Court File No.: DC-25-00002233-00JR

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

FACTUM OF THE APPLICANT

January 26, 2026

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as Represented by the Minister of Transportation

PART I - OVERVIEW

1. This application concerns the freedom of all Ontarians to express support for political or social causes on billboards adjacent to Bush Country Highways in Ontario. A Bush Country Highway is a specifically designated roadway running through forested or otherwise rugged terrain that does not allow for the normal setback of a billboard. While the Ontario Ministry of Transportation (the "**Ministry**") allows billboards with political and social messaging on other roadways, it inexplicably restricts such messaging on its 46-metre right-of-way along Bush Country Highways.

2. In March of 2024 the Applicant, George Katerberg, erected signage which expressed criticism of six public figures in relation to their role in responding to the Covid-19 pandemic. Mr. Katerberg was initially informed by the Ministry that his signage promoted hatred contrary to Ministry policies. Despite Mr. Katerberg's attempt to appease the Ministry by amending the signage, it maintained its position that the signage prompted hatred. Mr. Katerberg sought a judicial review of the Ministry's decision which ultimately resulted in a negotiated settlement. The settlement included an acknowledgement by the Ministry that the signage does not promote hatred and an agreement that the Ministry would reconsider its position.

3. In April of 2025, while in the midst of settlement negotiations, and unbeknownst to Mr. Katerberg and his legal counsel, the Ministry amended section 5.8.2.1 of the *Highway Corridor Management Manual*[1] (the "**Manual**"). As of April 2025, signage on the right-of-way of a Bush Country Highway shall only promote goods and services or authorized local events related to local businesses, municipalities, charities, not-for-profit organizations, or Indigenous communities.

[1] Affidavit of Selena Bird, affirmed September 10, 2025 ["**Bird Affidavit**"] at Exhibit "B".

4. In June of 2025 the Ministry reconsidered its position and relied solely on the newly amended Manual to bar Mr. Katerberg from erecting his signage. Mr. Katerberg now seeks judicial review of that decision. He contends that the Manual is an unreasonable and unjustified limit of his freedom of expression pursuant to the *Canadian Charter of Rights and Freedoms* (the "***Charter***"). Where the Ministry's decision to prevent him from erecting his signage relies entirely on the Manual, he also contends that the decision to prevent him from erecting his signage was unreasonable and not a proportional limitation of his *Charter* protected right of expression.

5. The June 2025 decision is the *third time* that the Ministry has determined that George's proposed signage ought not be erected. While the newly amended section 5.8.2.1 contains five subsections (a-e), the first four of which restrict expression in an unreasonable manner, the June 2025 decision only relies on the subsection (a). There is every reason to expect that further reconsideration will result in further consecutive denials under subsections (b), (c) and (d).

6. For these reasons Mr. Katerberg seeks remedies which will avoid an "*an endless merry-go-round of judicial reviews and subsequent reconsiderations*".[2] He seeks a declaration pursuant to section 52 of the *Constitution Act* that the sections 5.8.2.1 (a)-(d) of the Manual are of no force or effect. He also seeks a writ of mandamus compelling the Ministry to allow him to erect his chosen signage.

PART II - FACTUAL SUMMARY

A. Regulation of Highway Signage in Ontario

7. The Ministry is empowered by the *Public Transportation and Highway Improvement Act,* R.S.O. 1990, c. P.50 (the "**Act**") to regulate signage along public highways. Section 34(2)(c) of

[2] *Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65 at para 142. ["*Vavilov*"]

the *Act* provides that 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 Ministry. Section 38(11) of the Act gives the Minister and his delegates broad discretion to issue permits "*in such form and upon such terms and conditions as he or she considers proper."*[3]

8. Permit applications must be made through the Ministry's online permitting system. Permit applicants must provide details about the proposed billboard, including its size, and where the sign will be facing relative to traffic. Applicants must also indicate whether the proposed billboard will be placed on land that is owned by the Ministry, the applicant, or a third party. Applicants are responsible for making any necessary lease or licence requirements with third-party landowners. The Ministry charges applicants a standard permit fee of $770 to receive a billboard permit. Billboard permits last for five years. Permit holders are responsible for any costs related to the manufacture and placement of the approved sign.[4]

9. The Ministry has published the *Highway Corridor Management Manual*[5] (the "**Manual**") to direct its employees and agents in exercising their discretion pursuant to the *Act*. The Manual is published by the Ministry's Corridor Management Office, and contains mandatory policies, guidelines, and best practices and specifications for managing building and land use, encroachments, access and signs within the Ministry's controlled areas under the *Act*. The Manual's "Abstract" outlines three purposes of the Ministry's Highway Corridor Management function, namely to: "(1) protect provincial highway corridors for future expansion needs, (2)

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[3] *Public Transportation and Highway Improvement Act,* R.S.O. 1990, c. P. 50 at ss. 34(2)(c) and sections 38(11).
[4] Affidavit of Kevin Devos at paras 6-8.
[5] Affidavit of Selena Bird, affirmed September 10, 2025 ["**Bird Affidavit**"] at Exhibit "B".

preserve and improve highway safety and operations, and (3) improve the movement of people and goods in Ontario."[6]

10. Chapter 5 of the Manual provides the policies, standards, and requirements for sign permit applications. It outlines sign types and classifications, setbacks, fee calculations, and other permit procedures related to signs. Chapter 5 of the Manual restricts the *content* of signage in a number of ways. Section 5.7.1 of the Manual provides that: "*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.*"[7]

11. In April 2025, the Ministry amended the Manual to include the following additional content restrictions at section 5.8.2.1:

> *A billboard sign on the highway ROW ["right of way"] must meet the following requirements in addition to the messaging requirements set out in 5.1.7:*
>
> *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 communicates,*
>
> *b. Shall not demean, denigrate, or disparage one or more identifiable persons, group or 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.*[8]

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[6] Bird Affidavit at p. 96, Exhibit "B" at p. ii.
[7] Bird Affidavit at Exhibit "A", p. 58.
[8] Bird Affidavit, Exhibit "B" at pp. 147-148.

12. Unlike the restriction on signage promoting violence, hatred, or contempt (section 5.7.1), the restrictions contained in section 5.8.2.1 only apply to designated "Bush Country Highways." Highways are designated as Bush Country Highways when considerable amounts of bush (trees, shrubs, etc.) adjacent to the highway do not allow for the normal setback of a sign on private property. The Ministry lists designated Bush Country Highways in section 5.8.3 of the Manual.

B. The Applicant and his Sign

13. Mr. Katerberg is a resident of the Municipality of Huron Shore, Ontario and has resided there since 2022.[9] He has been critical of government legislation, regulations and policies enacted in response to Covid-19. In particular, he believes that various politicians and public health leaders lied about the safety and efficacy of the Covid-19 vaccines.[10] As a result of this strong belief, Mr. Katerberg decided to erect a sign along a Busy Country Highway with the intention of bringing attention to this important issue and holding public officials to account.[11]

14. At some point in late 2022 or early 2023 Mr. Katerberg noticed an advertisement to rent a billboard (the "**Billboard**") along the side of Highway 17, near Thessalon, Ontario. The Billboard is located approximately 20 minutes from Mr. Katerberg's home. It is about 8 feet wide and 16 feet high, located on the north side of Highway 17, and visible from the perspective of westbound traffic.[12] The Billboard's owner, Ken Shaw, possesses the required permit and rents the Billboard to interested parties.

