

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**CITY OF TORONTO and
WILLIAM JOHNSTON, CHIEF BUILDING OFFICIAL
FOR CITY OF TORONTO**

Applicants

-and-

TORONTO COMMUNITY HOUSING CORPORATION

Respondent

FACTUM OF THE APPLICANTS

June 30, 2022

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PART I – OVERVIEW

1. This application is brought by the Applicants, the City of Toronto (the "City") and William Johnston, the Chief Building Official (the "CBO") for the City, pursuant to subsection 15.10(7) and section 38 of the *Building Code Act, 1992* (the "BCA") to both confirm and enforce an emergency order issued by the City's Deputy Chief Building Official on June 12, 2022 pursuant to subsection 15.10(1) of the BCA (the "Emergency Order"). The Emergency Order prohibits the use and occupancy of the buildings at the property known municipally as 21 Windermere Avenue in the City of Toronto (the "Property").

2. The Property contains nine blocks of townhouses (designated as Blocks A to I) known as Swansea Mews in the City's Swansea neighbourhood (the "Swansea Buildings"). More specifically, the Swansea Mews complex consists of 154 townhouse units in total across the nine Swansea Buildings. The buildings were constructed approximately 50 years ago. The Property is owned and operated by the Respondent Toronto Community Housing Corporation ("TCHC").

TCHC is thus the landlord of the tenants who occupy the townhouse units at Swansea Mews. TCHC is a separate legal entity from the City.

3. On May 27, 2022, a section of a large concrete ceiling panel above the second floor bedroom in unit 19 in Block H of the Swansea Buildings detached from the structural flooring system. This large detached section of concrete ceiling panel fell from the ceiling and injured an occupant of the unit who was taken to hospital. Toronto Building has since issued several Orders to TCHC pursuant to the BCA in connection with this incident. After undertaking destructive testing throughout the Swansea Buildings, several qualified professionals concluded on June 12, 2022 that the Swansea Buildings are uninhabitable, are at imminent risk of structural failure, and must be vacated immediately. In reliance upon said professionals, the City issued the Emergency Order to TCHC which prohibited the use and occupancy of all 154 townhouse units effective immediately. Use and occupancy of the Swansea Buildings is prohibited until such time as the Swansea Buildings have been made safe for re-occupancy to the CBO's satisfaction.

4. It is clear from the many professional reports received by the City that the unsafe condition at the Swansea Buildings will not be resolved in the short term. Through additional Orders issued by the City and through City staff's dealings with the qualified professionals retained, Toronto Building (the City's building division) continues to pursue what work needs to be done to make the Swansea Buildings safe (whether through repair or replacement) to allow for re-occupancy and the timeframes for this. Once the buildings have been made safe for re-occupancy, the CBO will lift the Emergency Order.

5. The Emergency Order and copies of all engineering reports have been served on the tenants of the Swansea Buildings. The CBO has both in writing and in person explained to the tenants the contents of the Emergency Order, the basis for the order, and the requirement that they vacate immediately.

6. TCHC has gone to great lengths to remove the tenants from the Swansea Buildings and to relocate them at TCHC's expense pending the resolution of the emergency situation. However, TCHC's efforts have not achieved full compliance with the Emergency Order. Twenty-five units remain occupied, and some tenants are refusing to leave. For the safety of the tenants, it is imperative that they vacate immediately.

7. The tenants were put on notice that the City intended to bring the application herein, and the City's application record and factum have been provided to the tenants.

8. In addition to the statutory requirement in subsection 15.10(7) of the BCA that requires an application to this Honourable Court to confirm an emergency order, the Applicants are further seeking the relief set out in its Notice of Application pursuant to section 38 of the BCA which includes authorizing the Toronto Police Service and the Sheriff of Toronto to assist the Applicants in removing any remaining tenants from the Swansea Buildings. The City's primary interest is the safety of the tenants.

9. It is emphasized that the Emergency Order and the relief sought in the application herein have no bearing whatsoever on the on the landlord and tenant relationship that exists between TCHC and the tenants of the Swansea Buildings under the *Residential Tenancies Act, 2006* which

falls outside the jurisdiction of the Applicants. The relief sought by the Applicants includes a declaration to this effect and a declaration that the Swansea Buildings may be re-occupied by the tenants once it has been deemed safe to do so by the CBO and the Emergency Order has been lifted.

