

Information number A97752336 &
A97752351

Jurisdiction Drumheller

Court The Alberta Court of Justice

Prosecutor Siksika Nation

Accused Name(s) MORGAN, Cory

Date, time and location of scheduled trial June 30, 2026 at 9:30AM
Alberta Court of Justice – Siksika
Jct. of Highways 901 & 547
Siksika Indian Reserve #146
AB T9N 2G3

If no trial date set, date and type of next appearance

List of charges: Siksika Trespass By-Law s. 4.01 (2x)

Persons bringing application (for purposes of Service)

Name Christopher Fleury (legal counsel)
Address Charter Advocates Canada
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- Type of application (check one)**
- This is an application to be brought at trial
 - This is a pre-trial application
 - This is an application under s. 278.93 or 278.3 of the Code
 - This is an application under Rule 2.8

The clerks have scheduled the following date for the pre-trial hearing:
OR *an application to abridge time and schedule the application will be made on the following date (add courtroom and time)*

The estimated time to argue the application is: ½ Day

Criminal Rules of Court

Concise statement of subject of Application: See Appendix A attached

Statement of grounds: See Appendix A attached

Statement of relevant facts: See Appendix A attached

Relief sought: See Appendix A attached

Legal authorities to be relied upon: See Appendix A attached

The following materials or evidence will be also relied upon:

- Transcripts, ordered on Click or tap to enter a date. and expected to be ready by Click or tap to enter a date.
- Written argument
- Affidavit(s)
- Case law with the following citations See Appendix A attached
- Agreed statement of facts
- Oral testimony

IT IS UNDERSTOOD that the opposing party or parties must be served with this Application and any other materials to be relied upon, in accordance with the Alberta Court of Justice Rules of Court:

(Check to acknowledge)

THE RESPONDENT'S NAME AND CONTACT INFORMATION is:

Siksika Nation [Redacted]

Dated at Belleville, Ontario

on 26-05-28

Signature of Applicant or legal representative

APPENDIX A

CONCISE STATEMENT OF THE SUBJECT MATTER OF THE APPLICATION

1. The Applicant, Cory Morgan (“**Mr. Morgan**”), is charged with two counts of trespassing contrary to the Siksika Nation’s (“**Siksika**”) *Trespass By-law No 2021-01* (the “**Trespass By-law**” and the “**By-law**”).¹ Unlike provincial trespass legislation in Alberta and across Canada, the Trespass By-law allows for charge, conviction and imprisonment for trespassing in cases where no notice of any kind is provided to the accused that they are unwelcome, and no fault element need be proven.
2. The Trespass By-law is an infringement of section 7 of the *Canadian Charter of Rights and Freedoms* (the “**Charter**”).² The By-law engages liberty interests by providing for jail time as a penalty and is contrary to two principles of fundamental justice, namely: it is an absolute liability offence, and it is overbroad. Further, the Trespass By-law is not a reasonable and demonstrably justified limitation of Mr. Morgan’s rights pursuant to section 1 of the *Charter*.
3. Mr. Morgan seeks relief pursuant to section 24(1) of the *Charter*. He asks this Court for an order dismissing or, in the alternative, staying the charges before the Court.

STATEMENT OF RELEVANT FACTS

4. Mr. Morgan is a journalist and public commentator. He is a senior columnist with the *Western Standard*, an online news and opinion publication based in Calgary. He also

¹ *Siksika Nation Trespass By-law No 2021-01*, Siksika Nation in Treaty #7 [*Trespass By-law*].

² *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 at s 7 [*Charter*].

maintains a YouTube channel with approximately 14,000 subscribers. To date, he has published 235 videos on his channel.

