

File no.  
C117-01-09352

THE QUEEN'S BENCH  
WINNIPEG CENTRE

BETWEEN:

NICHOLAS TROLLER

Applicant

- and -

MANITOBA PUBLIC INSURANCE CORPORATION

Respondent

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NOTICE OF APPLICATION

HEARING DATE: August 16, 2017 at 10am

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Justice Centre for Constitutional Freedoms  
Jay Cameron  
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Calgary, Alberta T2V 1K2  
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Counsel for the Applicant

Service Of A True Copy Is Hereby Admitted  
This 27 Day Of July A.D. 2017  
Dulna Tok

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TO THE RESPONDENT:

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 before a judge, on  
August 16, 2017 at 10 AM at the Winnipeg Court of Queen's Bench, ~~373 Broadway,~~  
Winnipeg, Manitoba R3C 4S4. 408 York Ave

IF YOU WISH TO OPPOSE THIS APPLICATION, you or a Manitoba  
lawyer acting for you 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 serve a copy of the evidence on the applicants' lawyer or, where the applicants  
do not have a lawyer, serve it on the applicants, and file it, with proof of service, in

the court office where the application is to be heard as soon as possible, but not later than 2:00 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGEMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

\_\_\_\_\_  
Date July 27, 2017

Issued **J. SANDER  
DEPUTY REGISTRAR  
COURT OF QUEEN'S BENCH  
FOR MANITOBA**

Deputy Registrar

To: Manitoba Public Insurance Corporation  
Box 6300  
Winnipeg, MB R3C 4A4

### APPLICATION

**The Applicant makes application for:**

1. A Declaration pursuant to to section 24(1) of the *Charter of Rights and Freedoms* (the “*Charter*”) that the Respondent’s cancelation of the Applicant’s personalized license plate “ASIMIL8” (the “*Plate*”) unjustifiably infringes section 2(b) of the *Charter*;
2. An Order reinstating the *Plate*;
3. Further, or in the alternative, an Order for *certiorari* pursuant to section 24(1) of the *Charter*, or Rule 68.01 of the Court of Queen's Bench Rules, or both of

the foregoing, quashing the decision to cancel the Plate by The Manitoba Insurance Corporation (“MPI”).

4. Costs of this Application; and
5. Such further and other relief as this Honourable Court deems just and equitable.

**The grounds for the application are:**

6. Nicholas Troller is a resident of Winnipeg, Manitoba. He is an enthusiast of Star Trek, a science fiction television and movie franchise.
7. MPI is a non-profit Crown Corporation that provides automobile insurance in Manitoba, and has done so since 1971. MPI also exercises authority over the issuance of licence plates to the registered owners of vehicles licenced in Manitoba.
8. For a fee, vehicle owners in Manitoba are able to obtain a personalized licence plate from MPI.

Background

9. The Manitoba Government has statutorily authorized the use of expressive content on license plates issued by the province. MPI invites members of the public to express themselves via the purchase of a personalized license plate.

The portion of MPI's website dealing with personalized license plates contains the following statement:

Next to a house, a car is likely the most expensive single purchase a person will make. While a car can say a lot about lifestyle, personality and taste, many people prefer to let their personalized licence plates speak for them.

Personalized licence plates are rapidly becoming a treasured item for car owners. As a gift for yourself or someone else, personalized licence plates can make a statement about a profession, favourite hobby, status in life or pride in vehicle ownership.<sup>1</sup> [Emphasis added]

10. In 2015, Mr. Troller applied for, and paid the required fee to, receive the "ASIMIL8" Plate. Mr. Troller chose this Plate because it expresses his interest in Star Trek and the aliens from the franchise known as the Borg, which have gained iconic status in popular culture and who use the word "assimilate" as a core part of their dialogue. MPI approved Mr. Troller's application and issued the Plate.

11. Mr. Troller installed the ASIMIL8 Plate on his family vehicle along with a Star Trek license plate border that stated, "WE ARE THE BORG" and "RESISTANCE IS FUTILE". These phrases are commonly uttered by the Borg, and the Plate's accompanying border leaves no doubt that the word "assimilate" is used in reference to Star Trek.

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<sup>1</sup> <https://www.mpi.mb.ca/en/Reg-and-Ins/Registration/Plates/Pages/reg-plp.aspx>

12. While displaying the Plate for close to two years, Mr. Troller was approached by many people commenting positively on the Plate, and asking to have their picture taken with it.