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[9] Affidavit of George Katerberg, affirmed September 11, 2025 at para 2 ["**Katerberg Affidavit**"].
[10] Katerberg Affidavit at para 14.
[11] Katerberg Affidavit at para 15.
[12] Katerberg Affidavit at para 16 and Exhibit "A".

15. The Applicant called the advertisement and arranged to rent the Billboard from Mr. Shaw for one year at the cost of $500. The Applicant spent another $500 to print his signage (the "**Initial Sign**").[13]

16. The Initial Sign was designed by Mr. Katerberg and expressed his sincerely held belief that various public officials and politicians lied about the safety and efficacy of the Covid-19 vaccines. The sign included headshots of the following public figures: former Prime Minister Justin Trudeau; former Deputy Prime Minister Chrystia Freeland; former leader of the Federal New Democratic Party Jagmeet Singh; Ontario Premier Doug Ford; former Chief Public Health Officer of Canada Dr. Theresa Tam; and former Chief Medical Advisor to the President of the United States Dr. Anthony Fauci.[14]

17. The Initial Sign had text above it, stating: "THEY KNOWINGLY LIE ABOUT SAFETY AND STOPPING TRANMISSION [*sic*]." At the centre of the Initial Sign was a logo that Mr. Katerberg designed which pictured two claw hammers with the Canadian flag in the centre.[15] The inspiration for that logo was the album art for Pink Floyd's popular album, "The Wall" which featured a similar image. The bottom of the Initial Sign contained the text "CANADIANS DEMAND ACCOUNTABILITY."

C. The Ministry's Refusal to Permit the Initial Sign

18. On March 13, 2024, Christopher Marsh, a Corridor Management Officer at the Ministry, contacted Mr. Shaw and informed him that the Initial Sign had to be taken down because, according to him, it violated the Ministry's policies respecting the promotion of hatred.[16] Mr.

[13] Katerberg Affidavit at para 17.
[14] Katerberg Affidavit at para 18 and Exhibit "B".
[15] Katerberg Affidavit at para 19 and Exhibit "B".
[16] Katerberg Affidavit at para 22.

Marsh alleged that Mr. Katerberg's claw hammer logo was a symbol of white supremacy. Mr. Katerberg denies this allegation and his no knowledge of how or why the logo is a symbol of white supremacy. He denounces all forms of racism. According to him the logo was meant to symbolize the Canadian government's abuse of its citizens.[17]

19. On March 14, 2024, Mr. Katerberg, with the assistance of Mr. Shaw, took down the Initial Sign.[18]

20. On June 18, 2024, the Mr. Katerberg emailed Mr. Marsh and provided a proposed revised sign (the "**New Sign**"). The New Sign featured a new logo which was a Canadian flag cropped into a circle. It also corrected a typographical error. Otherwise, the New Sign was identical to the Initial Sign. While Mr. Katerberg has always denied that his logo promoted hatred or supported white supremacy, he replaced it to avoid any misunderstandings and ensure that the more important messaging about the lies of public officials could still be communicated.[19]

21. On June 28, 2024, Mr. Marsh replied and stated that the Ministry denied permission to erect the New Sign. Permission was denied because the New Sign *"…may be seen as promoting hatred or contempt for the individuals pictured on the billboard which may violate certain policies regarding advertising.*" He did not provide a citation for any particular policy.[20]

D. Litigation History

22. On July 25, 2024, Mr. Katerberg commenced an application for judicial review of the denial of the New Sign. The application was ultimately discontinued in June 2025 following a negotiated settlement. The settlement included an admission by the Ministry that the New Sign did

[17] Katerberg Affidavit at para 24.
[18] Katerberg Affidavit at para 25.
[19] Katerberg Affidavit at para 26, Exhibit "C".
[20] Katerberg Affidavit at para 28, Exhibit "D".

not promote hatred, and an agreement that the Ministry would reconsider the June 28, 2024, decision.

23. On May 23, 2025, Mr. Katerberg and his legal counsel received the reconsideration of the June 28, 2024, decision (the "**Decision**"). The Decision is an unsigned and undated attachment to an email sent by Ministry employee Shawn Nickerson. The Decision denied Mr. Katerberg permission to erect the New Sign. In doing so the Decision relies exclusively on the newly amended section 5.8.2.1 of the Manual.[21]

24. The addition of section 5.8.2.1 was first published in April 2025, while Mr. Katerberg and the Ministry were in the midst of resolution discussions with respect to his first application for judicial review.[22] As outlined in detail above, section 5.8.2.1 only allows advertisements for commercial or community goods, services or events to be placed on bush country highway billboards.[23] By implication the promotion of political or social causes of any kind is not permitted.

25. The Decision states that the Ministry never intended bush country highway billboards to promote such causes. It acknowledges past inconsistency in the application of the Ministry's intention.[24] It therefore clarified its position at section 5.8.2.1. of the Manual.[25] The Decision also clarifies that Section 5.8.2.1 "does not apply to billboards placed on private property adjacent to bush country highways." If Mr. Katerberg were to "*…place the proposed billboard on private property adjacent to the bush country highway, the Ministry will reconsider permitting the erection of the proposed billboard*."[26]

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[21] Katerberg Affidavit at para 32, Exhibit "E".
[22] Katerberg Affidavit at para 34.
[23] Bird Affidavit, Exhibit "B" at pp. 147-148.
[24] Katerberg Affidavit, Exhibit "E" at para 8.
[25] Katerberg Affidavit, Exhibit "E" at para 9.
[26] Katerberg Affidavit, Exhibit "E" at para 10.

PART III - STATEMENT OF ISSUES AND ARGUMENT

26. The applicant raises the following issues for the Court's determination in this application of judicial review:

a. whether section 5.8.2.1 of the Manual infringes section 2(b) of the *Charter*;

b. whether such an infringement is reasonable and demonstrably justified pursuant to section 1 of the *Charter*;

c. whether the Decision was reasonable; and

d. the appropriate remedies.

A. Section 5.8.2.1. of the Manual Infringes the Freedom of Expression

27. The test to determine whether section 2(b) of the *Charter* has been infringed consists of a three-part inquiry, first established by the Supreme Court of Canada ("**SCC**") in 1989 in *Irwin Toy Ltd. v. Quebec*,[27] and affirmed in many seminal decisions since.[28] The three-part test is as follows:

a. Does the activity in question have expressive content?

b. If so, does the method or location of the expression remove that protection?

c. If the activity is protected expression, does the government law or action restrict it, either in purpose or effect?[29]

The New Sign is Expressive Content

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[27] *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 SCR 927, 1989 CanLII 87 (SCC) at p. 969 ["*Irwin Toy*"].
[28] For example, see: *R. v. Keegstra*, [1990] 3 SCR. 697, 1990 CanLII 24 (SCC), *Montréal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62, *Greater Vancouver Transportation Authority v. Canadian Federation of Students*, 2009 SCC 31 ["*GVTA*"], *Canadian Broadcasting Corp. v. Canada (Attorney General)*, 2011 SCC 2.
[29] *Montréal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62 at para. 56 ["*Montreal (City)*"].