5. Siksika is a Treaty 7 First Nation occupying Canada's second largest First Nation reserve, spanning approximately 700 square kilometres, situated in southern Alberta approximately 100 kilometres east of Calgary. Siksika is governed by a Chief and Council who are empowered under the *Indian Act* to enact by-laws for certain purposes.³ Siksika has enacted several by-laws under that delegated authority, including the Trespass By-law at issue in this Application.
6. Mr. Morgan is facing two counts of trespassing contrary to section 4.01 of the Trespass By-law. The trespasses are alleged to have occurred on or about March 15 and 16, 2025 respectively.
7. There are no witnesses to the alleged trespasses.
8. The alleged trespasses came to Siksika's attention after Mr. Morgan posted two videos to his YouTube channel on March 15 and 16, 2025 respectively.
9. The March 16 video is 19 minutes and 19 seconds long and entitled "*A critical tour of a Canadian prairie Indigenous reserve*". The video begins with Mr. Morgan speaking in front of a large sign which says: "Welcome to Treaty #7 SIKSIKA NATION Member of the Blackfoot Confederacy". Following this approximately 45 second introduction, the remainder of the video consists of footage of the Siksika reserve, edited to include a voiceover of Mr. Morgan's commentary. The footage includes video taken at the Old Sun Community College, the Paul Little Walker Cemetery and the Chief Crowfoot

³ *Indian Act*, RSC 1985, c I-5 at [ss 81, 83, 85](#).

memorial site. Aside from the short introduction in front of the welcome sign, Mr. Morgan is not pictured in the video at all.

10. The March 15 video is 32 seconds long and is entitled “*Cemetery behind the Old Sun Indian Residential School on the Siksika reserve in Alberta.*” It is a shorter clip which is featured in the longer March 16 video at the 14:46 mark. Instead of a voiceover, the March 15 clip features instrumental music. The March 15 video does not feature Mr. Morgan at all.

11. At no point in any of the videos is there any signage indicating “no trespassing”, “private property”, or any other signage indicating an intent to exclude the public. Further, at no point was Mr. Morgan given any warning (verbal, written, or otherwise) that he could not enter onto the sites pictured in the videos.

12. After watching the videos and visiting the locations featured in the videos, the investigating officer, [REDACTED], issued two By-law Offence Notices alleging trespass.

13. Ultimately, after indicating his intention to dispute the By-law Offence Notices, Mr. Morgan received two Violation Tickets containing identical allegations as the By-law Offence Notices.

14. This Application as well as the trial on the merits are scheduled to be heard on June 30, 2026.

The Trespass By-law

15. Section 4 of the Trespass By-law provides that: “No Person shall Trespass on the Reserve”.⁴ “Trespass” is defined as:

⁴ *Trespass By-law*, note 1 *supra* at [s 4.01](#).

...any act that constitutes trespass under common law, and includes, without limitation, the following:

- (i) Entering or remaining in or on a Premises without lawful authority or permission of the Occupant, and
- (ii) entering or remaining on the Reserve without lawful authority or without the permission of either an Occupant or the Nation”.⁵

16. Section 6 of the Trespass By-law is entitled “Right of Access” and contains a number of exceptions to liability for trespassing. Section 6 reads in relevant part as follows:

6.01 (a) For clarity, the following Persons have a right of access to the Reserve:

...

- (e) a Person who has entered onto Reserve lands that have been designated for commercial uses provided that such Person is engaged in activities consistent with or related to such commercial uses and is otherwise obeying all laws of general application;
- (f) a Person travelling on a public road on or through the Reserve;⁶

17. Part III of the Trespass By-law is entitled “Signs and Notices”. It particularizes the form and content of notice that may be given including: who may give such a notice (section 9); acceptable methods of giving notice (section 10); and requirements for signage giving notice (section 11). Notwithstanding the requirements in these sections, section 13 of the Trespass By-law clarifies that notice is not required to sustain a conviction.

Section 13 reads as follows:

13.01 For certainty, a Person may be found guilty of an offence under this By-law regardless of whether notice not to Trespass or not to engage in a specified activity was given or received.⁷

18. Section 21 of the By-law, entitled “Penalties”, allows for both a fine and/or jail time upon conviction:

⁵ *Trespass By-law*, note 1 *supra* at [s 2.01\(q\)](#).

⁶ *Trespass By-law*, note 1 *supra* at [s 4.01](#).

⁷ *Trespass By-law*, note 1 *supra* at [s 13.01](#).

