

Form 7
Alberta Rules of Court
Rule 3.8

COURT FILE NO.

2001-15049

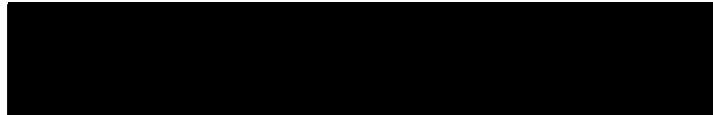
COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

APPLICANT



RESPONDENT

HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF ALBERTA

DOCUMENT

ORIGINATING APPLICATION

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT

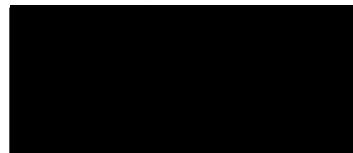
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Counsel for:



NOTICE TO RESPONDENT

This application is made against you. You are a respondent.
You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date:	10:00 am
Time:	December 17, 2020
Where:	Calgary Courts Centre – 601 5 th Street SW, Calgary, Alberta
Before:	Justice in Special Chambers

Go to the end of this document to see what you can do and when you must do it.

REMEDY SOUGHT

1. The Applicant seeks the following relief:

- a. An Order abridging the time for service of this Originating Application and supporting materials, if necessary;
- b. A Declaration that all provisions of the CMOH Orders currently in force that offend the enumerated rights in section 1 of the *Alberta Bill of Rights* are *ultra vires* the Chief Medical Officer of Health pursuant to section 2 of the *Alberta Bill of Rights*;
- c. A Declaration that section 29(2.1)(b) of the *Public Health Act* is of no force or effect as it offends all of the enumerated rights in section 1 of the *Alberta Bill of Rights* and are accordingly *ultra vires* the Chief Medical Officer of Health and the Alberta Legislature pursuant to section 2 of the *Alberta Bill of Rights*;
- d. In the alternative:
 - i. a Declaration that section 29(2.1)(b) of the *Public Health Act* is *ultra vires* as contravening section 92 of the *Constitution Act, 1867* (exclusive power of the provincial legislature to enact laws) as only the Legislative Assembly can make laws of general and universal application and that such

law-making authority cannot be delegated to medical officers of health and is therefore of no force or effect;

- ii. a Declaration that section 29(2.1)(b) of the *Public Health Act* is *ultra vires* as violating the unwritten constitutional principles labelled by the Supreme Court of Canada as the democratic principle and the rule of law (by subjecting citizens to unpredictable and arbitrary law-making for an unspecified period of time by an unelected public official) and is therefore of no force or effect;
- e. A Declaration that sections 38(1)(c) and 52.6(1)(d) of the *Public Health Act* unjustifiably limit sections 2, 7, 8 and 9 of the *Charter* and are therefore of no force or effect pursuant to section 52(1) of the *Constitution Act, 1982*;
- f. A Declaration that section 66.1 of the *Public Health Act* is of no force and effect as it expressly prohibits citizens from seeking damages arising from the Crown affecting their “property” rights which are protected rights under section 1 of the *Alberta Bill of Rights*;
- g. A Declaration that all provisions of the CMOH Orders currently in force that are effectively rules of general application are *ultra vires* the Chief Medical Officer of Health and of no force or effect;
- h. A Declaration pursuant to section 24(1) of the *Charter* and Rule 3.15(1) of the Rules of Court that the CMOH Orders currently in force are unreasonable because they disproportionately limit:
 - i. section 2 of the *Charter*;
 - ii. section 6(1) of the *Charter*;
 - iii. section 7 of the *Charter*;
 - iv. section 8 of the *Charter*; and
 - v. section 15 of the *Charter*.

- i. In the alternative, Declarations pursuant to section 52(1) of the *Constitution Act, 1982* that the CMOH Orders are of no force or effect because they unjustifiably infringe:
 - i. section 2 of the *Charter*;
 - ii. section 6(1) of the *Charter*;
 - iii. section 7 of the *Charter*;
 - iv. section 8 of the *Charter*; and
 - v. section 15 of the *Charter*.
- j. An Order for an interlocutory injunction staying sections 7-15 CMOH Order 38-2020 which prohibit various gatherings;
- k. In the alternative, an Order for an interim injunction staying sections 7-15 CMOH Order 38-2020 until January 4, 2021;
- l. Costs of this Application; and
- m. Such further and other relief as counsel may advise and this Honourable Court deems just and equitable.

