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City of Calgary
Law Department
P.O. Box 2100, Stn. M, /190
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BY FAX: 403-268-5900

Attention: Paul Tolley, Q.C.

Dear Sir:

Re: Artur Pawlowski and Street Church Volunteer Trespass Allegations

I have been retained to act on behalf of Artur Pawlowski, Bogdan Stobiecki, Dave Hughes, Maurice Boyer, Migael Serrano and Shelly Digout in relation to notices issued by the City of Calgary purportedly pursuant to the *Petty Trespass Act* and charges laid by the City of Calgary pursuant to the *Trespass to Premises Act* all arising from events that occurred on September 28, 2010.

It is in disbelief that as a barrister and solicitor in a Constitutional democracy as developed and respected as Canada's I am writing to seek redress for the treatment that my clients have been subjected to by the actions of the municipal government of this city.

During an ongoing general election campaign, as Canadian citizens and residents of Calgary, my clients attended at the seat of municipal government, otherwise known as "City Hall", and in a completely peaceful and non-obstructive manner engaged other citizens in public discourse regarding the importance of exercising one's right to vote.

In a manner that can only be described as anti-democratic and oppressive, my clients were accosted by City of Calgary "corporate security" personnel and Calgary Police Service officers. For having engaged in no action other than speaking to and distributing political pamphlets to members of the public traversing a public concourse in the publicly accessible and non-restricted areas of the City of Calgary Municipal Building, my clients were deemed to be trespassers and forcibly removed from the premises by armed officers of the State.

Having reviewed the video footage personally, it is objectively obvious that no disturbance to the daily business of the City was caused whatsoever by my clients. All doorways and public walkways were at all times unobstructed and not one citizen was interfered with in traversing through the public concourse. In fact, until numerous combined security and police personnel attended and grouped my

clients and other volunteers who accompanied them together in order to arrest, cite and expel them from the premises, the presence of my clients distributing pamphlets could not even be fairly characterized as an "incident".

Of course, I suggest to you that this is precisely why none of my clients were warned let alone charged for any form of public disturbance. Indeed, the only apparent infraction that the security and police personnel could cite as the basis for issuing a trespass notice was a breach of a bylaw prohibiting the distribution of printed material inside the City Municipal Building.

Upon further review of the video, while one of my clients attempted to show to a corporate security officer the pamphlet entitled, "Who are you going to vote for? Think! It's your future! And Remember Your Vote Counts! Calgary General Election will be held on October 18, 2010", a copy of which is attached for ease of reference, the officer is heard suggesting that my clients should "Go to Wal-Mart...or Sears" if they want to distribute such material.

This comment at first seems comical if it were not for the fact that it is demonstrative of the level of contempt that the City of Calgary is prepared to show for a citizen's right of freedom of expression, and more particularly, the freedom to express a viewpoint that is not congruous with the prevailing viewpoint of the City administration or with the concept of "political correctness".

Sadly, it is unremarkable that a frontline security officer would be so unintelligent and disrespectful to the citizen's right to freedom of expression when his employer instructs him to enforce a bylaw, the substance of which was, in my view, irreconcilably nullified in Canadian law 20 years ago.

While I am tempted to herein commence a lecture about the "messy" nature of democracy where citizens are permitted to freely communicate ideas and peacefully challenge the State's authority without fear of arrest, imprisonment and other untoward consequences, instead I will allow the reasons of learned jurists to speak on behalf of my clients.

In 1990 in *Orchard* v. *Edmonton (City)*,[1] Madam Justice McFadyen, as she then was, sitting as a summary conviction appeal court, reviewed the various authorities on freedom of expression in respect of the posting of written political materials on municipal utility poles in the City of Edmonton. In declaring the municipal bylaw in that case to be unconstitutional, Justice McFadyen wrote:

> Stated in very general terms, it appears from these authorities that a person is entitled to use public property in the exercise of freedom of expression unless that right seriously interferes with the use of the public property by the City or other individuals. Thus, it appears that a person may make a speech in a park, may use public sidewalks for peaceful picketing, **may enter public buildings carrying placards and distributing information in the form of handbills...**
>
> [Emphasis added]

