamilton, Ontario, (the Subject Property”);
- e. Mr. Leonetti has been obstructing access to the property since in or about October of 2018;
- f. On December 12, 2025 the Chief Building Official of the City of Hamilton (the “**CBO**”) issued an Emergency Order pursuant to Section 15.10 of the Building Code Act (“**BCA**”) requiring among other things that the Applicant immediately undertake emergency repairs or to demolish the property and requiring Mr. Leonetti to vacate the property;
- g. The Applicant was not able to complete the emergency work required under the Emergency Order as Mr. Leonetti obstructed her efforts in regard to same;
- h. Mr. Leonetti also hindered and obstructed the CBO's lawful exercise of their powers or performance of their duties under section 15.10(3)of the BCA;
- i. Mr. Leonetti's efforts to obstruct the Emergency Order were addressed by Justice Valenti by way of an order dated December 23, 2025;
- j. On January 21, 2026 the City of Hamilton issued a Property Standards Order against the Property;
- k. On January 28, 2026 the Applicant's contractor Jordan Fortino inspected the Property.

- l. To repair the property the Applicant has received a quote in the amount of \$130,984.50 to bring the property up to standard ("**Fortino Report**");
- m. the quote does not include potential damages to the interior of the Property as the contractor was not able to assess same;
- n. the Fortino Report has made it clear that to bring the property up to standard it will have to be vacated;
- o. The cost to demolish the property will be in the amount of \$26,400.00 plus HST ("**Demolition Quote**");
- p. repairing the property will be extremely prejudicial to the financial interests of the Applicant;
- q. the matter is urgent as the repairs need to be completed by May 1, 2026 and it is not clear whether Mr. Leonetti will vacate the property;
- r. The public interest by virtue of an Order issued under the *Building Code Act*;
- s. Rules 1.04, 1.05, 14.05(3)(g) and 40 of the *Rules of Civil Procedure*;
- t. Section 38 of the *Building Code Act*;
- u. Section 101 of the *Courts of Justice Act*;
- v. Such further and other evidence as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF
THE APPLICATION:**

- a. Affidavit of Andrea Horwath duly sworn on the 10th day of February, 2026 and
- b. Such further and other evidence as counsel may advise and this Honourable Court may permit.

Date: February 13, 2026

JAMES A. BROWN PROF CORP.
Barrister & Solicitor
8 Main Street East, Suite 208
Hamilton, Ontario
L8N 1E8

James A. Brown (LSO#60941Q)

Tel: (905) 577-9099

Fax: 1-866-281-3274

Lawyers for the Applicant

ANDREA HORWATH

and

BENIAMINO LEONETTI et. al.

Applicant

Respondent

Court File Number:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
HAMILTON

NOTICE OF APPLICATION

**JAMES A. BROWN PROFESSIONAL
CORPORATION**

Barrister & Solicitor
8 Main Street East, Suite 208
Hamilton, Ontario
L8N 1E8

JAMES A. BROWN (LSO#60941Q)

Tel: (905) 577-9099
Fax: (866) 281-3274

Lawyer for the Applicant,
Andrea Horwath