

CITATION: The Corporation of the Town of Wasaga Beach v. Persons Unknown, 2023 ONSC 4929

COURT FILE NO.: CV-23-1434

DATE: 20230829

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)	
)	
THE CORPORATION OF THE TOWN OF)	
WASAGA BEACH)	Sarah Hahn and Cary Emmett, for the Applicant
)	
Applicant/Moving Party)	
)	
– and –)	
)	
PERSONS UNKNOWN)	Ex Parte
)	
Respondents/Responding Party)	
)	
)	HEARD: August 29, 2023

M.L. EDWARDS, R.S.J.

PART I: OVERVIEW

- [1] The Corporation of the Town of Wasaga Beach (the “**Town**” or “**Wasaga Beach**”) brings this motion for statutory, interlocutory and *quia timet* injunctions for an Order restraining the respondents from violating the Town’s Car Rally By-law 2023-74, as amended (the “By-law”) and a number of the Town’s other by-laws. The motion was heard without notice.
- [2] The unknown respondents are organizers, coordinators, facilitators and/or advertisers of, and/or persons planning on attending and participating in a unauthorized and illegal H2Oi car rally (the “**car rally**”), currently scheduled to occur in Wasaga Beach from September 1 - 4, 2023.
- [3] As this matter was heard ex parte there is an obligation on the Town to provide full fair and frank disclosure of the facts and the applicable law. The facts reflected in these reasons are reflected in the Town’s motion record and summarized in the Town’s factum.

PART II: FACTS

History of the Wasaga Beach H2Oi Car Rally and its Impact on the Town

- [4] Wasaga Beach is a town in Simcoe County boasting the largest freshwater beach in the world.
- [5] Following the adoption of its Downtown Development Master Plan in 2017, the Town has been actively pursuing a rebranding of Wasaga Beach. This effort aims to shift away from the current party-town" perception, recognizing that replacing this image with a more refined, diversified, and inclusive identity holds significant importance for the Town's prospective economic achievements.
- [6] The H2Oi event is an annual car rally traditionally held in Ocean City Maryland, that has been coming to Wasaga Beach without authorization since 2020, as a result of the pandemic border closings.
- [7] The H2Oi event held in Wasaga Beach in 2020 required Ontario Provincial Police ("OPP") officers to break up large crowds and resulted in the police having to stop non-residents from entering the Town on Saturday September 26, 2020.
- [8] There were an estimated 500 – 800 cars in attendance at the 2020 event with 172 charges, 44 vehicles towed and 10 people charged for violating COVID restrictions.
- [9] H2Oi returned to Wasaga Beach the weekend of September 24 – 26, 2021 when approximately 1,000 vehicles attended resulting in 380 charges and 70 vehicles being pulled off the road for street racing or for being unfit for the road.
- [10] The response required to address the unsanctioned event was hundreds of thousands of dollars, including more than \$46,000 in Town resources which the Town can not recoup from the organizers and or the attendees of the car rally.
- [11] There were two H2Oi events in 2022 which were especially problematic for the Town. The first 2022 H2Oi event took place the weekend of August 26 – 28, 2022 and resulted in over 200 charges. After the first event an additional 20 individuals were charged with 37 *Criminal Code of Canada* and *Highway Traffic Act* offences stemming from the first 2022 H2Oi rally.
- [12] The second event of 2022 took place the weekend of September 23 – 25, 2022. By early Saturday night on September 24, 2022, police reported that 136 provincial offences notices had been issued for *Highway Traffic Act* violations and a driver was caught travelling 131km/h in an 80 km/h zone.
- [13] There were incidents of crowds swarming OPP officers as well as Town equipment being used for road blockage and firetrucks that had equipment taken by the attendees. Two OPP vehicles parked at Beck and Main streets had their windows smashed out; officers, and a police dog, were in the vehicles at the time. There was also further destruction of private property where crowds collapsed a roof at the Wasaga Beach Canadian Tire.

[14] What precipitates this ex parte motion are various social media posts which indicate that an unauthorized H2Oi car rally is being planned to be held in the Town on September 1 – 4, 2023. The 2023 event is organized solely on social media without an identifiable organizer or promoter. This explains why the Respondents “Are persons Unkknown” (sp).

The Car Rally Violates the Town’s By-laws

[15] There are several by-laws that have been enacted in the Town to address the nuisance and dangers posed by events like this one.

[16] In response to the serious threats to public safety and public nuisance from unsanctioned car rallies and similar events, Council for the Town specifically enacted By-law 2023-74 being A By-Law to Prohibit Vehicular Nuisance Events and known as the “Car Rally By-law”.