PART II – THE FACTS

The Emergency at Swansea Mews and Orders Issued by Toronto Building

10. On May 27, 2022, a section of a concrete ceiling panel measuring approximately 3' wide by 12' long above the second floor bedroom in unit 19 in Block H of the Swansea Buildings detached from the structural flooring system. This large detached section of concrete ceiling panel fell from the ceiling and injured an occupant of the unit who was taken to hospital. Toronto Building immediately issued an Order to Remedy Unsafe Building pursuant to section 15.9 of the BCA which required TCHC to forthwith retain a professional engineer to assess the cause of the failure and the structural stability of the Swansea Buildings and prescribe the required remedial measures to be taken (the "May 27 Unsafe Order").

Affidavit of Will Johnston, City's Application Record, paras. 8 and 9, and Ex. B

11. The professional engineering firm WSP Global Inc. ("WSP") was immediately retained by CS&P Architects ("CS&P") on behalf of TCHC and began investigating. By reports dated May 30, 2022 and June 10, 2022, WSP explained that the existing floor structures consist of a number of approximately 1200 mm wide precast concrete hollow-core panels placed tightly to each other and spanning between the concrete block demising walls. The concrete that fell formed the bottom portion / soffit of the hollow-core concrete panel which supported the laundry room in unit 20 at the level above and which served as part of the ceiling in unit 19. It was noted that these hollow-core concrete panels were used as part of the structure throughout the Swansea Buildings. A

concern was raised that the concrete ceiling panel and the structural portion of the floor panel appeared to have been fabricated separately and then bonded together with the remainder of the panel rather than being fabricated as one monolithic unit. The risk of failure of all the panels throughout the Swansea Buildings needed to be further explored.

Affidavit of Will Johnston, City's Application Record, paras. 10, and Ex. C and D

12. Toronto Building staff still had many additional questions about whether the units were unsafe for occupancy, whether all the hollow-core concrete panels were at risk of failure, whether some units were safe and if so which ones, how this could be quickly determined, whether shoring of panels could quickly make the units temporarily safe, and whether the structural safety concerns were contained to the subject building or whether they related to all the Swansea Buildings. A series of questions were posed in this regard as part of the May 27 Unsafe Order to be answered by WSP.

Affidavit of Will Johnston, City's Application Record, para. 11

13. While the engineering investigation continued at the Property, an extensive back-and-forth continued between Toronto Building staff and TCHC and its retained professionals in order to gather the necessary information. On Sunday June 12, 2022, Toronto Building was provided by TCHC with two engineering reports. The first was from Branko Kraincanic, P. Eng, of WSP and the second was from James Cooper, P. Eng, of Read Jones Christoffersen Ltd. Destructive testing had continued throughout various units in the Swansea Buildings wherein many of the concrete hollow-core ceiling panels failed in the same manner as the one which fell in Unit 19. The engineers concluded that the existing precast floor structures in all 154 units of the Swansea Mews complex are unsafe for the purpose they are used. They concluded that all the Swansea Buildings had been rendered uninhabitable and recommended that the tenants be evacuated immediately.

Affidavit of Will Johnston, City's Application Record, paras. 11-13, and Ex. E, F and G

14. Upon reading the numerous engineer's reports and in reliance upon said reports and staff's many attendances at the Property, the CBO determined on June 12, 2022 that the Swansea Buildings were unsafe for occupancy and that they must be immediately vacated until such time as the necessary repairs are carried out. The CBO deemed the matter to be urgent and was satisfied that the buildings pose an immediate danger to the health and safety of its occupants. Given the immediate danger to the occupants of the Swansea Buildings and in reliance upon the reports of the engineering professionals, the CBO authorized and Toronto Building issued to TCHC the Emergency Order dated June 12, 2022, which is the subject of the application herein, pursuant to section 15.10 of the BCA. The Emergency Order referred to and appended the WSP report of June 12th which concluded that the Swansea Buildings are currently uninhabitable and therefore unsafe for occupancy. The Emergency Order ordered that in accordance with the WSP report, occupancy and use of the 154 TCHC townhouse units are prohibited effective immediately. The Emergency Order further required TCHC to immediately notify and provide a copy of this Order and the appended WSP report to each and every tenant of the Swansea Buildings.

Affidavit of Will Johnston, City's Application Record, paras. 16-17, and Ex. A

15. The Emergency Order with the WSP report was indeed served on all the tenants immediately on the evening of June 12, 2022. The Emergency Order was also posted on site in several locations on the Property at that time.

