

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

B E T W E E N:

The Corporation of the Town of Wasaga Beach

Applicant

and.

Persons Unknown

Respondents

MOTION UNDER Section 440 of the *Municipal Act*, 2001, S.O. 2001, c. 25, Section 101 of the *Courts of Justice Act*, R.S.O. 1990, C. C.43 and Rules 1.04, 14.05, 38, 40.01 & 40.02 of the *Rules of Civil Procedure*, R.R.O. 1990, reg. 194.

**MOTION RECORD**

August 28, 2023

**BARRISTON LLP**

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Lawyers for the Applicant

The Corporation of the Town of Wasaga Beach

TO: PERSONS UNKNOWN

Respondent

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

The Corporation of the Town of Wasaga Beach  
Applicant/Moving Party

and.

Persons Unknown  
Respondents/Responding Party

MOTION UNDER Section 440 of the *Municipal Act*, 2001, S.O. 2001, c. 25, Section 101 of the *Courts of Justice Act*, R.S.O. 1990, C. C.43 and Rules 1.04, 14.05, 38, 40.01 & 40.02 of the *Rules of Civil Procedure*, R.R.O. 1990, reg. 194.

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Court File No.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

B E T W E E N:

THE CORPORATION OF THE TOWN OF WASAGA BEACH

Applicant/Moving Party

and

PERSONS UNKNOWN

Respondents/Responding Party

**NOTICE OF MOTION**

MOTION UNDER Section 440 of the *Municipal Act*, 2001, S.O. 2001, c. 25, Section 101 of the *Courts of Justice Act*, R.S.O. 1990, C. c.43 and Rules 1.04, 14.05, 38, 40.01 & 40.02 of the *Rules of Civil Procedure*, R.R.O. 1990, reg. 194.

The Moving Party will make an EX PARTE Motion to a Judge on Tuesday August 29, 2023 at 9:30 or as soon as can be heard.

**PROPOSED METHOD OF HEARING:** The Motion is to be heard

By video conference.

at the following location

75 Mulcaster Street Barrie, Ontario L4M 3P2

-2-

## MOTION

1. The Moving Party makes a motion for:

- a) an interlocutory injunction pursuant to section 440 of the Municipal Act, 2001, SO 2001, c. 25, restraining the Respondents from violating the Corporation of the Town of Wasaga Beach By-law 2023-74, as amended [the “By-law”] as well as By-law 2018-99, By-law 2019-15, By-law 2023-75, and By-law 2020-77;
- b) *quia timet* injunctive relief preventing anticipated contraventions of the By-law;
- c) relief from service and notice provisions, if required;
- d) an order for substituted service, if required;
- e) if opposed, an order that costs be paid by the Responding Parties on a substantial indemnity basis;
- f) such further and other relief as may be deemed fit by this Honourable Court;

2. The grounds for the Motion are:

- a) The Moving Party, the Corporation of the Town of Wasaga Beach (the “Town”), seeks an Order and interlocutory relief to restrain the Respondents from violating Town by-laws.
- b) An illegal event is being planned in Wasaga Beach for September 1 – 4, 2023 being a car rally that is advertised online as “h2oi Wasaga Beach”.
- c) An unsanctioned and illegal event of the same name has taken place in Wasaga Beach for several years.
- d) In 2022, it resulted in public and private property damage, danger to public safety, and was a nuisance to the public generally.
- e) Numerous entities online are violating the By-law by coordinating, facilitating, advertising, hosting, creating, causing, and permitting an unsanctioned and unapproved car rally.
- f) The By-law provides in section 4.1 that,  
*“No Person shall, within the boundary of the Municipality, sponsor, collect money for, conduct, coordinate, facilitate, advertise, continue, host, create, cause, permit, participate in, be a Spectator, and/or attend any Car Rally that is unsanctioned and unapproved by the Town of Wasaga Beach.”*

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- g) The Respondents are persons unknown, including the coordinators, facilitators, organizers, advertisers, hosts, creators, causers, permitters, and participants of the h2oi Wasaga Beach car rally.
  - h) Violating the By-law constitutes a public nuisance and is a threat to public safety.
  - i) The violation of the By-law has caused an interference 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.
  - j) The Persons Unknown continue to make posts online about this event and have indicated that they are in the process of receiving approval and permits from the Town.
  - k) There has been no contact to seek approval or permits for this event. This language has the result of enticing more people to attend this illegal event under the guise that it does not violate the By-law.
  - l) Section 101, of the Courts of Justice Act, R.R.O. 1990, Reg. 194 as amended;
  - m) The Corporation of the Town of Wasaga Beach By-law no. 2018-99, as amended;
  - n) The Corporation of the Town of Wasaga Beach By-law no. 2019-15, as amended;
  - o) The Corporation of the Town of Wasaga Beach By-law no. 2020-77, as amended;
  - p) The Corporation of the Town of Wasaga Beach By-law no. 2023-74, as amended;
  - q) The Corporation of the Town of Wasaga Beach By-law no. 2023-75, as amended;
  - r) Rules 1.04, 1.04 (1.1) and (2), 14.05(3) (d) (g) and (h) 40.01 & 40.02 of the Rules of Civil Procedure.
  - s) Section 440 of the *Municipal Act*.
3. The following documentary evidence will be used at the hearing of the Motion:
- a) the affidavit of Danny Rodgers, to be sworn;
  - b) such further and other documentation as the Applicant shall advise and this Honourable Court permit.

