

**ONTARIO  
PROVINCIAL OFFENCES COURT**

B E T W E E N:

**KIMBERLY NEUDORF**

Applicant

-and-

**HIS MAJESTY THE KING IN RIGHT  
OF THE PROVINCE OF ONTARIO**

Respondent

---

**AFFIDAVIT OF KIMBERLY NEUDORF  
SWORN ON DECEMBER 14<sup>th</sup>, 2022**

---

I, **KIMBERLY NEUDORF**, of the of the municipality of Chamcook, in the county of Charlotte, in the Province of New Brunswick, MAKE OATH AND SAY:

1. I am the Applicant herein, and as such have personal knowledge of the matters hereinafter deposed to, except where they are based on information and belief, in which case I verily believe them to be true.
2. I was born and raised in Springfield, Ontario. I have lived in the Town of Aylmer for over 10 years. I received a Bachelor of Music (Hons.) in Flute Performance from the University of Western Ontario in London, Ontario.
3. I have been married to my husband, Terry, for 24 years and we have three children. I am a devoted wife and stay-at-home mother. I have homeschooled my three children, from

kindergarten through high school.

4. When my children were young, for a period of five years (2009-2014), we had a family band called *vogelJoy*. We performed for small audiences across Canada and even put on a free concert series for one year at the Aylmer Bandshell and the Old Town Hall. We enjoyed having local children participate and sing with us at our performances.
5. I have always guided my children through their homeschooling and performing careers. Artistic expression has always been a cornerstone of our family unit. My children have been fortunate enough to be part of many amazing opportunities, such as performing in *Macbeth* at the Stratford Festival and in *Christmas Connection*, a Hallmark movie.
6. Unfortunately, most of what we, as a family, have worked for and enjoyed over the years was taken away from us due to overreaching government mandates. When the lockdowns first started, we had just started family tennis lessons in St. Thomas, and our children were continuing to excel in their acting, singing, and performing. This all ended abruptly with mandates.

### **The First Lockdown**

7. For the first few months of the initial lockdown beginning in March 2020, I was both concerned and cautious of the declared State of Emergency. I was prepared to accept this unprecedented declaration due to the uncertainty and absence of facts, along with my belief that the legislative safeguards in place would ensure any Orders that were implemented would be consistent with our *Constitution*. Furthermore, it was my belief that the existence of the *Charter of Rights and Freedoms* (“*Charter*”) would prevent any type of abuse through any forthcoming legislation.

8. I initially abided by the spirit of the Declaration, and limited my travel and social interactions. However, it became evident very quickly in this first lockdown that the government was ill prepared to assist people, and the ambiguity of the law and regulations were intensifying, creating uncertainty, confusion and fear. It became apparent to me that the government did not have the resources put in place to deal with either the expected or unforeseen consequences.
9. I attempted to reach out to numerous government officials to try to communicate to them that these sweeping decisions were severely impacting my family and I, and my community. I signed several online petitions to MPPs and MPs. I attempted to contact the mayor of Aylmer, Mary French, and several councillors regarding the re-opening of our community – including parks and tennis courts. I felt no one was open to discussing the negative effects of the lockdowns and the dire need to reopen our community. The mayor responded to me only through her Chief Administrative Officer, Jennifer Reynaert. Her response, on June 1, 2020, attached hereto and marked as **Exhibit “A”** to this affidavit, was for me to check the local website and newspaper for updates on the local pandemic response and to also check with public health, provincial and federal government websites for regular updates as well.
10. I started to feel that the opinions and complaints of constituents would have no impact on re-evaluating the town’s response. In fact, Councillor Barbour, in his reply to one of my emails dated June 9, 2020, attached hereto as **Exhibit “B”** to this affidavit, stated his challenges with the ever-changing COVID-19 regulations and noted, “the province does not give municipalities a heads up if a change is forthcoming.” There were numerous other attempts at an exchange with my local elected representatives, but there was little success in my attempts to have a dialogue with any of them.

