



Justice Centre for Constitutional Freedoms

July 8, 2020

VIA EMAIL, HARDCOPY TO FOLLOW

Investigative Services Team
Law Enforcement and Oversight Branch
Alberta Justice and Solicitor General
9th Floor, 10365-97 Street
Edmonton, Alberta T5J 3W7
Email: jsg.psu@gov.ab.ca

RE: Formal Complaint against Sheriff J. McLean Regarding Violation Ticket No. A70138762R issued to Patrick Lefebvre on May 2, 2020

We are counsel for Patrick Lefebvre and submit this formal complaint on behalf of Mr. Lefebvre against Sheriff J. McLean. On Saturday May 2, 2020, in breach of his constitutional rights, Mr. Lefebvre was forcefully removed from the Legislature grounds, detained and ticketed by Sheriff McLean.

On the afternoon of May 2, 2020, Mr. Lefebvre and approximately six acquaintances were peacefully rallying at the Legislature grounds, lawfully expressing their political views and exercising their constitutional right to do so. Mr. Lefebvre and those around him were at all material times adhering to the applicable orders of the Chief Medical Officer of Health to maintain physical distancing and to not gather in groups of more than 15.

Mr. Lefebvre was approached by two Sheriffs on bicycles, including Sheriff McLean. Sheriff McLean told the group, “you’re not going to be able to have your rally here.” Several members of the group, including Mr. Lefebvre, stated they were doing nothing wrong because there were less than 15 of them.

Sheriff McLean then forcibly grabbed Mr. Lefebvre by the arm and physically compelled him to walk off the Legislature grounds to a Sheriff vehicle. Mr. Lefebvre was detained by the Sheriffs for approximately 30 minutes while they questioned him. Then Sheriff McLean issued a ticket to Mr. Lefebvre in the amount of \$1,200.

The ticket states that Mr. Lefebvre contravened section 73(1) of the *Public Health Act*, but section 73(1) merely states:

A person who contravenes this Act, the regulations, an order under section 62 or an order of a medical officer of health or physician under Part 3 is guilty of an offence.

The ticket did not state what order, regulation or section of the *Public Health Act* Mr. Lefebvre contravened. Sheriff McLean did not explain to Mr. Lefebvre what was unlawful about his conduct, nor why he was forcibly removed from the Legislature grounds and detained. The removal from the Legislature grounds, the detention, and ticketing of Mr. Lefebvre by Sheriff McLean had no basis in law and was an abuse of power.

Sheriff McLean's conduct was egregious and in breach of the Sheriffs Code of Conduct. A breach of the Code amounts to misconduct, and, as such, is deserving of formal discipline. The Sheriff's Branch Policy and Procedure Manual 2.3.2 Sheriffs Code of Conduct states that:

- 4(2)(i) "unlawful or unnecessary exercise of authority" consists of one or both of the following:
- (i) exercising his/her authority as a peace officer when it is unlawful or unnecessary to do so;
 - (ii) applying inappropriate force in circumstances in which force is used.

Sheriff McLean's actions regarding Mr. Lefebvre were unlawful. It was an interference with Mr. Lefebvre's lawful exercise of his *Charter*-protected rights to peacefully assemble and freely express himself, in a manner that was not authorized by any relevant statute, to remove him from the Legislature grounds, detain him and ticket him. At the time Sheriff McLean laid hands on Mr. Lefebvre, it was apparent to a reasonable person that he was not, and not about to, engage in any unlawful behaviour.

Sheriff McLean's actions in removing Mr. Lefebvre from the Legislature grounds were also unnecessary. In addition to not contravening any relevant legislation or order, Mr. Lefebvre was not engaged in any conduct that could reasonably be identified as dangerous to the health and safety of those around him or as a threat to property when he was apprehended by Sheriff McLean.