28. An activity qualifies as expressive content if it involves any form of communication or conduct that seeks to transmit meaning, including ideas, opinions, information, beliefs, emotions, or artistic elements.[30] The content of the expression does not affect its prima facie protection. Protection applies regardless of whether the meaning is offensive, unpopular, disturbing, false, or otherwise objectionable. Courts do not evaluate the merit, truthfulness, or value of the expression at this stage; such assessments are reserved for the section 1 justification analysis if an infringement is found.[31]

29. The New Sign conveys meaning and is therefore expression. It includes the phrases: "they knowingly lie about safety and stopping transmission" (an obvious reference to the six public figures featured) and "Canadians demand accountability". Mr. Katerberg's evidence is that his purpose in putting up the Initial Sign was to bring attention to the lies of public officials and to hold them to account.[32] The New Sign, which is virtually identical to the Initial Sign, has the exact same purpose.

The Method and Location of the Expression does not Remove Protection

30. In *Montreal (City),* the SCC held that whether a location removes section 2(b) protection turns on the "*historical or actual function of the place*" and "*whether other aspects of the place suggest that expression within it would undermine the values underlying free expression*."[33] The Court went on to state that *"[t]he historical function of a place for public discourse is an indicator that expression in that place is consistent with the purposes of 2(b). In places where free expression*

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[30] *Irwin Toy* at p. 969.
[31] *Canada (Attorney General) v. JTI-Macdonald Corp*., 2007 SCC 30 at paragraph 60; *R. v. Zundel*, [1992] 2 SCR. 731, 1992 CanLII 75 (SCC), at p. 758.
[32] Katerberg Affidavit at para 15.
[33] *Montreal (City)* at para 74.

has traditionally occurred, it is unlikely that protecting expression undermines the values underlying the freedom."[34]

31. In determining whether expression on government-owned property would expect constitutional protection, the SCC held that it must not conflict with the purposes of 2(b), namely democratic discourse, truth finding and self-fulfilment.[35]

32. The Ontario Court of Appeal (ONCA) held in *Bracken v. Niagara Parks Police,*[36] that historical use of a place examines community practices. The ONCA held that "[a]n established community practice of free expression in a location is some evidence of a social convention that the location ought to be available for free expression."[37]

33. Caselaw has established that sidewalks[38], airports[39], parks[40], utility poles[41], and the town square[42] are all spaces that have historically supported free expression. In *Armstrong v. Township of Russel*[43]*,* the Court held that public property and intersections were historically used to express a variety of messages, including political campaigns[44]. In *GVTA,* the SCC held that the side of buses rented out for advertisement were spaces historically used for expressive purposes.[45] The

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[34] *Ibid* at para 75.
[35] *Montreal (City)* at para 74.
[36] *Bracken v. Niagara Parks Police,* 2018 ONCA 261 ["*Bracken*"].
[37] *Ibid* at para 41.
[38] *Montreal (City),* at paras 67-68.
[39] *Committee for the Commonwealth of Canada v. Canada,* [1991] 1 SCR. 139, 1991 CanLII 119 (SCC) at pp. 158-159.
[40] *Batty v. Toronto (City),* 2011 ONSC 6862 at paras 70-72.
[41] *Ramsden v. Peterborough (City),* [1993] 2 SCR. 1084, 1993 CanLII 60 (SCC) at pp. 1100-1102.
[42] *Bracken v. Fort Erie (Town),* 2017 ONCA 668 at para 54.
[43] *Armstrong v. Township of Russell,* 2025 ONSC 3790. ["*Armstrong*"]
[44] *Ibid* at para 31.
[45] *GVTA* at para 42.

fact that the general public has access to advertising space suggests that the public would expect constitutional protection there.[46]

34. The New Sign was proposed to be erected on the side of Highway 17 near Thessalon Ontario. Highway billboards are placed in public spaces, with the intention of catching the attention of passing motorists to convey a message to them. Billboards have traditionally been used for a diverse range of expression, from the advertisement of goods and services to conveying political messages. The Decision's concession that there have been past inconsistencies in Ministry's intention to prohibit the advertisement of political and social causes along Bush Country Highways,[47] strongly implies that such expression has occurred in the past.

35. The expression of support for political and social causes is permitted along all other Ontario highways. As the Ministry notes in the Decision, it is also permitted outside of the Ministry's "right-of-way" of 46 metres along Bush Country Highways. There is no evidence as to what would remove the protections of section 2(b) of the *Charter* from this narrow band of land along Bush Country Highways.

Section 5.8.2.1 of the Manual Limits Expression

36. In *Irwin Toy,* the SCC held that where government "*...restricts the content of expression by singling out particular meanings that are not to be conveyed…"* its purpose will be to limit free expression.[48]

37. Section 5.8.2.1 (a) of the Manual prohibits signage along Bush Country Highways, except those that *"...promote goods and services or authorized local events offered by, or related to,*

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[46] *GVTA* at para 43.
[47] Katerberg Affidavit at Exhibit "E" at para 8.
[48] *Irwin Toy* at p. 974.

businesses, municipalities, charities, not-for-profit organizations, or Indigenous communities."[49] By permitting only these types of signage, the Manual, in purpose and in effect, prohibits all expression of support of (or opposition to) political or social causes. Not only is Mr. Katerberg's message prohibited, so is any message which might disagree or oppose it.

38. In addition to the limitation of expression contained in subparagraph 5.8.2.1 (a), which is explicitly relied upon the Decision, subgraphs (b)-(e) further restrict specific forms of content.

B. The Infringement of Freedom of Expression is not Reasonable or Demonstrably Justified

39. Where in this case the impugned section of the Manual is a policy of general application adopted by the Ministry—rather than a one-off discretionary decision—the "*Oakes* test" is the governing framework of analysis. For the purposes of section 1 of the *Charter*, section 5.8.2.1 of the Manual need not take the form of a statutory instrument. So long as the enabling legislation allows the government entity to adopt binding rules, and so long as the rules establish rights and obligations of general rather than specific application and are sufficiently accessible and precise, they will qualify as a "law" which prescribes a limit on a *Charter* right.[50]

40. Section 5.8.2.1 of the Manual is legislative in nature. It sets out a binding rule of general application that applies to any member of the public who wishes to erect signage along a Bush Country Highway in Ontario. It is not an internal guideline or aid for Ministry officials that does not bind outsiders. The section is sufficiently precise to allow individuals to regulate their conduct accordingly and to guide those applying it, providing an "intelligible standard" rather than plenary discretion. Finally, the Manual is publicly accessible on its website so as to give notice of the rules to those affected. Indeed, that is how counsel for Mr. Katerberg obtained a copy.[51]

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[49] Bird Affidavit at Exhibit "B", p. 147.
[50] *GVTA* at para 64. See also: *The Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario,* 2018 ONSC 579 at paras 136-138.
[51] Bird Affidavit at paras 3-4.

