

Form 3-49
(Rule 3-49)

COURT FILE NUMBER QB 312 of 2017
COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
JUDICIAL CENTRE PRINCE ALBERT
APPLICANT(S) PRINCE ALBERT RIGHT TO LIFE ASSOCIATION AND
VALERIE HETTRICK
RESPONDENT(S) CITY OF PRINCE ALBERT

ORIGINATING APPLICATION

NOTICE TO THE RESPONDENT(S)

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court. To do so, you must be in Court when the application is heard as shown below:

Where 1800 Central Avenue, Prince Albert, SK S6V 4W7

Date November 21, 2017

Time 10:00 a.m.

Go to the end of this document to see what you can do and when you must do it.

PARTICULARS OF APPLICATION

The Applicants seek the following remedies and orders:

1. The Applicants apply to this Honourable Court for judicial review of the decision of the City of Prince Albert (the "City") to deny the Applicants' "Request to Fly a Flag on Courtesy Flag Pole" (the "Decision"):
2. A Declaration that the Decision is arbitrary, unreasonable and contrary to the principles of natural justice and procedural fairness.
3. A Declaration pursuant to section 24(1) that the Decision violates the Applicants' right to freedom of expression guaranteed in section 2(b) of the *Canadian Charter of Rights and Freedoms* ("the Charter").
4. A Declaration that the Decision is void.
5. An Order directing the City of Prince Albert to permit the Applicants' to fly their flag, described below, on the City's Courtesy Flag Pole.
6. In the alternative, an Order remitting the decisions back to the City of Prince Albert to be

reconsidered in accordance with the above Declarations and any further directions from this Honourable Court.

7. Costs.
8. Such further and other relief as this Honourable Court deems just and equitable.

The Applicants' summary of material facts is as follows:

9. The Prince Albert Right to Life Association ("PARLA") is a non-profit organization, comprised of Prince Albert and area residents, which seeks to promote the sanctity of life through prayer, education, community work and political action.
10. PARLA's work includes hosting Pro-Life events such as "Celebrate Life Week" and "Life Chain", as well as other activities, such as providing aid to women and families with unplanned pregnancies.
11. Valerie Hettrick is the former President of PARLA and currently serves as PARLA's event organizer.
12. The Respondent City of Prince Albert, a municipal corporation under *The Cities Act*, SS 2002, c C-11.1.
13. The City maintains a courtesy flag pole in Memorial Square at City Hall (the "Courtesy Flag Pole"). Pursuant to its *Flag Protocol Policy* (the "*Policy*"), the City permits groups or organizations to fly the flag of, *inter alia*, a "charitable or non-profit organization to help increase public awareness of their programs and activities."
14. PARLA has been permitted to raise a flag on the Courtesy Flag Pole for "Celebrate Life Week" for the past 20 years. Since 2007, PARLA has flown the same flag on the Courtesy Flag Pole. This flag is pink and white, with a logo of "Umbert the Unborn", a cartoon fetus. The phrases "Celebrate Life Week" and "Please Let Me Live" also appear on the flag (the "Umbert Flag").
15. In March 2017, formal complaints about the Umbert Flag and the proclamation of Celebrate Life Week were made by two individuals who then presented their concerns to the Prince Albert Executive Council.
16. By motion, the Executive Council decided that the matter be referred to the Mayor of Prince Albert, Greg Dionne ("the Mayor").

17. In the two days following the Council meeting, on or around April 4 and 5, 2017, the Mayor and Ms. Hettrick spoke over the phone. The Mayor raised the possibility of PARLA changing its flag.
18. On or around April 5, 2017, Ms. Hettrick submitted a "Request to Fly a Flag on Courtesy Flagpole" application as well as an "Invitation Request Form" to the City to raise the Umbert Flag and to proclaim Celebrate Life Week, respectively.
19. On or around May 4, 2017, the Mayor phoned Ms. Hettrick, asking whether PARLA had a new flag. When Ms. Hettrick informed the Mayor that PARLA did not have a new flag, the Mayor stated that the Umbert Flag could not be raised, as it was not a "national flag" or "nationally recognized flag". The Mayor stated that Celebrate Life Week would still be proclaimed without any flag being raised.
20. On May 4, 2017, Ms. Hettrick sent the Mayor a letter on behalf of PARLA, asking for clarification as to the specific provision that requires a flag to be "national" or "nationally recognized", and highlighted the discord between the two terms. No response letter from the Mayor was received by PARLA or by Ms. Hettrick.
21. The Mayor's words proved prescient: ultimately, neither was Celebrate Life Week proclaimed, nor was PARLA permitted to raise its flag on the Courtesy Flag Pole.

The Applicants' ground(s) for making this application are:

22. The Applicants submit this originating application for judicial review under Rule 3-56 of *The Queen's Bench Rules*, Sask Gaz, June 21, 2013 1370.
23. As public bodies, the decisions of municipalities are subject to judicial review: *Shell Canada Products Ltd. v Vancouver (City)*, [1994] 1 SCR 231, at p 241.
24. Indeed, municipalities are "bound by a duty of procedural fairness when it makes an administrative decision affecting individual rights, privileges or interests": *Congrégation des Témoins de Jéhovah de St-Jérôme-Lafontaine v Lafontaine (Village)*, 2004 SCC 48 at para 3.
25. The City of Prince Albert is therefore bound by a duty of procedural fairness in considering the Applicants' "Request to Fly a Flag on Courtesy Flag Pole".

26. The City of Prince Albert violated the basic requirements of procedural fairness, namely *audi alteram partem*, in its Decision refusing to fly the Umbert Flag. This Decision was made without proper notice to the Applicants, without disclosing to the Applicants the case to be met, without giving the Applicants an appropriate opportunity to be heard, and without providing the Applicants with transparent or intelligible reasons for the Decision.
27. The Decision not to fly PARLA's Flag was also arbitrary and unreasonable. The Decision was not based on criteria that appear in the *Policy*, but on irrelevant considerations.
28. Finally, the Applicants' freedom of expression right under the *Canadian Charter of Rights and Freedoms* (the "*Charter*") was also violated in the Respondent's Decision not to fly the Umbert Flag. The City has created a platform for expression on the Courtesy Flag Pole, and has a duty to neutrally respect the freedom of expression guaranteed by section 2(b) of the *Charter* in permitting groups to use the Courtesy Flag Pole: *Greater Vancouver Transportation Authority v Canadian Federation of Students—British Columbia Component*, 2009 SCC 31 at para 35.

In support of this Application, the Applicants rely on the following material or evidence:

29. *Affidavit of Valerie Hettrick*, Sworn November 1, 2017.
30. Record of Proceedings to be prepared by the City of Prince Albert;
31. Such further and other material as counsel may advise and as this Honourable Court may allow.

DATED at Calgary, Alberta, this 31st day of October, 2017.


(signature)

This notice is issued at the above-noted judicial centre on the _____ day of _____, 2_____.



Local Registrar

NOTICE

You are named as a respondent because you have made or are expected to make an adverse claim with respect to this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form.

The rules require that a party moving or opposing an originating application must serve any brief of written argument on each of the other parties and file it at least 3 days before the date scheduled for hearing the originating application.

If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must serve a copy of the affidavit and other evidence on the originating applicant at least 10 days before the originating application is to be heard or considered.

CONTACT INFORMATION AND ADDRESS FOR SERVICE

If prepared by a lawyer for the party:

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