

Court File No.

**ONTARIO
DIVISIONAL COURT**

B E T W E E N :

JULIAN CHARLES RENAUD and CANADIAN CONSTITUTION FOUNDATION

Applicants

- and -

REGIONAL MUNICIPALITY OF NIAGARA

Respondent

APPLICATION RECORD

April 4, 2024

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AND TO: **Attorney General of Ontario** (*as required by subsection 9(4) of the Judicial Review
Procedure Act*)
Crown Law Office – Civil
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**NOTICE OF APPLICATION TO DIVISIONAL COURT FOR JUDICIAL REVIEW
(FORM 68A)**

TO THE RESPONDENT

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

THIS APPLICATION for judicial review will come on for a hearing before the Divisional Court on a date to be fixed by the registrar by the method of hearing requested by the applicants, unless the court orders otherwise. The applicants request that this application be heard

- In person
- By telephone conference
- By video conference

at the following location

At a video conference with the link thereto to be advised prior to the hearing date

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 applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and

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APPLICATION

1. The Applicants make application for:
 - (a) An order pursuant to paragraph 2(1)1. of the *Judicial Review Procedure Act* in the nature of certiorari quashing the declaration of an emergency issued by the Regional Municipality of Niagara (hereinafter the “Region”) on March 28, 2024;
 - (b) A declaration pursuant to paragraph 2(1)2. of the *Judicial Review Procedure Act* that the Region’s March 28 declaration of an emergency pursuant to subsection 4(1) of the *Emergency Management and Civil Protection Act*, RSO 1990, c E.9, is unlawful and void;
 - (c) An order that there be no costs of this Application; and
 - (d) Such further and other relief as this Honourable Court may deem just.
2. The grounds for the application are:
 - (a) In the afternoon of April 8, 2024, there will be a solar eclipse such that, to an observer located in the Niagara region – among many other regions in Mexico, the United States of America, and Canada – the sun will be completely eclipsed by the moon for a period of approximately two minutes forty seconds to three minutes forty seconds, depending on the observer’s location.
 - (b) The Region predicts that there will be an influx of tourists due to the solar eclipse, and that this may cause issues with traffic, parking, cell phone network utilization, and so forth.

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(c) On March 28, 2024, the Regional Chair declared an emergency pursuant to subsection 4(1) of the *Emergency Management and Civil Protection Act*, RSO 1990, c E.9 (hereinafter the “*EMCPA*”) purportedly due to its estimate of the number of incoming tourists. It referred to this as a “State of Emergency,” though that term of art does not actually appear in the *EMCPA*; it is simply a declared “emergency” as defined in section 1 of same.

(d) An “emergency” is defined in section 1 of the *EMCPA* as follows:

“emergency” means a situation or an impending situation that constitutes a danger of major proportions that could result in serious harm to persons or substantial damage to property and that is caused by the forces of nature, a disease or other health risk, an accident or an act whether intentional or otherwise; (“situation d’urgence”)

(e) In its initial press release of March 28, 2024, the Region indicated that “thousands” of tourists would be arriving in Niagara for the eclipse. The next day, the Mayor of Niagara Falls gave an interview to CBC News in which he cited the number of incoming tourists as “upwards of a million,” and expanded upon why the Region declared an emergency and what it was expecting during the event. While the Mayor of Niagara Falls does not represent the Region itself, he was clearly in contact with the Region with respect to the declaration and the reasoning for same.

(f) The Region has not indicated how it arrived at its estimate for the number of incoming tourists, particularly given that Niagara is far from the only area that will be subject to a total solar eclipse. In fact, the vast majority of the land area that will be subject to the total solar eclipse is located in the United States of America, and nearby Buffalo is one of the best places to view it, given that it is directly in the eclipse’s “path

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of totality” and observers in Buffalo will consequently experience a total solar eclipse for longer than anywhere in the Region, with the exception of neighbouring Fort Erie.

- (g) The Region is a popular tourist destination that is accustomed to welcoming large numbers of tourists, especially in the summer and for celebrations such as New Year’s Eve. In fact, much of the Region’s economy *depends* on tourism. There is no evidence that, even if a million tourists *do* arrive to the Region, that that will constitute an emergency as contemplated by the *EMCPA*.
- (h) In its March 28 press release, the Region indicated that it declared an emergency because it “strengthens the tools the Region has at its disposal to safeguard the health and safety of residents and visitors and protect our critical infrastructure in any scenario that might arise.” It makes no reference to the actual statutory definition of “emergency” in the *EMCPA* nor does it explain why it purports this scenario to meet that definition.
- (i) It is understandable that the Region may wish to close certain roads and regulate traffic in response to an influx of tourists to an area. It does not require any powers granted by the *EMCPA* for this purpose; it already has the authority to do so pursuant to section 134 of the *Highway Traffic Act*, RSO 1990, c H.8, and it routinely makes use of this section without invoking the *EMCPA*.
- (j) In fact, the Region already has all the powers it reasonably needs to prepare for an influx of tourists on April 8. Solar eclipses are entirely predictable as to when and where they will occur, and the Region has thus had many years of notice that the Region would experience a solar eclipse on April 8 and just as many years to prepare. This is in no way comparable to a natural disaster, such as a hurricane or volcanic eruption, that come with much less notice and the potential for extreme and direct danger to life and property. The Region does *not* need the very broad and vaguely