GROUND FOR MAKING THIS APPLICATION

Background

2. Since March 16, 2020, Alberta's Chief Medical Officer of Health (the "**CMOH**") has pronounced 40 public health orders that have crushed constitutionally-protected rights and freedoms as guaranteed by the *Alberta Bill of Rights* and the *Canadian Charter of Rights and Freedoms*.
3. On March 17, 2020, the Alberta Government declared a state of public health emergency in Alberta, which lasted for 90 days.
4. Throughout this 90-day period and continuing on until now, the CMOH continued to make CMOH Orders.

5. On November 24, 2020, the Alberta Government once again declared a 90-day provincial state of public health emergency pursuant to sections 52.1(1) and 52.8 of the *Public Health Act* in response to the communicable viral infection SARS-CoV-2 (“**COVID-19**”). Additional prohibitions on and penalization of the ability of Alberta residents to move about, conduct business, be with family and friends, obtain necessities of life, manifest their religious beliefs, and access personal care products and services were implemented through CMOH Orders.
6. Measures imposed by the CMOH to lock down society and short-circuit the economy, both in the spring of 2020 and again now as the holiday season approaches, have imposed tragic levels of harm that dwarf the harm that, unfortunately, has and may continue to be caused by COVID-19.
7. This was done without adequate evidence of a *bona fide* “emergency” being created through illness or mortality outside the scope of normal mortality for respiratory and other numerous illnesses including human respiratory syncytial virus and human orthopneumovirus, influenza, pneumonia, emphysema, asthma or other diseases such as heart disease, cancer, renal failure, liver failure, alcoholism, drug addiction, suicide, old age or any other normal rate of mortality in Alberta.
8. The mere existence of COVID-19 in Alberta does not constitute an emergency. For Albertans under the age of 60 years, the chances of dying of COVID-19 in Alberta are currently 1 in 210,000 while the murder rate in Calgary is 6.1 per 100,000. Put in another way, a Calgarian under the age of 60 is 12 times more likely to be murdered than die of COVID-19.

Legal Basis

The CMOH Orders Are Issued in Contravention of the Alberta Bill of Rights

9. The orders of the CMOH made under section 29 of the *Public Health Act* contravene section 2 of the *Alberta Bill of Rights*. The paramountcy clause of the *Public Health Act*, section 75, expressly reiterates the supremacy of the *Alberta Bill of Rights*. To the degree the CMOH Orders abrogate and infringe the rights protected by sections 1(a), 1(b) and

1(e) of the *Alberta Bill of Rights*, the CMOH orders are unlawful and of no force or effect. Pursuant to section 2 of the *Alberta Bill of Rights*, section 29 of the *Public Health Act* must be construed and applied so as not to authorize the abrogation or infringement of the rights protected by section 1 of the *Alberta Bill of Rights*. All infringements of enumerated rights protected under section 1 are prohibited unless the government has passed legislation declaring that the infringement may occur “notwithstanding” the *Alberta Bill of Rights*.

The CMOH Orders are Ultra Vires

10. The rule of law and the constitutional rights of Albertans are not suspended by the declaration of a public health crisis. The Constitution, both written and unwritten, continues to apply to all legislation and government decisions and operates to protect the fundamental freedoms and civil rights of all Albertans notwithstanding the presence of an infectious illness.
11. The Constitution, and its historical and legal underpinnings, exist as a check on the rule by one individual over the lives of the citizenry. History bears witness to the abuses which flow from the arbitrary rule of one over many. The citizens of Alberta have at no time waived or foregone their right to a representative system of democracy in accordance with the Constitution, and the checks and balances of the rule of law.
12. In elucidating the unwritten constitutional principles embedded by the preamble of the *Constitution Act, 1867*, the Supreme Court of Canada has recognized that it is fundamental to the working of government that the legislative bodies not improperly delegate their exclusive legislative authority to civil servants who are neither democratically accountable nor jurisdictionally capable of making laws.
13. Section 92 of the *Constitution Act, 1867*, explicitly outlines that the making of laws is in the exclusive jurisdiction of the Legislature.
14. The CMOH Orders are effectively rules of general and universal application which, if not adhered to by all members of the public, can result in non-compliant members of the public

being penalized. In both purpose and effect, the CMOH orders are legislation. The CMOH Orders are therefore *ultra vires* and of no force or effect.