Affidavit of Will Johnston, City's Application Record, para. 18

16. In addition to the Emergency Order, Toronto Building issued a further Order to Remedy Unsafe Condition to TCHC dated June 12, 2022 (the "June 12 Unsafe Order") pursuant to section

15.9 of the BCA which required TCHC to provide an engineer's report by June 17, 2022 setting out the repair methodology for alleviating the unsafe condition at the Swansea Buildings, clearly identifying the specific work that must be completed in order to allow for safe re-occupancy of the units, and providing the timeframes for said work. The June 12 Unsafe Order further required TCHC to notify the CBO when each unit is safe for re-occupancy.

Affidavit of Will Johnston, City's Application Record, para. 19, and Ex. H

17. Shortly thereafter, Toronto Building was provided with an architectural Field Review Report prepared by CS&P dated June 15, 2022 regarding CS&P's inspections carried out on June 14, 2022. This field review report identified those panels which had been found to be defective and those which remained intact following destructive testing carried out thus far. It was evident that the defective panels are located at random throughout the Swansea Buildings and are not isolated to one particular building or area.

Affidavit of Will Johnston, City's Application Record, para. 20, and Ex. I

18. TCHC continued to update Toronto Building regarding their tremendous efforts to vacate the units and relocate the tenants at their expense and regarding which units had been vacated. As at June 17, 2022, some 87 units were still occupied in non-compliance with the Emergency Order.

Affidavit of Will Johnston, City's Application Record, paras. 21-22, and Ex. J and K

19. Late in the day on Friday June 17th, Toronto Building received a report prepared by Mr. Kraincanic of WSP dated June 16, 2022 in response to the June 12 Unsafe Order. The report addressed further destructive testing carried out and concluded that it is WSP's opinion that the precast concrete panels in all the units were intentionally fabricated by casting the ceiling panel separately from the remainder of the precast panel (the web and the upper slab), and that the ceiling

panel was bonded to the webs of the upper portion of the panel by application of a bonding agent. In other words, rather than casting the panels as a monolithic unit which would be standard, they were casted in two parts and bonded together, and the bonding is failing which could result in the lower portions' collapse at any moment (which is what occurred in Unit 19).

Affidavit of Will Johnston, City's Application Record, para. 23, and Ex. L

20. On Saturday June 18, 2022, Toronto Building staff were provided by TCHC with two new engineering reports. The first report was prepared by Mr. Kraincanic of WSP and the second report was prepared by Jovo Mitrovic, P. Eng., of Precast Design Solutions Inc. ("PDS"). WSP had sought an opinion from PDS, a precast concrete engineering specialist. Both reports yet again concluded that the Swansea Buildings are not safe for occupancy. Additionally, both reports concluded that the precast hollow-core panels cannot be salvaged or repaired. PDS believes that the cause of the issue with the precast panels lies in the manufacturing process. PDS opines that the production process consisted of a two stage cast with the bottom slab poured first, then the void forms placed, and then the rest of the concrete added including the web sections and the top slab section. PDS believes that too much time elapsed between the bottom slab pour and the upper section pour. PDS indicated that "future failures can occur in the same random mode that cannot be detected and repaired with any available tools and processes".

Affidavit of Will Johnston, City's Application Record, paras. 24-45, and Ex. M, N and O

21. With regard to possible repairs, PDS stated:

Reattaching the bottom slab section to the remainder of the slab where the bond was lost as part of a repair solution would not be possible as the slab would have to be attached into the webs where the prestressing tendons are placed just now. Leaving the condition as is is not acceptable either since the bond loss would effectively reduce the structural section of the slab and therefore reduce the capacity of the slab to carry the loads. Furthermore, if the bottom slab failure in a similar manner as it has occurred exposes the prestressing tendons, that would present the

immediate structural dangerous condition as the bond between the prestressing tendons and concrete is essential for the structural system to function as designed.

Affidavit of Will Johnston, City's Application Record, para. 26, and Ex. O

22. In its report of June 18th, WSP also concluded that the panels cannot be repaired. WSP recommended that all the Swansea Buildings be demolished. With regard to whether shoring the units would allow the tenants to return to their units, WSP stated:

Shoring is being implemented as a temporary measure to allow safe removal of belongings from units. The shoring installation prevents ceiling panels from falling in the event of a failure of the bond between the ceiling panels and the rest of the hollow-core panels. The shoring process, which includes monitoring for asbestos, takes 3 to 4 days per unit. Because of the protection of the hazardous materials required during installation of shoring, the tenants cannot occupy the unit while shoring installation is taking place. Shoring is not a long-term solution; it does not address the underlying structural condition. We do not support shoring with the intent to allow tenants to re-occupy their units.