41. Under the test in *Oakes*, the evidentiary burden falls on the Ministry to establish: (1) a pressing and substantial objective and (2) that there is proportionality between the objective and the means used to achieve it. This second branch of the test requires the Court to consider (1) whether there is a rational connection between the infringement of the right and the pression and substantial objective, (2) whether the infringement is minimally impairing of the right, and (3) a final balancing of salutary vs. deleterious effects.[52] The test "must be applied rigorously."[53] Chief Justice Dickson held that "*[w]here evidence is required in order to prove the constituent elements of a section 1 inquiry, and this will generally be the case, it should be cogent and persuasive and make clear to the Court the consequences of imposing or not imposing the limit*."[54] Black's Law Dictionary defines cogent as "*compelling or convincing*."[55]

Pressing and Substantial Objective

42. The Ministry has not led any evidence as to what pressing and substantial objective section 5.8.2.1 of the Manual is meant to address. The only evidence on this point is found in the Abstract to the Manual which states that "*the purpose of the Ministry's Highway Corridor Management function is to protect provincial highway corridors for future expansion needs, preserve and improve highway safety and operations, and improve the movement of people and goods in Ontario.*[56]

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[52] *R. v. Oakes,* [1986] 1 SCR. 103, 1986 CanLII 46 (SCC) at p.138. ["*Oakes*"]
[53] *Ibid* at p. 137.
[54] *Ibid* at p. 138.
[55] Bryan A. Garner, ed., *Black's Law Dictionary,* 11th ed. (Thompson West, 2019), sub verbo "cogent".
[56] Bird Affidavit at p. 96, Exhibit "B" at p. ii.

43. The applicant concedes that ensuring future highway expansion needs, preserving and improving highway safety and operation, and improving the movement of goods people and goods in Ontario are all pressing and substantial objectives.

44. In the event that the applicant is incorrect, and some other objective is put forward by the Ministry, the applicant may not concede that the objective is pressing and substantial.

Rational Connection

45. Measures which limit citizens' constitutional rights must be carefully designed to achieve their objective. They must not be arbitrary, unfair or based on irrational considerations. In short, they must be rationally connected to the objective.[57]

46. In this case, there is no rational connection between any of the above objectives and the restriction of messaging to that which "*promotes goods and services or authorized local events offered by, or related to, businesses, municipalities, charities, not-for-profit organizations, or Indigenous communities."* The same can be said of subsections 5.8.2.1 (b-d) which form content-based restrictions and are totally disconnected from the above objectives.

47. The Ministry has provided no evidence or explanation as to why political or social messages like that pictured on the New Sign would detract from the Ministry's Highway Corridor Management function. In *GVTA,* the SCC held that a ban on all political messages on bus advertising space was not rationally connected to the goal of providing a safe and welcoming public transit environment.[58] Similarly in the case at bar, there is no rational connection between prohibiting political and social messaging and ensuring the safety, efficiency, and future expansion of Ontario's highways.

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[57] *Oakes* at p. 139.
[58] *GVTA* at para 76.

48. The Decision concedes that there have been past inconsistencies in the Ministry's application of its intention to prohibit the advertisement of political and social causes along Bush Country Highways,[59] strongly implying that such advertisements have occurred in the past. This fact further demonstrates that such messages have no impact on the objectives.

49. The Ministry's evidence describes the decision to prohibit all messages except those advertising goods, services or events in the local community as a "policy preference".[60] There is no evidence as to *why* the Ministry prefers this policy preference. The Ministry's affiant, Kevin Devos, has no knowledge of when the Ministry formed this preference.[61] The Ministry simply prefers that no political or social commentary appear on billboards along the narrow band of land adjacent to Bush Country Highways. A policy preference alone does not demonstrate a rational connection or otherwise justify the infringement of *Charter* rights.

Minimal Impairment

50. The limitation of a *Charter* protection must be carefully tailored to its objectives, and must impair the right no more than reasonably necessary, having regard to the practical difficulties and conflicting tensions that must be taken into account.[62] Governments should adduce evidence as to why less intrusive and equally effective measures were not chosen.[63] Typically, outright bans will be difficult to prove as minimally impairing.[64]

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[59] Katerberg Affidavit at Exhibit "E" at para 8.
[60] Affidavit of Kevin DeVos, affirmed October 17, 2025 (DeVos Affidavit) at para 16.
[61] Cross Examination of Kevin Devos question 32.
[62] *R. v. Sharpe,* 2001 SCC 2 at paras 95-96.
[63] *Thomson Newspapers v Canada (Attorney General)*, [1998] 1 SCR 877 at paras 118-119; *RJR-MacDonald Inc. v. Canada (Attorney General),* [1995] 3 SCR 199, 1995 CanLII 64 (SCC) at para 160; *Charkaoui v. Canada (Citizenship and Immigration),* 2007 SCC 9, at paras 69, 76, 86.
[64] see *RJR-MacDonald Inc, supra; Ramsden v Peterborough (City of),* [1993] 2 SCR 1084 at p. 1105-1106; *Corbiere v Canada (Minister of Indian and Northern Affairs),* [1999] 2 SCR 203 at para 103; *UFCW, Local 1518 v Kmart,* [1999] 2 SCR 1083 at paras 65-66; *Dunmore v Ontario (Attorney General),* 2001 SCC 94 at para 183.

51. The Ministry's evidence appears focused on this area of the *Oakes* analysis, essentially making the case that the impugned provision is not minimally impairing because Mr. Katerberg could place his billboard on private property adjacent to Highway 17, outside of the 46-metre band of land pictured in Exhibit A of Kevin Devos' affidavit.[65] As described above, the Decision concludes by advising Mr. Katerberg that the Ministry would reconsider their decision if Mr. Katerberg were to "*place the proposed billboard on private property adjacent to the bush country highway.*"[66] Further, the only substantive question posed to Mr. Katerberg on cross-examination of his affidavit by the Ministry's counsel was whether Mr. Katerberg had attempted to place his sign at an alternative location. He answered in the negative.[67]

52. To begin, whether there was actually another place that Mr. Katerberg could have erected the Sign is entirely speculative. The only evidence led by the Ministry was the affidavit of Mr. Kevin Devos, a resident of Tillsonburg, Ontario—a seven and half hour drive from the location of the Billboard.[68] On cross-examination Mr. Devos conceded that he does not know who owns the property pictured in the satellite image attached to his affidavit, nor does he know whether it is Crown vs private land.[69] He further conceded that areas on which Mr. Katerberg could theoretically erect his sign, as pictured in Exhibit A of his affidavit, were obstructed by tress and other topography.[70] In short, there is no evidence that there is actually another place available to Mr. Katerberg to place his sign that would be visible from Highway 17.