[17] The Town initially became aware that the H2Oi event was being planned in Wasaga Beach for September 1 – 4, 2023 when the Instagram account @h20i.ca3 “h20i Canada” made a post on or around July 12, 2023.

[18] This post was removed after comments discussing the illegality of the event were posted. The 2023 event is organized solely on social media without an identifiable organizer or promoter. Subsequent to the removal of the initial post, a new Instagram account was created on or around August 13, 2023 being @h20i_wasaga “H20i canada” which has distributed posts and stories promoting the event in violation of the By-law. This account posts pictures and “stories” multiple times nearly every day. It also encourages people to share these posts. Additionally, @h20i_wasaga had an online store where it was selling merchandise for this event.

[19] In addition to the Instagram account referenced above there is evidence that numerous other Instagram pages appear to be working in conjunction with @h20i_wasaga and have cross-posted messaging aimed at increasing the number of people attending this event.

[20] There is evidence before this court that anonymous organizers and promoters of the event are telling the public that they are seeking permits and approval from the Town for this car rally. More recently, the posts have falsely indicated that permits are slowly being approved by the Town .

[21] The Town being aware of the impending car rally that contravenes the Towns by laws has been actively coordinating with the local division of the OPP to prepare for and respond to the illegal event. The Town is expecting an influx in visitors for the September 1 – 4, 2023 long weekend as it hosts a free Memories of Summer event with headlining band April Wine set to play. The Town in its evidence before this court has estimated that 12,000 – 15,000 people will attend each day throughout the weekend for this event.

PART III: ISSUES

[22] The issues on this ex parte motion are as follows:

- (a) Should the Town of Wasaga Beach be granted an interlocutory injunction pursuant to section 440 of the *Municipal Act, 2001*
- (b) Should the Town of Wasaga Beach be granted a *quia timet* injunction pursuant to section 101 of the *Courts of Justice Act* and Rules 40.01 and 40.02 of the *Rules of Civil Procedure*

[23] As it relates to the issue of whether an injunction can issue against “Unknown Persons” and the applicable law that guides the court on this type of motion I refer to and rely on the decision of ACJ McWatt in *City of Ottawa* 2022 ONSC 1151. In that regard I specifically refer to the following beginning at para 29-42:

[29] Case law, from Ontario and across Canada, allows that an injunction can be ordered on unknown persons. Furthermore, procedural fairness is likely met in issuing the injunction on an *ex parte* basis so long as the three parts of the *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 test are met, there is urgency for the order, and the moving party has provided full and frank disclosure.

[30] In *MacMillan Bloedel Ltd. v. Simpson*, [1996] 2 S.C.R. 1048, the Supreme Court of Canada dealt with the issue of whether courts have the power to grant injunctions against members of the public who are engaged in protests that interfere with the private rights of others. Related to this was the question of whether the courts could make orders against unidentified persons not named in the action or referenced by proxy as “Jane Doe” or “John Doe”, and whether such orders are enforceable even if they are not named in the order. At paragraph 23 of the decision, the Court held that an injunction can be brought against non-parties on the basis of the long-standing principle that “non-parties may be seen as being, if not technically bound by the order, bound to obey the order”.

B. Legislative Framework

Interim Injunction Under Section 101 of the *Courts of Justice Act*

[31] Section 101 of the *Courts of Justice Act*, RSO 1990, c C 43 and Rule 40.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 authorize the Court to grant an interlocutory injunction “where it appears to a judge of the court to be just or convenient to do so.”

[32] Rule 40.02(1) of the *Rules of Civil Procedure* provides that an interlocutory injunction or mandatory order may be granted on motion without notice for an interim period not exceeding ten days.

[33] The Supreme Court's test for a prohibitive interlocutory injunction in the *RJR-MacDonald* case is set out at paragraphs 40 and 48. Before exercising its discretion, a court must consider the following questions:

- a. Is there a serious question to be tried? In other words, has the moving party presented a case which is not frivolous or vexatious?
- b. Will the moving party, if unsuccessful, suffer irreparable harm which cannot be compensated other than through the granting of an injunction?
- c. Does the balance of convenience favour the moving party? In other words, who will suffer the greater harm from the granting or refusal of an interlocutory injunction, pending a decision on the merits?

