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IN THE COURT OF APPEAL

FOR THE PROVINCE OF SASKATCHEWAN

BETWEEN

PRINCE ALBERT RIGHT TO LIFE ASSOCIATION AND VALERIE HETTRICK

APPELLANTS

AND

CITY OF PRINCE ALBERT

RESPONDENT

NOTICE OF APPEAL

TAKE NOTICE:

1. THAT the Appellants appeal to the Court of Appeal from the judgment of the Honourable Madam Justice Goebel issued on the sixth day of June, 2019.

2. THAT the Appellants appeal the Court of Queen's Bench's dismissal of their application for a Declaration pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms* ("the *Charter*") that the Respondent's denial of their application to fly their requested flag violated the Applicants' right to freedom of expression guaranteed in section 2(b) of the *Charter.*

3. THAT the sources of the Appellants' right of appeal and the court's jurisdiction to entertain the appeal are sections 7(2)(a) and 10 of *The Court of Appeal Act, 2000*, S.S. 2000 c C-42.1.

4. THAT the appeal is taken upon the following grounds:

    a. That the Respondent impaired the Applicants' right to freedom of expression guaranteed in section 2(b) of the *Charter* when it denied the Appellants'

application to fly their requested flag in a public forum created by the Respondent.

b. That a government body such as the Respondent must show that impairment of a *Charter*-protected right or freedom is reasonable and demonstrably justified in a free and democratic society. In the context of an administrative decision, a statutory decisionmaker may limit a protected right or freedom only if its decision proportionately balances the severity of the interference with the *Charter* protection against the relevant statutory/policy objectives, taking care to ensure that the *Charter* right is infringed no more than is necessary given those objectives.

c. That the findings of fact in the Court below evidence that the Respondent failed to justify the infringement of the Applicant's Charter rights in any way. The Court below found that the Respondent's decision to the deny the Appellants' request was "neither the product of a transparent process nor was it supported by intelligible reasons. In fact, no reasons were articulated to the applicants at all." See *Prince Alberta Right to Live Association et al v City of Prince Albert*, 2019 SKQB 143 at paras. 31-40.

d. That the limitation of the Applicants' *Charter*-protected freedom of expression without justification is grounds for a declaration that the Applicants' *Charter*-protected freedom was unreasonably impaired. It is the Respondent's burden to show that its restriction of a *Charter* freedom is reasonable and justified. In the absence of reasons articulating such justification the decision is *ipso facto* an unreasonable infringement – that is, an unconstitutional decision which should be remedied by the court by a declaration that a *Charter* breach occurred.

e. That the Court below instead held that the Respondent's failure to provide sufficient reasons prevented the Court from determining if the Respondent's decision was a proportionate balance between the *Charter* freedom of expression and the Respondent's municipal objectives. See *ibid* at paras 40-41. This holding ignored the burden imposed by the *Charter* on the Respondent.

f. That rather, after a fully contested hearing and with a complete factual record, the Court found that "[t]here remains no live controversy between the parties and the application [including specifically the application for a declaration that the Respondent unjustifiably infringed the Appellants' *Charter* freedom of expression] is moot." *Ibid* at para 51.

g. That this holding was an error of law, in that:

i. It failed to recognize the Respondent's constitutional burden to a justify its limitation of the Appellants' *Charter* freedom of expression, failing which such infringement is necessarily unreasonable; and

ii. It failed to recognize that the Respondent's violation of the Appellants' *Charter* freedom of expression remains a live controversy. The Appellant's claim for relief under section 24(1) of the *Charter* is not moot. There was a *Charter* infringement, and a declaration that it occurred remains an appropriate and just remedy under section 24(1). A request for a *Charter* declaration regarding a past *Charter* breach is not moot, even if a subsequent policy change that renders it impossible to remit the matter to the statutory decision-maker.

h. That permitting statutory decision-makers to infringe *Charter*-protected rights and freedoms without any redress is inconsistent with the principles of constitutionalism and a free and democratic society.

5. THAT the Appellant requests the following relief:

a. That an order setting aside the dismissal of the Applicants' application for a *Charter* declaration and declaring pursuant to section 24(1) of the *Charter* that the Respondent's denial of the Appellants' application to fly their requested flag was an unreasonable violation of the Appellants' *Charter* freedom of expression guaranteed under section 2(b) of the *Charter*;

b. That costs; and

c. That such further and other relief as this Honourable Court deems just and

equitable.

6. THAT the Appellant's address for service is:

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The lawyer in charge of this file is Marty Moore.

7. THAT the Appellants request that this appeal be heard at Saskatoon.

DATED at Prince Albert, Saskatchewan, this eighth day of July, 2019.

Lawyers for the Appellants

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