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[65] Kevin Devos Affidavit Exhibit A
[66] George's Affidavit Exhibit E – para 10
[67] Cross Examination of George Katerberg – p.2 ln 12-14.
[68] Cross Examination of Kevin Devos – p. 2 ln 12-17.
[69] Cross Examination of Kevin Devos – p. 3 ln 10-16.
[70] Cross Examination of Kevin Devos question 35.

53. Even if one were to assume that Mr. Katerberg's sign could be placed in a nearby location not subject to section 5.8.2.1 of the Manual, this type of analysis flies in the face of established caselaw and guidance given by appellate courts, including the SCC, in the context of advertising space provided by government actors. In short, complete bans of political advertisements in such spaces do not withstand *Charter* scrutiny.

54. In *GVTA* the appellants operated public transit systems in British Columbia and sold advertising space on the exteriors of their buses and other vehicles. Policies were in place that explicitly prohibited political advertisements. In advance of the 2005 provincial election, the respondents attempted to purchase ad space for messages encouraging voter participation and highlighting education issues. These proposed advertisements were rejected by the respondents pursuant to their no-political-ads policies. The SCC held that that the transit authorities' policies prohibiting political advertisements did not minimally impair freedom of expression, as they imposed a complete ban on an entire category of expression rather than adopting less restrictive alternatives, such as permitting ads that did not pose risks to safety. The SCC emphasized that while the objective of providing a safe and welcoming transit environment was pressing, the blanket prohibition went further than necessary, failing the minimal impairment stage of the *Oakes* test.[71]

55. Fish J.'s concurring judgment found that advertising spaces on the side of buses would not be undermined by the inclusion of political messages. He concluded that *"[h]aving chosen to make the sides of busses available for expression on such a wide variety of matters, the Transit*

[71] *GVTA* at para 77.

Authorities cannot, without infringing s. 2(b) of the Charter, arbitrarily exclude a particular kind or category of expression that is otherwise permitted by law.[72]

56. It is noteworthy that, while before trial court (Supreme Court of British Columbia), the defendant transit authority put forward the argument that the impugned policies were minimally impairing as there were "*innumerable other ways in which the plaintiffs could have communicated their messages to the public.*"[73] This argument was rejected by the trial judge. The argument was likely abandoned by the defendant on appeal, but in any event was not addressed by the SCC.

57. In *R. v. Guignard*,[74] another sign case, the SCC struck down a municipal by-law restricting the placement of commercial signs. It found that the by-law constituted a direct infringement of freedom of expression. The Court undertook the analysis in *Oakes* and found that the by-law failed the minimal impairment stage as it imposed a total ban on advertising signs outside industrial or commercial zones without exceptions. It was found to be overbroad and not tailored to impair expression as little as possible. It applied even to signs not visible from roads or posing no safety risk. Less restrictive alternatives like size or location limits could have sufficed. Finally, the Court determined that the deleterious effects on expression (e.g., stifling consumer criticism of businesses and limiting access to information for those without other means) outweighed the salutary effects on aesthetics and safety, given the by-law's excessive scope.

58. In *Vann Media Group Inc. v. Oakville (Town)*[75] the respondent town passed by-laws which essentially prohibited third-party advertising on local billboards. The Court rejected the proposition that the by-law was minimally impairing because the applicant had other advertising

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[72] *GVTA* at para 121.
[73] *Canadian Federation of Students - British Columbia Component et al v. Greater Vancouver Transportation Authority et al,* 2006 BCSC 455 at para 119.
[74] *R. v. Guignard,* 2002 SCC 14.
[75] *Vann Media Group Inc. v. Oakville (Town),* 2008 ONCA 752.

options, such as bus shelters.[76] The Court went on to hold that there was no evidence to demonstrate that these alternatives were an equivalent outlet.[77]

59. In *Canadian Centre for Bio-Ethical Reform v. Grand Prairie (City)*[78], the Alberta Court of Appeal found that the city's rejection of the applicant's graphic anti-abortion advertisement for display on public buses infringed the organization's freedom of expression. While the infringement was demonstrably justified on the facts of that case, the Court found that when a government provides advertising space governed by the *Charter*, it cannot adopt a policy of "advertising neutrality" in the sense that it rejects contentious issues generally or on a particular social or political issue.[79]

60. Section 5.8.2.1 (a) of the Manual creates a total prohibition of advertising political and social causes on the right-of-way along Bush Country Highways. This despite allowing other forms of commercial advertising. The burden is on the Ministry to provide evidence that the limit was minimally impairing. The Ministry has provided no such evidence other than to say that other options might be available. As in *GVTA* and *Vann Media Group Inc.*, the fact there may be other theoretical means of advertising Mr. Katerberg's message does not resolve the minimal impairment analysis in the Ministry's favour.

61. While not specifically relied upon in the Decision, section 5.8.2.1 of the Manual restricts expression and is overly broad in a number of other important ways. For example, subparagraph (b) of section 5.2.8.1. prohibits messages which:

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[76] *Ibid* at para 52.
[77] *Ibid.*
[78] *Canadian Centre for Bio-Ethical Reform v. Grand Prairie (City),* 2018 ABCA 154.
[79] *Ibid* at para 101.

> *...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.*[80]

62. In *Whatcott*[81], the SCC held that restrictions on expression must produce specific, objective harmful effects, such as eliciting hatred of a group.[82] The Court held that a restriction on expression that merely "*ridicules, belittles or otherwise affronts the dignity of...*" failed to rise to a constitutionally valid limit.[83] Similarly, the Court in *Ward* observed that *"...expression that attacks or ridicules people may inspire feelings of distain or superiority in relation to them, but it generally does not encourage the denial of their humanity or their marginalization in the eyes of the majority.*"[84]

63. Subparagraph 5.2.8.1 (b) utilizes the precise language that the SCC has already held to be an insufficient justification to limit expression. Merely ridiculing or bringing persons or organizations into contempt, while it may cause offence, cannot justify limiting expression. It is completely disproportionate to preserve the emotional wellbeing of the target subject by restricting speech, particularly in this case where the targets of Mr. Katerberg's ire are elected officials and public figures.

