

CV-10-404640
Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**CORPORATION OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION, the
CANADIAN LABOUR CONGRESS, ABBY DESHMAN,
and NATHALIE DES ROSIERS**

Applicants

- and -

**TORONTO POLICE SERVICE,
AND ONTARIO PROVINCIAL POLICE**

Respondents

**APPLICATION UNDER Rule 14.05(3) of the *Rules of Civil Procedure*
and the *Canadian Charter of Rights and Freedoms*, ss. 2(b), 2(c),
2(d) and 7 and *Constitution Act, 1982*, s. 52.**

NOTICE OF APPLICATION

TO THE RESPONDENT

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

THIS APPLICATION will come on for a hearing at Toronto, 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 this court office, and you or your lawyer must appear at the hearing.

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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 court office where the application is to be heard as soon as possible, but at least two days before the hearing.

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

Date: *June 9, 2010* Issued by

[Signature]
Registrar
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(M. Brentan)

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APPLICATION

1. THE APPLICANTS MAKE APPLICATION FOR:

- a. A declaration that the use of the "alert" function on sonic cannons and the "communications" function at a sound level above that prescribed by Ontario occupational health and safety legislation by the Respondents their respective agents, employees and persons acting under their instructions, or instructions of either of them, without prior approval by the Solicitor General violates Regulation 926 of the *Police Services Act* ("Equipment and Use of Force").
- b. An order restraining the Respondents, their respective agents, employees and persons acting under their instructions, or instructions of either of them, from using the "alert" function on sonic cannons and the "communications" function at a sound level above that prescribed by Ontario occupational health and safety legislation without prior approval by the Solicitor General pursuant to Regulation 926 of the *Police Services Act* and then only in strict compliance with Regulation 926 of the *Police Services Act*.
- c. A declaration that the use of the "alert" function on Long Range Acoustic Devices ("sonic cannons") in policing and/or providing security during the 2010 Group of Twenty ("G-20") Summit violates the freedoms of expression, peaceful assembly and association protected under ss. 2(b), (c), and (d) of the *Canadian Charter of Rights and Freedoms* ("*Charter*") and that this violation is not saved under s. 1 of the *Charter*.
- d. A declaration that the use of the "communications" function on sonic cannons at a sound level above that prescribed by Ontario occupational

health and safety legislation in policing and/or providing security during the 2010 Group of Twenty ("G-20") Summit violates the freedoms of expression, peaceful assembly, and association protected under ss. 2(b), (c), and (d) of the *Charter* and that this violation is not saved under s. 1 of the *Charter*.

- e. A declaration that the use of the "alert" function on sonic cannons in policing and/or providing security during the 2010 G-20 Summit violates the right to security of the person protected under s. 7 of the *Canadian Charter of Rights and Freedoms* ("*Charter*") in a way that is not in accordance with principles of fundamental justice and that is not saved under s. 1 of the *Charter*.
- f. A declaration that the use of the "communications" function on sonic cannons at a sound level above that prescribed by Ontario occupational health and safety legislation in policing and/or providing security during the 2010 G-20 Summit violates the right to security of the person protected under s. 7 of the *Canadian Charter of Rights and Freedoms* ("*Charter*") in a way that is not in accordance with principles of fundamental justice and that is not saved under s. 1 of the *Charter*.
- g. An order restraining the Respondents, their respective agents, employees and persons acting under their instructions, or instructions of any of them, from using the "alert" function on sonic cannons and the "communications" function at a sound level above that prescribed by Ontario occupational health and safety legislation in policing and/or providing security during the 2010 G-20 Summit.
- h. Their costs of this application, and

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- i. Such further and other relief as counsel may advise and this Honourable Court may permit.