13. The Plate was renewed by MPI in 2016 without question or concern.

#### Cancellation of Plate

14. Mr. Troller received a letter from MPI dated April 26, 2017 (the “April 26 Letter”), within which MPI stated that the Plate “is considered offensive.”

15. The April 26 Letter did not provide any explanation or reason as to why MPI claimed that the Plate was “considered offensive,” or the identity of the person who took offense at the Plate. MPI did not state that MPI itself considers the Plate “offensive”, or clarify whether MPI was repeating the opinion of other parties about the alleged offensiveness of the Plate.

16. In the April 26 Letter, MPI did not disclose whether or not someone had complained about the Plate. MPI made no attempt to explain the process by which the Plate could transform from “inoffensive” to “offensive.” Prior to the letter, MPI did not find the plate “offensive,” as demonstrated by MPI approving the plate in 2015 and renewing it in 2016.

17. In short, no rationale or justification was provided by MPI for its arbitrary reversal in regard to the acceptability of the word “ASIMIL8” (assimilate), which was approved and renewed for use by MPI for nearly two years.
18. In the April 26, Letter MPI ordered Mr. Troller to surrender the Plate by May 1, 2017. MPI offered Mr. Troller no right of appeal or other recourse. Fearing sanction by MPI, Mr. Troller acceded to the demand.
19. On May 29, 2017, counsel for Mr. Troller wrote to MPI, requesting the reinstatement of the Plate.
20. On July 6, 2017, MPI advised counsel for Mr. Troller that it would not reinstate the Plate.

#### Legal Basis for Application

21. MPI is a provincial Crown corporation, and as a government body the *Charter* applies to its decisions. The Manitoba Government, through section 60(1) of *The Drivers and Vehicles Act*, has provided for the use of “words” on license plates as a medium by which citizens may express themselves. MPI administers the provision of personalized license plates. Manitoba and MPI have thus created a space for expression and cannot arbitrarily restrict that expression in an unreasonable or capricious fashion. MPI is required by the

*Charter* and the Rule of Law to uphold fundamental freedoms, including freedom of expression.

22. Further, as a government entity, MPI may only limit expression in as minimal a way as possible, and only if it is truly necessary in order to meet a pressing and substantial objective. The revocation of the Plate in the within circumstances is neither minimal nor effected for a proper statutory objective. The revocation of the Plate is arbitrary, oppressive, inconsistent and unreasonable.

23. Further, the word “assimilate” is neither profane nor socially unacceptable. “Assimilate” is used in common parlance across Canada in a host of professions, including journalism, medicine, psychology, nutrition and law. Its usage in these fields is not hateful, discriminatory or offensive, nor does any government censor or sanction its usage at all, nor would it be reasonable, lawful or rational to do so. MPI’s assertion that “assimilate” as a stand-alone word is “offensive” is made without justification and is contradictory to the usage and meaning of words in the English language. Further, in the specific context of Mr. Troller’s plate, it is clear that “ASIMIL8” refers uniquely and exclusively to Star Trek, and is neither discriminatory nor offensive.



24. Further, MPI followed its regulatory process whereby Mr. Troller obtained the Plate and used it for two years, with MPI's express knowledge and approval. It is therefore improper, arbitrary and unreasonable for this process to be superseded, suddenly, by an unfounded and capricious statement that the Plate "is considered offensive," especially in the context of MPI having approved of the Plate in the preceding two years.

25. The Plate is protected expression under the *Charter*. As a government body, MPI is under a *Charter* obligation to uphold and protect Mr. Troller's freedom of expression, a duty which it has failed to uphold.

26. Further, or in the alternative, if the Plate is not protected expression under the *Charter*, MPI is legally obligated to act reasonably and fairly, in accordance with the Rule of Law, and without making arbitrary decisions.

**Authorities Relied On:**

27. Rules 14.05(2) and 16.08 of the *Court of Queen's Bench Rules*;

28. Sections 2(b) and 24(1) of the *Canadian Charter of Rights and Freedoms*, Part I of The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11; and


29. *The Drivers and Vehicles Act*, CCSM c D104.

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

30. The Affidavit of Nicholas Troller, to be sworn; and

31. Such further and other material as counsel may advise and this Honourable Court will permit.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS <sup>27</sup>26<sup>TH</sup> DAY OF JULY, 2017.

*for =*  
  
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JAY CAMERON  
Justice Centre for Constitutional Freedoms  
Counsel for the Applicant, NICHOLAS TROLLER