

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

(Court Seal)

THE REGIONAL MUNICIPALITY OF WATERLOO

Applicant

and

PERSONS UNKNOWN AND TO BE ASCERTAINED

Respondents

APPLICATION UNDER Section 440 of the *Municipal Act*, 2001, S.O. 2001, c. 25 as amended

NOTICE OF APPLICATION

TO THE RESPONDENT(S)

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 (or as otherwise directed by the Court)

at the following location:

85 Frederick Street, Kitchener, ON N2H 0A7

On a date and time to be set by the Registrar



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.

Date July 5, 2022 Issued by _____
Local Registrar

Address of 85 Frederick Street
court office: Kitchener ON N2H 0A7

TO: Persons Unknown and to be Ascertained
100 Victoria Street North
Kitchener ON

APPLICATION

1. The Applicant makes application for:
 - a) Initial Direction and Advice from the Court on the proper service of the Notice of Application, the Respondents to be named, intervenors to be put on notice, and a timetable for the filing of materials and eventual hearing of the Application;
 - b) A Declaration that the Respondents are in breach of By-law Number 13-050 of The Regional Municipality of Waterloo, A By-law Respecting the Conduct of Persons Entering Upon Buildings, Grounds and Public Transportation Vehicles Owned or Occupied by The Regional Municipality of Waterloo (the “Code of Use By-law”);
 - c) An Interim and Final Order that any persons having notice of the Order are restrained and enjoined from breaching the Code of Use By-law by remaining and/or re-entering onto the property municipally known as 100 Victoria Street North, City of Kitchener (the “Property”) after the required vacancy date of June 30, 2022, at 09:00 a.m.;
 - d) An Order that any police officer with the Waterloo Regional Police Service, and any other police authority (the “Police”), shall have authorization to arrest and remove any person who has knowledge of the Order and who the Police have reasonable and probable grounds to believe is contravening or has contravened any provision of the Order;
 - e) An Order that the Police or designated agents shall have authorization to remove any vehicles, personal property, equipment, structures, or other objects that are located on the Property;
 - f) An Order that the Police shall retain discretion: i) as to the timing and manner of enforcement of the Order, and specifically retain discretion as to the timing and manner of arrest and removal of any person pursuant to the Order; ii) to detain and release any person without arrest who the Police have reasonable and probable grounds to believe is contravening, or has contravened, any provisions of the Order, upon that person agreeing to abide by the Order; and iii) to lay any charges or take any other lawful action;
 - g) An Order that any peace officer and any member of the Police who arrests or arrests and removes any person pursuant to the Order shall have authorization to release that person from arrest upon that person agreeing in writing to obey the Order;
 - h) An Order that notice of the Order shall be given by posting a copy of it along the perimeter of the Property on Victoria Street and Weber Street at intervals of nine (9) metres;
 - i) An Order that notice of the Order may also be given in the following manners:
 - i) by posting copies of the Order in or around the City of Kitchener; ii) reading the Order to any person, including but not limited to reading the Order over an amplification system; iii) publishing the Order online; and iv) any other manner deemed appropriate by the Region or the Police;

- j) An Order that the Order shall not apply to persons acting in the course of, or in the exercise of a statutory duty, power or authority;
- k) An Order that the terms of the Order shall remain in force until varied or discharged by a further Order of the Court;
- l) An Order that the terms of the Order bind the Respondents and every other person or legal entity who is subject to the Order and is given notice of the Order, as of the time such Respondents, person or legal entity first receives notice of the Order, and whether or not such Respondents, person or legal entity has been served with a copy of the Order;
- m) An Order that service and notice of this Application is hereby dispensed with;
- n) An Order abridging the time for service and filing of this Application, if necessary; and
- o) Such other relief as counsel may request and this Court may grant.

2. The grounds for the application are:

- a) The Region is the registered owner of the Property
- b) The Region's Code of Use By-law, which was enacted to govern its public assets pursuant to the Region's authority under the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (the "*Municipal Act*"), prohibits certain activities on Regional grounds, including the erecting of tents / temporary structures, loitering, and obstructing, preventing or hindering the rights of others, including the Region, to use the Property;
- c) Between approximately December 2021 and June 6, 2022, certain unknown persons, believed to be homeless, in the approximate number of seventy (70) erected approximately seventy (70) tents and other temporary structures on the Property and began living there thus creating unsanitary and unsafe conditions with disturbances to neighbours;
- d) Throughout this period, the Region, which is responsible for community housing and social assistance in Waterloo Region, attempted to find alternative housing and social supports for the unknown persons;
- e) On June 6, 2022, the Region posted signs around the perimeter of the Property pursuant to its Code of Use By-law and the *Trespass to Property Act*, R.S.O. 1990, c. T.21, as amended ("*TPA*") requiring the unknown persons to remove any belongings, tents or structures on the Property, and vacate the Property by 09:00 a.m. on June 30, 2022 and not return to the Property thereafter (the "*Trespass Notice*");
- f) As of July 3, 2022 at 08:00 a.m., approximately forty-eight (48) unknown persons and their tents/temporary shelters and belongings remain on the Property in contravention of the Code of Use By-law, the *TPA* and the *Trespass Notice*;

- g) Section 440 of the *Municipal Act* provides that if any by-law of a municipality is contravened, in addition to any other remedy and to any penalty imposed by the by-law, the contravention may be restrained by application at the instance of the municipality;
 - h) Sections 11 and 440 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended;
 - i) The *Trespass to Property Act*, R.S.O. 1990, c. T.21, as amended;
 - j) Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - k) Rules 2.03, 3.02, 16.04, 16.08, 14.05(3)(g), 38 and 40 of the *Rules of Civil Procedure* R.R.O. 1990, Reg. 194, as amended; and
 - l) Such other grounds as counsel may advise.
3. The following documentary evidence will be used at the hearing of the application:
- a) Affidavit of Ellen McGaghey, to be sworn;
 - b) Affidavit of Shannon Walls, to be sworn;
 - c) Affidavit of Chris Komorowski, to be sworn;
 - d) Affidavit of Cory Shantz, to be sworn;
 - e) Affidavit of Arran Rowles, to be sworn; and
 - f) Such other documentary evidence as counsel may advise and this Court may admit.

July 4, 2022

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Lawyers for the Applicant

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Applicant

-and- PERSONS UNKNOWN AND TO BE ASCERTAINED
Respondent

Court File No.

**ONTARIO
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PROCEEDING COMMENCED AT
WATERLOO REGION

NOTICE OF APPLICATION

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Lawyers for the Applicant

RCP-F 4C (September 1, 2020)