



Clerk's stamp:

COURT FILE NUMBER 2001-04001

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT TOMAS MANASEK

RESPONDENT REGISTRAR OF MOTOR VEHICLE SERVICES

DOCUMENT **ORIGINATING APPLICATION FOR JUDICIAL REVIEW**

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- 475-3622
Fax: 587-352-3233
Email: jkitchen@jccf.ca
jcameron@jccf.ca
Counsel for the Applicant

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: April 23, 2020

Time: 10:00 AM

Where: Calgary Courts Centre
601 5th Street SW Calgary Alberta

Before: Justice in Chambers

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

GROUND FOR MAKING THIS APPLICATION

The Parties

1. The Applicant, Tomas Manasek lives in Calgary and is a long-time resident of Alberta. He immigrated to Canada in 1978, in part, to escape communist oppression in his country of origin, the former Czechoslovakia. He has a particular interest in individual freedom and democracy and especially freedom of expression.
2. The Respondent, the Registrar of Motor Vehicle Services (the “Registrar”) administers the issuance of vehicle licence plates, including personalized licence plates (“Personalized Plates”).

Personalized Plates

3. Personalized Plates are different from standard licence plates issued by the Registrar. For a fee, a vehicle registrant chooses the configurations of letters and numbers that appear on a Personalized Plate. Personalized Plates have been issued in Alberta since 1985. The Alberta Government has chosen to invite the diverse public to express themselves on Personalized Plates, and derives a revenue stream from said expression.

Decision to Reject Mr. Manasek’s Personalized Plate Application

4. On December 10, 2019, Mr. Manasek submitted an application for a Personalized Plate to the Registrar and paid the application fee. In his application, Mr. Manasek requested a Personalized Plate with the message “FREE AB” and identified the meaning of “FREE AB” to be “Alberta independence”.
5. The Registrar rejected Mr. Manasek’s Personalized Plate application two days later in a December 12 letter (the “Rejection Letter”). The Rejection Letter stated, in part:

Thank you for your interest in the Alberta Personalized Licence Plate Program.

Your request for a personalized licence plate was reviewed however unfortunately the licence plate configuration you have requested does not fit within the guidelines of the program. *The Traffic Safety Act* provides authorization for the Registrar of Motor Vehicle

Services to refuse to issue, or recall at any time, any licence plate configuration that is deemed inappropriate for a government issued licence plate.
(the “Decision”)

6. The only publicly accessible, government-issued material that addresses Personalized Plates is what is available on Service Alberta’s website. Service Alberta’s website contains “guidelines” and “restrictions” regarding Personalized Plates. The guidelines regarding Personalized Plates identified by Service Alberta on its website are the following:

- must be letters and/or numbers – special characters are not permitted, including - (hyphen), ’ (apostrophe), ! (exclamation mark), ? (question mark)
- have a minimum of 1 character and/or a maximum of 7 characters for regular plates
- have a minimum of 1 character and/or a maximum of 5 characters for motorcycle plates
- have a minimum of 1 character and/or a maximum of 5 characters (for veteran plate (3-pass, 2-58 and ham radio operator plates)

7. The Restrictions on the content of Personalized Plates listed on the Service Alberta website are the following:

- can’t be a look-alike or similar plate to one that already exists
- can’t use the letter O, only a 0 (zero) may be used
- no ethnic slurs
- no religious slurs
- no foul language
- no sexual connotations
- no political slurs
- no illegal acts
- no text that may cause identification problems, such as MLA, Mayor, Doctor, etc.
- no text message abbreviation that may be offensive.
- no words when translated are offensive.
- no reference to alcoholic beverages, controlled substances or paraphernalia used in the consumption of these
- must not be a configuration used by Motor Vehicles for regular licence plates

8. In the Rejection Letter, the Registrar stated that “FREE AB” “does not fit within the guidelines” and did not mention the above restrictions.