21.01 Any Person who is found guilty of an offence under this By-law is liable on summary conviction to a fine not exceeding \$1,000.00, or to a term of imprisonment not exceeding thirty (30) days, or both.⁸

STATEMENT OF GROUNDS

19. Section 7 of the *Charter* guarantees:

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.⁹

20. The legal analysis under section 7 involves two steps: first, a finding that there has been a deprivation of life, liberty and security of the person and, secondly, that the deprivation is contrary to the principles of fundamental justice. The principles of fundamental justice are to be found in the basic tenets and principles not only of our judicial process but also of the other components of our legal system.¹⁰ The principles of fundamental justice are not limited solely to procedural guarantees but include substantive protections as well.¹¹

1. Mr. Morgan's liberty interest is engaged

21. The availability of imprisonment as a penalty under a statutory provision engages the section 7 liberty interest.¹² As section 21 of the By-law allows for imprisonment for a period of up to thirty days,¹³ Mr. Morgan's liberty interests pursuant to section 7 of the *Charter* are engaged.

⁸ *Trespass By-law*, note 1 *supra* at [s 21.01](#).

⁹ *Charter*, note 2 *supra* at [s 7](#).

¹⁰ *Reference re s 94(2) of Motor Vehicle Act (British Columbia)*, [1985] 2 SCR 486 at [para 64](#) [*Re BC Motor Vehicle Act*].

¹¹ *Re BC Motor Vehicle Act*, note 10 *supra* at [para 99](#).

¹² *R v Malmo-Levine; R v Caine*, 2003 SCC 74 at [para 84](#); *Re BC Motor Vehicle Act*, note 10 *supra* at [para 76](#).

¹³ *Trespass By-law*, note 1 *supra* at [s 21.01](#).

22. Section 7 of the *Charter* is engaged notwithstanding the fact that the Applicant was issued a ticket with a fine amount of \$1,000 and that imprisonment is not an available penalty where the matter is proceeding pursuant to Part 3 of the *Provincial Offences Procedure Act* (“**POPA**”).¹⁴
23. Siksika had a choice of proceeding under either *POPA* or under Siksika’s own *Offences Procedures By-law No 2024-12*,¹⁵ the latter of which has no provision to exclude imprisonment for absolute liability offences and which, in contrast to *POPA*, does not preclude imprisonment either as a penalty upon conviction under Part III proceedings or as a consequence for non-payment of fines.¹⁶
24. The discretion of police or prosecutors regarding choice of procedure cannot insulate an otherwise unconstitutional law from scrutiny. Although the prosecution has chosen a mode of proceeding that in this instance forecloses the possibility of imprisonment, it had the ability to choose otherwise. As put succinctly by Chief Justice McLachlin in *R v Nur*, “the divergence between the law on the books and the law as applied — and the uncertainty and unpredictability that result — exacts a price paid in the coin of injustice.” Further, “bad law, fixed up on a case-by-case basis by prosecutors, does not accord with the role and responsibility of Parliament to enact constitutional laws.”¹⁷

¹⁴ *Provincial Offences Procedure Act*, RSA 2000, c P-34 at ss 7(3), 40 [*POPA*].

¹⁵ *Siksika Nation Offences Procedures By-law No 2024-12*, Siksika Nation in Treaty #7, online: <https://partii-partiii.fng.ca/fng-gpn-ii-iii/pii/en/item/522150/index.do> [*Offences By-law*]. Section 45 of this by-law, which was added in July 2025, grants discretion to prosecutors to proceed under *POPA* instead of the *Offences By-law*.

¹⁶ *Offences By-law*, note 15 *supra* at ss 23-31, and especially s 29.4(c).

¹⁷ *R v Nur*, 2015 SCC 15 at para 91.

Where such discretion exists, *Charter* interests – in this case, Mr. Morgan’s section 7 liberty interest – remain engaged, regardless of the actual choice of proceeding made by the prosecution.

2. Trespassing under the By-law is an absolute liability offence

25. It is a principle of fundamental justice that the penalty imposed on an accused requires proof of fault reflecting the offence and punishment.¹⁸ Where an offence carries the potential for imprisonment, negligence is required as a minimum fault element. To make full answer and defence to a charge grounded in negligence as a fault element, a defence of due diligence must be open to an accused, in order for the offence to accord with the principles of fundamental justice.¹⁹ An offence that does not permit the accused to raise a defence of honest mistake or due diligence is typically deemed an absolute liability offence.²⁰

26. Where the Trespass By-law codifies the common law tort of trespass as a statutory offence, without any alteration, it creates an absolute liability offence.

