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APPLICANT	REBECCA MARIE INGRAM, HEIGHTS BAPTIST CHURCH, NORTHSIDE BAPTIST CHURCH, ERIN BLACKLAWS and TORRY TANNER JS Dec 17 2020 1202827
RESPONDENT	HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA and THE CHIEF MEDICAL OFFICER OF HEALTH
DOCUMENT	**MEMORANDUM OF ARGUMENT OF THE APPLICANTS HEIGHTS BAPTIST CHURCH, NORTHSIDE BAPTIST CHURCH, ERIN BLACKLAWS, AND TORRY TANNER IN SUPPORT OF APPLICATION FOR INJUNCTIVE RELIEF**

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I. OVERVIEW

1. Rebecca Marie Ingram ("**Ms. Ingram**"), Heights Baptist Church ("**Heights Baptist**"), Northside Baptist Church ("**Northside Baptist**"), Erin Blacklaws ("**Mr. Blacklaws**"), and Torry Tanner ("**Ms. Tanner**"), which are collectively referred to as the "**Applicants**", have filed an Originating Application against Her Majesty the Queen in Right of the Province of Alberta ("**Alberta**") and Alberta's Chief Medical Officer of Health ("**CMOH**") , which are collectively referred to as the "**Respondents**".

2. The Originating Application claims that the CMOH Orders in Alberta created in response to the communicable viral infection SARS-CoV-2 ("**COVID-19**") violate the *Constitution Act, 1867*, the *Canadian Charter of Rights and Freedoms*, and the *Alberta Bill of Rights*.

3. The Applicant, Heights Baptist, is located in Medicine Hat.[1] It was founded in 1890 and its members hold religious beliefs and values,[2] including regularly gathering together in a congregational setting[3] and practicing certain religious expressions, such as singing congregationally,[4] public baptism,[5] and physical touch for acts of service .[6] Heights Baptist and its members also believe in using their homes to offer hospitality.[7] The CMOH Orders have interfered with these deeply held religious beliefs. They have also had damaging affects on the members of Baptist High.

4. The Applicant, Ms. Tanner, is a business owner in Calgary, Alberta, who lives with her oldest daughter.[8] Christmas time and family are extremely important to her and the CMOH Orders are prohibiting her from gathering together with her family.[9]

[1] Affidavit of Patrick Schoenberger, filed December 7, 2020 [Schoenberger Affidavit], Exhibit "A".
[2] Schoenberger Affidavit, para 3.
[3] Schoenberger Affidavit, para 4.
[4] Schoenberger Affidavit, para 5.
[5] Schoenberger Affidavit, para 8.
[6] Schoenberger Affidavit, para 10.
[7] Schoenberger Affidavit, para 11.
[8] Schoenberger Affidavit, para 1.
[9] Affidavit of Torry Tanner, filed December 11, 2020 [Tanner Affidavit], paras 1, 5.

5. The Applicants herein submit that they meet the test for the limited injunctive relief sought, pending this Court's determination of their claims regarding the constitutionality of the impugned CMOH Orders.

A. The Chief Medical Officer of Health Orders

6. Since March 16, 2020, Dr. Deena Hinshaw, in her role as Alberta's CMOH, has pronounced 42 CMOH Orders.[10] These Orders are all endorsed by her and made by her under her authority as a medical officer of health and pursuant to section 29 of the *Public Health Act*. These CMOH Orders have placed prohibitions on the ability of Alberta residents to invite friends and family inside their own homes, move about freely, conduct business, peacefully gather in outdoor locations and indoor public and private locations, obtain necessities of life, manifest their religious beliefs, gather for the purposes of commemorate major life events, attend school or work, and access personal care and health care services.

7. The Orders are not "guidelines", they are mandatory restrictions imposed on all Albertans that come with the threat of a fine for contravening any of the orders.[11] All of the CMOH Orders are endorsed exclusively by the CMOH and made under her purported authority as a medical officer of health under section 29 of the *Public Health Act.* All of the CMOH Orders (unless they have an embedded expiration date) state that they remain in effect until rescinded by the CMOH.[12]

8. On November 24, 2020, the Alberta Government declared, for a second time, 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 COVID-19.

9. At the time of filing the Originating Application on December 7, 2020, the CMOH had pronounced 40 Orders. Subsequently, on December 8, 2020, the CMOH pronounced CMOH

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[10] RECORD OF DECISION – CMOH Order 01-2020 [**BOA TAB 2**]; RECORD OF DECISION – CMOH Order 42-2020 ["CMOH Order 42"] [**BOA TAB 3**].

[11] Public Health Act, RSA 2000, c P-37, section 73(3) A person who contravenes this Act, the regulations or an order of a medical officer of health under Part 3 is, if no penalty in respect of that offence is prescribed elsewhere in this Act, liable to a fine of not more than $100 000 in the case of a first offence and $500 000 in the case of a subsequent offence {**BOA TAB** 1}.

[12] See e.g. RECORD OF DECISION – CMOH Order 38-2020 ["CMOH Order 38'}, Part 5, section 29 [**BOA TAB** 3}; RECORD OF DECISION – CMOH Order 42-2020 ["CMOH Order 42"], Part 10, section 48 [**BOA TAB** 4].

Order 41-2020 ("CMOH Order 41"), which rescinded and modified sections of CMOH Order 38. CMOH 41 imposed new restrictions that severely limited what few constitutional rights and freedoms the Applicants had left.