Justice McFadyen's ruling was cited with approval by the Supreme Court of Canada in *Ramsden* v. *Peterborough (City)*[2] where the unanimous Court also struck a bylaw prohibiting postering. Justice Binnie reviewed the reasons of the dissenting judge below that suggested the Supreme Court of

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[1] [1990] A.J. No. 940 (Q.B.)
[2] [1993] S.C.J. No. 87

Canada's decision in *Committee for the Commonwealth of Canada* v. *Canada* [3] only recognized the right of the citizen to use discussion and distribution of written material or carrying placards as vehicles of expression rather than the use of posters and ultimately concluded:

> With respect I do not find this distinction between using public space for leaflet distribution and using public property for the display of posters persuasive...The question should not be whether or how the speaker uses the forum, but rather **whether the use of the forum either furthers the values underlying the constitutional protection of freedom of expression...or is compatible with the primary function of the property**.
>
> [Emphasis added]

How can one possibly suggest that the passive distribution of leaflets at the City Municipal Building which encourage people to vote in the current general election and also provide details of political history in Canada are in any way incompatible with the primary function of the seat of municipal government, or that such activity does not further the values underlying s. 2(b) of the *Charter*?

Madam Justice L'Heureux-Dube's reasons in *Committee for the Commonwealth, supra*, are instructive in this regard:

> Cory J.A., now of this Court, offered a resonating endorsement of freedom of expression in R. v. Kopyto (1987), 24 O.A.C. 81. Mr. Kopyto was convicted of scandalizing the court for suggesting that the police and the courts were not independent of one [page182] another. Cory J.A. announced that "the rights granted by the Charter were not frozen at the moment of its enactment; the Charter does more than recognize and declare pre-existing rights" (p. 89). The critical role of free speech in the political context was specifically underscored, at pp. 90-91:
>
> > ... **it is difficult to imagine a more important guarantee of freedom to a democratic society than that of freedom of expression**. A democracy cannot exist without the freedom to express new ideas and to put forward opinions about the functioning of public institutions. These opinions may be critical of existing practices in public institutions and of the institutions themselves. However, change for the better is dependent upon constructive criticism. Nor can it be expected that criticism will always be muted by restraint. Frustration with outmoded practices will often lead to vigorous and unpropitious complaints. **Hyperbole and colourful, perhaps even disrespectful language, may be the necessary touchstone to fire the interest and imagination of the public, to the need for reform, and to suggest the manner in which that reform may be achieved**.
> >
> > **The concept of free and uninhibited speech permeates all truly democratic societies. Caustic and biting debate is, for example, often the hallmark of election campaigns**, parliamentary debates and campaigns for the establishment of new public institutions or the reform of existing practices and institutions. The exchange of ideas on important issues is often framed in colourful and vitriolic language. So long as comments made on matters of public interest are neither obscene nor contrary to the laws of criminal libel, citizens of a democratic state should not have to worry unduly about the framing of their expression of ideas. **The very lifeblood of democracy is the**

[3] [1991] 1 S.C.R. 139

free exchange of ideas and opinions. If these exchanges are stifled, democratic government itself is threatened.

History has repeatedly demonstrated that the first step taken by totalitarian regimes is to muzzle the media and then the individual in order to prevent the dissemination of views and opinions that may be contrary to those of the government. The vital importance of freedom of expression cannot be overemphasized. It is important in this context to note that s. 2(b) of the Charter is framed in absolute terms, which distinguishes it, for example, from s. 8 of the Charter, which guarantees the qualified [page183] right to be secure from unreasonable search. **The rights entrenched in s. 2(b) should therefore only be restricted in the clearest of circumstances.**

...