Further, Sheriff McLean applied inappropriate force in the circumstances by grabbing Mr. Lefebvre and pulling him off the Legislature grounds. There was no reason to apply any degree of force in the situation. Mr. Lefebvre was not attempting to flee, was not acting in a physically aggressive manner and did not have anything that could be used as a weapon. Sheriff McLean unreasonably resorted to physical force mere seconds after interacting with a peaceful Mr. Lefebvre. The use of force is humiliating and a violation of a person's physical liberty and bodily autonomy. It must only be used when necessary.

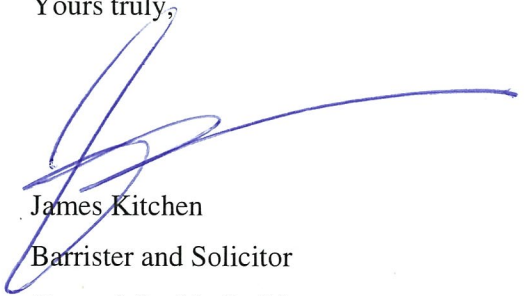
In *Committee for the Commonwealth of Canada v Canada*, the Supreme Court of Canada held that individuals have a *Charter* section 2(b) right to engage in the peaceful expression of opinion on government property, such as the Legislature grounds, the symbolic importance of which is self-evident.¹ This is a right granted by the supreme law of the country, not a privilege conferred on citizens by police or by municipalities or provincial governments.

In *R v Behrens*,² some protestors at the Legislative Building at Queen's Park in Toronto were charged with trespassing under the *Trespass Act*. The primary issue before the court was whether the defendants' *Charter* rights to participate in a political demonstration on government property took precedence over the Speaker's common law right under the *Trespass Act*. The defendants' activities on that occasion were constitutionally protected and, as a result, the charges against the defendants could not stand.

The infringement of Mr. Lefebvre's constitutional right to free expression and peaceful assembly was not justified. Mr. Lefebvre was not breaching any order, regulation or law. He was peaceful and expressing his views as a citizen of Canada and resident of Alberta. Law enforcement authority to remove and arrest rally attendees on the Legislature grounds must yield to the *Charter* rights of citizens who are peacefully expressing their views, except in the rare occasion interference with individual liberties is justified in the circumstances. Such circumstances did not exist on May 10, 2020 regarding Sheriff McLean's removal and ticketing of Pat Lefebvre.

Mr. Lefebvre requests this complaint be formally responded to. Enclosed is a video of the events described herein.

Yours truly,



James Kitchen
Barrister and Solicitor
Counsel for Mr. Lefebvre

Enclosure

¹ [1991] 1 S.C.R. 139 at para 55.

² [2001] O.J. No. 245 (Ont. Ct. Just.).



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**RE: Formal Complaint Against Sheriffs J. Carbert, P. Lavallee and W. Ford Regarding
Violation Ticket No. A70136533R issued to Patrick Tipper on May 10, 2020**

We are counsel for Patrick Tipper, and submit this formal complaint on behalf of Mr. Tipper against Sheriffs J. Carbert, P. Lavallee and W. Ford (the “Complained Sheriffs”). On Sunday, May 10, 2020, in breach of his constitutional rights, Mr. Tipper was removed from the Legislature grounds, detained and ticketed by the Complained Sheriffs.

On the afternoon of May 10, 2020, Mr. Tipper and approximately 50 other individuals attended the Legislature grounds to rally and express their political views regarding recent actions of the provincial and federal governments. Approximately 20 Sheriffs and Edmonton Police officers were present.

Mr. Tipper was peacefully and lawfully exercising his constitutionally protected rights to expression and peaceful assembly. Mr. Tipper and those around him were at all material times adhering to the applicable order of the Chief Medical Officer of Health to maintain physical distancing in relation to other individuals.