27. While “public welfare” offences are *prima facie* strict liability offences, and subject to a due diligence defence, in this case Siksika has used explicit statutory language to override that presumption. Further, and as described in detail below, Siksika does not have authority under the *Indian Act* to create a strict liability offence of trespassing.

The Trespass By-law codifies the common law tort of trespass

28. As above, the definition of “Trespass” under the By-law is:

¹⁸ *R v Brown*, 2022 SCC 18 at para 95; *Re BC Motor Vehicle Act*, note 10 *supra* at [paras 69-77](#).

¹⁹ *Re BC Motor Vehicle Act*, note 10 *supra* at [paras 2-3](#); *R v Wholesale Travel Group Inc*, [1991] 3 SCR 154 at [p 184](#).

²⁰ *R v Hess*; *R v Nguyen*, [1990] 2 SCR 906 at [p 918](#).

...any act that constitutes trespass under common law, and includes, without limitation, the following:

- (i) Entering or remaining in or on a Premises without lawful authority or permission of the Occupant, and
- (ii) entering or remaining on the Reserve without lawful authority or without the permission of either an Occupant or the Nation".²¹

29. While it may be tempting to read subsections 2.01(q)(i) and (ii) as expanding the scope of "Trespass" under the By-law as beyond the common law tort, this interpretation is untenable as it would be *ultra vires* Siksika's authority under the *Indian Act*.²² In *R v Gingrich* the Appellate Division of the Alberta Supreme Court (as it was then known) was asked to quash the trespassing conviction of a missionary who was invited onto the Blood Indian Reserve by one of its members, but ran afoul of the council's permitting system. At issue was the authority of the council to devise and enforce such a system. The Court found:

[5] It will be seen at once that as the Act does not define "trespassing" one must look to the common law for a definition of the term, as it is quite clear that the powers of the council are not to decide what constitutes trespassing, but are limited to removing and punishing persons who are found trespassing upon the reserve.²³

30. The *Indian Act* and binding appellate authority are clear that Siksika's jurisdiction under the *Indian Act* is to punish and remove those found guilty of a trespass as defined at common law, not to codify its own definitions of what constitutes a trespass.

²¹ *Trespass By-law*, note 1 *supra* at [s 2.01\(q\)](#).

²² *Indian Act*, note 3 *supra* at [s 81\(p\)](#).

²³ *R v Gingrich*, 1958 CanLII 839 (AB SCAD) at [pp 385-386](#) [emphasis added].

A defence of due diligence is not available to the common law tort of trespass

31. It is settled law, based on an exceptionally long line of authority, that trespass to land is a strict liability tort that is actionable *per se* at common law.²⁴ It is noteworthy that the term “strict liability” is used differently in the tort context vs the criminal/regulatory context. While the common law tort of trespass permits some defences to a defendant – primarily consent of the owner, necessity, and legal authority – the tort of trespass does not allow for a defence of either due diligence or honest mistake. In the criminal/regulatory context, an offence that does not permit a defence of due diligence or honest mistake is an absolute liability offence. On this basis, trespass to land, which is strict liability in the tort context, is actually absolute liability in the criminal/regulatory context unless modifications to introduce a fault element are made by the legislature.

32. As the Supreme Court of Canada has stated: “Trespass does not depend on intention. If I walk upon my neighbour’s land, I am a trespasser even though I believe it to be my own”.²⁵ The Alberta Court of Appeal has followed this jurisprudence, holding in *Calgary (City) v Costello* that “a trespass occurs, regardless of consciousness of wrongdoing...”.²⁶

33. Introducing more confusion arising from the application of tort principles to the criminal/regulatory context, the Court in *Costello* does go on to reference “intention”. It is clear from a full reading of *Costello* and related jurisprudence that the word “intention” does not describe a will or desire to undertake a wrongful act against the

²⁴ *Entick v Carrington*, [1765] EWHC KB J98, affirmed in *Fitzpatrick v Orwin*, 2012 ONSC 3492 at [paras 135, 159](#).

²⁵ *East Crest Oil Co v R*, [1945] SCR 191 at [p 195](#) per Rand J [emphasis added].

