

(Court file no.)

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

DAVE FREEDOM

Applicant

and

OTTAWA POLICE SERVICES

Respondent

APPLICATION UNDER *Section 101 of the Courts of Justice Act, R.S.O. 1990, c. C. 43, Rule 40.01 and Rule 40.02 of the Rules of Civil Procedure.*

APPLICANT FACTUM

PART I – STATEMENT OF THE CASE:

1. The Applicant, Mr. Dave Freedom, is a Canadian Citizen who is, at all material times, alleged only to be in the lawful course and exercise of their rights under the *Canadian Bill of Rights*, namely s. 1(d) freedom of speech and s. 1(e) freedom of assembly and association.
2. The Applicant filed a judicial review of the Defendant's decision on May 9th to create a vehicle exclusion zone (Ref: *Exhibit #2: Affidavit of Dave Freedom date April 29, 2022, OPS News Announcement dated April 25, 2022*).
3. The Applicant intends to file a Statement of Claim regarding violations of his right to free speech, assembly and association without discrimination recognized and protected by the *Canadian Bill of Rights*.

4. On April 30th the Applicant attempted to drive his car to the heart of the demonstration near Parliament Hill, Ottawa where he intended to dive with the convoy and pass out flyers regarding actions that can be taken regarding mandatory vaccination passports for travel. At the intersection of Kent and Wellington Street, I encountered a cement blockade guarded by two police officers who stated that my car would not be permitted within the vehicle exclusion zone.
5. As of April 25, 2022, the Ottawa Police Service have announced to the public of their intention to enforce a “vehicle exclusion zone” for protests in the Ottawa downtown core commencing April 30, 2022 (Ref: *Exhibit #2: OPS News Announcement*). The implementation of this “vehicle exclusion zone” is intended to be implemented for all future protest in downtown Ottawa.
6. That Ottawa Police Service is acting arbitrarily and has no lawful basis in statute or common law to restrict protest by vehicle or otherwise impede the Applicant and others exercising their lawful rights.
7. The Applicant respectfully submits that the violation of the Applicant’s rights under the *Canadian Bill of Rights*, s. 1(d) freedom of speech and s. 1(e) freedom of assembly and association, is a serious issue to be tried.
8. The Applicant further submits that irreparable harm will be caused to the Applicant if an interim injunction is not granted, namely that the Applicant’s rights will be violated.
9. That the balance of convenience favours the Applicant, as the Defendants have acted without proper authority, have failed to pursue potentially appropriate political and legal remedies (including by-laws and injunctions), and have instead acted arbitrarily in violating the rights of the Applicant and others.
10. The Applicant respectfully submits that this Court should order:
 - a. An order, if necessary, abridging the time for filing and service of this Notice of Motion and the Applicant’s Factum;

- b. An interim injunction restraining the defendants, and any other person or agent of the State having notice of this injunction, from hindering, interfering with, detaining, searching, intimidating, physically obstructing or otherwise impairing the Freedom of Speech and Freedom Assembly and Association and impairing the movements of the Applicant and fellow protestors in their vehicle in the “vehicle exclusion zone” in the City of Ottawa, for ten days;
- c. Costs of this motion on a substantial indemnity basis; and
- d. Such further and other relief as this Honourable Court deems just.

PART II: SUMMARY OF THE FACTS

- 11. The Applicant, Dave Freedom, is passionate about maintaining Our Human Rights and Fundamental Freedoms in Canada. He has also experienced tremendous support from the community and mutual respect from police officers he got to know through peaceful protests at Queens Park in Toronto.
- 12. Without either notice or evidence on February 6th, 2021, Dave Freedom’s right to peacefully protest was violated when he was arrested for “common nuisance” in violation of the COVID-19 measures. With his hands behind his back in handcuffs, the Applicant was taken into custody and held for 3 hours in pain.
- 13. The Applicant’s speaker was confiscated, and his rights were further violated with unreasonable bail conditions. These conditions include, but are not limited to:
 - i. Banned from the downtown core;
 - ii. Banned from possessing sound equipment;
 - iii. Banned from holding a microphone;
 - iv. Banned from Free Speech and Assembly
- 14. The Applicant’s trial for this issue was set for March 3rd, 2022. The Applicant submitted an application to dismiss for violations of his Recognized and Protected Rights with the

Canadian Bill of Rights, 1960 s1(d) freedom of speech and s1(e) freedom of assembly and association.