LEGAL BASIS

The Decision Infringes Freedom of Expression

9. The Registrar is government for purposes of the *Canadian Charter of Rights and Freedoms*. All of the Registrar’s decisions are subject to *Charter* scrutiny.
10. The Registrar administers a government program which invites the public to personalize the space on vehicle licence plates and express themselves on that space. When it determined to implement such a program, it created another purpose for licence plates in addition to the identification of registered vehicles and conceded that Personalized Plates are an appropriate forum for individual expression. Constitutionally protecting expression in such a space is consistent with the values underlying freedom of expression. Permitting “FREE AB” on a Personalized Plate advances the underlying values of self-fulfilment and democratic discourse. Censoring “FREE AB” in this space harms these values and protects none.
11. The Decision infringes Mr. Manasek’s constitutional right protected under section 2(b) of the *Charter* to freedom of expression. “FREE AB” is Mr. Manasek’s personal expressive content, and there is nothing unlawful about the expression of such a message. Mr. Manasek contends that a personalized plate program which invites his personalized expression is subject to the *Charter*, and that the Decision censors lawful expression contrary to the *Charter*.

The Decision is not a Justified Limitation of Section 2(b) *Charter* Rights

12. Freedom of expression is a “fundamental freedom” in Canada’s liberal democracy and cannot be infringed by government absent demonstrable justification. Section 2(b) of the *Charter* protects minority, dissenting or unpopular expression from being restricted by government based on its content. It also serves to afford society the benefit of being exposed to dissident and diverse expression.

13. As the Supreme Court of Canada found in *Irwin Toy Ltd v Québec (Attorney General)*, [1989] 1 SCR 927 at paragraph 41:

“[f]reedom of expression was entrenched in our Constitution... so as to ensure that everyone can manifest their thoughts, opinions, beliefs, indeed all expressions of the heart and mind, however unpopular, distasteful or contrary to the mainstream. Such protection is... "fundamental" because in a free, pluralistic and democratic society we prize a diversity of ideas and opinions for their inherent value both to the community and to the individual.”

14. The *Charter* delineates the limits on all state actors, including administrative decision makers such as the Registrar. The onus is on the Registrar to demonstrate that the infringement of Mr. Manasek’s free expression rights, occasioned by disallowing “FREE AB” on a Personalized Plate, is justified in a free and democratic society. It is not; the Decision is neither intelligible nor transparent.
15. The Applicant submits the Decision is reviewable on a correctness standard because it infringes a *Charter*-protected right. The rejection of “FREE AB” as a Personalized Plate is a “constitutional question”, which the Supreme Court of Canada recently identified in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 as a “rule of law” issue. The presumption of the standard of reasonableness is therefore rebutted and the standard of correctness ought to be applied.
16. Under a correctness standard, a reviewing court considers not whether a government decision results in an acceptable or reasonable outcome, but rather whether it is a legally correct outcome. Put another way, a reviewing court does not show deference to the decision-maker and only upholds the decision if it accords with what the court would have decided itself. The Applicant submits the Decision is incorrect at law as the Registrar did not meet, or even attempt to meet, its burden of proof to justify the infringement of Mr. Manasek’s freedom of expression.

The Decision is Unreasonable

17. In the alternative, under a reasonableness review, the Applicant submits the Decision is unreasonable. The Registrar did not balance Mr. Manasek's freedom of expression as against the Personalized Plate content restrictions and provided no explanation for its determination that "FREE AB" contravened the restrictions. The Registrar merely communicated its arbitrary conclusion. A reviewing court is unable to engage in the robust review analysis as required by *Vavilov* and the *Doré/Loyola* framework.
18. The decision is further unreasonable as the outcome of the Decision is disproportionate. Disallowing "FREE AB" on a Personalized Plate does not give effect as fully as possible to free expression. Reasonably interpreted and applied, the Personalized Plate content restrictions do not require the censorship of "FREE AB", even if it is exclusively considered to be a reference to Alberta independence.