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Issued: August 24, 2023

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Lawyers for the Moving Party,  
The Corporation of the Town of  
Wasaga Beach

To: John Doe

THE CORPORATION OF THE TOWN OF WASAGA BEACH  
Moving Party

-and-

PERSONS UNKNOWN  
Responding Party

Court File No. CV-23-

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
BARRIE

**NOTICE OF MOTION**

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Lawyers for the Moving Party

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

The Corporation of the Town of Wasaga Beach

Applicant

and

Persons Unknown

Respondents

**NOTICE OF APPLICATION**

APPLICATION UNDER Section 440 of the *Municipal Act*, 2001, S.O. 2001, c. 25, Section 101 of the *Courts of Justice Act*, R.S.O. 1990, C. c.43 and Rules 1.04, 14.05, 38, 40.01 and 40.02 of the *Rules of Civil Procedure*, R.R.O. 1990, reg. 194.

**NOTICE OF APPLICATION**

**TO THE RESPONDENT:**

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicants. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on a date to TBD, at 75 Mulcaster St, Barrie, ON L4M 3P2, or by video conference, or in writing. A motion regarding this matter shall be heard at 9:30am, or soon after, on August 29, 2023 via video conference.

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 a solicitor 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.

August , 2023

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Local Registrar

75 Mulcaster Street  
Barrie, Ontario L4M 3P2

TO: **PERSONS UNKNOWN**  
**Without Notice**

## APPLICATION

1. The Applicant makes an application for:
  - a) an order compelling the Respondents to permanently cease and refrain from contravening the Corporation of the Town of Wasaga Beach By-law 2023-74, as amended [the “By-law”] as well as By-law 2018-99, By-law 2019-15, By-law 2023-75, and By-law 2020-77;
  - b) an interlocutory injunction pursuant to section 440 of the Municipal Act, 2001, SO 2001, c. 25, restraining the Respondents from violating the By-law;
  - c) *quia timet* injunctive relief preventing anticipated contraventions of the By-law;
  - d) relief from service and notice provisions, if required;
  - e) an order for substituted service, if required;
  - f) damages, to be assessed and provided before a hearing date, resulting from the contravention of the By-law.
  - g) if opposed, an order that costs be paid by the Respondents on a substantial indemnity basis;
  - h) such further and other relief as may be deemed fit by this Honourable Court;
  
2. The grounds for the Application are:
  - a) The Applicant, the Corporation of the Town of Wasaga Beach (the “Town”), seeks an Order and interlocutory relief to retrain the Respondents from violating Town by-laws.
  - b) An illegal event is being planned in Wasaga Beach for September 1 – 4, 2023 being a car rally that is advertised online as “h2oi Wasaga Beach”.
  - c) An unsanctioned and illegal event of the same name has taken place in Wasaga Beach for several years. In past years, it has resulted in public and private property damage, danger to public safety, and was a nuisance to the public generally.
  - d) Numerous entities online are violating the By-law by coordinating, facilitating, advertising, hosting, creating, causing, and permitting an unsanctioned and unapproved car rally.
  - e) The By-law provides in section 4.1 that,  
*“No Person shall, within the boundary of the Municipality, sponsor, collect money for, conduct, coordinate, facilitate, advertise, continue, host, create, cause, permit, participate in, be a Spectator, and/or attend any Car Rally that is unsanctioned and unapproved by the Town of Wasaga Beach.”*

