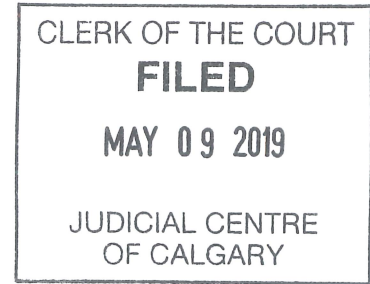


Form 7
[Rule 3.8]

Clerk's stamp:



COURT FILE NUMBER **1901-06503**

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANTS GERRIT TOP, JANTJE TOP and SPOT ADS INC.

RESPONDENT MUNICIPAL DISTRICT OF FOOTHILLS NO. 31

DOCUMENT **ORIGINATING APPLICATION**

ADDRESS FOR
SERVICE AND
CONTACT INFORMATION
OF PARTY FILING
THIS DOCUMENT James Kitchen & Jay Cameron
Justice Centre for Constitutional Freedoms
#253, 7620 Elbow Drive SW
Calgary, Alberta T2V 1K2
Phone: 403-667-8575
Fax: 587-352-3233

NOTICE TO THE RESPONDENT

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:

Date: June 18, 2019, ~~or such time as determined hereafter~~

Time: 10:00 AM

Where: Calgary Courts Centre
601 5th Street SW Calgary AB T2P 5P7

Before: Justice in Chambers

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

Grounds for Making this Application

1. The Applicant, Spot Ads Inc. (“Spot Ads”) is an Alberta corporation with a registered office in Calgary. Spot Ads is in the business of leasing advertising space on the sides of transport truck trailers placed on private property adjacent to roadways in Alberta (the “Trailer Signs”), including in the Municipal District of Foothills No. 31 (“Foothills”). Spot Ads Trailer Signs provide affordable space for small and medium sized businesses to advertise and for other entities to express various messages to the public. In this way, the Trailer Signs are not unlike the various advertising billboards along Alberta’s highways.
2. The Applicants Gerrit and Jantje Top reside in Foothills near High River. Like many Canadians, the Tops hold to strong views and beliefs regarding the inherent value of all human life and the importance of supporting women with unwanted pregnancies. They believe that Canada should legislate to establish protections for pre-born human life.
3. The Tops determined to publicly express their views, inform the public and offer support to pregnant women who may feel alone and abandoned by placing billboard signs on both sides of a transport truck trailer located on their own private property adjacent to Highway 2 (the “Tops Billboard”). On one side, the Tops Billboard states, “CANADA HAS NO ABORTION LAWS” and lists the website “weneedalaw.ca”. On the other side, the Tops Billboard shows a picture of a young woman and the text “PREGNANT? NEED HELP? YOU ARE NOT ALONE” and lists the website “CHOICE42.COM”.
4. On February 1, 2019, the Tops received a letter from Foothills Patrol Division which identified the Tops Billboard as an “advertising trailer” and a “prohibited sign” pursuant to section 9.24.10 of the Foothills Land Use Bylaw (the “Bylaw”). Foothills Patrol Division

requested the Tops Billboard be removed and threatened various “enforcement measures” if it was not.

5. On February 20, 2019, a Foothills Planning and Development Officer emailed Spot Ads demanding that all Trailer Signs within Foothills be removed. In addition, Spot Ads has received several phone calls from Foothills Bylaw Officers threatening the imposition of fines for non-compliance.
6. Section 9.24.10.b of the Bylaw states:

The following signs are prohibited in the municipality: Signs attached to licensed or unlicensed vehicles, not including imagery or wording either painted or adhered by magnetic or glued on decals directly onto the vehicle in question.
7. Apparently, Foothills considers the Trailer Signs and the Tops Billboard, to be prohibited pursuant to section 9.24.10.b of the Bylaw.
8. The *Canadian Charter of Rights and Freedoms* (the “*Charter*”) protects under section 2(b), as a fundamental freedom in a free and democratic society, the freedom of thought, belief, opinion and expression. Any law, including a municipal bylaw, that infringes section 2(b) of the *Charter* is unconstitutional and therefore of no force or effect unless the infringement is demonstrably justified in a free and democratic society pursuant to section 1 of the *Charter*.
9. Section 9.24.10.b of the Bylaw infringes freedom of expression as protected under section 2(b) of the *Charter* and is not saved by section 1. The effect of section 9.24.10.b is to limit expression by arbitrarily prohibiting all signs attached to “vehicles”.
10. The categorical prohibition of all signs attached to trailers is not rationally connected to any legitimate objective. Although regulated, many other types of roadside signs are permitted.

Prohibiting all signs attached to trailers while simultaneously permitting many other types of signs is not rationally connected to objectives such as increasing road safety or reducing aesthetic blight. There is nothing unique about signs attached to trailers that make them any more distracting or visually unappealing than other roadside signs.

11. Further, as a blanket prohibition, section 9.24.10.b does not constitute minimal impairment of freedom of expression. Totally prohibiting a particularly effective and affordable means of communicating with the public, as opposed to simply regulating it, impairs freedom of expression much more than is necessary to achieve any objective that could be rationally connected.
12. Lastly, section 9.24.10.b of the Bylaw is not proportionate to any purported benefit that may be achieved by such a blanket prohibition. The Bylaw's infringement of the Applicants' *Charter* rights to freedom of expression is not justified in a free and democratic society.

Remedy sought:

1. A declaration pursuant to section 52(1) of the *Constitution Act, 1982* that section 9.24.10.b of the Bylaw unjustifiably infringes section 2(b) of the *Charter* and is therefore void and of no force or effect;
2. Further, a declaration that section 9.24.10.b infringes section 1(d) of the *Alberta Bill of Rights*, RSA 2000 c A-14;
3. An order abridging the time for service of this Originating Application and supporting materials, if necessary;
4. Costs; and

5. Such further and other relief as this Honourable Court deems just and equitable.

Materials to be Relied on

6. The Affidavit of Jantje Top, to be filed;

7. The Affidavit of Josh Laforet, to be filed; and

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

Applicable Acts and Rules

9. *Alberta Rules of Court*, Alta Reg 124/2010;

10. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11;

11. *Alberta Bill of Rights*, RSA 2000, c A-14;

12. *Municipal District of Foothills No. 31 Land Use Bylaw 60/2014*;

13. *Highways Development and Protection Regulation*, Alta Reg 326/2009; and

14. *Municipal Government Act*, RSA 2000, c M-26

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of 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, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. 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. If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must reply by giving reasonable notice of that material to the applicant(s).