64. Subparagraph 5.8.2.1 (c) prohibits billboards which *"...offend the standards of public decency prevailing among a significant segment of the population.*"[85] In essence this provision seeks to protect the general public from expression which may offend them. As the Ministry

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[80] Bird Affidavit at p. 147, Exhibit "B" at s. 5.8.2.1.
[81] *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11. ["*Whatcott*"]
[82] *Ibid* at para 82.
[83] *Ibid* at para 89.
[84] *Ward v. Quebec (Commission des droits de la personne et des droits de la jeunesse),* 2021 SCC 43 at para 88. ["*Ward*"]
[85] Bird Affidavit at p. 147, Exhibit "B" at 5.8.2.1. (c)

correctly notes the Decision, "*it cannot reject the proposed billboard…because some people may be offended by it*.[86] As affirmed by the SCC in *Whatcott* and *Ward*, protection from offence is not a valid justification to limit *Charter* protected expression. Furthermore, it is unclear how the Ministry would determine what standards are "*prevailing among a significant segment of the population.*" This sort of standard in inherently subjective. As the SCC held in *Whatcott,* limits on expression must be considered on the basis of on an *objective standard*.[87]

65. Finally, subparagraph (d) of section 5.8.2.1. requires all billboard signs to be in accordance with the *Canadian Code of Advertising Standards* (the "**Code**"). In *Guelph and Area Right to Life v. Guelph (City)*[88]*,* the Court held that by relying entirely on the Code, the respondent failed to undertake the *Doré* analysis.[89] The Court went on to note that while accuracy in commercial advertising may be a determinative factor, concerns over accuracy in political expression cannot be the sole reason for rejecting an advertisement. Issues over inaccuracy must be weighed against the right to freedom of expression, including considering whether the statement is one of opinion or fact.[90]

Balancing Salutatory Benefits and Deleterious Effects

66. On the evidence presented by the Ministry in this case, section 5.8.2.1 of the Manual has no salutary benefits. It does nothing to further the Ministry's admittedly important Highway Corridor Management function of ensuring future highway expansion needs, preserving and improving highway safety and operation, and improving the movement of goods people and goods in Ontario. It is merely a "*policy preference*."

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[86] Katerberg Affidavit Exhibit "E" at para 5.
[87] *Whatcott* at paras 52, 56 and 59.
[88] *Guelph and Area Right to Life v. City of Guelph,* 2022 ONSC 43. ["*Guelph*"]
[89] *Ibid* at para 81.
[90] *Ibid* at para 82.

67. On the other hand, the deleterious effects are overwhelming. The impugned provision prohibits political expression, which the SCC has described as "*...the single most important and protected type of expression.*"[91] As this Court noted in *CHP v. Hamilton (City),*[92] the ability to advertise political opinions in public spaces is an "*important phenomenon for the political process and for society as a whole.*" Further:

> "*[s]ociety's need to ensure that political parties can voice their views ensures that Canadian political discourse does not become a dogmatic single voice that only transmits messages with accepted content. Such an outcome erodes the fundamental rights of individuals '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'*"[93] [emphasis added]

68. The Applicant's purpose in erecting the New Sign was to engage in political advocacy and to hold political actors to account for what he believed was dishonest messaging and poor handling of the Covid-19 pandemic.[94] While one may disagree with Mr. Katerberg's belief that these particular public figures were dishonest about this particular issue, the impugned provision prevents Ontarians from criticizing *any public figure* on *any issue*.

69. Additionally, there is a "*dual effect*" in the limitation of political expression. As recently noted by this Court in *Armstrong*, "*freedom of expression protects not only the individual who speaks the message, but also the recipient*."[95] The prohibition of all political messaging on highway billboards restricts not just those seeking to express opinions, but also the general public who benefit from the dissemination of political opinions as a whole.

C. The Decision was Unreasonable

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[91] *Harper v. Canada (Attorney General),* 2004 SCC 33 at para 11. ["*Harper*"]
[92] *Christian Heritage Party v. Hamilton (City),* 2018 ONSC 3690. ["*CHP*"]
[93] *Ibid* at paras 53-54.
[94] Katerberg Affidavit at para 15.
[95] *Armstrong* at para 45.

70. Reasonableness review of an administrative decision requires a deferential approach focused on the decision-maker's reasons, assessing whether the decision bears the hallmarks of "*justification, transparency, and intelligibility*," and is justified in light of the relevant legal and factual constraints.[96] The burden is on the challenger to prove unreasonableness. The review examines both the reasoning process and the outcome for fundamental flaws including a lack of internal coherence or rationality, illogical analysis, failure to address critical issues, or fallacious reasoning[97] as well as inadequate justification relative to contextual constraints.[98] The non-exhaustive considerations guiding justification include the governing statutory scheme, which must be interpreted and applied consistently with its text, context, and purpose;[99] other applicable statutes, common law, or international law;[100] principles of statutory interpretation;[101] the evidence and facts before the decision-maker;[102] the body's past practices and decisions;[103] and the decision's impact on affected individuals, to whom responsive justification is owed.[104] These factors vary in significance by context, with demonstrated expertise warranting deference but not allowing decisions to exceed statutory bounds.[105]

71. The Decision itself is a one-and-a-half page unsigned and undated attachment to an email sent to Mr. Katerberg by Ministry employee Shawn Nickerson. It is unclear exactly who authored the decision and when. In any event, the decision's conclusion is as follows: "[*t]he proposed*

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[96] *Vavilov* at paras 81, 83-85.
[97] *Ibid* at paras 96, 100-104.
[98] *Ibid* at para 105.
[99] *Ibid* 108-110, 119-122.
[100] *Ibid* at paras. 111-114.
[101] *Ibid* at paras. 115-124.
[102] *Ibid* at paras. 125-126.
[103] *Ibid* at paras. 129-132.
[104] *Ibid* at paras 95, 133-135.
[105] *Vavilov* at paras 90, 93, 106, 110.

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."[106] This conclusion relies solely on section 5.8.2.1 of the Manual as its justification.

72. For the reasons set out above section 5.8.2.1 is an unreasonable infringement of section 2(b) of the *Charter*. Relying solely on an unconstitutional policy to arrive at a decision is quintessentially unjustified, unreasonable, and not in keeping with SCC jurisprudence that administrative decisions give effect, as fully as possible to the *Charter* protections at stake.[107]

73. In the alternative that this Court is not of the opinion that section 5.8.2.1 is a "law" subject to the *Charter* review and analysis laid out above, this Court must undertake the framework of analysis described by the SCC in *Doré c. Québec (Tribunal des professions)*[108]. In short, the finding that the Decision is unreasonable must be the same.

74. It is trite law that administrative decisions that engage *Charter* rights through the exercise of statutory discretion must proportionately balance the relevant *Charter* protections with the statutory objectives. This involves first identifying the *Charter* value at stake and interpreting the statutory mandate in a manner consistent with *Charter* values.[109] Next the Court must undertake an evaluation of whether the administrative decision reflects a *proportionate balancing* in light of the factual and statutory context. The decision will be unreasonable if the balancing fails to adequately protect the *Charter* value.[110] While this analysis is conducted within the administrative framework, "*there is nonetheless conceptual harmony between a reasonableness review and the*

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[106] Exhibit "E" of Katerberg affidavit at para 9.
[107] *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12 at para 39.
[108] *Doré v. Barreau du Québec*, 2012 SCC 12 . ["*Doré"*]
[109] *Doré* at para 55.
[110] *Doré* at 57-58.