- f) The Respondents are persons unknown, including the coordinators, facilitators, organizers, advertisers, hosts, creators, causers, permitters, and participants of the h2oi Wasaga Beach car rally.
- g) Violating the By-law constitutes a public nuisance and is a threat to public safety.
- h) The violation of the By-law has caused an interference 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.
- i) The Persons Unknown continue to make posts online about this event and have indicated that they are in the process of receiving approval and permits from the Town and have already received some approvals.
- j) There has been no contact to seek approval or permits for this event. This language has the result of enticing more people to attend this illegal event under the guise that it does not violate the By-law.
- k) Section 101, of the Courts of Justice Act, R.R.O. 1990, Reg. 194 as amended;
- l) The Corporation of the Town of Wasaga Beach By-law no. 2018-99, as amended;
- m) The Corporation of the Town of Wasaga Beach By-law no. 2019-15, as amended;
- n) The Corporation of the Town of Wasaga Beach By-law no. 2020-77, as amended;
- o) The Corporation of the Town of Wasaga Beach By-law no. 2023-74, as amended;
- p) The Corporation of the Town of Wasaga Beach By-law no. 2023-75, as amended;
- q) The Corporation of the Town of Wasaga Beach By-law no. 2023-89;
- r) Rule 14.05(3) (d) (g) and (h) of the Rules of Civil Procedure;
- s) Rule 1.04, 1.04 (1.1) and (2) of the Rules of Civil Procedure.
- t) Section 440 of the *Municipal Act*.

3. The following documentary evidence will be used at the hearing of the application:

- a) the affidavit of Danny Rodgers, to be sworn;
- b) such further and other documentation as the Applicant shall advise and this Honourable Court permit.

Issued:

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Lawyer for the Applicant,  
The Corporation of the Town of  
Wasaga Beach

To: **PERSONS UNKNOWN**  
**Without Notice**

THE CORPORATION OF THE TOWN OF WASAGA BEACH  
Applicant

-and- PERSONS UNKNOWN  
Respondents

Court File No. CV-23-1434

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
BARRIE

**NOTICE OF APPLICATION**

**BARRISTON LLP**

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Lawyers for the Applicant

The Corporation of the Town of Wasaga Beach

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE )  
 )  
JUSTICE ) ..... THE .....  
 DAY of AUGUST, 2023

B E T W E E N:

*(Court Seal)*

THE CORPORATION OF THE TOWN OF WASAGA BEACH

Applicant/Moving Party

and

PERSONS UNKNOWN

Respondents/Responding Parties

**ORDER**

**THIS MOTION**, made by the Corporation of the Town of Wasaga Beach was heard by video conference this day at the Court House, 75 Mulcaster Street, Barrie, Ontario.

**UPON READING** the Motion Record of the applicant and upon hearing oral argument of counsel for the applicant, and having regard to the urgency of the situation,

1. **THIS COURT ORDERS** that the time for service, filing and confirmation of the

Notice of Motion and the Motion Record is hereby abridged so that this Motion is properly returnable today.

2. **THIS COURT ORDERS** that an interlocutory and *quia timet* injunction is granted, pursuant to section 440 of the *Municipal Act*, and section 101 of the *Courts of Justice Act*.

3. **THIS COURT ORDERS** that any persons having notice of this Order are hereby restrained and enjoined from directly or indirectly, by any means whatsoever breaching the Town of Wasaga Beach: By-law No. 2023-74, A By-Law to Prohibit Vehicular Nuisance Events.

4. **THIS COURT ORDERS** that any persons having notice of this Order are hereby restrained and enjoined from attending and/or participating in the H2Oi car-rally, or any unauthorized car-rally scheduled to occur in the Town of Wasaga Beach from September 1-4, 2023.

5. **THIS COURT ORDERS** that any police officer with the Ontario Provincial Police (“OPP”) shall have authorization to arrest and remove any person who has knowledge of this Order and who the OPP have reasonable and probable grounds to believe is contravening or has contravened any provision of this Order, subject to the discretion of the OPP with respect to the timing and means of enforcement.

6. **THIS COURT ORDERS** that the terms of this Order shall remain in force until varied or discharged by a further Order of the Court.

7. **THIS COURT ORDERS** that notice of this Order shall be given by the creation of a

URL on the Town of Wasaga website whereby this Order can be viewed and downloaded, and the Town issuing a press release containing the URL linking to the Order. Additional notice of this Order may be given by:

- a. posting copies of this Order in or around Wasaga Beach;
- b. publishing this Order online on any social media accounts promoting and/or advertising the H2Oi car rally or related contraventions of the Town's by-laws;
- c. reading the Order to any person, including but not limited to reading the Order over an amplification system; and
- d. any other manner deemed appropriate by the Town of Wasaga beach or OPP.

8. **THIS COURT ORDERS** that this Order shall not apply to persons acting in the course of or in the exercise of a statutory duty, power or authority.

9. **THIS COURT ORDERS** that the terms of this Order bind the respondents and every other person or legal entity who is subject to this 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.

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(Signature of Judge)

THE CORPORATION OF THE TOWN OF WASAGA BEACH  
Moving Party

-and-

PERSONS UNKNOWN  
Responding Party

Court File No. CV-23-1434

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
BARRIE

**ORDER**

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THE CORPORATION OF THE TOWN OF WASAGA BEACH  
Applicant

-and-

PERSONS UNKNOWN  
Respondent

Court File No. CV-23-1434

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
BRACEBRIDGE

**MOTION RECORD**

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