



COURT FILE NUMBER 1903-20251
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
APPLICANTS ALBERTA MARCH FOR LIFE ASSOCIATION and
JERRY PASTERNAK
RESPONDENT CITY OF EDMONTON
DOCUMENT **NOTICE OF APPLICATION**

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CONTACT INFORMATION
OF PARTY FILING
THIS DOCUMENT

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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:	March 20, 2020
Time:	10:00 AM
Where:	Law Courts Building 1A Sir Winston Churchill Square, Edmonton AB T5J 0R2
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. On October 4, 2019 the Applicants filed an Originating Application for judicial review of a decision by the City of Edmonton (the “City”) to cancel an approved and scheduled request to light the High Level Bridge (the “Bridge”) in the colours of pink, blue, and white in association with the 2019 March for Life that was to occur in Edmonton in the spring of 2019 (the “Decision”).
2. A Notice to Obtain Record of Proceedings was filed by the Applicants on October 7, 2019 and a Certified Record of Proceedings (the “Record”) was filed by the Respondent on December 19, 2019.
3. Pursuant to Rule 3.18(2)(e), included in the Notice to Obtain Record of Proceedings was a request that the Respondent provide, or explain why it cannot be provided, a record of:

Anything else in your possession relevant to the decision, including a list of all citizen requests to light the High Level Bridge received by the City of Edmonton in the three years preceding the date of the filing of this Notice, and a list of all requests that have been approved therein.

4. Except for an undated list of 11 apparently approved requests to light the Bridge contained at Tab 8 of the Record, the Respondent failed to provide the above requested list or an explanation why it could not be provided.
5. The Applicants apply to this Honourable Court to rectify the deficiency in the Record and permit the filing of affidavit evidence with a view to ensuring this Court has before it an adequate evidentiary record upon which to fully assess the claims of the Applicants and consider the issues. The evidence sought by the Applicants to be produced by the City was available to the decision-maker prior to the Decision.

Legal Basis

6. In order to adequately assess the claims that the City has unjustifiably infringed the Applicants' *Charter* section 2(b) rights, and acted in an ideologically partial and arbitrary manner regarding the March for Life's request to light the Bridge, a record of prior approved or denied requests to light the Bridge must be included in the Record. This evidence is directly relevant to the issues raised in this judicial review.
7. The Applicants note that although the City failed to provide relevant evidence available to the decision-maker at the time of the Decision, namely, a list of all Bridge lighting requests that have been approved and denied, it did provide material of no relevance regarding events in other cities and material that was not available to the decision-maker at the time of the Decision. The City has selectively compiled the Record to exclude relevant material which may not be supportive of the Decision.
8. The Affidavit of Mary Smolis-Hunt contains evidence that the City has repeatedly lit the Bridge for events and causes that "have a risk of polarizing the community", in breach of its own policy. Included in the Affidavit of Mary Smolis-Hunt is evidence that such issues clearly "have a risk of polarizing the community", particularly regarding "climate change", which is a favoured cause of the City.
9. In addition, the evidence contained in the Supplemental Affidavit of Mary Smolis-Hunt demonstrates that the City has recently lit the Bridge for events and causes that are "mainly political in nature".

10. This case centers on the vital and fundamental freedom of expression, the duty of state neutrality and whether the City has acted in a procedurally unfair manner. As the Decision engaged the constitutional rights of the Applicants, and, as the Supreme Court recently ruled in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, the standard of review that will be applied by this Court in conducting a judicial review of the Decision is correctness. This Court cannot properly conduct a judicial review of the Decision without a sufficient record.
11. This court, in *Alberta Liquor Store Assn v Alberta (Gaming and Liquor Commission)*, 2006 ABQB 904, has found that there are exceptions to the general rule that only the record produced by the administrative decision-maker can be relied on for purposes of a judicial review. One exception is where, as in this case, the decision-maker has provided an inadequate record.
12. Further, as the Federal Court has noted in *State Farm Mutual Automobile Insurance Co v Canada (Privacy Commissioner)*, 2010 FC 736, courts will permit evidence on a judicial review that relates to a constitutional issue raised within the framework of the proceedings. Evidence of other Bridge lighting requests that the city has approved or denied and evidence of other “polarizing” Bridge lightings, are highly relevant to the constitutional issues raised by the Applicants regarding free expression, the duty of state neutrality, and whether the criteria utilized by the City for processing Bridge lighting requests is constitutionally valid.

Remedy Sought

13. An Order pursuant to Rule 3.22(3) admitting the Affidavit of Mary Smolis-Hunt, sworn on February 24, 2020;
14. An Order pursuant to Rules 3.18(3) and 3.19(3)(b) that the Respondent send to the court clerk an Amended Certified Record of Proceedings containing a list of all citizen requests to light the High Level Bridge received by the City of Edmonton in the three years preceding the date of the filing of the Notice to Obtain Record of Proceedings, and a list of all requests that have been approved therein.

15. In the alternative, an Order pursuant to Rules 3.21 and 3.22 permitting questioning of Nicole Poirier, being the person who certified the Certified Record of Proceedings filed on December 19, 2019;
16. Further, or in the alternative, an Order pursuant to Rule 3.22(d) admitting the Supplemental Affidavit of Marry Smolis-Hunt, sworn February 24, 2020;
17. Costs of this Application; and
18. Such further and other relief as this Honourable Court deems just.

Materials to be Relied on

19. The Originating Application for Judicial Review, filed October 4, 2019;
20. The Notice to Obtain Record of Proceedings, filed October 7, 2019;
21. The Certified Record of Proceedings, filed December 19, 2019;
22. The Affidavit of Mary Smolis-Hunt;
23. The Supplemental Affidavit of Mary Smolis-Hunt; and
24. Such further and other material as counsel may advise and as this Honourable Court may permit.

Applicable Acts and Rules

25. *Alberta Rules of Court*, Alta Reg 124/2010, including Rules

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).