

JAN 10 24 KA

Court File No:

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

RANDY HILLIER

Appellant

and

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF ONTARIO

Respondent

NOTICE OF APPEAL

THE APPELLANT (APPLICANT ON THE APPLICATION) APPEALS to the Court of Appeal from the judgment of Justice Callaghan dated November 22, 2023, made at Toronto Ontario (the “Decision”). The Decision dismissed the Appellant’s Application challenging the constitutionality of regulations which prohibited Ontarians from attending peaceful protests in April through June of 2021.

THE APPELLANT ASKS that the judgment be set aside, and a judgment be granted as follows:

1. Declaring (pursuant to section 52(1) of the *Constitution Act, 1982*) that section 1(1) of Schedule 1 of the Ontario Regulation 265/21 (*Stay-at-Home-Order*) unjustifiably infringed freedom of assembly guaranteed under section 2(c) of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”) and therefore was of no force and effect.
2. Declaring (pursuant to section 52(1) of the *Constitution Act, 1982*) that section 1(1)(c) of Schedule 4 of Ontario Regulation 82/20 (*Rules for Areas in Stage 1*) and any related amendments established under the *Reopening Ontario Act* unjustifiably infringe the

freedom of peaceful assembly guaranteed under section 2(c) of the *Charter* and therefore was of no force and effect.

THE GROUNDS OF APPEAL are as follows:

1. Callaghan J. erred in law by finding that the challenged regulations could be justified under section 1 of the *Charter*. Callaghan J. erred in his application of the test set out in *R. v. Oakes*, [1986] 1 SCR 103 (“*Oakes*”), including by:
 - a. failing to recognize that a complete ban on Charter protected activity is subject to a more onerous test for demonstrable justification at the minimal impairment and proportionality branches of *Oakes*;
 - b. misinterpreting what applicable caselaw terms a “complete ban” on a *Charter* protected activity, and
 - c. considering other permitted in-person settings which were technically available to the Appellant as support for the proposition that the ban at issue was not a “complete ban” on a *Charter*-protected activity, namely protesting.
2. Callaghan J. erred in law by upholding a hierarchy of rights whereby outdoor in-person religious gatherings, protected under *Charter* section 2(a) were permitted, but outdoor in-person protests, protected under *Charter* section 2(c), were simultaneously not permitted, without evidence showing protests carried greater risks.
3. Such further and other grounds as counsel may advise and this Court may permit.

THE BASIS OF THE APPELLATE COURT’S JURISDICTION IS:

1. The Decision is a final order disposing of the issue of whether Ontario’s gathering restrictions are unconstitutional. Pursuant to s. 6(1)(b) of the *Courts of Justice Act*, RSO

1990, c C.43, an appeal from a final order of the Superior Court of Justice lies to the Court of Appeal.

2. Leave is not required to appeal a final order of the Superior Court.

DATED THIS 22nd day of December 2023



Christopher Fleury
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Attorney General of Ontario

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APPELLANT

-and-

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[REDACTED]

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Hatim Kheir (LSO# 79576J)

[REDACTED]

Lawyers for the Appellant, Randy Hillier