Affidavit of Will Johnston, City's Application Record, para. 27, and Ex. N

23. From reading these June 18th reports, it became very clear that the emergency situation at the Swansea Buildings would not be able to be resolved in the short term.

Affidavit of Will Johnston, City's Application Record, para. 28

24. Given the significance of the impact of the Emergency Order on the tenants and given the implications for the tenants should the Swansea Buildings be required to be demolished, the CBO decided to retain an independent engineer at the City's expense to carry out an inspection at the Property and do a peer review of all the professional reports provided to the City. The City retained Ken Maschke of the engineering firm Thornton Tomaetti ("Thornton"). Mr. Maschke attended at the Property on June 19, 2022, reviewed all the expert reports, and provided Toronto Building with his report on June 19th. In his report, Mr. Maschke agreed that the Swansea Buildings are at imminent risk of structural failure. He indicated that there is an imminent danger that additional portions of the hollow-core plank soffit may fall as experienced on May 27th. He

agreed with and supported the Emergency Order which prohibits the use and occupancy of the Swansea Buildings. It is noted that Mr. Maschke was the fourth qualified professional to conclude that an imminent danger existed and that the Swansea Buildings must be vacated. Further, Mr. Maschke also agreed that it would not be safe for tenants to return to their units once the units are temporarily shored. This further confirmed that any resolution of the unsafe condition would not occur in the short term.

Affidavit of Will Johnston, City's Application Record, para. 29-30, and Ex. P and Q

25. Mr. Maschke, however, did not necessarily agree that the Swansea Buildings need to be demolished and opined that it may be possible to repair the panels. He opined that further testing may be possible. However, he acknowledged that he had not costed any of his suggestions and could not conclude as to their reasonableness in the circumstances.

Affidavit of Will Johnston, City's Application Record, para. 31, and Ex. Q

26. In addition to approaching Mr. Maschke of Thornton, Toronto Building staff sought out a further opinion from James Liu, P. Eng, a building engineer employed with Toronto Building, given the significance of the implications for the tenants of the Swansea Buildings. Like all the other qualified professionals, Mr. Liu concluded on June 19, 2022 that the Swansea Buildings are in imminent danger of structural failure, that occupancy of the units should be prohibited, and that it would not be safe for the tenants to occupy the units even with temporary shoring installed. Mr. Liu was now the fifth qualified professional to reach these conclusions. There can reasonably be no dispute about the fact that the Swansea Buildings pose an imminent danger to the tenants and that occupancy must be prohibited. Lastly, Mr. Liu agreed with WSP and PDS that repairing the hollow-core panels is not a viable option.

Affidavit of Will Johnston, City's Application Record, para. 32, and Ex. R

27. By this time, over a week had passed since the issuance of the Emergency Order and the CBO was concerned that many units in the Swansea Buildings were still occupied. As such, the CBO wrote a letter to the tenants of the Swansea Buildings dated June 23, 2022 to further explain the basis of the Emergency Order, to emphasize that he is independent of TCHC, to convey that his sole objective is to address the urgent safety issue with their best interests in mind, and to impress upon them that they must vacate immediately. He further advised that he would be bringing the court application herein to confirm and enforce the Emergency Order. The letter was personally delivered to each unit of the Swansea Buildings by Toronto Building staff on June 23rd. Appended to the letter were copies of the engineer's reports provided to Toronto Building since the issuance of the Emergency Order. Further, the CBO and other Toronto Building staff attended a community meeting held on the evening of June 23, 2022 in the courtyard of the Swansea Mews complex at the Property to again explain the Emergency Order and the need to vacate immediately and to answer any questions the tenants had regarding the actions being taken by Toronto Building including with regard to the application herein. TCHC staff were also in attendance to address matters pertaining to the relocation of the tenants.