²⁶ *Calgary (City) v Costello*, 1997 ABCA 281 at [para 7](#) [emphasis added], citing *East Crest Oil Co*, note 26 *supra*, with approval.

plaintiff as it would in the criminal/regulatory context. Rather the word “intention” is used to differentiate a physically voluntary act from an involuntary one. The Saskatchewan Court of Appeal framed the issue as follows in *Peter Ballantyne Cree Nation v. Canada (Attorney General)*:

[132]... It is generally viewed that “intentional” does not mean that the defendant intended to do a wrongful act against the plaintiff, but that the defendant completed a voluntary and affirmative act. Trespass will occur, regardless of consciousness of wrongdoing, if the defendant intends to conduct itself in a certain manner and exercises its volition to do so. In *R. v. East Crest Oil Co. Ltd.* Rand J. stated that “[t]respass does not depend upon intention. If I walk upon my neighbour's land, I am a trespasser even though I believe it to be my own”. Furthermore, if person A is carried against his will by person B onto the plaintiff's land, A is not liable for trespass as his act was not voluntary.

....

[135]... Trespass is concerned primarily with interference of possessory rights. As a tort of strict liability, it acts as a remedy against dispossession, vindicating a propriety interest rather than a tort obligation. A classic example of this aspect of trespass is illustrated by the old case of *Basely v. Clarkson*. In *Basely*, the defendant was liable in trespass to land for innocently mowing the plaintiff's grass in belief it was his own. However, he intentionally (perhaps should be read as "voluntarily") acted which interfered with the property right of another.²⁷

34. Further to the point, mistake is no defence to an action in trespass.

...Mistake is no defence. The old case of *Basely v. Clarkson* [(1681), 3 Lev. 37, 83 E.R. 565 (C.P.)] is illustrative. The defendant was held liable in trespass to land for innocently mowing the plaintiff's grass in the belief that it was his own.²⁸

²⁷ *Peter Ballantyne Cree Nation v Canada (Attorney General)*, 2016 SKCA 124 at [paras 132, 135](#) [emphasis added].

²⁸ *RDF (Litigation Guardian of) v General Insurance Co*, 2004 MBCA 156 at [para 32](#), citing Philip H Osborne, *The Law of Torts*, 2nd ed (Irwin Law Inc: Quicklaw, 2003).

35. At common law a plaintiff succeeds in an action in trespass to land solely by establishing that the defendant voluntarily entered upon the plaintiff's land. The plaintiff is not required to prove a fault element of either *mens rea* or negligence. The defendant's intentions, or beliefs regarding the status and ownership of the land, however well founded, are irrelevant to the defendant's liability. The offending act itself, and that it was voluntarily completed, are the sole elements that the plaintiff needs to prove in order to succeed. Applying the tort of trespass to the criminal/regulatory context necessarily creates an absolute liability offence.

36. It is noteworthy that the creation of an absolute liability offence which is subject to imprisonment upon conviction differentiates the By-law from trespass legislation in Alberta, and indeed in all other Canadian common law provinces. Provincial trespass statutes either: require a criminal or regulatory fault element as part of the offence;²⁹ do not provide for imprisonment;³⁰ allow for various "colour of right" defences;³¹ or a combination of all three.³²

37. In this case, it would be no defence for Mr. Morgan that he reasonably but mistakenly thought that he was travelling on public roads, that he only entered areas that a reasonable person would believe were open to the public (ie. a cemetery, a school parking lot), and that he took other reasonable steps to ensure that he was not

²⁹ See, for example, *Petty Trespass Act*, RSA 2000, c P-11 at [s 2.1\(1\)](#), where the notice requirement introduces a necessary fault element before a contravention is made out.

³⁰ See, for example, *Trespass to Property Act*, RSPEI 1988, c T-6 at [s 2\(1\)](#).

³¹ See, for example, *Trespass to Property Act*, RSO 1990, c T.21 at [s 2\(2\)](#).

³² [Petty Trespass Act, RSA 2000, c P-11](#); [Trespass Act, RSBC 2018, c 3](#); [The Trespass to Property Act, SS 2009, c T-20.2](#); [The Trespass Act, CCSM c T156](#); [Trespass to Property Act, RSO 1990, c T.21](#); [Trespass Act, RSNB 2012, c 117](#); [Protection of Property Act, RSNS 1989, c 363](#); [Trespass to Property Act, RSPEI 1988, c T-6](#); [Petty Trespass Act, RSNL 1990, c P-11](#).

trespassing, including availing himself of the By-law's "right of access" exceptions to trespassing.³³

38. The analysis is further aggravated by the fact that, not only was Mr. Morgan not given any notice of Siksika's intention to exclude either himself or the general public from specific areas on its territory, the only signage that Mr. Morgan would have seen during the alleged trespass was an expression of "welcome" when he entered Siksika in the form of a large sign on the side of the roadway.

