

Court File No.:

DIVISIONAL COURT, SUPERIOR COURT OF JUSTICE

B E T W E E N:

GEORGE KATERBERG

Applicant

and

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO
AS REPRESENTED BY THE MINISTER OF TRANSPORTATION**

Respondent

APPLICATION UNDER Rules 14.05, 38 and 68 of the *Rules of Civil Procedure*, RRO 1990, Reg 194 and Sections 2(1) and 6(1) of the *Judicial Review Procedure Act*, RSO 1990, c J.1.

NOTICE OF APPLICATION TO DIVISIONAL COURT FOR JUDICIAL REVIEW

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION for judicial review will come on for a hearing before the Divisional Court on a date to be fixed by the registrar by the method of hearing requested by the applicant, unless the court orders otherwise. The applicant requests that this application be heard in person at 155 Elm St., Sudbury, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a

lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court within thirty days after service on you of the applicant's application record, or at least four days before the hearing, whichever is earlier.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN TO IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS APPLICATION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for hearing or terminated by any means within five years after the notice of application was filed with the court, unless otherwise ordered by the court.

Date: June 20, 2025

Issued by: _____

Registrar
155 Elm Street
Sudbury ON P3C 1T9

TO MINISTRY OF TRANSPORTATION

████████████████████
████████████████████

AND TO ATTORNEY GENERAL OF ONTARIO

██
██████████
████████████████████

Respondents

APPLICATION

1. The Applicant makes application for:
 - a) an order declaring that section 5.8.2.1 of the *Highway Corridor Management Manual* (the “**Manual**”), as described below, infringes section 2(b) of the *Canadian Charter of Rights and Freedoms*, being Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (the “**Charter**”), and that such infringement cannot be saved by section 1;
 - b) an order, pursuant to section 52 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (the “**Constitution Act, 1982**”), declaring that section 5.8.2.1 of the Manual is of no force or effect;
 - c) an order granting judicial review of the respondent’s decision, dated May 23, 2025 (the “**Decision**”), not to permit the Applicant to erect a certain sign along a provincial highway, as described below (the “**Sign**”);
 - d) an order setting aside the Decision;
 - e) an order, in the nature of *mandamus*, directing the respondent to permit the applicant to erect the Sign as requested by the applicant;
 - f) in the alternative, an order remitting the matter back to a different employee or agent of the respondent for reconsideration in keeping with this Court’s reasons; and
 - g) such further and other relief as this Court considers appropriate.

2. The grounds for the application are:

The Parties

a) the applicant is a resident of Thessalon, Ontario. The applicant holds strong political beliefs regarding the provincial and federal governments' responses to the recent Covid-19 pandemic, including with respect to the safety and efficacy of Covid-19 vaccines, government policies surrounding the adoption of Covid-19 vaccines, and the statements of public officials regarding Covid-19 vaccines, which the applicant believes to be untruthful;

b) the respondent, His Majesty the King in right of Ontario as represented by The Minister of Transportation (the "MTO") is named as a respondent in this proceeding pursuant to section 9 of the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P.27. The MTO is empowered by statute to regulate private signage along public highways. In particular, pursuant to section 34(2)(c) of the *Public Transportation and Highway Improvement Act*, R.S.O. 1990, c. P.50 (the "*Act*"), no sign, notice or advertising device may be placed within 400 metres of any limit of the King's Highway absent an authorizing permit issued by the MTO;

The Manual

c) the regulation of highway signage under the *Act* is directed by the *Manual*. The *Manual* is written and promulgated by the Corridor Management Office of the MTO. The *Manual* contains mandatory policies, guidelines, and best practices and specifications for managing building and land use, encroachments, access and signs within the MTO's controlled areas under the *Act*;

d) in or about April of 2025, the MTO amended section 5.8.2.1 of the *Manual*. Section 5.8.2.1 now reads:

A billboard sign on the highway [right-of-way] must meet the following requirements in addition to the messaging requirements set out in Section 5.7.1:

