



Justice Centre
for Constitutional Freedoms

URGENT OPEN LETTER

April 29th, 2022

VIA EMAIL: Jim.Watson@ottawa.ca

Mayor Jim Watson
Ottawa City Hall
110 Laurier Avenue West
Ottawa, ON K1P 1J1

Dear Mayor Watson,

Re: Rolling Thunder and the Unconstitutional “Motor Vehicle Exclusion Zone”

We write to the City of Ottawa [“City”] with grave concerns about the City’s announcement dated April 26th, 2022 regarding the Rolling Thunder event.¹ Specifically, we write to caution the City that its intention to enforce a “motor vehicle exclusion zone” would be a gravely unjustified and unlawful restriction on Canadians’ freedoms of expression, association and peaceful assembly guaranteed under the *Charter*. The City’s statement is a very troubling and oppressive attempt at limiting the actions of Canadians in a free and democratic society.

The City’s intention to enforce by-laws regulating parking, noise, “public urination and defecation,” fires, littering, and fireworks are legitimate. We encourage police authorities to enforce them. These by-laws have valid objectives and are duly enacted.

However, the City’s “motor vehicle exclusion zone” is an unconstitutional exercise of executive power specifically aimed at preventing a public gathering. It is wrong, unlawful, and unconstitutional. It aims to make unlawful what is otherwise a legitimate, peaceful assembly in exercise of the right to free expression.

Public streets have always been a place where members of the public can gather to express their views in unity with one another, and their use has ranged from celebrations and parades to protests and demonstrations. The Supreme Court has ruled that “streets are clearly areas of public...concourse, where expression of many varieties has long been accepted.”² This is all the more so in

¹ City of Ottawa, *Update on Rolling Thunder event*, dated April 26, 2022, <https://ottawa.ca/en/news/update-rolling-thunder-event>.

² *Montreal (City) v. 2952-1366 Quebec Inc.*, 2005 SCC 62 at para. 81.

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Ottawa, our nation's capital. As the City has itself acknowledged, "...as the capital of Canada, we [Ottawa] host events, protests, rallies, and demonstrations on many issues."³

The City of Ottawa respected and supported the rights of Canadians to assemble in June of 2020 in demonstrations held in the nation's capital:

Ottawa police were not invited at the request of the No Peace Until Justice organizers. After Ottawa Mayor Jim Watson noted his intention to be there...
Prime Minister Justin Trudeau attended the Ottawa demonstration.⁴

We understand that Rolling Thunder's purpose is to remember and pay respect to fallen veterans. Indeed, many of those planning on personally attending are veterans themselves.

Particularly concerning is the City's apparent intent to frustrate, impair or even prevent the Rolling Thunder event. The City's intended course of action would go beyond an incidental infringement of free expression. Unlike a noise by-law, which has the effect of limiting expression but for a valid purpose, the City is purposely taking action to prevent the Rolling Thunder event from proceeding even if the event complies with municipal, provincial and federal laws. As Justice McLean of the Ontario Superior Court recently confirmed, there is a right to engage in peaceful, lawful, and safe protest, both at common law and guaranteed in the *Charter*.⁵

The City's intended course of action to restrict Charter freedoms is not justified under section 1 of the Charter because it is not "prescribed by law." The "motor vehicle exclusion zone" is an exercise of executive and police power that is not established by a by-law or any other statute. Therefore, it is not "prescribed by law" as required by section 1 of the *Charter*, and therefore it cannot be justified.

Separate and apart from the "motor vehicle exclusion zone" not being prescribed by law, it is not a rational or reasonable restriction on *Charter* freedoms of expression, association and peaceful assembly that can be "demonstrably justified" as required by the *Charter*.

It is our understanding from publicly available information and videos that the Rolling Thunder organizers have been in daily contact with Ottawa Police. The organizers have stated that their intention is that motorcycles will "leave on routes outside the city" after paying respects at the National War Memorial.⁶ The organizers have stated they do not intend to form a blockade, obstruct police, or damage property.⁷

We urgently request that the City abandon its unconstitutional planned "motor vehicle exclusion zone." Ottawa in particular, being the nation's capital city, is constitutionally obligated to respect the rights of all Canadians to peacefully assemble and express themselves. We urge the City and

³ City of Ottawa tweet dated April 26th, 2022, <https://twitter.com/ottawacity/status/1519076828857745410>.

⁴ [Canadians hold protests, vigils for black lives lost at the hands of police | CBC News](https://www.cbc.com/news/canadians-hold-protests-vigils-for-black-lives-lost-at-the-hands-of-police).

⁵ *Li v. Barber*, 2022 ONSC 1037; Order of Justice McLean dated February 7th, 2022, Court File No. CV-22-00088514-00CP.

⁶ Rolling Thunder Ottawa Schedule, <https://rollingthunderottawa.com/schedule>.

⁷ Rolling Thunder Ottawa Statement, dated April 25th, 2022, <https://img1.wsimg.com/blobby/go/0629068d-f6dc-4a0d-bdbe-059ce62b689d/Rolling%20Thunder%20statement.pdf>.

police authorities to work with the organizers of Rolling Thunder and other Canadians supporting this expression and assembly, to ensure that the event can proceed in an orderly, safe, and respectful fashion.

We understand that the City has been, and will continue to be, the focal point for Canadians to protest for and against various laws and policies, because Ottawa is the national capital. The City has always had, and continues to have, the resources and police officers to manage such events to ensure the safety of Canadians and City's residents and we expect the same from the City in respect of the Rolling Thunder events.

Legal action against the City may be commenced if it does not respect the *Charter*-protected freedoms of expression and peaceful assembly.

Yours truly,

The Justice Centre for Constitutional Freedoms

PER:



Hatim Kheir
Barrister and Solicitor

cc. Interim Chief Steve Bell, Ottawa Police Service: Steve.Bell@ottawapolice.ca;
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