39. Finally, the Applicant acknowledges section 10 of *POPA* which states that: "Notwithstanding this Act or any other enactment, a defendant is not liable to imprisonment for an absolute liability offence."³⁴ As also acknowledged above with regard to Part 3 prosecutions,³⁵ Mr. Morgan cannot be subject to a penalty of imprisonment in the current case. But it would have been open to Siksika to prosecute Mr. Morgan under its own *Siksika Nation Offences Procedures By-law*, which does not contain such an exception.³⁶ As stated above, the Supreme Court of Canada has held that the discretion of police or prosecutors regarding choice of procedure cannot insulate an otherwise unconstitutional law.³⁷

40. Where the Trespass By-law codifies the common law tort of trespass as a statutory offence, without any alteration, it creates an absolute liability offence.

³³ *Trespass By-law*, note 1 *supra* at [s 6.01](#).

³⁴ *POPA*, note 14 *supra* at [s 10](#).

³⁵ See paras 21-24 *supra*.

³⁶ *Offences By-law*, [note 15 supra](#).

³⁷ *Nur*, note 17 *supra* at [para 91](#).

The statutory language precludes a defence of due diligence, had one been available

41. In the alternative, even if the common law tort of trespass allowed for a defence of due diligence or honest mistake – which has no support in law and is contradicted by the jurisprudence cited in this Application – such a defence would be diminished to the point of meaninglessness by the language of section 13.01 of the Trespass By-law.³⁸

42. Were such a defence available, the most likely argument that could be raised in support of it is that the accused looked for some kind of signage or other notice to indicate that the land was private and outsiders were barred from entry. Finding none and seeing that the location otherwise appeared to be open to the public (ie. a school, a cemetery, etc.), a reasonable person would conclude that entry was permitted. Section 13.01 of the Trespass By-law prohibits an accused from advancing this argument, which is functionally the same as barring a defence of due diligence entirely.

Conclusion on absolute liability

43. SCC jurisprudence is clear that section 7 of the *Charter* prohibits offences that are punishable by imprisonment and that do not allow the accused, at a minimum, to raise a due diligence defence.³⁹ Whether due to the nature of the common law tort that Siksika has codified into a statutory offence without modification, or due to the statutory language that effectively bars an accused from arguing due diligence or honest mistake, the Trespass By-law combines an absolute liability offence with the possibility of imprisonment, and therefore violates section 7 of the *Charter*.

³⁸ See para 49 *infra*.

³⁹ Hess, note 20 *supra* at [pp 915-916](#).

3. The Trespass By-law is Overbroad

44. If an impugned law or government measure which limits section 7 rights “goes too far and interferes with some conduct that bears no connection to its objective,” it will be overbroad.⁴⁰ It is only necessary that “*some* conduct” bear no relation to the law’s purpose. “In this sense, the law is arbitrary *in part*.”⁴¹

45. On the face of the Trespass By-law, and particularly the preamble, its purpose appears to be ensuring “peace and harmony”, and the “comfort and safety of residents on the reserve”. The relevant sections of the preamble read as follows:

WHEREAS the Siksika Nation from time immemorial undertook issue of trespassing to maintain Pomiikapi (peace and harmony) with enforcement by Siksika Traditional Societies; and

...

WHEREAS the Council of the Siksika Nation deems it to be expedient and in the best interests of the Siksika Nation, and necessary for the benefit, comfort and safety of residents of the Reserve and for the protection of the Reserve, to make a by-law for the purpose of regulating the conduct and activities of persons entering upon the Reserve and providing for the removal and punishment of persons trespassing on the Reserve or frequenting the Reserve for prohibited purposes;⁴²

46. These admittedly important purposes essentially accord with the purpose of the trespass tort at common law, namely: “... to ensure that breaches of the peace [are] avoided.”⁴³

⁴⁰ *R v Heywood*, [1994] 3 SCR 761 at [pp 792-793](#); *Canada (Attorney General) v Bedford*, 2013 SCC 72 at [para 101](#).