If members of the public had no right whatsoever to distribute leaflets or engage in other expressive activity on government-owned property (except with permission), then there would be little if any opportunity to exercise their rights of freedom of expression. Only those with enough wealth to own land, or mass media facilities (whose ownership is largely concentrated), would be able to engage in free expression. This would subvert achievement of the Charter's basic purpose as identified by this Court, i.e., the free exchange of ideas, open debate of public affairs, the effective working of democratic institutions and the pursuit of knowledge and truth. These eminent goals would be frustrated if for practical purposes, only the favoured few have any avenue to communicate with the public.

On the other hand, the Charter's framers did not intend internal government offices, air traffic control towers, prison cells and Judges' Chambers to be made available for leafletting or demonstrations. It is evident that the right to freedom of expression under s. 2(b) of the Charter does not provide a right of access to all property whether public or private. Such a wholesale transformation of all government property is not necessary to fulfill the Charter's purposes, or to avoid a stifling of free expression. As this Court held in R. v. Big M Drug Mart, supra, at p. 344, while the Charter should be given a broad and generous interpretation, "it is important not to overshoot the actual purpose of the right or freedom in question".

The logical compromise then is to recognize that some, but not all, government-owned property is constitutionally open to the public for engaging in expressive activity. Restrictions on expression in particular places will be harder to defend than in others. [page199]

[Emphasis added]

Unlike the weak factual record that resulted in convictions for trespass to the accused in *R.* v. *Breeden*,[4] (and recognizing the accused there was disruptively protesting with allegations of corruption as opposed to quietly distributing information) the objective reality of the foyer of the City Municipal Building in Calgary is that it is routinely used for media scrums, press conferences, artwork displays, cultural and religious ceremonies, speeches and similar types of "expressive" events. **Nothing that my clients did on September 28, 2010 was in any way inconsistent with the function or historical use of the public place in which they chose to engage the democratic process.**

[4] [2009] B.C.J. No. 2106 (C.A.)

In spite of this objective truth, Mr. Owen Key summarily declared all of my clients to be trespassers and ordered their ultimate forcible removal and two year banishment from the City Municipal Building in addition to their ultimate prosecution under Provincial trespass legislation.

That the City will readily "White Hat" a celebrity in or about the same area in which my clients were barred from engaging potential voters in a municipal election is further evidence of the apparent maliciousness with which City officials are prepared to address all issues that relate to Artur Pawlowski and his efforts toward social activism.

In all of the circumstances, and in light of the legal authorities cited herein, I am formally demanding that the City withdraw the trespass notices issued to my clients pursuant to the *Petty Trespass Act*.

Further, in respect of the charges laid pursuant to the Trespass to Premises Act, I direct your attention to section 8 of that Act which reads as follows:

> **8** Nothing in this Act extends to a case where the trespasser acted under a fair and reasonable supposition that the trespasser had a right to do the act complained of.

By operation of this section, and in light of the jurisprudence quoted above, it is my view that there is absolutely no reasonable prospect of conviction of any of my clients on the charges they are facing, and furthermore, it is difficult to reconcile how the prohibition against distributing printed material in City Hall could withstand constitutional scrutiny.

As such, I am formally demanding that the City also withdraw these charges as against my clients.

In addition, my clients are requesting a formal apology for the serious infringement of their democratic and legal rights as protected both by the *Canadian Charter of Rights and Freedoms* and the *Alberta Bill of Rights*.

To be frank, if the charges are not withdrawn, I expect that subsequent to a very lengthy trial proceeding in Provincial Court, I will receive instructions to proceed with a malicious prosecution claim against the City of Calgary to recover damages on behalf of my clients.

Further, in the event that the trespass notices are not withdrawn, I am requesting that you provide to me the express authority pursuant to which Owen Key purports to bar my clients from the Municipal Complex, and to advise of any appeal (formal or informal) or other internal remedy that you consider is available to my clients prior to their bringing judicial review proceedings in the Court of Queen's Bench.

That all of this arises out of a handful of people wishing to take an active role in challenging voter apathy should, in my view, be truly embarrassing to the administrators of a major metropolitan Canadian city. I sincerely hope that careful consideration of this correspondence will lead to good faith attempts to rectify the harms already caused and to prevent additional harm from occurring.

Yours truly,

Michael Bates
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