15. The CMOH Orders derive their basis in flawed reasons as available medical literature indicates that the COVID-19 PCR test utilized by Albert is highly inaccurate. The Lisbon Court of Appeal, in Portugal, recently held that the PCR test “is unable to determine, beyond reasonable doubt, that a positive result corresponds, in fact, to the infection of a person by the SARS-CoV-2 virus” and that restrictions justified on infections rates based on the test are unconstitutional.
16. The CMOH Orders arbitrarily and capriciously shut down certain businesses while allowing others to remain open without any intelligible reason that would permit judicial review.

The CMOH Orders Unjustifiably Infringe Charter Rights

17. Whether properly considered to effectively be a set legislative provisions, or a series of administrative decisions, the CMOH Orders have caused and are causing unprecedented harm to the Alberta population. The vast harms from “locking down” society outweigh the harms caused by COVID-19, and include:
 - a. cancelled surgeries and other medical treatments and delayed medical diagnoses resulting in predictable and tragic amounts hardship and suffering;
 - b. the predictable and tragic deterioration of the mental health of wide swaths of public, resulting in increases in suicides, substance abuse, deaths due to overdoses, domestic abuse, and relationship breakdowns;
 - c. devastating economic hardship inflicted upon small business owners and laid-off employees;
 - d. a critical decline in social cohesion, an alarming rise in members of society “snitching” on their neighbours, and a loss of trust in public authorities; and

- e. a crushing deprivation of fundamental freedoms and individual liberty, the breadth and depth of which is unknown in the history of this Province making life in Alberta more akin to life in a totalitarian dictatorship.
18. In addition to being *ultra vires*, the CMOH orders unjustifiably limits multiple *Charter* rights.
 19. Provisions of the CMOH Orders that restrict the activities of places of worship and prevent individuals from manifesting their sincerely-held religious beliefs disproportionately limit the fundamental freedoms of religion, expression, peaceful assembly and association as protected by section 2 of the *Charter*.
 20. Provisions of the CMOH Orders that restrict the ability of small business owners to conduct their business and earn a living disproportionately limits security of the person as protected by section 7 of the *Charter* in a manner that is not in accordance with the principles of fundamental justice.
 21. Provisions of the CMOH Orders that restrict or close businesses and service providers that provide personal care, self-care products, wellness products and services, ancillary health services, entertainment, dining, recreation and leisure disproportionately limits the liberty rights of individuals as protected by section 7 of the *Charter* to freely access those products, services, and activities in a manner that is not in accordance with the principles of fundamental justice
 22. Provisions of the CMOH Orders that mandate mask wearing disproportionately limits liberty and security of the person as protected by section 7 of the *Charter* in a manner that is not in accordance with the principles of fundamental justice, freedom of expression as protected by section 2(b) of the *Charter* and freedom of conscience and religion as protected by section 2(a) of the *Charter*.
 23. Provisions of the CMOH Orders that prohibit social gatherings at private residences disproportionately limits freedom of peaceful assembly, freedom of association and freedom of religion as protected by section 2 of the *Charter*, and liberty as protected by

section 7 of the *Charter* in a manner that is not in accordance with the principles of fundamental justice.

