

**PROVINCIAL COURT OF ALBERTA
AT EDMONTON**

BETWEEN:

JOSEPH AARON HARMS

Applicant

- and -

HER MAJESTY THE QUEEN

Respondent

NOTICE OF CONSTITUTIONAL ARGUMENT

TAKE NOTICE THAT the Applicant will apply for a remedy under s. 24(1) of the *Charter of Rights and Freedoms*, being a stay of proceedings, damages, and an award of solicitor/client costs. These remedies are just and appropriate in the circumstances

The Applicant will also apply for a remedy under s. 24(2) of the *Charter of Rights and Freedoms* to exclude evidence because its admission could bring the administration of justice into disrepute.

Those remedies are being sought because of the following *Charter* infringements:

- a. The police unlawfully arrested and detained the Applicant, in breach of s. 7 and s. 9 of the *Charter*.
- b. The police unlawfully attempted to gain access to the Applicant's residence by breaking his door, in breach of s. 7 and s. 8 of the *Charter*.
- c. The police unlawfully entered the Applicant's residence, in breach of s. 7 and s. 8 of the *Charter*.
- d. The police used excessive force on the Applicant by using pepper spray, in

- breach of s. 7 and s. 12 of the *Charter*.
- e. The police threatened to kill the Applicant, in breach of s. 7 and s. 12 of the *Charter*.
 - f. The police unlawfully searched the Applicant's residence and damaged the Applicant's residence after the Applicant was arrested, in breach of s. 8 of the *Charter*.
 - g. The police provided misleading and false statements by omission and commission in their notes and reports, in breach of s. 7 of the *Charter*.
 - h. The Applicant has not been tried within a reasonable time, in breach of s. 11(b) of the *Charter*.

Further particulars of the infringements are as follows:

1. On June 19, 2013, the Edmonton Police Service received a phone call from Dan Kasko. Kasko told the police that his friend in Ontario, John Dance, told him to call police because the Complainant, Kayla Roberts, sent him a text message with a photo of her black eye and told him that she locked herself in her room and wanted Dance to call police.
2. The police then attended the residence where Roberts and the Applicant resided. The police knocked on the door and Roberts answered and came out to speak to the police. The police then told Roberts to go down the hall so they could speak to her in isolation. The police did not observe any injuries, bruising, or torn clothing on Roberts. Roberts told the police that she did not send a text message to John and there was no violence that day.
3. At this time, the Applicant started playing loud music because he thought that Roberts went out to buy groceries, since Roberts does not like loud music in the residence.
4. The police then told Roberts that they needed to enter the residence "to speak with HARMS and verify if any assault or disturbance took place". The police attempted to open the door; however, the door was locked. A police officer then

drew his/her gun and told Roberts to kick down the door. Roberts complied with the police direction and started kicking the door. The Applicant not knowing who was on the other side, warned the attackers that if the door breached, he would use the bear spray. The door then opened slightly after Roberts kicked it a few times. The Applicant then sprayed the bear spray through the ajar door and then barricaded the door. The police did not identify themselves as police officers during this ordeal.

5. The police did not write in their notes or reports that they drew their gun and ordered Roberts to kick down the door. Cst. Gavins in her report wrote that “ROBERTS became agitated that HARMS would not open the door and began kicking it several times”. This is false and misleading because Cst. Gavins ordered Roberts to kick the door. Cst. Schaefer in his report wrote “ROBERTS became increasingly frustrated and threatened to kick the door if HARMS did not open it. When HARMS still did not unlock the door, I observed ROBERTS kick the door three or four times.” This is false and misleading because Cst. Gavins ordered Roberts to kick the door. According to Cst. Baragar’s report, “Cst. Gavins was eventually able to coax ROBERTS into allowing the police into the suite”. This is false. Cst. Gavins ordered Roberts to kick the door.
6. The police then called for backup and at least 25 police officers attended. The police threatened to kill the Applicant if he did not unbarricade the door. The Applicant then called ‘911’ and told the operator that the police wanted to kill him. During this time, the police unloaded pepper spray through the ajar door which caused the Applicant pain, redness in his eyes, and also caused him breathing difficulties.
7. The Applicant eventually unbarricaded the door after the police threatened to use a battering ram and kill the Applicant. The police arrested the Applicant in his residence and then unlawfully searched his residence without a search warrant.
8. The police then damaged the Applicant’s property after he was arrested.
9. The Applicant is currently suffering from post-traumatic stress syndrome due to

this incident.

10. The information against the Applicant was sworn on June 20, 2013. The last day of the Applicant's trial is set for December 11, 2014.

AND FURTHER TAKE NOTICE THAT, the cases that the Applicant will rely on include the following:

Defence of Property

R. v. Gunning, [2005] 1 S.C.R. 627

Negligent Investigation

Hill v Hamilton-Wentworth Regional Police Services Board, [2007] 3 SCR 129

Chartier v. Attorney General of Quebec, [1979] 2 SCR 474

R. v. Steele, 2010 ABQB 39

Failing to take notes

Wood v. Schaeffer, 2013 SCC 71

Failure to Disclose

R. v. Bachelet, 2013 ABPC 11

Section 24(1) Remedies

R. v. Weaver, 2005 ABCA 105

R. v. Nasogaluak, 2010 SCC 6

R. v. Spracklin, 2014 ABQB 88

R. v. Steele, 2010 ABQB 191

R. v. Zarinchang, 2010 ONCA 286

R. v. Bellusci, 2012 SCC 44

Charter Damages / Costs

Vancouver (City) v. Ward, 2010 SCC 27

R. v. Singh, 2014 ONSC 897

R. v. Zarinchang, 2010 ONCA 286

Section 24(2) Remedies

R. v. Weaver, 2005 ABCA 105

R. v. Grant, 2009 SCC 32

Unreasonable Search

R. v. S.A.B., 2003 SCC 60

R. v. Collins, [1987] 1 SCR 265

R. v. Mann, 2004 SCC 52

Unreasonable Delay

R. v. Godin [2009] 2 SCR 3

R v Morin [1992] 71 SCC 1

Use of Force

R. v. Nasogaluak, 2010 SCC 6

R. v. Davis, 2013 ABCA 15

R. v. Davis, 2014 SCC 4

R. v. Bellusci, 2012 SCC 44

Arbitrary Detention

R. v. Grant, [2009] 2 S.C.R. 353

R. v. Vidovic, 2013 ABPC 310

R. v. Spracklin, 2014 ABQB 88

Agent of the State

R. v. Broyles, [1991] 3 SCR 595

R. v. Edwards, [1996] 1 SCR 128

Self-Defence

R. v. X.J., 2012 ABCA 69 (CanLII)

R. v. Deegan (1979), 17 A.R. 187 (Alta. C.A.)

R. v. Cinous, 2002 SCC 29

Warrantless Entry

R. v. Godoy, [1999] 1 SCR 311

DATED at the City of Edmonton, in the Province of Alberta, this Xth day of February, 2014; **AND DELIVERED** by Engel Law Office, Suite 200 Wentworth Building, 10209 - 97 Street, in the City of Edmonton, in the Province of Alberta, Counsel for the Applicant herein, whose address for service is in care of the said counsel.

ENGEL LAW OFFICE

Per: _____

CYRUS HAGHIGHI (STUDENT-AT-LAW)
Counsel for the Applicant

To: Crown Prosecutor

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CYRUS HAGHIGHI

Engel Law Office
Suite 200, Wentworth Building
10209 - 97 Street
Edmonton, Alberta
T5J 0L6

Ph: (780) 448-3639
Fax: (780) 448-4924