Affidavit of Will Johnston, City's Application Record, para. 33-34, and Ex. S

28. On June 23, 2022, a copy of Mr. Maschke's report was provided by Toronto Building staff to TCHC. While there is unanimous agreement that the Swansea Buildings are uninhabitable, are in imminent danger of structure failure, are unsafe for occupancy and must be vacated, and are unsafe to occupy with temporary shoring in place, there is some difference in opinion about whether there is a repair solution available or whether the Swansea Buildings should be demolished. TCHC's engineers have been asked to comment on Mr. Maschke's report. The City requires this information as its objective is to ensure that the emergency condition is addressed as

quickly as possible so that the Emergency Order prohibiting use and occupancy of the Swansea Buildings can be lifted. This issue has yet to be resolved.

Affidavit of Will Johnston, City's Application Record, para. 35, and Ex. T

29. On June 29, 2022, a Statement was served by Toronto Building on TCHC as required pursuant to subsection 15.10(6) of the BCA setting out the efforts Toronto Building has made to attain compliance with the Emergency Order.

Affidavit of Will Johnston, City's Application Record, para. 36-38, and Ex. U

Conclusion and Relief Sought

30. Toronto Building has left no stone unturned in concluding that the Swansea Buildings pose an imminent danger to the health and safety of the tenants and anybody visiting the buildings. Such conclusions are not made lightly. However, the engineering evidence to date is irrefutable that the Swansea Buildings are at imminent risk of structural failure such that use and occupancy of the buildings must be prohibited. While tenants continue to vacate the Swansea Buildings, the efforts of TCHC to remove and relocate the tenants have been insufficient to bring about full compliance with the Emergency Order. Approximately 25 units are still occupied despite that the Emergency Order was issued on June 12, 2022. In order to ensure their safety, it is imperative that these remaining tenants vacate immediately.

Affidavit of Will Johnston, City's Application Record, para. 39-41

31. Toronto Building will continue in its efforts to ensure that the May 27 Unsafe Order and the June 12 Unsafe Order are complied with and that the Swansea Buildings are made safe (whether through repair or demolition). Once again, the Emergency Order and all other actions taken by Toronto Building have no bearing on the landlord tenant relationship that exists between

TCHC and the tenants of the Swansea Buildings. As soon as the Property has been made safe to the satisfaction of the CBO, the Emergency Order will be lifted.

Affidavit of Will Johnston, City's Application Record, para. 43

PART III – THE LAW

The Legislation and the Application

32. The Emergency Order was issued pursuant to s. 15.10(1) of the BCA which provides that 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. Pursuant to s. 15.10(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 and in a location visible to the public. The Emergency Order prohibits use and occupancy of the Swansea Buildings and was served on TCHC and all the buildings' tenants and was posted on the site as required.

Building Code Act, 1992, SO 1992, c 23 (the "BCA"), ss. 15.10(1) and (2), Applicants' Factum, Sch. B

33. The Applicants bring this application pursuant to s. 15.10(7) of the BCA, which requires a chief building official to apply to a judge of the Superior Court to confirm an emergency order made under s. 15.10(1) as soon as is practicable. On an application pursuant to s. 15.10(7), the court shall confirm, modify or rescind the emergency order. Pursuant to s. 15.10(9), the disposition of the court is final.

*BCA, ss 15.10(7), (8) and (9), Applicants' Factum, Sch. B
Whitby (Town) v G & G 878996 LM Ltd, 2020 ONCA 654 at para 3*

34. In addition to seeking confirmation of the Emergency Order, the Applicants are further seeking relief regarding the enforcement of the order given that there has not been full compliance in that some of the tenants continue to occupy the Swansea Buildings. As such, the Applicants additionally bring this application pursuant to s. 38 of the BCA which provides that where it appears to a chief building official that a person does not comply with the BCA, the regulations or an order made under the BCA, the chief building official may apply to the Superior Court of Justice for an order directing that person to comply. Upon an application made under subsection (1), the judge may make the order or such other order as the judge thinks fit.

BCA, ss. 38(1) and (2), Applicants' Factum, Sch. B

35. This application is brought on consent of the TCHC with notice to the tenants of the Swansea Mews buildings. In addition to seeking an Order confirming the Emergency Order, the Applicants seek the relief set out in its Notice of Application which includes an Order authorizing the Sheriff of Toronto and the Toronto Police Services to assist the Applicants in removing any remaining tenants from the buildings at the Property in the event that TCHC is unable to obtain full compliance with the Emergency Order within 48 hours.