⁴¹ *Bedford*, note 40 *supra* at [para 112](#) [emphasis in original].

⁴² *Trespass By-Law*, note 1 *supra* at [preamble](#).

⁴³ *Gateway Casinos LP v BCGEU*, 2007 BCCA 140 at [paras 13-14](#).

47. The means chosen by Siksika to achieve those objectives, namely the Trespass By-law, allows for individuals to be convicted for trespassing in the absence of any proof of fault, or of any notice that they are unwelcome on Siksika lands.

48. Dispensing with proof of fault is discussed in detail above,⁴⁴ and on its own captures conduct unrelated to its purpose of maintaining peace and harmony.

49. Dispensing with notice is accomplished by section 13 of the By-law which reads as follows:

13.01 For certainty, a Person may be found guilty of an offence under this By-law regardless of whether notice not to Trespass or not to engage in a specified activity was given or received.⁴⁵

50. A similar provision was challenged as being overly broad in *Alberta Union of Provincial Employees v Her Majesty the Queen (Alberta)*. The plaintiffs asserted that the *Critical Infrastructure Defence Act*⁴⁶ (“**CIDA**”) was overly broad in that it did not require notice that a potential offender was not to enter “essential infrastructure.” Alberta relied on the decision in *R v SA*⁴⁷ which previously determined that the *Trespass to Premises Act*⁴⁸ was not overly broad. In the context of a motion to strike for failing to disclose a reasonable cause of action brought by Alberta, the Court found that:

...the provisions of the *Trespass to Premises Act* are not the same as the *CIDA*. Whereas the *Trespass to Premises Act* contains a notice provision, the *CIDA* does not. Section 2(1) of the *Trespass to Premises Act* provides that a person shall not “trespass on premises with respect to which that person has had notice not to trespass”. The *CIDA* contains no similar provision. The absence of a notice

⁴⁴ See paras 25-27 *supra*.

⁴⁵ *Trespass By-law*, note 1 *supra* at [s 13.01](#).

⁴⁶ [SA 2020, c C-32.7](#).

⁴⁷ [2012 ABQB 311](#).

⁴⁸ [RSA 2000, c T-7](#).

provision is potentially significant and could enable a Court to come to a different conclusion regarding the nature of the *CIDA* and whether it is overly broad.⁴⁹

51. The Trespass By-law captures the conduct of innocent persons who have not been made aware that they are unwelcome, and who make every attempt to ensure that they are maintaining the peace and harmony of the reserve. In the case of Mr. Morgan, there is no evidence that anyone on the reserve even noticed that he was allegedly there, despite the alleged trespass having occurred in broad daylight. Certainly no one complained until he posted the videos on YouTube. Further, there is no evidence that Mr. Morgan would not have left immediately were he asked to, or that he would not have avoided areas with signage or notices that restrict entry.

4. The Trespass By-law is not a reasonable limit of section 7

52. Siksika may argue that any infringement of Mr. Morgan's section 7 rights is justified pursuant to section 1 of the *Charter* as a reasonable limit demonstrably justified in a free and democratic society. The onus is on Siksika to establish justification on a balance of probabilities with "cogent and persuasive evidence".⁵⁰ The analytical framework for determining whether a limit is justified under section 1 is the test set out by the Supreme Court of Canada in *R v Oakes*. The *Oakes* test requires the following: (a) the impugned law must pursue a pressing and substantial objective; (b) the means chosen must be rationally connected to that objective; (c) the law must impair the right as little as possible (minimal impairment); and (d) there must be proportionality between the salutary effects of the law and its deleterious effects on the infringed right.

⁴⁹ *Alberta Union of Provincial Employees v Her Majesty the Queen (Alberta)*, 2026 ABKB 282 at [para 53](#).

⁵⁰ *R v Oakes*, [1986] 1 SCR 103 at [pp 138-140](#).

53. Life, liberty, and security of the person are “basic to our conception of a free and democratic society, and hence are not easily overridden by competing social interests.”⁵¹ *Obiter dicta* from the SCC suggest that such a scenario could only ever occur in extreme conditions, such as war, plague or natural disaster.⁵² No such scenario applies to the case at bar.