2. THE GROUNDS FOR THE APPLICATION ARE:

Applicants

1. The Applicant Corporation of the Canadian Civil Liberties Association ("CCLA") is a national organization that was constituted in 1964 to protect and promote respect for and observance of fundamental human rights and civil liberties. The CCLA has several thousand paid supporters, and a wide variety of persons, occupations, and interests are represented in its national membership.
2. The CCLA's advocacy work aims to defend and ensure the protection and full exercise of human rights and civil liberties. The CCLA historically has taken principled positions to fight against abuse of authority and threats to democratic rights. The organization has consistently upheld the right of Canadians to associate freely and dissent politically without unwarranted force, threats, harassment, or surveillance from authorities. In courts and at legislative committees, the CCLA has fought for the right of Canadians to express themselves freely, even if the thoughts and opinions being expressed are different from, or offensive to, others.
3. The Applicant Canadian Labour Congress ("CLC") is the umbrella organization for dozens of affiliated Canadian and international unions, as well as provincial federations of labour and regional labour councils. The Canadian Labour Congress represents the human rights and interests of more than three million affiliated workers in every imaginable occupation from coast to coast to coast.

4. Both the CCLA and CLC have a genuine interest in the issues raised in this Application as they are directly connected to the organizations' mandates. Both organizations also have developed substantial expertise in relation to the issues raised in this Application through their advocacy, public education and research.
5. CCLA has volunteer members scheduled to monitor the interaction between police and demonstrators. The organization is concerned for the safety of its volunteer human rights monitors likely to be exposed to the operation of the sonic cannons.
6. CLC has organized a protest march and as such is concerned about the safety of its members engaged in the demonstration
7. The Applicant Nathalie Des Rosiers is General Counsel of the CCLA and Executive Director of the Canadian Civil Liberties Education Trust, as a result of which she has a legal interest in the issues raised in this Application.
8. The Applicant Abby Deshman is Project Director at the CCLA. She has a legal interest in the issues raised in this Application due to her work with the CCLA. She is organizing a team of volunteer human rights monitors to attend protests occurring during the G-20 Summit to monitor police conduct and any violations of *Charter* rights and freedoms. She will also herself be a human rights monitor for the CCLA.

G-20

9. The G-20 is a group of finance ministers from countries around the world and central bank governors who meet to discuss international economic issues. This year's initial G-20 Summit will be held in Toronto on June 26-27, 2010. It follows the G-8 summit of leaders from eight of the world's

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industrialized countries which will be held in Muskoka on June 25-26, 2010.

10. Security for the Summit is being managed by the Integrated Security Unit, a joint security team led by the Royal Canadian Mounted Police in partnership with the Toronto Police Service, the Ontario Provincial Police, the Canadian Forces, and Peel Regional Police. However, each police force will retain an effective enforcement capacity within their jurisdiction.

Sonic Cannons

11. In preparation for the G-20 Summit, the TPS purchased four sonic cannons that it intends to use at large gatherings before, during and after the 2010 G-20 Summit in Toronto. The purchase includes three handheld units that broadcast at 135 dB, and a fourth vehicle-mounted unit which reaches 143 dB. The OPP also has four sonic cannons.
12. Sonic cannons were developed following the bombing of the USS Cole in Yemen in October 2000 to protect American naval warships. The devices have distinct "communications" and "alert" functions. The former blasts loud, pre-recorded human-voice messages urging crowds to disperse. The "alert" function is used to direct a high-pitched piercing sound at a target. Sonic cannons are a non-lethal weapon that can be set to induce pain and can cause permanent damage to a person's hearing. Very little independent research has been conducted to date on the harmful effects associated with the use of sonic cannons.
13. Sonic cannons have been employed in Iraq, where United States forces deploy them for crowd control, area denial, and clearing buildings. They have also been used to deter maritime piracy against both military and commercial vessels, and have been used by Japanese whalers to repel

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anti-whaling activists. While the "communication" function on sonic cannons had previously been used by police in the United States to give information to large crowds on a number of occasions, the 2009 G-20 Summit in Pittsburgh was the first time that the "alert" function had been deployed in a civilian setting.

14. It has been reported that the RCMP's use of sonic cannons is limited to marine operations. In news reports, the RCMP has confirmed that it does not use sonic cannons as a crowd-control tool. The RCMP also stated that an internal RCMP review did not support the use of sonic cannons as crowd-control devices.
15. Similarly, in response to pressure from civil liberties groups, the Vancouver Police Department undertook not to use the "alert" function on its sonic cannons during the recent Vancouver Olympics.
16. The OPP has not announced its intentions in relation to the use at the G-20 Summit of its recently purchased sonic cannons. The TPS has not disclosed the protocol for the deployment of their four recently purchased units.