Confirmation of the Emergency Order under Section 15.10 of the BCA

36. Section 15.10(3) of the BCA provides that, after making an order under subsection (1), the chief building official may take any measures necessary to terminate the danger. Such measures include an immediate evacuation order.

BCA, s 15.10(3), Applicants' Factum, Sch. B
Gordon v North Grenville (Municipality), 2011 ONSC 2222 at para 40

37. The effect of confirmation of an emergency Order issued under s. 15.10(1) of the BCA is that, upon confirmation, the emergency order becomes enforceable as an order of the court.

38. The standard of review of a chief building official's decision to issue an emergency order under section 15.10(1) is one of reasonableness because the issues are based on factual considerations. That was the express holding of this Honourable Court in *Pickle Lake (Township) v. Shetterly Enterprises Ltd.* which held that, in the context of section 15.10(1), "...the question of what constituted "an immediate danger to the health and safety of any person" in our situation is much more a question of fact than it is of law."

Pickle Lake (Township) v Shetterly Enterprises Ltd, [2006] OJ No 776 (Sup Ct J) at para 8;
Georgina (Town) Chief Building Official v Anagnostopoulos, [2007] OJ No 3263 at paras 43-44;
1218897 Ontario Inc v Toronto (City) Chief Building Official, [2005] OJ No 4607 (Sup Ct J) at para 5.

39. Given that five separate qualified professionals concluded that the Swansea Buildings pose an immediate danger to its occupants, are uninhabitable and must be vacated immediately, and that temporary shoring would not render the units safe for occupancy, it is submitted that the Emergency Order prohibiting use and occupancy of the Swansea Buildings was more than reasonable and ought to be confirmed by this Honourable Court. It is emphasized that the Emergency Order was issued to ensure the safety of the tenants and will be lifted as soon as the Swansea Buildings have been made safe (whether through repair or replacement) to the CBO's satisfaction. The tenants will be able to re-occupy once the Emergency Order is lifted by the CBO.

Enforcement of the Emergency Order under Section 38 of the BCA

40. A judge hearing an application under section 38 of the BCA has broad discretion to grant the relief sought by virtue of s. 38(2) which provides that the judge may make any such order as the judge sees fit.

41. In applications brought previously by the Applicants in other matters pursuant to s. 38 of the BCA, the court has seen fit to grant relief that includes prohibiting occupancy of a building and authorizing the Sheriff of Toronto and the Toronto Police Services to assist the Applicants in the enforcement of the relevant Order. By way of example, such relief was granted by this Honourable Court in 2016 in *City of Toronto v. Lambrinos*.

City of Toronto v. Lambrinos, Judgment of Justice Akhtar, July 14, 2016
City of Toronto v. Lambrinos, 2016 ONSC 4597, para. 38

42. It is emphasized that the relief sought by the Applicants related to both the confirmation and enforcement of the Emergency Order has no bearing on the landlord tenant relationship between TCHC and its tenants that exists under the *Residential Tenancies Act, 2006*. In fact, the relief sought includes a declaration to this effect. The provisions in the BCA that grant a chief building official the authority to issue emergency orders and to prohibit the occupancy of buildings are in any event not directed at the termination of tenancies even though tenants may be affected by such orders. This was the conclusion of Justice Shaw in *Kenora v. Eikre Holdings Ltd.*, which involved an application by Kenora to close an illegal boarding house. Although the application was made under the *Municipal Act, 2001*, Justice Shaw also considered other statutory remedies available to municipalities including those under the BCA. The court specifically rejected an argument made on behalf of the tenants that the subject matter of the application was within the jurisdiction of the Landlord and Tenant Board. In rationalizing this conclusion, Justice Shaw stated that:

It seems unreasonable that for reasons of public and health and safety the City could order the closure of a residential building occupied solely by the owner and the owner's family, but would be unable to close the same building if a tenant also resided there.

Kenora (City) v Eikre Holdings Ltd, 2018 ONSC 7635 at paras 62-63 & 67-68

43. The evidence is overwhelming that the Swansea Buildings are not safe for occupancy and must be vacated immediately and that use and occupancy must be prohibited until such time as the buildings are made safe at which time the Emergency Order will be lifted and the tenants may re-occupy. The Applicants therefore submit that the relief it is seeking in respect of the enforcement of the Emergency Order is necessary, reasonable and justified.

