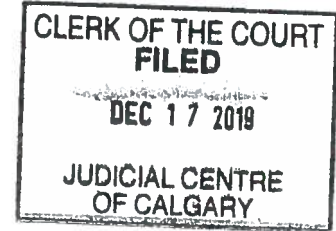


**Form 7**  
[Rule 3.8]

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., ROSS MARTIN, JOHN MARKIW and BRIAN WICKHORST

RESPONDENT MUNICIPAL DISTRICT OF FOOTHILLS NO. 31

DOCUMENT AMENDED ORIGINATING APPLICATION  
(Amended December 17, 2019)

ADDRESS FOR  
SERVICE AND  
CONTACT INFORMATION  
OF PARTY FILING  
THIS DOCUMENT

Attention: James Kitchen and Jay Cameron  
Justice Centre for Constitutional Freedoms  
#253, 7620 Elbow Drive SW  
Calgary, Alberta T2V 1K2  
Phone: 403-475-3622  
Fax: 587-352-3233  
Email: [jkitchen@jccf.ca](mailto:jkitchen@jccf.ca)  
[jcameron@jccf.ca](mailto:jcameron@jccf.ca)

and

CONTACT INFORMATION  
OF ALL OTHER PARTIES

Sean Fairhurst  
Dentons Canada LLP  
15th Floor, Bankers Court, 850 - 2nd Street SW  
Calgary, AB T2P 0R8  
Phone: 403-268-6803  
Fax: 403-268-3100  
Email: [sean.fairhurst@dentons.com](mailto:sean.fairhurst@dentons.com)  
*Counsel for the Respondent*

## 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:	February 19, 2020
Time:	2:00 PM
Where:	Calgary Courts Center 601 5 <sup>th</sup> Street SW Calgary AB T2P 5P7
Before:	Justice in Special 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

#### **Background**

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 Spot Ads Signs~~”), including in the Municipal District of Foothills No. 31 (“Foothills”). ~~Trailer Spot Ads Signs~~ provide affordable space for small and medium sized businesses to advertise and for other entities to express various messages to the public, while also providing income to landowners. ~~In this way, the Trailer Signs are not unlike the various advertising billboards along the Alberta highways.~~
2. The Applicants Gerrit and Jantje Top reside in Foothills near High River. Like many Canadians, the Tops ~~held to have~~ strong personal 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. It is not unlawful to hold or to express such views in public or in private.

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 Sign”). On one side, the Tops Billboard Sign states, “CANADA HAS NO ABORTION LAWS” and lists the website “weneedalaw.ca”. On the other side, the Tops Billboard Sign shows a picture of a young woman and the text “PREGNANT? NEED HELP? YOU ARE NOT ALONE” and lists the website “CHOICE42.COM”.
4. The Applicants, Ross Martin, John Markiw and Brian Wickhorst are Foothills resident landowners, and each either has currently or had prior to December 2019 signs on their property attached to the sides of trailers.
5. The Applicants are challenging the constitutionality of section 9.24.10(a) of the Foothills Land Use Bylaw, Bylaw No. 60/2014 as an unjustified infringement of section 2(b) of the Charter and section 1(d) of the Alberta Bill of Rights and are seeking to strike section 9.24.10(a) under section 52(1) of the Constitution Act, 1982. Affidavit material was filed by the Applicants in June 2019.
6. ~~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.~~

~~7. 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.~~

8. As amended in June 2019 by Bylaw No. 9/2019, section 9.24.10(a) of the Land Use Bylaw states:

The following signs are prohibited in the County:

- a. Vehicle Signs, except for signs exclusively advertising the business for which the vehicle is used, where the vehicle:
  - i. is a motor vehicle or trailer;
  - ii. is registered and operational; and
  - iii. used on a regular basis to transport personnel, equipment or goods as part of the normal operations of that business. (the "Impugned Bylaw")

9. The term "Vehicle Sign" is defined in the Land Use Bylaw at section 9.24.1 as:

a sign that is mounted, affixed or painted onto an operational or non-operational vehicle, including but not limited to trailers with or without wheels, Sea-cans, wagons, motor vehicles, tractors, recreational vehicles, mobile billboards or any similar mode of transportation that is left or placed at a location clearly visible from a highway...

~~10. 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.~~

11. ~~Apparently, Foothills considers the Trailer Signs and the Tops Billboard, to be prohibited pursuant to section 9.24.10.b of the Bylaw.~~

## Legal Basis

12. The Constitution preserves Canada as a free and democratic society. Governments at all levels are required to respect fundamental freedoms, including freedom of expression as protected by section 2(b) of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”). The vital importance of freedom of expression cannot be overemphasized and, as the Supreme Court has noted, it is difficult to imagine a guaranteed right more important to a democratic society.
13. Roadside billboard signs containing messages to the public, political or otherwise, and commercial advertising are common along Alberta’s roadways. The ubiquitous presence of signs, as one of society’s most important and effective means of communication, is a defining characteristic of free societies such as Canada. Alberta is part of a liberal democracy in which freedom of expression is zealously guarded by the courts.
14. The Landowners have a constitutionally protected right to engage in expressive activities on their own private property, including the display of billboard signs visible from adjacent highways.
15. ~~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*.
16. The Impugned Section 9.24.10.b Bylaw infringes freedom of expression as protected under section 2(b) of the *Charter* and is not saved by section 1. The purpose and effect of section

9.24.10(a).b is to limit expression by arbitrarily prohibiting all “vehicle signs”, except “signs exclusively advertising the business for which the vehicle is used” signs attached to “vehicles”.

17. The categorical prohibition of such signs, which includes all signs attached to trailers such as the Tops’ Sign and the Spot Ads Signs, 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 roadside 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. There is no evidence to justify the arbitrary and artificial distinction created by the bylaw.
18. Further, as a blanket prohibition, the Impugned section 9.24.10.b of the Bylaw 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.
19. Lastly, the Impugned 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**

20. A declaration pursuant to section 52(1) of the *Constitution Act, 1982* that the Impugned 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;
21. Further, a declaration that the Impugned section 9.24.10.b of the Bylaw infringes section 1(d) of the *Alberta Bill of Rights*, RSA 2000 c A-14;
22. An order abridging the time for service of this Amended Originating Application and supporting materials, if necessary;
23. Costs; and
24. Such further and other relief as this Honourable Court deems just and equitable.

**Materials to be Relied on**

25. The Affidavit of Jantje Top, ~~to be~~ filed;
26. The Affidavit of Josh Laforet, ~~to be~~ filed;
27. The Affidavit of Jeremy Graf, filed;
28. The Affidavit of Ross Martin, filed;
29. The Affidavit of John Markiw, filed;
30. The Affidavit of Brian Wickhorst, filed; and
31. Such further and other material as counsel may advise and as this Honourable Court may permit.

**Applicable Acts and Rules**

32. *Alberta Rules of Court*, Alta Reg 124/2010, in particular Rules 3.8, 3.11, 3.14 and such other

Rules as may be applicable;

33. *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;

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

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

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

37. *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).