a. Serious issue to be tried

[34] The party requesting an injunction has the onus of demonstrating there is a serious issue to be tried. The determination of whether the threshold of a "serious issue to be tried" is met is based on common sense and an extremely limited view of the case on the merits (*RJR*, at paras. 78, 83). So long as the claim is not frivolous or vexatious, this factor of the test will generally be satisfied (*RJR*, at paras. 44-56, 78).

b. Irreparable harm

[35] The second element of the *RJR-MacDonald* test is whether the moving parties will suffer irreparable harm if the injunction is not granted. What must be established in this part of the test is whether refusing to grant an injunction will cause harm that cannot be remedied at some later stage. "Irreparable harm" refers to the nature of the harm suffered, rather than its magnitude. "It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other" (*RJR*, at para. 59).

c. Balance of convenience

[36] The third factor, the balance of convenience, considers which of the parties will suffer the greater harm from the granting or refusal of an interlocutory injunction pending a decision on the merits.

Modified Test for a Statutory Interlocutory Injunction to Enforce Municipal By-Laws

[37] Section 440 of the *Municipal Act, 2001, S.O. 2001, c. 25. 2006, c. 32* allows a municipality to bring an Application to restrain a person (or persons) from contravening its by-laws. It sets out the following:

Power to restrain

440 If any by-law of a municipality or by-law of a local board of a municipality under this or any other Act 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 a taxpayer or the municipality or local board.

[38] As in the motion before me, if an injunction is authorized by statute, different considerations apply from an injunction being sought at common law. The case of *Retirement Homes Regulatory Authority v. In Touch Retirement Living for Vegetarians/Vegans Inc.*, 2019 ONSC 3401 sets out how at para 47:

[39] Where a statutory injunction is sought:

- a) The Court's discretion is more fettered, and the factors considered by a court when considering equitable relief will have more limited application.
- b) An applicant will not have to prove that damages are inadequate or that irreparable harm will result if the injunction is refused.
- c) Proof of damages or proof of harm to the public is not an element of the legal test.
- d) There is no need for other enforcement remedies to have been pursued.
- e) The Court retains a discretion as to whether to grant injunctive relief. Hardship from the imposition and enforcement of an injunction will generally not outweigh the public interest in having the law obeyed. However, an injunction will not issue where it would be of questionable utility or inequitable; and
- f) It remains more difficult to obtain a mandatory injunction.

[40] Where it is alleged that a municipal by-law is being breached, the emphasis for injunctive purposes is on whether there is a serious question to be tried. If the municipality satisfies the first criterion, the usual remedy is for the court to grant an interlocutory injunction that restrains the ongoing breach (*Hamilton (City) v. Loucks*, ONSC, 2003 CanLII 64221, at para. 30).

[41] In this modified test, there is no need for the City to prove that it will suffer irreparable harm and there is no need to consider the balance of convenience because the public authority is presumed to be acting in the best interests of the public and a breach of the law is considered to be irreparable harm to the public interest (*The Township of Amaranth v. Ramdas*, 2020 ONSC 2428, at para. 54). However, in this modified test, the first criteria (serious issue to be tried) should be higher than the standard required when all three criteria are considered under the *RJR-MacDonald* test. A strong *prima facie* case must be established (*Hamilton (City)* at para. 37).

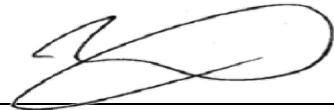
[42] Where by-laws of a municipality are being violated, a court ought to assist the municipality by granting interlocutory relief (*Municipality of Metropolitan of Toronto v. N.B. Theatrical Agencies, Inc.*, 1984 CanLII 2092 (ONSC), cited in *Hamilton (City) v. Loucks*, ONSC, 2003 CanLII 64221, at para 30).

- [24] I am satisfied on the evidence before me and the law as set forth above that it is appropriate to grant an ex parte injunction against “Persons Unknown”. There is compelling evidence of a car rallies being held in Wasaga Beach in the last 2 years that have resulted in significant police costs, arrests, and damage. The Town’s by law seeks to prevent such unsanctioned car rallies in the future. There is clear social media evidence that “Persons Unknown” are planning an unsanctioned car rally that is contrary to the Town’s bylaw.
- [25] There is a clear public interest to ensure that all citizens of Wasaga Beach and its surrounding area are safe and that all citizens obey the law. The Court should grant an interlocutory ex parte injunction in situations where there is clear evidence that persons unknown in the past have attended unsanctioned car rallies where significant property damage and inconvenience to the public has ensued . Where there is evidence that persons unknown intend to “facilitate” a similar unsanctioned car rally that contravenes the Town’s by law it is appropriate to grant injunctive relief to prevent the unlawful violation of the bylaw. In my view on the evidence before this Court there is a strong *prima facie* case that the Town’s by law is and will continue to be violated if injunctive relief is not granted.
- [26] As it relates to the question of whether the Town will suffer irreparable harm if the injunction is not granted I am more than satisfied on the evidence that what has happened in Wasaga Beach in the past with previous unsanctioned car rallies is a strong indication of what may, and likely will, happen if an injunction is not granted. The Town and the policing authorities have in the past dealt with serious breaches of the law that has necessitated the dedication of significant policing resources-police resources that