15. The week before the preliminary hearing, the crown submitted pleadings and on the day of the hearing, the crown withdrew the charge.
16. With his Rights restored and his speaker now returned, Mr. Freedom intends to continue attending protests in the Ottawa downtown core in his vehicle in order to pass out flyers educating people on how they can get involved in various social actions regarding mandatory vaccinations.
17. The Applicant(s) did attend the Protest on April 30, 2022.
18. The Applicant, Dave Freedom, on April 30th, 2022 was denied access to the heart of the demonstration near downtown core of Ottawa. His intent was to drive with the convoy to pass out flyers regarding actions that can be taken regarding mandatory vaccination passports for travel.
19. ON April 30th, 2022, at the intersection of Kent and Wellington St the Applicant encountered a cement blockade guarded by two police officers who stated that his car would not be permitted within the vehicle exclusion zone under.
20. The Applicant submits that irreparable harm was caused to the Applicant, namely that the Applicant's rights were violated.
21. The Applicant(s) respectfully submits that their rights were violated under the *Canadian Bill of Rights*, s. 1(d) freedom of speech and s. 1(e) freedom of assembly and association, and is a serious issue to be tried.
22. The Defendant did interfere with the Applicant's lawful exercise of the right to Protest by:

- a. Preventing him from participating in the convoy in his vehicle and therefore stopping him from sharing his handouts to the public;
- b. Creating “vehicle exclusion zones” whereby alleged violators would have their vehicles ticketed and towed.

PART III – GROUNDS:

23. The Ottawa Police Services has no authority to close the roads under the Highway Traffic Act, s. 134.1 as they have not indicated any highway safety issues.

24. The Ottawa Police Services has no authority to prohibit vehicles from peaceful protest under the Criminal Code of Canada, Part II, s. 63(1).

25. The Ottawa Police Services has no authority to enforce a vehicle exclusion zone in this case as there is no breach of law that has occurred. Common law defines the criteria the police need to have an order to violate civil liberties to keep the peace, according to *Fleming vs Ontario*:

“As these authorities make clear, an act can be considered a breach of the peace only if it involves some level of violence and a risk of harm. It is only in the face of such a serious danger that the state’s ability to lawfully interfere with individual liberty comes into play. Behaviour that is merely disruptive, annoying or unruly is not a breach of the peace.”: see Fleming v. Ontario at para. 59.

26. The actions by Ottawa police in restricting the movements of the Applicant and other protestors will necessarily involve the Applicant having to submit to searches, including identifying their residence. These parameters of such searches are unlawful, a violation of human rights and fundamental freedoms and are arbitrary.

27. In the event that an interim injunction is not granted, the Applicant will be subject to a violation of the right to freedom of speech and assembly and association protected under the *Canadian Bill of Rights*, when attending lawful and peaceful protests in their vehicle in the

“vehicle exclusion zone”.

28. It is respectfully submitted that such harm cannot be remedied at a later stage. Indeed, the actions taken by the Defendants are clearly meant to prevent the Applicant and others from attending in their vehicle or interfering with their lawful freedom of movement where the Applicant and others are unable to access the downtown core by vehicle in order to attend a lawful protest.
29. The balance of convenience considers which party will suffer greater harm from the granting or refusal of relief pending a decision on the merits.
30. The Defendants have no information nor evidence that violence will occur, or that anything unlawful did occur, at a protest in the downtown core.
31. As such, no harm will result to the Defendants should this motion be granted.
32. Whereas, if this motion is refused, the Applicant and others will suffer far greater harm to their rights violation under the *Canadian Bill of Rights*.
33. The Applicant reserves the right to make more fulsome submissions in oral argument.

PART IV – ORDER REQUESTED:

34. The Applicant respectfully requests this Honourable Court to allow the Motion and order An interim injunction restraining the defendants, and any other person or agent of the State having notice of this injunction, from hindering, interfering with, detaining, searching, intimidating, physically obstructing or otherwise impairing the Freedom of Speech and Freedom Assembly and Association and impairing the movements of the Applicant and fellow protestors in their vehicle in the “vehicle exclusion zone” in the City of Ottawa, for ten days;

PART V – BOOK OF AUTHORITIES:

35. CASE LAW: Fleming v Ontario, 2018 ONCA 160 (CanLII), <<https://canlii.ca/t/hqg10>>, retrieved April 28, 2022

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 9th DAY OF MAY, 2022.

DAVE FREEDOM

**SUPERIOR COURT OF JUSTICE
(OTTAWA REGION)**

BETWEEN:

DAVE FREEDOM
Applicant(s)

-and-

OTTAWA POLICE SERVICE
Defendant(s)

APPLICANT'S FACTUM

Dave Freedom