- a) shall only promote goods and services or authorized local events offered by, or related to, businesses, municipalities, charities, not-for-profit organizations, or Indigenous communities.*
 - b) Shall not demean, denigrate, or disparage one or more identifiable persons, group of persons, firms, organizations, industrial or commercial activities, professions, entities, products or services, or attempt to bring it or them into public contempt or ridicule.*
 - c) Shall not undermine human dignity; or display obvious indifference to, or encourage, gratuitously and without merit, conduct or attitudes that offend the standards of public decency prevailing among a significant segment of the population.*
 - d) Shall be in accordance with the Canadian Code of Advertising Standards.*
 - e) Shall have no adverse effect on public safety or liability to the Ontario government;*
- e) section 5.8.2.1 of the *Manual* is a binding policy of general application adopted by the MTO pursuant to its rule-making powers under section 34(2)(c) *Act*;

Background

f) in an effort to communicate his strong political beliefs to his fellow citizens, the applicant chose to rent space on a billboard (the “**Billboard**”) with a view to erecting a sign. The Billboard is owned by Mr. Ken Shaw. It is located on the side of Provincial Highway 17, east of the Town of Thessalon Ontario, near Walker Road. The Billboard is about a 20-minute drive from the applicant’s residence. The applicant paid for the use of the Billboard for one year. He paid the entire amount of the rental up-front and prior to the erection of any signage;

- g) on or about March 1, 2024, signage was first posted onto the Billboard by the applicant with the assistance of Mr. Shaw (the “**Initial Sign**”);
- h) the top of the Initial Sign included the text: “THEY KNOWINGLY LIED ABOUT SAFETY AND STOPPING TRANSMISSION” [sic]. The bottom included the additional text: “CANADIANS DEMAND ACCOUNTABILITY”. The middle of the Initial Sign included the portraits of six prominent and well-known public figures, namely: Prime Minister Justin Trudeau; Deputy Prime Minister Chrystia Freeland; leader of the Federal New Democratic Party Jagmeet Singh; Ontario Premier Doug Ford; Chief Public Health Officer of Canada Theresa Tam; and Chief Medical Advisor to the President of the United States Anthony Fauci;
- i) the Initial Sign also included a logo designed by the applicant (the “**Logo**”). The Logo was essentially two claw hammers intersecting each other, laid over a Canadian flag. The applicant’s inspiration in designing the Logo was the album art of the popular album “The Wall” by the rock group Pink Floyd;
- j) unbeknownst to the applicant, the claw hammer image from Pink Floyd’s “The Wall” had been previously appropriated and used by an American white supremacist music group in the late 1980s and/or early 1990s;
- k) on or about March 13, 2024, the Billboard’s owner, Mr. Shaw, was first contacted by [REDACTED]. [REDACTED] was at all material times a Corridor Management Officer of the Corridor Management/Operations Division of the MTO and acting in that capacity;
- l) [REDACTED] informed Mr. Shaw that the Logo was a symbol of white supremacy and that it needed to be taken down pursuant to MTO policies surrounding the promotion of

hatred. Further, a revised version could only be put up with the advanced approval of the MTO;

m) Mr. Shaw quickly informed the applicant of his conversation with [REDACTED]. The applicant then immediately contacted [REDACTED] himself. [REDACTED] reiterated to the applicant the content of his previous conversation with Mr. Shaw;

n) the Initial Sign was quickly taken down by the applicant and Mr. Shaw pursuant to the MTO's request;

o) by email dated June 18, 2024, the applicant wrote to [REDACTED] in connection with a new proposed sign (the "Sign"). The Sign was identical to the Initial Sign with the notable exception that the Logo was removed and replaced with a Canadian flag cropped into a circle. The applicant proposed to [REDACTED] that the Sign be erected onto the Billboard;

p) the MTO responded anew to the applicant by email dated June 28, 2024 (the "**June 2024 Decision**"). The email states that:

"...the decision has been made not to permit the installation of your proposed billboard on a provincial highway in Ontario. The message on the billboard may be seen as promoting hatred or contempt for the individuals pictured on the billboard which may violate certain policies regarding advertising."

q) the June 2024 Decision did not specify which specific "policies regarding advertising" the Sign may be in violation of. However, Section 5.7.1 of the *Manual* states:

The message on the billboard must not promote violence, hatred, or contempt against any identifiable group. "Identifiable group" means any section of the public distinguished by colour, race, ancestry, religion, ethnic origin, sexual orientation, or disability.

r) the applicant then commenced an application in this Court on July 25, 2024, seeking judicial review of the June 2024 Decision;

s) the application for judicial review was abandoned by the applicant in June of 2025 following a negotiated settlement;

