

COURT OF APPEAL FOR ONTARIO

BETWEEN:

The CITY OF THUNDER BAY, ONTARIO

(Appellant)

- and -

**MICHELLE RAINFOOT
DAVID MORRISON**

(Respondents)

APPELLANT'S / RESPONDENT'S FACTUM
(Select One)

NAME OF LAW FIRM
Address of law firm

Names of Counsel (Include First and Last Names)
Of Counsel for the Appellant / Respondent (select one)

Telephone:

Fax:

Email:

**PART I:
INTRODUCTION**

1. This case is about the **[insert a short summary of the main issue raised by this appeal]**.

**PART II:
SUMMARY OF THE FACTS [do not alter]**

2. In October 2012 the federal government introduced Bill C-35, the *Jobs and Growth Act, 2012*. The *Act* became law the following December. Since its introduction, concerns about the *Act*'s impact on Indigenous rights and environmental regulation – and about Indigenous rights and the environment in general – have become the basis for protests across Canada and abroad. Collectively, these have become known as the “Idle No More Movement”.
3. The Respondents are members of the Nishnawbe Aski First Nation, which is a party to James Bay Treaty No. 9 and the Ontario portions of Treaty No. 5. Ms. Rainfoot and Mr. Morrison each live in Thunder Bay and they are deeply connected to their First Nations community and their heritage.
4. In connection with the Idle No More Movement, the Respondents, along with other protesters, began holding weekly gatherings at Prince Arthur's Landing at Marina Park in Thunder Bay in December 2012. The purpose of these meetings was to speak out against Bill C-45 and to call attention to the approach of the federal government to the protection of Aboriginal lands and the environment.
5. Part of the protesters' message was one of support for the hunger strike of Attawapiskat Chief Theresa Spence. Chief Spence's strike was the subject of a great deal of media scrutiny and so kept the concerns of the Idle No More Movement in the public eye for its duration.
6. After Chief Spence ended her hunger strike, the protesters felt that there needed to be a continued presence that reflected the ongoing urgency of the issues regarding Bill C-

45 and development on Aboriginal lands. Inspired by the Occupy Movement, they felt that a continuous encampment would illustrate the seriousness of their concerns, and provide a permanent space to allow the voices of First Nations and other concerned individuals to be heard through the media. The Respondents and fellow protesters began occupying Prince Arthur's Landing since January 24, 2013.

7. The continuous encampment raised the concerns of the Appellant. On March 1, 2013, citing issues of safety to the protestors and the public, public access to and enjoyment of the park and damage to the park, the City of Thunder Bay (City) issued Trespass Notices to everyone who was present in the park, and posted these notices on unoccupied tents. The Trespass Notice states:

You are hereby given notice that you are prohibited from engaging in the following activities at Prince Arthur's Landing and in any other City of Thunder Bay park:

- 1) Installing, erecting or maintaining a tent, shelter or other structure;
- 2) Using, entering or gathering in the Park between the hours of 12:01 a.m. and 5:30 a.m.

8. The Respondents brought an application seeking an injunction against the enforcement of the Trespass Notice. The trial judge, Harcourt J., considered this application and found that:

- a) the Trespass Notice violates s. 2(b) of the *Charter of Rights and Freedoms*;
- b) the Trespass Notice violates s. 2(c) of the *Charter*; and
- c) the Trespass Notice cannot be saved under s.1 of the *Charter*.

9. Turning to remedy, Harcourt J. granted the injunction in part, ordering the City not to enforce the Trespass Notice insofar as it required the dismantling of the library yurt and the speakers' lodge.

10. The City has appealed this decision and is challenging the decision on the three Charter issues and on the issue of remedy. The Respondents are counter-appealing the fourth issue and seeking an injunction against acting on any aspect of the Trespass order.

11.

[This is where you will need to summarize the trial judge's decision, by explaining how Justice Lockup decided on each of the four Charter issues. All quotes should be indented and single-spaced (like this paragraph). They must be referenced immediately after the paragraph, noting the page **or** paragraph number of the quote.]

PART III

GROUND OF APPEAL

ISSUE ONE: DOES THE TRESPASS NOTICE VIOLATE THE RESPONDENTS' S. 2(B) FREEDOM OF EXPRESSION?

12. [Insert your firm's argument on this issue. Refer to the explanatory notes, How to Prepare a Factum, for information on how to refer to cases and how to structure your argument.]

ISSUE TWO: DOES THE TRESPASS NOTICE VIOLATE THE RESPONDENTS' S. 2(C) FREEDOM OF PEACEFUL ASSEMBLY?

13. [Insert your firm's argument on this issue. Refer to the explanatory notes, How to Prepare a Factum, for information on how to refer to cases and how to structure your argument.]

ISSUE THREE: IS THE TRESPASS NOTICE SAVED UNDER S. 1 OF THE CHARTER?

14. [Insert your firm's argument on this issue. Refer to the explanatory notes, How to Prepare a Factum, for information on how to refer to cases and how to structure your argument.]

ISSUE FOUR: DID HARCOURT J. ERR IN FINDING THAT GRANTING THE INJUNCTION AGAINST THE REMOVAL OF THE LIBRARY YURT AND SPEAKERS' LODGE WAS A JUST AND APPROPRIATE REMEDY?

15. [Insert your firm's argument on this issue. Refer to the explanatory notes, How to

Prepare a Factum, for information on how to refer to cases and how to structure your argument.]

APPLICATION TO THIS CASE

16. [Insert a concluding statement, summarizing how the preceding arguments support the order you have requested (to grant or deny an exemption to the Appellants).]

**PART IV
ORDER REQUESTED**

17. It is respectfully requested that [Explain what it is that you are requesting – whether you are requesting that the appeal be granted or dismissed.]

ALL OF WHICH is respectfully submitted by

Name of all four counsel
Of Counsel for the Appellant/Respondent (**Select One**)

DATED AT (LOCATION) this ____th Day of **(month)**, **(year)**

APPENDIX A

AUTHORITIES TO BE CITED

[List all the cases and/or statutes that you have referred to in your factum using proper legal citation. Refer to the explanatory notes, *How to Prepare a Factum*, for formatting guidelines.]