24. Provisions of the CMOH Orders that prohibit or limit to small numbers outside gatherings or gatherings at public or private facilities disproportionately limits freedom of peaceful assembly as protected by section 2(c) of the *Charter* and freedom of expression as protected by section 2(b) of the *Charter*.
25. Provisions of the CMOH Orders that mandate persons to isolate themselves for up to 14 days who are not reasonably suspected to be harbouring an uncommonly dangerous infectious respiratory illness disproportionately limits liberty and security of the person as protected by section 7 of the *Charter* in a manner that is not in accordance with the principles of fundamental justice.
26. Provisions of the CMOH Orders that mandate persons to isolate themselves for up to 14 days for no other reason than that they travelled into Canada disproportionately limits the right to enter Canada as protected by section 6(1) of the *Charter*.
27. Provisions of the CMOH Orders that require individuals to disclose to government agents personal details about their whereabouts and who they associated with disproportionately limits the right to be secure against unreasonable searches.
28. Provisions of the CMOH Orders that mandate physical distancing between individuals disproportionately limits liberty and security of the person as protected by section 7 of the *Charter* in a manner that is not in accordance with the principles of fundamental justice.
29. Provisions of the CMOH Orders that mandate the arbitrary closure of individuals' businesses and places of work thus arbitrarily choosing capriciously winners and losers in breach of section 15 of the *Charter* that guarantees equality before and under the law.
30. Provisions of the CMOH Orders or any other order mandating arbitrary and unequal province wide mandatory restrictions for schools mandating the shutdown of grades 7 – 12 as of November 30, 2020 but allowing grades K – 6 to remain open breach section 15 of the *Charter* that guarantees equality before and under the law.

31. Provisions of the CMOH Orders that arbitrarily and capriciously limit weddings and funerals to 10 people but allow individuals to attend at a place of worship if the place of worship is limited to 1/3 of the total operational occupant load as determined in accordance with the Alberta Fire Code and the fire authority having jurisdiction are cruel and inhumane and breach section 15 of the *Charter* that guarantees equality before and under the law.

Unlawful Provisions of the Public Health Act

32. Section 29(2.1)(b), of the *Public Health Act* grants unlimited ability to medical officers of health to breach all of the enumerated rights in section 1 of the *Alberta Bill of Rights* and is therefore *ultra vires* pursuant to s. 2 of the *Alberta Bill of Rights*.
33. Further, section 29(2.1)(b) of the *Public Health Act* is *ultra vires* as contravening section 92 of the *Constitution Act, 1867* as only the Legislative Assembly can make laws of general and universal application. Legislative authority cannot be wholly delegated to medical officers of health as section 29(2.1)(b) purports to do. Section 29(2.1)(b) of the *Public Health Act* is also *ultra vires* as violating the unwritten constitutional principles labelled by the Supreme Court of Canada as the democratic principle and the rule of law.
34. Sections 38(1)(c) and 52.6(1)(d) of the *Public Health Act* arbitrarily and in an overbroad manner permit warrantless entry into private residences and the forced vaccination of Albertans. Such actions by the state are repugnant to a free and democratic society and represent egregious infringements of sections 2(a), 7, 8 and 9 of the *Charter* and are not saved by section 1.
35. Section 66.1 of the *Public Health Act* offends s. 1 of the Alberta Bill of Rights insofar as it would prohibit citizens from seeking damages arising from the infringement of their property rights guaranteed under s. 1 of the *Alberta Bill of Rights*.

MATERIALS TO BE RELIED ON

36. The Affidavit of [REDACTED]
37. The Affidavit of [REDACTED]

38. Such further and other material as counsel may advise and this Honourable Court may allow.

APPLICABLE ACTS AND RULES

39. *Alberta Rules of Court*, Alta Reg 124/2010;
40. *Constitution Act*, 1867, 30 & 31 Vict, c 3
41. *Canada Act 1982 (UK)*, 1982, c 11, including the *Canadian Charter of Rights and Freedoms*;
42. *Constitution of Alberta Amendment Act*, 1990, RSA 2000, c C-24
43. *Alberta Bill of Rights*, RSA 2000, c A-14;
44. *Public Health Act*, RSA 2000, c P-37;
45. *Bill 10: Public Health (Emergency Powers) Amendment Act*, 2020; and
46. Such other enactments as the Applicant may advise.

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must reply by giving reasonable notice of that material to the applicant(s).