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defined powers granted by subsection 4(1) of the *EMCPA* to prepare for a solar eclipse. During a declared emergency, the head of council of a municipality:

may take such action and make such orders as he or she considers necessary and are not contrary to law to implement the emergency plan of the municipality and to protect property and the health, safety and welfare of the inhabitants of the emergency area.

- (k) Even if the Region needs to make use of its emergency management plan and the resources referred to thereunder during the solar eclipse, it can do so without actually declaring an emergency under subsection 4(1) of the *EMCPA*. Subsection 9(a) of the *EMCPA* reads:

9 An emergency plan formulated under section 3, 6, 6.0.1 or 8 shall,

(a) in the case of a municipality, authorize employees of the municipality or, in the case of a plan formulated under section 6 or 8, authorize public servants to take action under the emergency plan where an emergency exists but has not yet been declared to exist;

- (l) The Region has adopted that requirement under the *EMCPA* in its Emergency Management Plan, the relevant portion of which reads:

Declaration and Termination of an Emergency

Prior to a Declaration

When an emergency exists, but has not yet been declared, Niagara Region employees and first responders may take such action(s) as identified in the

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Niagara Region Emergency Management Plan necessary to protect lives and property.

- (m) In the Mayor of Niagara Falls' March 29 interview, he stated that the emergency was declared "in an abundance of caution" and that it would "also potentially open [the Region] up if we need any assistance with funding provincially or federally, and it really reiterates the message that we are sending: we are asking people to come prepared. Make sure your gas tank is full, your cars and your devices are charged, bring your glasses, don't show up hoping to find some, bring your medication if you need it, bring a blanket to lay down and enjoy..."
- (n) With respect to funding, the Mayor appears to have been referring to sections 13 and 13.1 of the *EMCPA*. Neither of those sections automatically entitles the declarant of an emergency to funding of any sort. Even if they did, invocation of either of those sections to compensate the Region for expenses incurred during the solar eclipse would require the solar eclipse to constitute an emergency as defined by the *EMCPA*. The Region cannot lawfully misrepresent a forthcoming event as an emergency as a ploy to obtain funding from the Province or the Crown in Right of Canada.
- (o) The Region also cannot declare a State of Emergency as a *de facto* travel advisory, as it lacks the statutory authority to do so. It can issue travel advisories without such a declaration in any event.
- (p) Further, an Emergency cannot be declared based on unfounded speculation that danger due to crowding *might* arise due to a tourist attraction or celebration.
- (q) None of the Region's professed reasons for declaring an emergency begin to approach the definition of "emergency" enshrined in section 1 of the *EMCPA*.

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- (r) Were the Region's declaration of an emergency on these facts to be allowed to stand and, by consequence, the bar to declare an emergency so lowered as to be subterranean, there would be nothing to prevent municipalities from declaring an emergency on every New Year's Eve, every major film and music festival, every major sporting event, and every Saint Patrick's Day.
 - (s) For the foregoing reasons, this Court must exercise its jurisdiction to quash the Region's declaration of an emergency and/or declare that said declaration is unlawful and void. This will not only protect the residents of and visitors to the Region from the Region's unlawful exercise of emergency powers, but will also make it clear to municipalities and the Province that the *EMCPA* cannot be invoked in response to trivialities or for financial reasons. A high threshold must be met to lawfully declare an emergency.
 - (t) The Applicant, Julian Charles Renaud, is a resident of the City of Port Colborne, being a lower-tier municipality located in the Region that is subject to the Region's declaration in this matter. He also operates a law firm in the City of Port Colborne. As such, he has direct standing in this proceeding.
 - (u) The co-Applicant, the Canadian Constitution Foundation, is a registered charity with a mandate to serve the public interest by protecting constitutional freedoms through education, publication, and, when necessary, litigation. It has been a public interest litigant in many Court proceedings in the past and likewise has public interest standing in this proceeding, given the matters of public interest at stake.
3. The following documentary evidence will be used at the hearing of the application:
- (a) The Affidavit of Julian Charles Renaud sworn April 4, 2024;

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(b) The Affidavit of Joanna Baron sworn April 3, 2024; and

(c) Such further and other evidence as counsel may advise and this Honourable Court permit.

Date of Issue: April 4, 2024

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