

Court File No.:

**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

APPLICATION UNDER Rules 14.05(2), 38 and 68 of the *Rules of Civil Procedure*, RRO 1990, Reg 194 and Sections 2(1) and 6(1) of the *Judicial Review Procedure Act*, RSO 1990, c J.1.

**NOTICE OF APPLICATION TO DIVISIONAL COURT FOR JUDICIAL REVIEW**

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION for judicial review will come on for a hearing before the Divisional Court on a date to be fixed by the registrar by the method of hearing requested by the applicant, unless the court orders otherwise. The applicant requests that this application be heard in person at 155 Elm St., Sudbury, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a

lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court within thirty days after service on you of the applicant's application record, or at least four days before the hearing, whichever is earlier.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN TO IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

*TAKE NOTICE: THIS APPLICATION WILL AUTOMATICALLY BE DISMISSED* if it has not been set down for hearing or terminated by any means within five years after the notice of application was filed with the court, unless otherwise ordered by the court.

Date: July 25, 2024

Issued by: \_\_\_\_\_

Registrar

Address of court office

**TO**            **Ministry of Transportation**  
777 Bay Street, 5th floor  
Toronto, Ontario M7A 1Z8

**AND TO**     **ATTORNEY GENERAL OF ONTARIO**  
Crown Law Office – Civil 720 Bay Street  
8th Floor  
Toronto, Ontario M7A 2S9

**Respondents**

## APPLICATION

1. The Applicant makes application for:

- a. Judicial Review of the Respondent's June 28, 2024, decision not to permit the Applicant to erect signage, as described herein (the "**Sign**"), along a provincial highway (the "**Decision**").
- b. An order quashing and setting aside the Decision.
- c. An order granting the Applicant permission to erect the Sign along a provincial highway.
- d. In the alternative, an order remitting the matter back to a different employee or agent of the Respondent for reconsideration with the benefit of this Honourable Court's reasons.
- e. A Declaration that the Decision unreasonably and unjustifiably infringes the Applicant's rights under s. 2(b) of the *Canadian Charter of Rights and Freedoms* (the "**Charter**").
- f. Such further and other relief as this Honourable Court may permit.

2. The grounds for the application are:

### **The Parties**

- a. The Applicant, George Katerberg, is a resident of Thessalon, Ontario. The Applicant has strong political beliefs regarding the Provincial and Federal Governments' responses to the Covid-19 pandemic. The subject matter of these beliefs includes the safety and efficacy of Covid-19 vaccines, government policies surrounding the adoption of Covid-19 vaccines, and the statements of public officials regarding said vaccines which the Applicant believes to be untruthful.

- b. The Respondent, His Majesty the King in right of Ontario as represented by The Minister of Transportation (the “**MTO**”) is named pursuant to section 9 of the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P.27. The MTO is empowered by statute to regulate private signage along public highways. In particular, pursuant to section 34(2)(c) of the *Public Transportation and Highway Improvement Act*, R.S.O. 1990, c. P.50 (the “**Act**”), 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 MTO.

### **The Billboard**

- c. As a result of his strong political beliefs, the Applicant chose to rent space on a billboard (the “**Billboard**”). The Billboard is owned by Mr. Ken Shaw. It is located on the side of Provincial Highway 17, east of the Town of Thessalon Ontario, near Walker Road. The Billboard is an approximately 20-minute drive from the Applicant’s residence. The Applicant paid for the use of the Billboard for one year. He paid the entire amount of the rental up-front and prior to the erection of any signage.
- d. On or about March 1, 2024, signage was first posted onto the Billboard by the Applicant with the assistance of Mr. Shaw (the “**Initial Sign**”).
- e. The top of the Initial Sign included the text: “THEY KNOWINGLY LIED ABOUT SAFETY AND STOPPING TRANSMISSION” [sic]. The bottom included the additional text: “CANADIANS DEMAND ACCOUNTABILITY”. The middle of the Initial Sign included the portraits of six prominent and well-known public figures, namely: Prime Minister Justin Trudeau; Deputy Prime Minister Chrystia Freeland; leader of the Federal New Democratic Party Jagmeet Singh; Ontario Premier Doug

Ford; Chief Public Health Officer of Canada Theresa Tam; and former Chief Medical Advisor to the President of the United States Anthony Fauci.

- f. The Initial Sign also included a logo designed by the Applicant (the “**Logo**”). The Logo is essentially two claw hammers intersecting, with a Canadian flag overlaid. The Applicant’s inspiration in designing the Logo was the album art for the popular album The Wall by Pink Floyd.
- g. Unbeknownst to the Applicant, the claw hammer image from Pink Floyd’s The Wall was appropriated and used by an American white supremacist music group in the late eighties and/or early nineties.
- h. On or about March 13, 2024, the Billboard’s owner, Mr. Shaw, was first contacted by [REDACTED] was at all material times a Corridor Management Officer of the Corridor Management/Operations Division of the MTO and acting in that capacity.
- i. [REDACTED] informed Mr. Shaw that the Logo was a symbol of white supremacy and that it needed to be taken down pursuant to MTO policies surrounding the promotion of hatred. Further, a revised version could only be put up with the advanced approval of the MTO.
- j. Mr. Shaw quickly informed the Applicant of the conversation with [REDACTED]. The Applicant immediately contacted [REDACTED] himself. [REDACTED] reiterated to the Applicant the content of his previous conversation with Mr. Shaw.
- k. The Initial Sign was quickly taken down by the Applicant and Mr. Shaw pursuant to the MTO’s request.