The Decision is Procedurally Unfair

19. The Decision was reached in a procedurally unfair manner and is therefore void. The Registrar did not communicate to Mr. Manasek what "guidelines" his requested Personalized Plate configuration "does not fit within", nor how or why "FREE AB" contravenes any applicable guidelines or restrictions. Further, the Registrar did not provide Mr. Manasek an opportunity to respond to whatever concerns the Registrar has regarding the configuration "FREE AB". Mr. Manasek has no idea why his requested Personalized Plate configuration was rejected or how the Decision was made and was not able to participate in the decision-making process in any way.

The Personalized Plate Restrictions are Unconstitutional

20. Personalized Plates are subject to certain restrictions, as listed in paragraph 7. Mr. Manasek challenges the following three Personalized Plate "restrictions":
 - i. no political slurs;
 - ii. no text message abbreviation that may be offensive; and
 - iii. no words when translated are offensive.(the "Impugned Restrictions")

21. The Impugned Restrictions are so vague and devoid of defined parameters as to be unintelligible and so subjective and broad as to be incapable of being interpreted or applied in a non-arbitrary fashion. Exclusion of lawful expression from Personalized Plates is not justified by reference to undefined terms such as “political slurs” or something “that may be offensive”. There is no limit to what people may be offended by and no limit to the amount of people who may be offended about something. “Offense” does not justify censorship. Such a broad and vague restriction on expressive content is not constitutional.
22. The Impugned Restrictions improperly grant unlimited discretion to the Registrar to arbitrarily censor lawful expression. The rejection of “FREE AB” as a Personalized Plate configuration is an example of the Impugned Restrictions being used to censor lawful expression on a constitutionally protected space.
23. The Impugned Restrictions are not a proportionate limitation on freedom of expression and as protected by section 2(b) of the *Charter* and therefore are not justified and not saved by section 1 of the *Charter*.

REMEDY SOUGHT

24. Mr. Manasek applies to this Honourable Court for the following relief:
 - a. A Declaration pursuant to Rule 3.15(1)(b) and section 24(1) of the *Charter* that the Decision unjustifiably infringes freedom of expression as protected by section 2(b) of the *Charter* and section 1(d) of the *Alberta Bill of Rights* and is therefore invalid;
 - b. Further, or in the alternative, a Declaration pursuant to Rule 3.15(1)(b) and section 24(1) of the *Charter* that the Decision is unreasonable and therefore invalid;
 - c. Further, or in the alternative, a Declaration pursuant to Rule 3.15(1)(b) and section 24(1) of the *Charter* that the Decision is incorrect at law and therefore invalid;
 - d. A Declaration pursuant to Rule 3.15(1)(b) and section 24(1) of the *Charter* that the Decision was reached in a procedurally unfair manner and is therefore invalid;

- e. A Declaration pursuant to Rule 3.15(1)(b) and section 52(1) of the *Constitution Act, 1982* that the Impugned Restrictions infringe freedom of expression as protected by section 2(b) of the *Charter*, are not saved by section 1 of the *Charter* and are therefore void and of no force or effect;
- f. Further, a Declaration pursuant to Rule 3.15(1)(b) and section 2 of the *Alberta Bill of Rights* that the Impugned Restrictions infringe freedom of speech as protected by section 1(d) of the *Alberta Bill of Rights* and are therefore void and of no force or effect;
- g. An Order pursuant to Rule 3.15(1)(a) and section 24(1) of the *Charter* in the nature of *certiorari*, quashing the Decision;
- h. An Order pursuant to Rule 3.15(1)(a) and section 24(1) of the *Charter* in the nature of *mandamus*, requiring the Registrar to register and issue to Mr. Manasek the Personalized Plate “FREE AB” to be displayed by Mr. Manasek on his registered vehicle;
- i. Costs of this Application; and
- j. Such further and other relief as this Honourable Court deems just and equitable.

MATERIALS TO BE RELIED ON

- 25. The Certified Record of Proceedings, to be filed; and
- 26. Such further and other material as counsel may advise and as this Honourable Court may order or permit.

APPLICABLE ACTS AND RULES

- 27. *Alberta Rules of Court*, Alta Reg 124/2010;
- 28. *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; and

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

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).