11. More and more, the community was directly impacted. Small businesses that were not deemed “essential” were forced to shut down, while big box stores like Walmart and Costco could stay open, with hundreds of people able to assemble there. LCBO stores, and others the government deemed “essential” remained open.
12. There were legitimate economic concerns for everyone, and health concerns with respect to access to medical services and cancellation of surgeries. Many people felt isolated and lonely, and, especially with the absence of sports and recreation in addition to the prohibitions of visiting friends and family, was very traumatizing for many people in this country. The only thing that could alleviate their suffering was to connect with a part of a community.
13. I recognized that peaceful demonstrations always happened in order to encourage others who felt the same to unite. The hope has always been, that with a unified voice, all levels of government might finally be willing to hear that their policies were hurting many of their citizens. The more I connected with my neighbours and members of the community over the months, the more I realized that government mandates were having a very negative impact on the community and dividing us all. The mandates were being inconsistently enforced and arbitrarily applied, especially when it involved subject specific protests.

### **Attending and Organizing Peaceful Demonstrations**

14. It was very important to me, as a concerned citizen, to peacefully assemble and voice my opinions and those of my community against COVID-19 mandates. Prior to the peaceful demonstrations in question, I participated in two peaceful demonstrations against the restrictive Covid-19 measures at Queen’s Park in Toronto in September 2020 and in

October 2020. I met and spoke with other peaceful demonstrators. I had no role in organizing these peaceful protests. Both had an attendance of over 4000 people. I was not charged with any offences at these events in Toronto.

15. I attended and organized a peaceful demonstration in my town of Aylmer for October 24, 2020. A few days before, I approached the local police to inform them of the upcoming protest and the police agreed that I had a Charter right to protest and could do so. I discussed the demonstration route, requested assistance in clearing traffic if need be, and ensuring non-violent, peaceful assembly. For the most part, I found law enforcement to be very accommodating when planning for and during our demonstration. This demonstration went well, and had under 300 demonstrators. I was not charged on this day nor given any indication that I would be charged in the future.
16. I attended and organized another peaceful freedom rally in Aylmer for November 7, 2020. This time, I approached the Aylmer police just over a week before, on October 30, 2020. However, this experience was very unlike my previous experience. The police were uncooperative and difficult to deal with. Moreover, they were guiding me to OPP as they indicated a part of the route wasn't in their jurisdiction. They were intimidating and disobliging. The police attended my residence numerous times that week citing various sections of the Criminal Code indicating that I could be charged for organizing this peaceful protest.
17. Due to my discussions with the police leading up to the November 7, 2020 rally, I was unsure if I had police support or if they would even show up. Consequently, I created a "Safety Team", for the purposes of keeping the peace and to be on the lookout for any issues. This peaceful demonstration went just as well as the first one, and had just under 2000 demonstrators. The police were present, and, for the most part, there weren't any

issues. Once again, I was not charged on this day nor given any indication that I would be charged in the future.

18. For the most part, I felt that I had the cooperation of police during the demonstrations. The police indicated we had a *Charter* right to protest, and I appreciated them upholding the *Charter*. In fact, the Town of Aylmer Police Services Board discussed the October protest in their meeting on October 29, 2020. Their meeting minutes on that day, attached hereto as **Exhibit “C”**, to this affidavit, which indicate that Zonk Horvat, Chief of Aylmer Police, stated, “. . . there were a number in attendance not wearing masks. Charges were not laid at the Freedom March, there are a couple of issues which restrict charges from being laid; the first being the Charter of Rights in particular Section 2 (b) which is the Freedom of Expression and the second issue is under Section 2 (c) the Freedom for peaceful assembly which does not limit the number of persons in attendance. The *Charter of Rights* would take precedence over By-Laws or Temporary Orders.” I wasn’t aware of the police minutes until they were broadcast on the town council YouTube channel live on November 16, 2020.

