

Motion to Dismiss – Reopening Ontario Act Violation

The defendant was charged for violating the Emergency Management and Civil Protection Act (EMCPA) for participating in a protest.

The ticket issued was fatally flawed as it did not identify the alleged offence that was committed. The defendant was charged with a failure to comply with the EMCPA, section 7.0.11(1). This section of the EMCPA is the act that declares the emergencies; it outlines to parameters, the details on who can declare orders and regulations that “sit” under the act. And section 7.0.11(1) only states the enforcement of the offence, it does not indicate what the offence is. The ticket fails to identify the actual alleged charges, offence.

From EMCPA:

Offences

7.0.11 (1) Every person who fails to comply with an order under subsection 7.0.2 (4) or who interferes with or obstructs any person in the exercise of a power or the performance of a duty conferred by an order under that subsection is guilty of an offence and is liable on conviction,

- (a) in the case of an individual, subject to clause (b), to a fine of not more than \$100,000 and for a term of imprisonment of not more than one year;
- (b) in the case of an individual who is a director or officer of a corporation, to a fine of not more than \$500,000 and for a term of imprisonment of not more than one year; and
- (c) in the case of a corporation, to a fine of not more than \$10,000,000. 2006, c. 13, s. 1 (4).

Because her charges were not properly identified the defendant put forward a motion to dismiss as there is no chance of conviction and cited the Canadian Bill of Rights section 2(c)(i).

Please note this is not the final formal court form, this is only the written statement. The court form was completed by the defended at submitted to the prosecutor (as this is provincial offences) at a later date.

I am putting forward a motion to have all the charges against me dismissed because:

1. The charges against me have not been promptly identified as the charges state an alleged violation of the Emergency Management and Civil Protection Act, section 7.0.11(1) and this pertains to offences and yet no specific offence has been identified. The alleged offences against me do not appear on my ticket, nor in my disclosure. This is a violation of my rights under the Canadian Bill of Rights section 2(c)(i) deprive a person who has been arrested or detained of the right to be informed promptly of the reason for his arrest or detention.
2. The court proceedings did not commence within the 6-month period, which is required as per section 76(1) of the Provincial Offences Act;

Limitation

76 (1) A proceeding shall not be commenced after the expiration of any limitation period prescribed by or under any Act for the offence or, where no limitation period is prescribed, after six months after the date on which the offence was, or is alleged to have been, committed.

3. This is a violation of my rights as per section 1(a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law; 2(a) authorize or effect the arbitrary detention, imprisonment or exile of any person and 2(b) impose or authorize the imposition of cruel and unusual treatment or punishment. As I was arbitrarily detained by police officers for alleged bylaw infraction and my arms were injured by the handcuffs and my property was taken by the police and damaged and/or never returned to me. Also, this is a violation of sections 1(d) freedom of speech and 1(e) freedom of assembly and association as I was engaged in a public protest.
4. There is case law that validates my right to protest, even in a time of emergency. The case of *Beaudoin v. British Columbia, 2021* ruled that public health regulations are of “no force and effect” as it’s an infringement of constitutional rights to restrict public protests as per section 2(c) and (d) of the Charter.

Beaudoin v. British Columbia, 2021

[251] Mr. Beaudoin is entitled to a part of the declaration he seeks, pursuant to ss. 24(1) and 52(1) of the Constitution Act, 1982. I declare that orders made by Dr. Henry entitled “Gatherings and Events” pursuant to ss. 30, 31, 32 and 39(3) of the PHA, including the orders of November 19, 2020, December 2, 9, 15 and 24, 2020 are of no force and effect as against Mr. Beaudoin as they unjustifiably infringe his rights and freedoms with respect to public protests pursuant to ss. 2(c) and (d) of the Charter.

<https://www.canlii.org/en/bc/bcsc/doc/2021/2021bcsc512/2021bcsc512.html?resultIndex=1>

Based on the facts stated above, there is no chance of conviction therefore I am asking the court to dismiss these charges against me.

Statement of facts that were included in affidavit and submitted with the proper court motion form:

1. Defendant was alone therefore no possible violations of COVID measures could have taken place
2. Defendant was arrested without being told what law had been broken
3. Defendant was detained, hurt with the handcuffs, property seized, glasses taken, left in the vehicle for 3 hours
4. OPIRD report after trying to rectify the false report