undoubtedly are already stretched thin dealing with everything the police have to deal with on a day to day basis. The evidence from the past can predict the future and in this case it is more than predictable that the anticipated car rally will simply be a repeat of the car rallies in the past. Irreparable harm is more than made out on the evidence before me.

- [27] Dealing with the balance of convenience there is no evidence that those who are organizing the car rally this Labour Weekend have done anything to work with the Town to obtain a permit or coordinate security issues with the local police authorities. The car rally can not in any way be compared to a lawful protest nor in my view could a car rally be equated with any of the *Charter* protected rights of freedom of conscience, peaceful assembly, or freedom of expression. These are all fundamental and important rights in the free and democratic society we call Canada. Even if a car rally could in some way be compared to one of the section 2 (b) *Charter* rights it is worth remembering that those rights are not absolute. *Charter* rights do not give a person the right to simply trample on the rights of others. There must be a balancing of those rights. In this case on the evidence before me I can see no basis upon which the persons unknown who have published their intentions on social media have the right to violate the Town by law and trample on the rights of others.
- [28] In this case the Town is seeking what is often referred to as a *quia timet* injunction. A *quia timet* injunction restrains wrongful acts which are threatened or imminent but have not yet commenced. It is said to be an “illustration of the rule that prevention is better than cure” especially where the cure in the form of damages may be uncertain.
- [29] In determining whether a *quia timet* injunction should be granted, the court will consider whether there is a high degree of probability that the moving party will suffer irreparable harm if the injunction is not granted, and that the harm is about to occur imminently or in the near future. See *Wiggins v. WPD Canada Corporation*, 2013 ONSC 2350. On the evidence before me because the car rally has yet to occur, a *quia timet* injunction is the appropriate relief in order to restrain the respondents from anticipated breaches of the Town’s by-laws.
- [30] The record before me establishes that an unsanctioned and illegal H2Oi event has taken place in Wasaga Beach for several years and the evidence available strongly indicates that this event is once again being organized to take place over this Labor Day weekend, from September 1st to September 4th.
- [31] As a result of the car rally, the Town and its residents, will incur harm or injury that cannot be adequately compensated or remedied by any monetary award or damages that may be awarded later.
- [32] The car rally is not a permitted event which means that there is no one accountable for the actions of the crowd, nor is there appropriate insurance in place to cover damages to property, health, or human life.
- [33] The costs incurred by the Town, and ultimately its ratepayers to prevent, enforce, police, and prosecute this illegal event far exceeds the amount the Town would ever receive from prosecuting those that contravene the Town’s by-laws related to the event.

- [34] The evidence before this court establishes that in previous years the car rally has resulted in damage to public and private property, all which is not recoverable from those that attend or participate in what can only be described as an illegal event. The car rally has in the past, and will if allowed to proceed this weekend, interfere with the Town's ability to maintain its roads, regulate the flow of traffic and enforce by-laws which will threaten public safety and cause a public nuisance.
- [35] In assessing the balance of convenience it is difficult on the evidence before this court to see what balance of convenience could tip the balance in favour of the Respondents. The car rally planned for this weekend has been advertised on social media with no attempt to seek approval from the Town. What happened in prior car rallies is a precursor to what may happen if this court does not intervene and issue injunctive relief. The balance of convenience clearly favours the Town.
- [36] At the hearing of this ex parte motion I directed counsel to amend the form of the draft order submitted as part of its materials to require the Town prepare a press release with a link to the Town's motion material. Every effort should be made to disseminate this order to the Respondents. I have also directed that the respondents may move on 24 hours notice to set aside this Court's order. An order shall issue in the form of the draft as amended order I have signed.



M.L. EDWARDS, R.S.J.

Released: August 29, 2023

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SUPERIOR COURT OF JUSTICE

BETWEEN:

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BEACH

- And -

PERSONS UNKNOWN

REASONS FOR JUDGMENT

M.L. EDWARDS, R.S.J.

Released: August 29, 2023