Oakes framework, since both contemplate giving a margin of appreciation, or deference, to administrative and legislative bodies in balancing Charter values against broader objectives."[111]

75. Given the "*conceptual harmony*" between the *Oakes* and *Doré* frameworks, the applicant repeats and relies on its submissions with regards to the *Oakes* test set out above. In particular, the Decision limited Mr. Katerberg's political expression, which is "*...the single most important and protected type of expression.*"[112] This limitation is totally disconnected from the Ministry's Highway Corridor Management function of ensuring future highway expansion needs, preserving and improving highway safety and operation, and improving the movement of goods people and goods in Ontario. Further, there is no evidence that the Ministry engaged in any balancing of Mr. Katerberg's rights as against the purposes of the Act.

76. While the Decision admittedly recognizes that the "*MTO cannot reject the proposed billboard because it is political expression...*" it nevertheless rejects Mr. Katerberg's request on *exactly* that basis. In *Pro-Life Association v. Lethbridge (City)*[113] the city's reasons in denying the applicant's proposed bus advertisement included only a single sentence referencing the *Charter*, with no mention of the specific right at issue and no discussion of how the decision minimally impaired that right. The Court described this as a "fatal gap," emphasizing that a mere assertion or reference to the *Charter* is insufficient; the decision-maker must actually undertake and demonstrate the balancing exercise in their reasons. Merely reciting the newly implemented policy set out in the Manual does not constitute a balancing exercise.[114]

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[111] *Doré* at 57.
[112] *Harper* at para 11.
[113] *Lethbridge and District Pro-Life Association v. Lethbridge (City),* 2020 ABQB 654.
[114] *Ibid* at para 112.

D. Remedies

A Declaration that section 5.8.2.1 (a)-(d) is of no force and effect is the appropriate remedy

77. Section 52 of the *Constitution Act* requires a court to make up to five decisions:

a. First, a determination of the extent to which the law is unconstitutional and whether to declare the entire law inoperative under section 52(1) or grant a narrower remedy that is tailored to the breadth of the violation.

b. Second, whether to suspend the declaration of unconstitutionality.

c. Third, whether the declaration should be prospective or retrospective.

d. Fourth, if a suspended declaration is granted, whether to exempt the claimant from it.

e. Finally, if a suspended and prospective declaration is granted, whether the Court should provide guidance with respect to remedies for other persons effected by the unconstitutional law.[115]

78. For the reasons set out above, Mr. Katerberg requests that sections 5.8.2.1 (a)-(d) of the Manual be declared of no force and effect. He does not take issue with the remainder of the Manual, which is otherwise consistent with the Ministry's corridor management function and the Act's purposes.

79. Further tailoring the remedy is not appropriate in this case. Such tailoring (i.e. reading down, reading in, or severance) should only be granted where it can be fairly assumed that the Ministry would have drafted section 5.8.2.1 in the manner amended by the declaration.[116] In this case the Ministry's explicit purpose of including section 5.8.2.1 of the Manual was to clarify its

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[115] *R. v. Pike,* 2024 ONCA 608 at para 101.
[116] *Ontario (Attorney General) v. G.,* 2020 SCC 38 at para 114. ["*G.*"]

"policy intention" that signage along Bush Country Highways "be used to promote causes of any kind (i.e. political, social, etc.)."[117] It specifically sought to restrict expression in an unreasonable and unjustified manner. There is simply no means of tailoring a remedy in these circumstances.

80. There is a strong interest that declarations take immediate effect. This reflects the principle that *Charter* rights should be safeguarded through effective remedies and that the public has an interest in constitutionally compliant legislation.[118] The Ministry bears the onus of demonstrating that a compelling public interest supports a suspension. The specific interest and the manner in which an immediate declaration would endanger that interest must be identified and, where necessary, supported by evidence.[119]

81. The evidence in this case is that the Ministry amended the Manual in April 2025 to include the impugned provisions. While it is not clear *exactly* how long the Ministry has been regulating signage on Ontario highways, it appears that the province functioned for quite some time without the "benefit" of section 5.8.2.1. The Ministry has provided no evidence of a compelling public interest that supports a suspension. Accordingly, the declaration should take immediate effect.

82. A section 52(1) declaration will generally be both immediate and retroactive, such that lower courts are bound to apply the declaration in outstanding matters before them.[120] Retroactive remedies that immediately apply to everyone who is still "in the system" maximize the protection and vindication of *Charter* rights, and give effect to the principle of constitutional supremacy.[121] The Ministry has led no evidence in this case to rebut the "*strong but rebuttable presumption*" that

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[117] Katerberg affidavit Exhibit E at paras 7-9.
[118] *G.* at paras 131-32.
[119] *G.* at para 133.
[120] *R. v. Albashir,* 2021 SCC 48 at para 38. ["*Albashir*"].
[121] *Ibid* at paras 31 and 42.

declarations will be retroactive.[122] Accordingly, any declaration should be retroactive.

Mandamus

83. Mr. Katerberg asks this court for an order, in the nature of mandamus, directing the Ministry to permit him to erect the Sign without further reconsideration.

84. In *Canada (Attorney General) v. PHS Community Services Society* the SCC granted a writ of mandamus in the context of the federal government's refusal to grant a continuing exemption to the *Controlled Drugs and Substances Act* ("**CDSA**") to a Vancouver-based "supervised injection site." Closing the site was found to violate section 7 of the *Charter* by exacerbating health risks without sufficient justification. The SCC ultimately found that in the circumstances of the case, a reconsideration would be inadequate. An order compelling the federal government to grant an exemption to the CDSA was warranted.[123]

85. The SCC began its remedy analysis by observing that "*What is required is a remedy that vindicates the respondents' Charter rights in a responsive and effective manner*."[124] Section 24(1) confers a broad discretion on the Court to craft an appropriate remedy that is responsive to the violation of *Charter* rights. The SCC further found that:

> *"On the trial judge's findings of fact, the only constitutional response to the application for a s. 56 exemption was to grant it.*
>
> ....
>
> *This does not fetter the Minister's discretion with respect to future applications for exemptions, whether for other premises, or for Insite. As always, the Minister must exercise that discretion within the constraints imposed by the law and the Charter."*[125]

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[122] *Ibid* at para 34.
[123] *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44.
[124] *Ibid* at para 142.
[125] *Ibid* at paras 150-151.

86. Where sections 5.8.2.1 (a)-(d) of the Manual are an unreasonable infringement of Ontarians freedom of expression, and the Ministry has not relied on any other factor in denying Mr. Katerberg's request to erect his sign, "*the only constitutional response*" to Mr. Katerberg's request is that the Ministry grant permission for the New Sign to be erected.

87. By the time this matter reaches a contested hearing Mr. Katerberg will have waited over two years since the Initial Sign was taken down. The June 2025 decision is the *third time* that the Ministry has determined that George's proposed signage ought not be erected. While the newly amended section 5.8.2.1 contains five subsections (a-e), the June 2025 decision only relies on the subsection (a). There is every reason to expect that further reconsideration will result in further consecutive denials under subsections (b), (c) and (d). Granting a remedy of mandamus will avoid an "*an endless merry-go-round of judicial reviews and subsequent reconsiderations*".[126]

88. In the alternative, Mr. Katerberg asks that this Court remit the matter back to a different employee or agent of the Ministry for reconsideration with the benefit of this Court's reasons.