Breach of Statute and Regulation

17. *The Police Services Act* sets out the broad statutory duties of OPP and municipal police officers, including *inter alia* preserving the peace and preventing crime. Regulation 926 "Equipment and Use of Force" regulates the use of equipment and the use of force by police officers in carrying out their duties. Section 14 of Regulation 926 prohibits members of a police force from using a weapon other than a firearm on another person unless the conditions set out in subsection 14(1) are met. These conditions include the requirement that the type of weapon at issue has been

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approved for use by the Solicitor General. Subsection 14(1) also requires that the weapon conform to technical standards established by the Solicitor General and that the weapon be used in accordance with standards established by the Solicitor General.

18. The term "weapon" is not defined in the Regulation, nor in the *Police Services Act*. However, the proper interpretation of the term, consistent with its use in other statutory contexts, would encompass the "alert" function on the sonic cannon and the "communications" function when used at a sound level above that prescribed by Ontario occupational health and safety legislation.
19. As a result, the use of the "alert" function on sonic cannons and their "communications" function when used at a sound level above that prescribed by Ontario occupational health and safety legislation by the Respondents without prior approval by the Solicitor General breaches Regulation 926 of the *Police Services Act*. The use of the sonic cannons in this manner must comply with the conditions for the use of weapons set out in Regulation 926.

Charter Violations

20. Sections 2(b), 2(c) and 2(d) of the *Charter* guarantee the freedoms of expression, peaceful assembly, and association, respectively. These freedoms include the right to peacefully assemble and engage in expressive activity on public property without the fear of being subject to threats to one's health and safety. The expression at issue in this matter would include lawful expression with respect to the G-20, the policies and actions of the government of Canada, international affairs, and the actions

of International governmental and economic institutions. Such expressive activity lies at the core of freedom of expression under the *Charter*.

21. Any use by the Respondents of the "alert" function on sound cannons and of the "communications" function at a sound level above that prescribed by Ontario occupational health and safety legislation would have both the purpose and effect of restricting the freedoms of expression, peaceful assembly, and association by driving individuals away from the public property where the sonic cannons are deployed. The use of the sonic cannons in this manner would thereby restrict and/or completely deprive affected individuals of their freedoms of expression, peaceful assembly and association while the sound cannons are being deployed. In addition, the threat of using the sound cannons in the manner described above, or intentionally leaving open the possibility of their use, violates the freedoms of expression, peaceful assembly, and association through its chilling effect. This chilling effect deters individuals from engaging in expressive activity and peaceful assembly and association out of fear of endangering their own health and safety if the sound cannons were to be deployed. Both the CCLA and the CLC have members who wish to engage in such activity.

22. Section 7 of the *Charter* guarantees the right to security of the person and the right not to be deprived thereof except in accordance with fundamental justice. The right to security of the person includes protections against threats to an individual's health and safety. The use of the sound cannons' "alert" function and/or their "communications" function at a sound level above that prescribed by Ontario occupational health and safety legislation deprives individuals within range of the right to security of the person by inflicting physical pain and potential hearing loss on

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them. This deprivation is not in accordance with principles of fundamental justice.

23. These violations of ss. 2(b), 2(c), 2(d) and 7 of the *Charter* do not constitute reasonable limits demonstrably justified in a free and democratic society pursuant to s. 1 of the *Charter*.

Statutory Provisions

24. *Canadian Charter of Rights and Freedoms*, including ss. 1, 2(b), 2(c), 2(d) and 7.
25. *Constitution Act, 1982*, s. 52;
26. The *Police Services Act* and Regulation 926 under that Act.
27. *Rules of Civil Procedure*, Rule 14; and
28. Such further and other grounds as counsel may advise and this Honourable Court may permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Application:

- a. The affidavit of Nathalie Des Rosiers;
- b. The affidavit of Abby Dushman;
- c. The affidavit of Ken Georgetti;

- d. Such further and other documentary evidence as counsel shall advise and this Honourable Court may permit.

Date of issue:

June 9, 2010

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