### **Government Response to Peaceful Assembly**

19. On November 26, 2020, the police attended my residence and I was issued a summons for attending and organizing a peaceful protest in Aylmer and charged for both October 24, 2020 and on November 7, 2020, for the offence of, “fail to comply with a continued section 7.0.2 order, to wit, O. Reg 364/20, Rules for Areas in Stage 3, Schedule 3, section (1) no person shall attend an outdoor organized event exceeding number specified, contrary to section 10(1) of the Reopening Ontario Act.

20. The official Information of the Aylmer charges against me was later amended to include two more additional charges, for both October 24 and November 7, 2020, of “host an event exceeding number permitted”, contrary to section 10.1(1) of the Reopening Ontario Act.
21. To the best of my knowledge, I have a total of 6 charges currently before the courts in Aylmer and Welland. Of the charges relating solely to the Aylmer demonstrations, I am facing maximum penalties of over \$100,000 with a possibility of imprisonment on two of the four charges.
22. I had two charges for attending demonstrations in London, Ontario, on two separate occasions, November 2020 and March 2021. Of those, one has been one has been withdrawn, and the other charge appears to have been stayed. At both of these peaceful protests, I was asked to give a speech. I was shocked at all of these charges against me, but I am happy with the outcome for the London charges, with the charges rightfully withdrawn against me.
23. Prior to organizing the Aylmer freedom rallies, I had no idea how many people would attend. As it would happen, many people felt the same as my family and I did, and joined the demonstration to help send a united message to the government that these mandates were damaging their families, communities and livelihoods. It is my belief that the rallies were so well-attended because the message resonated with so many people who, up to that point, felt voiceless and overlooked. This is precisely why there was a small turnout at the first freedom rally, and such a significantly higher attendance for the second one. These peaceful demonstrations motivated everyone to unite and send a message to government.
24. In light of the many protests attended by people over 2020, and due to the protections which I believed were afforded to me under the *Charter*, I never thought that my actions of engaging and organizing peaceful assemblies would ever be viewed as breaking the law. I

viewed these acts as my only way to communicate my dissent with ongoing government mandates.

### **Other Outdoor Gatherings in 2020/2021**

25. During the time period spanning from March 2020-December 2020, there were several outdoor gatherings and demonstrations held both during and in-between lockdowns. It is my firm belief that all peaceful protests should be permissible. However, during this time it appears to me that the only demonstrations which were deemed unlawful were those calling for an end to mandates and lockdowns. Below is a small sample of protests that took place during this time period that were supported, encouraged and even attended by several high-ranking government officials, including the Prime Minister.
26. In early June 2020, “Black Lives Matter” protests were bringing thousands of people together, across the country and the world, protesting anti-Black racism, in response to George Floyd’s death. Attached hereto is **Exhibit “D”** to this affidavit, of two articles discussing this event in Toronto and also on Parliament Hill. The photographs, in particular, demonstrate that not everyone wore a mask or practiced social distancing, including the local police. This protest happened in June 2020, when the “outdoor gathering” limit was 10 people.
27. In July 2020, thousands of people continued to frequent Niagara Falls and the attractions on Clifton Hill. No tickets or summons were issued to any patrons enjoying this outdoor gathering. Attached hereto is **Exhibit “E”** to this affidavit of an article discussing this situation.