PART IV – ORDER REQUESTED

44. The City requests an Order confirming the Emergency Order and granting the relief sought in its Notice of Application which includes, but it is not limited to, an Order authorizing the Sheriff of Toronto and the Toronto Police Services to assist the Applicants in removing any remaining tenants from the buildings at the Property should the TCHC be unable to achieve full compliance with the Emergency Order within 48 hours. THCH consents to the relief sought in the application.

Date: June 30, 2022

ALL OF WHICH IS RESPECTFULLY SUBMITTED



Naomi Brown
Counsel for the Applicants



Jared Wehrle
Counsel for the Applicants

SCHEDULE 'A'

LIST OF AUTHORITIES

1218897 Ontario Ltd. (c.o.b. Castle Auto Collision and Mechanical Service) v. Toronto (City) Chief Building Official, [2005] O.J. No. 4607 (Sup. Ct. J.)

City of Toronto v. Lambrinos, 2016 ONSC 4597

Georgina (Town) Chief Building Official v. Anagnostopoulos, [2007] O.J. No. 3263 (Sup. Ct. J.)

Gordon v. North Grenville (Municipality), 2011 ONSC 2222

Kenora (City) v. Eikre Holdings Ltd., 2018 ONSC 7635

Pickle Lake (Township) v. Shetterly Enterprises Ltd., [2006] O.J. No. 776 (Sup. Ct. J.)

South Bruce (Municipality) v. 1260964 Ontario Inc., 2015 ONSC 2206

Whitby (Town) v. G & G 878996 LM Ltd., 2020 ONCA 654

SCHEDULE 'B'
STATUTES AND BY-LAWS

Building Code Act, 1992

S.O. 1992, CHAPTER 23

Consolidation Period: From February 1, 2021 to the e-Laws currency date.

Last amendment: 2020, c. 18, Sched. 1.

INTERPRETATION

Definitions

1. (1) In this Act,

“building” means,

- (a) a structure occupying an area greater than ten square metres consisting of a wall, roof and floor or any of them or a structural system serving the function thereof including all plumbing, works, fixtures and service systems appurtenant thereto,
- (b) a structure occupying an area of ten square metres or less that contains plumbing, including the plumbing appurtenant thereto,
- (c) plumbing not located in a structure,
- (c.1) a sewage system, or
- (d) structures designated in the building code; (“bâtiment”)

“building code” means regulations made under section 34; (“code du bâtiment”)

“change certificate” means a certificate prescribed under the building code or approved by the Minister as a change certificate; (“certificat de modification”)

“chief building official” means a chief building official appointed or constituted under section 3 or 4; (“chef du service du bâtiment”)

“code of conduct” means a code of conduct described in section 7.1; (“code de conduite”)

“construct” means to do anything in the erection, installation, extension or material alteration or repair of a building and includes the installation of a building unit fabricated or moved from elsewhere and “construction” has a corresponding meaning; (“construire”, “construction”, “travaux de construction”)

“demolish” means to do anything in the removal of a building or any material part thereof and “demolition” has a corresponding meaning; (“démolir”, “démolition”, “travaux de démolition”)

“director” means the person appointed as director under section 2; (“directeur”)

“final certificate” means a certificate prescribed under the building code or approved by the Minister as a final certificate; (“certificat définitif”)

“inspector” means an inspector appointed under section 3, 3.1, 4, 6.1 or 6.2; (“inspecteur”)

“maintenance inspection” means an inspection conducted under a maintenance inspection program; (“inspection d’entretien”)

“maintenance inspection program” means a program established under clause 7 (1) (b.1) or subsection 34 (2.2); (“programme d’inspections d’entretien”)

“Minister” means the Minister of Municipal Affairs and Housing; (“ministre”)

“municipality” means a local municipality; (“municipalité”)

“officer” means a property standards officer who has been assigned the responsibility of administering and enforcing by-laws passed under section 15.1; (“agent”)

“planning board” means a planning board established under section 9 or 10 of the *Planning Act*; (“conseil d’aménagement”)

“plans review certificate” means a certificate prescribed under the building code or approved by the Minister as a plans review certificate; (“certificat d’examen des plans”)

“plumbing” means a drainage system, a venting system and a water system or parts thereof; (“installation de plomberie”)

