



Justice Centre

for Constitutional Freedoms

May 29, 2017

VIA REGULAR MAIL AND FACSIMILE: (204) 943-9851

Manitoba Public Insurance
PO Box 6300
Winnipeg, MB R3C 4A4

ATTENTION: Mr. David Burns, Manager, Licensing Services

Dear Mr. Burns,

RE: Cancellation of Personalized License Plate: "ASIMIL8" (the "Plate")

We have been retained by Nicholas Troller in regard to the above captioned matter. On April 26, 2017, you ordered him to surrender his personalized license plate "ASIMIL8".

Background

Mr. Troller is a Star Trek enthusiast. In 2015 Mr. Troller applied and paid the required fee to receive the personalized license plate "ASIMIL8". Manitoba Public Insurance ("MPI") approved his application and issued the Plate.

Mr. Troller installed the Plate on his family vehicle, along with a license plate border that stated "WE ARE THE BORG" and "RESISTANCE IS FUTILE". The Plate and accompanying border refers to the fictional Star Trek series.

While displaying the Plate over the past two years, Mr. Troller has been approached by many people commenting positively on it and asking for pictures with it. The Plate was renewed by MPI in 2016 without question or concern.

On April 27, 2017, Mr. Troller received MPI's letter dated April 26, 2017, in which you state that the Plate "is considered offensive." Your letter does not say why the Plate is "considered offensive" or by whom. It remains entirely unclear whether MPI considers the Plate to be "offensive", or whether MPI is repeating someone else's subjective feelings. You also provide no rationale or justification for MPI's arbitrary reversal of its prior position that "ASIMIL8" (assimilate) is not offensive, as demonstrated by MPI's decision to issue and re-issue the Plate two years. The meaning of the word "assimilate" has not changed between the time that Mr. Troller obtained the Plate, and the time you ordered him to surrender it, and you offer no

justification as to how a word that was approved for use on the Plate by MPI could suddenly become inappropriate and “offensive”. In your letter of April 27, 2017, you simply order Mr. Troller to surrender the Plate by May 1, 2017. You offered Mr. Troller no right of appeal, or other recourse. He therefore promptly acceded to your demand.

MPI’s government obligations concerning expression in a free society

Canada’s Constitution preserves Canada as a free and democratic society. As such, governments at all levels are required to respect fundamental freedoms, including freedom of expression as protected by section 2(b) of the *Canadian Charter of Rights and Freedoms*. Practically, this requires that when a concern is raised relating to expression, government entities such as MPI must respect free expression, and only minimally limit expression if truly necessary to meet a pressing and substantial concern. Further, MPI cannot do whatever it pleases in regard to the issuance and arbitrary rescission of license plates. As the Supreme Court of Canada stated:

In public regulation of this sort there is no such thing as absolute and untrammelled “discretion”, that is that action can be taken on any ground or for any reason that can be suggested to the mind of the administrator; no legislative Act can, without express language, be taken to contemplate an unlimited arbitrary power exercisable for any purpose, however capricious or irrelevant, regardless of the nature or purpose of the statute...¹

Your office acknowledges on its website that “[w]hile a car can say a lot about lifestyle, personality and taste, many people prefer to let their personalized licence plates speak for them.”² MPI encourages the public to express themselves on personalized plates, and invites them to make “a statement about a profession, hobby, lifestyle or interest — or your message can be just for fun”.³ Mr. Troller responded to MPI’s invitation to express himself on a personalized license plate, and he applied and paid the required fee to obtain the Plate. The Plate is protected expression under the *Charter*. Your office is under a *Charter* obligation to uphold Mr. Troller’s freedom of expression, a duty which it has failed to fulfill.

The Supreme Court has stated the following in regard to freedom of expression:

As explained in *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927, at p. 968, freedom of expression was guaranteed in the *Charter* ‘so as to

¹ *Roncarelli v. Duplessi*, [1959] SCR 121 at p. 141.

² <https://www.mpi.mb.ca/en/Reg-and-Ins/Registration/Plates/Pages/reg-plp.aspx>

³ Personalized License Plate Brochure, p. 2, available at <https://www.mpi.mb.ca/en/PDFs/PersonalizedLicencePlateBrochure.pdf>.

ensure that everyone can manifest their thoughts, opinions, beliefs, indeed all expressions of the heart and mind, however unpopular, distasteful or contrary to the mainstream'. If the repugnancy or offensiveness of an idea does not exclude it from *Charter* protection under s. 2 (b), it cannot, in itself, be sufficient to justify a limitation on expression under a s. 1 analysis. A blanket prohibition on the communication of repugnant ideas would offend the core of freedom of expression and could not be viewed as a minimal impairment of that right offensive ideas are not sufficient to ground a justification for infringing on freedom of expression.⁴

The word "assimilate", however, is not objectively offensive. In addition to the Star Trek context, there are many other non-objectionable usages of this word. A regulatory process was followed whereby Mr. Troller obtained the Plate. It is both improper and unreasonable for this process to be superseded by an unfounded statement that the Plate is "is considered offensive." Your office has taken an unreasonable, arbitrary and capricious position in cancelling the Plate.

Had you considered the matter carefully, any concern about whether the Plate is "offensive" could have been resolved by a simple explanation and a recitation of MPI's obligation to uphold *Charter* rights. Your actions in handling this matter are unjustifiable in Canada's free society.

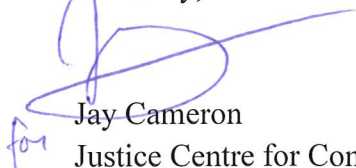
Conclusion

In our diverse, pluralistic and free society, the government, including MPI, is required to respect individuals' freedom of expression.

We request that you reinstate Mr. Troller's personalized license plate "ASIMIL8" no later than Friday, June 9, 2017, or express in writing your intention to do so, by that same date.

If by June 9, 2017, you have not reinstated the Plate, or provided us with written confirmation evidencing your commitment to doing so, our client will have no choice but to take further steps to assert his legal rights. Govern yourself accordingly.

Sincerely,



Jay Cameron
Justice Centre for Constitutional Freedoms
Counsel for Nicholas Troller

⁴ *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11 paras 50, 90.