28. In September 2020, approximately 800 pro-gun activists assemble and march to Parliament Hill, to speak out against the assault weapon ban. Attached hereto and marked as **Exhibit “F”** to this Affidavit is a news article detailing this event.
29. On November 11, 2020, while Ontarians couldn't arrange outdoor gatherings of more than 25 people, and, to my understanding, in some parts more than 10 people, the Town of Alymer arranged for Remembrance Day services. In Aylmer, more than 50 people attended the service, which was, 1) above the local limit, 2) overflowing onto the street, and 3) with many people not choosing to social distance. Attached hereto and marked as **Exhibit “G”** to this Affidavit is a photograph and news article detailing this gathering. When I organized our freedom rally demonstration, I was told by the police no street blocks whatsoever. I have utmost respect and appreciation for our war veterans, and, have no issue with any services dedicated to Remembrance Day; however, it is the selective application of our rights of freedom of expression and freedom of assembly which appear to be only available to us on an “approved by” basis. Any gathering which was against a specific government policy, however big or small, resulted in tickets or charges laid against the hosts and/or demonstrators.
30. While Ontarians couldn't meet with more than 5 people at a time at a restaurant, Windsor Mayor Drew Dilkens broke COVID-19 regulations when dined at the Nico Taverna restaurant with seven other people at the table. Attached hereto and marked as **Exhibit “H”** to this Affidavit is a news article detailing this event.
31. In early December 2020, while certain Ontarians could not peacefully demonstrate, thousands of people participated in a protest in Toronto to stand in solidarity with “Farmers in India” who were facing new laws that they say could threaten their livelihood. Attached hereto and marked as **Exhibit “I”** to this Affidavit is a news article detailing this rally.

32. In fact, the Prime Minister went a step further to show his support for this protest as well, and, stated, “The situation is very concerning. All of us are worried about family and friends, and this is a reality for many. Let me remind you. Canada will always defend the rights of peaceful protesters.” His support for the farmers protesting in India acquired a lot of international attention. Attached hereto and marked as **Exhibit “J”** to this Affidavit is a news article describing his comments.
33. In June 2021, Premier Ford actually asked the local medical officer to grant an exemption to the public health gathering rules so that thousands of people could assemble for a vigil, attached hereto and marked as **Exhibit “K”** to this Affidavit is the article. This was, in my opinion, the right thing to do, but this is just another example, of many, which demonstrates how the rules were permitted to be relaxed where government officials supported a cause.
34. To the best of my knowledge, there has never been a documented case of COVID-19 from any protest I was involved in. In fact, the CDC has stated that there has never been a documented transmission of the virus linked to an outdoor activity anywhere in the world. Attached hereto and marked as **Exhibit “L”** to this affidavit is an article discussing outdoor spread of the COVID-19 virus.

### **Freedom of Expression, Peaceful Assembly, and Association**

35. The protection of freedom of expression, peaceful assembly and association are the fundamental principles of a democratic society and entails values that promote the search for and attainment of truth, participation in social and political decision-making and the opportunity for individual self-fulfillment through expression. When this expression and assembly is related directly to government action or inaction, this right to speak out an

assemble in the collective is crucial and is essentially the only way for citizens to be heard.

I do not feel that it would have been the same nor reached the same level of impact had there been an online or virtual demonstration. I have attended many online meetings, signed numerous online petitions, to absolutely no avail.

36. I believe it is critical for a person to be able to participate in a peaceful demonstration, which fundamentally is an attempt to prove and restore faith in our democracy. To peacefully assemble and to peacefully protest government policy is a keystone of our society and is inherent throughout our laws and is protected by the *Charter*. The prevention of peaceful assembly by the government is a direct attack to our democracy.
37. I make this affidavit in support of my Notice of Constitutional Question and Charter challenges. I make this affidavit honestly, in good faith, and for no improper purpose.

SWORN REMOTELY BEFORE ME by )  
videoconferencing technology by Kimberly )  
Neudorf, in the Province of Ontario, this 14th )  
day of December, 2022, in accordance with O. )  
Reg 431/20 Administering Oath or Declaration )  
Remotely. )  
)  
)  
)  
)  
)

\_\_\_\_\_  
Rosy Rumpal

A Commissioner etc.,

Rosy Rumpal  
Barrister & Solicitor  
The Lean Lawyer Law Office  
Suite 101, 116 - 50 Lacoste Blvd.  
Brampton, ON L6P 3Z8  
c: 416.575.4423  
e: rosy@rosyslaw.ca

\_\_\_\_\_  
*Kimberly Neudorf*  
**KIMBERLY NEUDORF**

Counsel for the Applicant