“principal authority” means,

- (a) the Crown,
- (b) the council of a municipality,
- (c) an upper-tier municipality that has entered into an agreement under subsection 3 (5), 6.1 (1) or 6.2 (1),
- (d) a board of health that has been prescribed for the purposes of subsection 3.1 (1) or has entered into an agreement under subsection 6.1 (2) or (3) or 6.2 (2),
- (e) a planning board that has been prescribed for the purposes of subsection 3.1 (1), or
- (f) a conservation authority that has been prescribed for the purposes of subsection 3.1 (1) or has entered into an agreement under subsection 6.2 (2); (“autorité principale”)

“registered code agency” means a person that has the qualifications and meets the requirements described in subsection 15.11 (4); (“organisme inscrit d’exécution du code”)

“regulations” means regulations made under this Act. (“règlements”)

Interpretation

(1.1) Except as provided in subsection (1.2), a reference to “this Act” in any provision of this Act shall be deemed to be a reference to this Act excluding sections 15.1 to 15.8.

Same

(1.2) A reference to “this Act” in subsection 1 (1) and sections 2, 16, 19, 20, 21, 27, 31, 36 and 37 includes a reference to sections 15.1 to 15.8.

Chief building official

- (1.3) A reference to the “chief building official” in this Act, other than in subsections 1 (1), 3 (2), (3) and (6) and section 4, includes an inspector who has the same powers and duties as the chief building official,
- (a) in relation to sewage systems by virtue of subsections 3.1 (3) or 6.2 (4); and
 - (b) in relation to plumbing by virtue of subsection 6.1 (5).

[...]

UNSAFE BUILDINGS

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.

Making information available

(2.1) A copy of an order made under subsection (1) may be,

- (a) made available to the public by,
 - (i) posting the copy of the order on the website of the principal authority, or
 - (ii) allowing members of the public, during normal business hours, to inspect and copy the order at their own expense; and
- (b) registered in the proper land registry office.

Registration

(2.2) If an order made under subsection (1) is registered in the proper land registry office, any person acquiring any interest in the land subsequent to the registration of the order shall be deemed to have been served with the order on the day on which the order was served.

Discharge

(2.3) When the requirements of an order described in subsection (2.2) have been satisfied, the chief building official shall register in the proper land registry office a

certificate that such requirements have been satisfied, which shall operate as a discharge of the order.

Same

(2.4) In the case of an order that has been made available to the public in accordance with clause (2.1) (a), when the requirements of the order have been satisfied, an inspector shall indicate on the copy of the order, or by such other means as may be prescribed by regulation, that the requirements of the order have been satisfied.

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.

No liability

(4) Despite subsection 31 (2), the Crown, a municipality, an upper-tier municipality, a board of health, a planning board or a conservation authority or a person acting on behalf of any of them is not liable to compensate the registered owner, occupant or any other person by reason of anything done by or on behalf of the chief building official or an inspector in the reasonable exercise of his or her powers under subsection (3).

Service

(5) If the order was not served before measures were taken to terminate the danger, the chief building official shall serve copies of the order in accordance with subsection (2) as soon as practicable after the measures have been taken and each copy of the order shall have attached to it a statement by the chief building official describing the measures taken and providing details of the amount spent in taking the measures.

Service of statement

(6) If the order was served before the measures were taken, the chief building official shall serve a copy of the statement mentioned in subsection (5) in accordance with subsection (2) as soon as practicable after the measures have been taken.

Application to court

(7) As soon as practicable after subsections (5) and (6) have been complied with, the chief building official shall apply to the Superior Court of Justice for an order confirming the order made under subsection (1) and the court shall hold a hearing for that purpose.

Powers of court

(8) In disposing of an application under subsection (7), the court shall,

- (a) confirm, modify or rescind the order; and
- (b) determine whether the amount spent on measures to terminate the danger may be recovered in whole, in part or not at all.

Order final

(9) The disposition under subsection (8) is final.

Municipal lien

(10) If the building is in a municipality, the amount determined by the judge to be recoverable shall be a lien on the land and shall have priority lien status as described in section 1 of the Municipal Act, 2001 or section 3 of the City of Toronto Act, 2006, as the case may be.

Deemed taxes

(11) If the building is in territory without municipal organization, the amount determined by the judge to be recoverable is a debt owing to the Crown and may be collected under the Provincial Land Tax Act, 2006 as if it was tax imposed under that Act.

[...]

GENERAL

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).

B E T W E E N :

CITY OF TORONTO, et al

And

TORONTO COMMUNITY HOUSING CORPORATION

(Short Title of Proceeding)

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

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