During the rally, three teams of three Sheriffs each, including the Complained Sheriffs, moved among the attendees and targeted specific individuals for detentions and removal from the grounds. One of the individuals targeted by the Complained Sheriffs was Mr. Tipper. The Complained Sheriffs approached Mr. Tipper and demanded that he accompany them off the Legislature grounds. Mr. Tipper was detained

and issued a ticket in the amount of \$1,200. The ticket states that Mr. Tipper contravened section 73(1) of the *Public Health Act*, but section 73(1) merely states:

A person who contravenes this Act, the regulations, an order under section 62 or an order of a medical officer of health or physician under Part 3 is guilty of an offence.

The conduct of the Complained Sheriffs was egregious and in breach of the Sheriffs Code of Conduct. A breach of the Code amounts to a misconduct and as such, is deserving of formal discipline. The Sheriff's Branch Policy and Procedure Manual 2.3.2 Sheriffs Code of Conduct states that an

- 4(2)(i) "unlawful or unnecessary exercise of authority" consists of one or both of the following:
- (i) exercising his/her authority as a peace officer when it is unlawful or unnecessary to do so;

The actions of the Complained Sheriffs regarding Mr. Tipper were unlawful. It was an interference with Mr. Tipper's lawful exercise of his *Charter*-protected rights to peacefully assemble and freely express himself, in a manner that was not authorized by any relevant statute, to remove him from the Legislature grounds, detain him and ticket him. At the time the Complained Sheriffs approached Mr. Tipper and began escorting him out of the Legislature ground, it was apparent to a reasonable person that he was not, and not about to, engage in any unlawful behaviour.

The Complained Sheriffs' actions in removing Mr. Tipper from the Legislature grounds were also unnecessary. In addition to not contravening any relevant legislation or order, Mr. Tipper was not engaged in any conduct that could reasonably be identified as dangerous to the health and safety of those around him or as a threat to property when he was apprehended by the Complained Sheriffs.

In *Committee for the Commonwealth of Canada v Canada*, the Supreme Court of Canada held that individuals have a *Charter* section 2(b) right to engage in the peaceful expression of opinion on government property, such as the Legislature grounds, the symbolic importance of which is self-evident.¹ This is a right granted by the supreme law of the country, not a privilege conferred on citizens by police or by municipalities or provincial governments.

In *R v Behrens*,² some protestors at the Legislative Building at Queen's Park in Toronto were charged with trespassing under the *Trespass Act*. The primary issue before the court was whether the defendants' *Charter* rights to participate in a political demonstration on government property took precedence over

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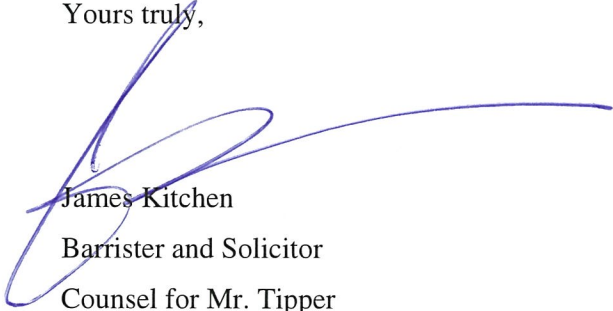
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the Speaker's common law right under the *Trespass Act*. The defendants' activities on that occasion were constitutionally protected and, as a result, the charges against the defendants could not stand.

The infringement of Mr. Tipper's constitutional right to free expression and peaceful assembly was not justified. Mr. Tipper was not breaching any order, regulation or law. He was peaceful and expressing his views as a citizen of Canada and resident of Alberta. Law enforcement authority to remove and arrest rally attendees on the Legislature grounds must yield to the *Charter* rights of citizens who are peacefully expressing their views, except in the rare occasion interference with individual liberties is justified in the circumstances. Such circumstances did not exist on May 10, 2020 regarding the Complained Sheriffs removal and ticketing of Pat Tipper.

Mr. Tipper requests this complaint be formally responded to. Enclosed is a video of the events described herein.

Yours truly,



James Kitchen
Barrister and Solicitor
Counsel for Mr. Tipper

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