- l. By email dated June 18, 2024, the Applicant wrote to [REDACTED] with a new proposed Sign. The Sign was identical to the Initial Sign with the notable exception that the Logo was removed and replaced with a Canadian flag cropped into a circle. The Applicant proposed to [REDACTED] that the Sign be erected onto the Billboard.

### **The Decision**

- m. The Decision was communicated to the Applicant by email dated June 28, 2024. The email states that:

“...the decision has been made not to permit the installation of your proposed billboard on a provincial highway in Ontario. The message on the billboard may be seen as promoting hatred or contempt for the individuals pictured on the billboard which may violate certain policies regarding advertising.”

- n. The Decision provides no further reasons as to why the Sign was not permitted to be erected onto the Billboard.
- o. The Decision does not specify which specific “policies regarding advertising” the Sign may be in violation of.
- p. However, Section 5.7.1 of the *Ontario Highway Corridor Management Manual* states:

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.

- q. The Sign does not promote violence, hatred, or contempt.
- r. Further, the Sign does not target any “identifiable group”, as defined in Section 5.7.1. To the extent that the six well known public figures featured on the Sign form a group at all, it is on the basis of their collective response to the Covid-19 pandemic in their political and/or professional capacity.

- s. The individuals pictured on the Sign are all highly recognizable and influential public officials. Their political and professional actions in response to Covid-19 are the subject of legitimate public expression and debate.
- t. The content and subject matter of the Sign are matters of legitimate public debate. They constitute expression for the purposes of political discourse, truth-seeking and self-fulfilment, values which lie at the core of the *Charter's* section 2(b) protection of the freedom of expression.
- u. The content and subject matter of the Sign are matters of deep personal importance to the Applicant. The Applicant witnessed many Canadians experiencing serious health consequences, including death, as a result of taking Covid-19 vaccines. This included the Applicant's brother and father, each of whom suffered a stroke following a Covid-19 vaccine booster dose.
- v. What the Applicant witnessed regarding the safety of Covid-19 vaccines contrasted strongly with the statements of elected officials, particularly those pictured on the Sign, as well as reports in the mainstream media. The Applicant's motivation for erecting the Sign is to raise awareness, spark a public discussion on these issues, and ultimately hold elected leaders and public officials accountable.
- w. The Decision was an exercise of statutory discretion pursuant to the *Act*.
- x. The Decision is incorrect as it:
  - i. failed to recognize that it limited the Applicant's *Charter* protected freedom of thought, opinion, belief and expression and the related *Charter* protection of the passing public's "right to hear";
  - ii. failed to identify the scope of those *Charter* protections;

- iii. failed to identify any appropriate framework of analysis; and
  - iv. failed to engage in any balancing of the *Charter* protections and the relevant objectives of the *Act*.
- y. Further, the Decision is unreasonable as it:
- i. lacks transparency where it relies on “certain policies regarding advertising” but does not specify which policies;
  - ii. is not justified by the grounds on which it purports to be justified;
  - iii. does not decide whether or not the Sign actually promotes hatred but relies on the assumption that it does;
  - iv. does not decide whether or not the Sign violates any MTO policy but relies on the assumption that it does;
  - v. employs a flawed and incoherent reasoning process;
  - vi. employs an unreasonable chain of analysis; and
  - vii. fails to proportionately balance the relevant objectives of the *Act* while affecting *Charter* protections as little as reasonably possible.
- z. The approval of the Applicant’s June 18, 2024, request to erect the Sign is the only correct and reasonable outcome. Remitting the case back to the MTO for further consideration would serve no useful purpose.
- aa. Such further and other grounds as this Honourable Court may permit.

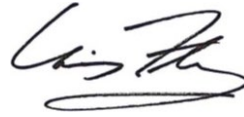
3. The following documentary evidence will be used at the hearing of the application:

- a. The affidavit of George Katerberg.
- b. The affidavit of Ken Shaw.



c. The affidavit of Selena Bird.

July 25, 2024.

A handwritten signature in black ink, appearing to read "Chris Fleury".

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**CHARTER ADVOCATES CANADA**

[REDACTED]

**Christopher Fleury** LSO#: 64785L

[REDACTED]

**Darren Leung** LSO#: 87938Q

[REDACTED]

**GEORGE KATERBERG**

APPLICANT

**-and-**

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

Court File No.:

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**SUPERIOR COURT OF ONTARIO  
DIVISIONAL COURT**  
at Sudbury

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**NOTICE OF APPLICATION**

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[REDACTED]

**Christopher Fleury** LSO#: 64785L

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