54. Assuming that the By-law pursues a pressing and substantial objective (protecting peace, harmony, and resident safety on Siksika lands), it fails at the minimal impairment stage of the *Oakes* test. The By-law is not tailored to impair Mr. Morgan’s (or others’) liberty as little as possible. Less impairing alternatives exist and are used in provincial trespass statutes across Canada. While Siksika does not have the jurisdiction to define the meaning of “trespass”, it does have the ability to (1) exclude imprisonment as a possible penalty and (2) include a notice requirement similar to what exists in every provincial trespass statute. With regard to the latter, Siksika did the opposite, choosing instead to include an express provision that notice is not required to sustain a conviction for trespass. The effect of this is that individuals may be found guilty of trespass without ever being made aware that they were in trespass to begin with, capturing the conduct of the morally innocent as well as the intentional offender. Siksika’s choice to codify an absolute liability common law tort without these safeguards is not minimally impairing.

55. Finally, the deleterious effects outweigh any salutary ones. The By-law penalizes by imprisonment legitimate activities such as journalism, public commentary, and

⁵¹ *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9 at [para 66](#); see also *Malmo-Levine*, note 12 *supra* at [paras 94-99](#).

⁵² *Re BC Motor Vehicle Act*, note 10 *supra* at [para 85](#).

visitation to apparently open areas of the Reserve (including cemeteries and memorials), without materially advancing resident safety beyond what notice-based or fault-based provisions could achieve. The balance tips decisively against the By-law.

RELIEF SOUGHT

56. That a person cannot be convicted of an offence under an unconstitutional law is a cornerstone of Canadian constitutional law.⁵³ For this reason, Mr. Morgan asks this Court to dismiss or, in the alternative, stay the trespassing charges before the Court pursuant to section 24(1) of the *Charter*.

⁵³ *R v Big M Drug Mart Ltd*, [1985] 1 SCR 295 at [para 38](#).

AUTHORITY RELIED UPON

LEGISLATION

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

Critical Infrastructure Defence Act, SA 2020, c C-32.7.

Indian Act, RSC 1985, c I-5.

Petty Trespass Act, RSA 2000, c P-11.

Petty Trespass Act, RSNL 1990, c P-11.

Protection of Property Act, RSNS 1989, c 363.

Provincial Offences Procedure Act, RSA 2000, c P-34.

Siksika Nation Offences Procedures By-law No 2024-12, Siksika Nation in Treaty #7.

Siksika Nation Trespass By-law No 2021-01, Siksika Nation in Treaty #7.

The Trespass Act, CCSM c T156.

The Trespass to Property Act, SS 2009, c T-20.2.

Trespass Act, RSBC 2018, c 3.

Trespass Act, RSNB 2012, c 117.

Trespass to Property Act, RSO 1990, c T.21.

Trespass to Property Act, RSPEI 1988, c T-6.

Trespass to Premises Act, RSA 2000, c T-7.

JURISPRUDENCE

Alberta Union of Provincial Employees v Her Majesty the Queen (Alberta), 2026 ABKB 282.

Calgary (City) v Costello, 1997 ABCA 281.

Canada (Attorney General) v Bedford, 2013 SCC 72.

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

East Crest Oil Co v R, [1945] SCR 191.

Entick v Carrington, [1765] EWHC KB J98.

Fitzpatrick v Orwin, 2012 ONSC 3492.

Gateway Casinos LP v BCGEU, 2007 BCCA 140.

Peter Ballantyne Cree Nation v Canada (Attorney General), 2016 SKCA 124.

Reference re s 94(2) of Motor Vehicle Act (British Columbia), [1985] 2 SCR 486.

R v Big M Drug Mart Ltd, [1985] 1 SCR 295.

R v Brown, 2022 SCC 18.

R v Gingrich, 1958 CanLII 839 (AB SCAD).

R v Hess; R v Nguyen, [1990] 2 SCR 906.

R v Heywood, [1994] 3 SCR 761.

R v Malmo-Levine; R v Caine, 2003 SCC 74.

R v Nur, 2015 SCC 15.

R v Oakes, [1986] 1 SCR 103.

R v SA, 2012 ABQB 311.

R v Wholesale Travel Group Inc, [1991] 3 SCR 154.

RDF (Litigation Guardian of) v General Insurance Co, 2004 MBCA 156.