The Decision

t) ultimately the MTO reconsidered the June 2024 Decision by way of an email dated May 23, 2025, from MTO employee [REDACTED] (the “**Decision**”). The Decision is an unsigned and undated attachment to that email. The Decision concludes that: “*The Ministry will not permit the Applicant’s proposed billboard to be placed at its proposed location.*”;

u) the MTO relies exclusively on the recently amended section 5.8.2.1 of the *Manual*, and in particular subclause (a), in refusing to permit Mr. Katerberg to erect the Sign. The Decision states that “*the proposed billboard does not promote a good, service or authorized local event offered by or related to businesses, municipalities, charities, not for profit organizations or indigenous communities. Therefore, it is not permitted.*”;

v) while the Decision explicitly recognizes that the MTO “*cannot reject the proposed billboard because it is political expression and/or because some people may be offended by it*”, it nevertheless rejects the applicant’s request on exactly that basis;

w) the Decision was an exercise of statutory discretion pursuant to section 34(2)(c) of the *Act*;

Freedom of Expression

x) the individuals pictured on the Sign are all highly recognizable and influential public officials. Their political and professional actions in response to Covid-19 are the subject of legitimate public expression and debate;

y) the content and subject matter of the Sign are matters of legitimate public debate. They constitute expression for the purposes of political discourse, truth-seeking and self-fulfilment, values which lie at the core of the *Charter's* section 2(b) protection of the freedom of expression;

z) the content and subject matter of the Sign are matters of deep personal importance to the applicant. The applicant witnessed many Canadians experiencing serious health consequences, including death, as a result of taking Covid-19 vaccines. This included the applicant's brother and father, each of whom suffered a stroke following a Covid-19 vaccine booster dose;

aa) what the applicant witnessed regarding the safety of Covid-19 vaccines contrasted strongly with the statements of elected officials, particularly those pictured on the Sign, as well as reports in the mainstream media. The applicant's motivation for erecting the Sign is to raise awareness, spark a public discussion on these issues, and ultimately hold elected leaders and public officials accountable;

Section 5.8.2.1 of the Manual violates section 2(b) of the *Charter* and cannot be saved by section 1

bb) by prohibiting the advertisement of political and social causes as well as the criticism of public officials, section 5.8.2.1 (a)-(c) of the *Manual* infringes the applicant's freedom of expression as guaranteed by section 2(b) of the *Charter*;

cc) further, section 5.8.2.1 (a)-(c) of the *Manual* is not demonstrably justified pursuant to section 1 of the *Charter*;

dd) accordingly, section 5.8.2.1 (a)-(c) of the *Manual* is unconstitutional and is of no force or effect;

The Decision was Incorrect and Unreasonable

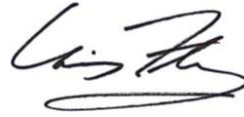
- ee) the Decision is incorrect and unreasonable as it:
 - i. relies solely on an unconstitutional provision of the *Manual* to justify the outcome;
 - ii. recognizes that the MTO “*cannot reject the proposed billboard because it is political expression and/or because some people may be offended by it*”, but nevertheless rejects the applicant’s request on exactly that basis;
 - iii. employs a flawed and incoherent reasoning process;
 - iv. employs an unreasonable chain of analysis;
 - v. does not bear the “hallmarks of reasonableness” (transparency, intelligibility, and justifiability);
 - vi. fails to proportionately balance the relevant objectives of the *Act* while affecting *Charter* protections as little as reasonably possible;
- ff) the approval of the applicant’s request to erect the Sign is the only correct and reasonable outcome. Remitting the case back to the MTO for further consideration, and for a *third decision*, would serve no useful purpose; and
- gg) such further and other grounds as this Honourable Court may permit.

3. The following documentary evidence will be used at the hearing of the application:

- a) the affidavit of George Katerberg;
- b) the affidavit of Ken Shaw; and

c) the affidavit of Selena Bird.

June 20, 2025.

A handwritten signature in black ink, appearing to read 'Chris Fleury', written in a cursive style.

CHARTER ADVOCATES CANADA

[REDACTED]
[REDACTED]

Christopher Fleury LSO#: 64785L

[REDACTED]
[REDACTED]

Darren Leung LSO#: 87938Q

[REDACTED]
[REDACTED]

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RESPONDENT

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