PART IV - RELIEF SOUGHT

89. The applicant seeks an order:

a. declaring that sections 5.8.2.1 (a)-(d) of the Manual are of no force or effect;

b. in the nature of mandamus, that the Ministry allow Mr. Katerberg to erect the Sign on the Billboard; and

c. in the alternative, that matter be sent back to a different employee or agent of the Ministry for reconsideration.

[126] *Vavilov* at 142.

90. Given the public interest nature of this application, Mr. Katerberg requests that costs not be awarded to either party, regardless of the outcome.

January 26, 2025

Christopher Fleury
Darren Leung

Counsel for the Applicant
George Katerberg

Court File No.: DC-25-00002233-00JR

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

CERTIFICATE OF AUTHENTICITY

I, Christopher Fleury, counsel for the Applicant George Katerberg, certify that I am satisfied as to the authenticity of every authority cited in the factum. The Applicant estimates that he requires one and a half (1.5) hours for oral argument, not including reply.

January 26, 2026

[redacted]

CHARTER ADVOCATES CANADA

[redacted]

Christopher Fleury LSO #64785L

[redacted]

Darren Leung LSO #87938Q

[redacted]

SCHEDULE A

Armstrong v. Township of Russell, 2025 ONSC 3790

Batty v. Toronto (City), 2011 ONSC 6862

Bracken v. Fort Erie (Town), 2017 ONCA 668

Bracken v. Niagara Parks Police, 2018 ONCA 261

Canada (Attorney General) v. JTI-Macdonald Corp., 2007 SCC 30

Canada (Attorney General) v. PHS Community Services Society, 2011 SCC 44

Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65

Canadian Broadcasting Corp. v. Canada (Attorney General), 2011 SCC 2

Canadian Centre for Bio-Ethical Reform v. Grand Prairie (City), 2018 ABCA 154

Canadian Federation of Students - British Columbia Component et al v. Greater Vancouver Transportation Authority et al, 2006 BCSC 455

Charkaoui v. Canada (Citizenship and Immigration), 2007 SCC 9

Christian Heritage Party v. Hamilton (City), 2018 ONSC 3690

Committee for the Commonwealth of Canada v. Canada, [1991] 1 SCR. 139, 1991 CanLII 119 (SCC)

Corbiere v Canada (Minister of Indian and Northern Affairs), [1999] 2 SCR 203

Doré v. Barreau du Québec, 2012 SCC 12

Dunmore v Ontario (Attorney General), 2001 SCC 94

Greater Vancouver Transportation Authority v. Canadian Federation of Students, 2009 SCC 31

Guelph and Area Right to Life v. City of Guelph, 2022 ONSC 43

Harper v. Canada (Attorney General), 2004 SCC 33

Irwin Toy Ltd. v. Quebec (Attorney General), [1989] 1 SCR 927, 1989 CanLII 87

Lethbridge and District Pro-Life Association v. Lethbridge (City), 2020 ABQB 654

Loyola High School v. Quebec (Attorney General), 2015 SCC 12

Montréal (City) v. 2952-1366 Québec Inc., 2005 SCC 62

Ontario (Attorney General) v. G., 2020 SCC 38

R. v. Albashir, 2021 SCC 48

R. v. Guignard, 2002 SCC 14

R. v. Keegstra, [1990] 3 SCR. 697, 1990 CanLII 24 (SCC)

R. v. Oakes, [1986] 1 SCR. 103

R. v. Pike, 2024 ONCA 608

R. v. Sharpe, 2001 SCC 2

R. v. Zundel, [1992] 2 SCR. 731, 1992 CanLII 75 (SCC)

Ramsden v Peterborough (City of), [1993] 2 SCR 1084

RJR-MacDonald Inc. v. Canada (Attorney General), [1995] 3 SCR 199, 1995 CanLII 64(SCC)

Saskatchewan (Human Rights Commission) v. Whatcott, 2013 SCC 11

The Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario, 2018 ONSC 579

Thomson Newspapers v Canada (Attorney General), [1998] 1 SCR 877

UFCW, Local 1518 v Kmart, [1999] 2 SCR 1083

Vann Media Group Inc. v. Oakville (Town), 2008 ONCA 752

Ward v. Quebec (Commission des droits de la personne et des droits de la jeunesse), 2021 SCC 43

SCHEDULE B

Public Transportation and Highway Improvement Act
R.S.O. 1990, CHAPTER P.50

Roadside buildings, trees, signs, activities, etc.

34 (2) Despite any general or special Act, regulation, by-law or other authority, no person shall, except under a permit therefor from the Minister,

(a) place, erect or alter any building, fence, gasoline pump or other structure or any road, or perform any grading upon or within 45 metres of any limit of the King's Highway or upon or within 180 metres of the centre point of an intersection;

(b) place any tree, shrub or hedge within 45 metres of any limit of the King's Highway or within 180 metres of the centre point of an intersection;

(c) display any sign, notice or advertising device, whether it contains words or not, within 400 metres of any limit of the King's highway, other than,

(i) one sign not more than 60 centimetres by 30 centimetres in size displaying the name or the name and occupation of the owner of the premises where it is displayed or the name of the premises,

(ii) a maximum of two single-sided signs, each being not more than 122 centimetres by 122 centimetres in size and facing in different directions, or one single-sided sign not more than 122 centimetres by 244 centimetres in size if,

(A) the signs display information about the sale of agricultural products, other than tobacco, that are produced and offered for sale on the premises where the signs are displayed, and

(B) the signs are displayed on premises that is zoned for agricultural uses and that is not owned by the Crown in right of Canada or the public sector as defined in subsection 2 (1) of the *Public Sector Salary Disclosure Act, 1996*, or

(iii) a maximum of two single-sided signs, each being not more than 122 centimetres by 122 centimetres in size and facing in different directions, or one single-sided sign not more than 122 centimetres by 244 centimetres in size if,

(A) the signs display directions to a place where agricultural products produced in Ontario, other than tobacco, are offered for sale or information about the sale,

(B) the owner of the signs also owns or rents the land on which the agricultural products mentioned in sub-subclause (A) were produced,

(C) the signs are displayed on premises that is zoned for agricultural uses and that is not owned by the Crown in right of Canada or the public sector as defined in subsection 2 (1) of the *Public Sector Salary Disclosure Act, 1996*, and

(D) the signs are displayed only during the season during which the agricultural products mentioned in sub-subclause (A) are offered for sale;

The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11

2 Everyone has the following fundamental freedoms:

(b)freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

GEORGE KATERBERG

APPLICANT

-and-

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

RESPONDENT

Court File No.: DC-25-00002233-00JR

SUPERIOR COURT OF ONTARIO
DIVISIONAL COURT

at Sudbury

FACTUM OF THE APPLICANT

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