10. Then, on December 11, 2020, the CMOH issued CMOH Order 42-2020 ("CMOH Order 42") to come into effect on December 13, 2020.[13] This Order rescinded CMOH Orders 38 and 39.[14]

11. CMOH Order 42 purports to use the heavy hand of the state to effectively cancel Christmas and lockdown 4.5 million Albertans. Such a gross infringement of civil liberties is unprecedented in this Province. Dr. Hinshaw, at the stroke of her pen, has attempted to take away the constitutional right of Albertans to provide for their families, be with friends and family at Christmas, and peacefully gather out of doors to protest the loss of their liberty, all without legislative review or involvement from the citizens' representatives.

II. RELIEF SOUGHT

12. The Applicants seek injunctive relief in the form of an Order staying the restrictions set out below (collectively, the "**Restrictions**"):

    a. CMOH Order 42, Part 2, section 3, formerly CMOH Order 38, Part 1, section 3 ("**Private Residence Restrictions**") on an interlocutory basis, or, in the alternative, on an interim basis until January 4, 2021;

    b. CMOH Order 42, Part 3, section 11, formerly CMOH Order 41, Part 2, section 12 ("**Indoor Social Gathering Restrictions**") on an interlocutory basis, or, in the alternative, on an interim basis until January 4, 2021, and directing a gathering size limit of 15% venue capacity;

    c. Or, in the alternative and in any event, CMOH Order 42, Part 3, section 11 only in so far as it prevents funeral services, wedding ceremonies and receptions thereafter

[13] CMOH Order 42, preamble [**BOA TAB** 4].
[14] CMOH Order 42, preamble [**BOA TAB** 4].

("**Solemn Life Events Restrictions**") on an interlocutory basis, and directing a gathering size limit of 15% venue capacity;

d. CMOH Order 42, Part 3, section 12, formerly CMOH Order 41, Part 2, section 13, and CMOH Order 42, Part 7, section 38 and Part 8, section 44 ("**Outdoor Gathering Restrictions**") on an interlocutory basis, and directing that no size limit be imposed on any type of outdoor gathering;

e. Or, in the alterative, CMOH Order 42, Part 3, section 12 only in so far as it prevents gatherings for the purpose of peaceful collective political expression, such as a rally, protest or demonstration ("**Peaceful Protest Restrictions**") on an interlocutory basis, and directing that no size limit be imposed on such gatherings;

f. CMOH Order 42, Part 5, section 23, formerly CMOH Order 38, Part 3, section 19(b), CMOH Order 38, Part 4, section 26 and CMOH Order 41, Part 4, section 20 ("**Mandated Mask Wearing**") on an interlocutory basis;

g. Or, in the alternative, CMOH Order 42, Part 5, section 23 in so far it mandates mask wearing at worship services, wedding ceremonies and funeral services ("**Mandated Mask Wearing at Solemn Life Events**") on an interlocutory basis.

13. Costs of this Application; and

14. Such further and other relief as counsel may advise and this Honourable Court deems just and equitable.

III. LEGAL BASIS

15. The **Restrictions** are an unjustified infringement of the fundamental freedoms and rights protected by sections 2(a), 2(b), 2(c), 2(d), and 7 of the *Charter*, are causing irreparable harm to all Albertans, including the Applicants, and their stay, pending a determination of their constitutionality, is on balance in the public interest.

16. The **Restrictions** are:

a. **Private Residence Restrictions** (CMOH Order 42, Part 2, section 3): [A] person who resides in a private residence must not permit a person who does not normally reside in that residence to enter or remain in the residence;

b. **Indoor Social Gathering Restrictions** (CMOH Order 42, Part 3, section 11): All persons are prohibited from attending a private social gathering at an indoor public place;

c. **Outdoor Gathering Restrictions** (CMOH Order 42, Part 3, section 12): All persons are prohibited from attending a private social gathering at an outdoor private place or public place;

d. **Mandated Mask Wearing** (CMOH Order 42, Part 5, section 23): [A] person must wear a face mask at all times while attending an indoor public place.[15]

A. The Triparte Test for Injunctive Relief

17. The Applicants seek interlocutory injunctive relief from this Honourable Court pending a determination of the constitutionality of the CMOH Orders. The Supreme Court in *RJR-MacDonald Inc. v Canada (Attorney General)*[16] established the tripartite test for injunctive relief, as follows:

> (1) whether there is a serious issue to be tried,
>
> (2) whether irreparable harm would result to the Applicants if the injunction is not granted, and
>
> (3) whether the balance of convenience between the parties favours granting the injunction to the Applicants.[17]

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[15] CMOH Order 42 [**BOA TAB** 4].
[16] *RJR – MacDonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311, 1994CanLII 117 (SCC) [*RJR-MacDonald*] [**BOA TAB 41**]; see also *Harper v Canada (Attorney General)*, 2000 SCC 57, [2000] 2 SCR 764 [*Harper*] [**BOA TAB 22**].
[17] See also *PT v Alberta*, 2019 ABCA 158 [**BOA TAB** 37].

18. These factors should be considered as interrelated.[18] The Federal Court recently stated:

> The fundamental question is always whether it is "just and equitable in all the circumstances" to grant the injunction [citations omitted]
> …
> The three stages in the *RJR-MacDonald* framework are conjunctive, meaning that an applicant must satisfy all elements in order to be entitled to relief: *Air Passengers Rights*, at para 15. They are also flexible and interrelated. They are not watertight compartments. Each one relates to the others and each focuses the court on factors that inform its overall exercise of the court's discretion in a particular case. As an example, demonstrated strength on the merits at stage one may affect the court's consideration of irreparable harm and the balance of (in)convenience [citations omitted].[19]

B. Serious Issues to be Tried and Irreparable Harm

19. In addition to the serious issue as to whether the Restrictions are *ultra* vires, the Applicants' submission that the Restrictions are unconstitutional because they unjustifiably limit several *Charter*-protected rights is categorically a serious issue to be tried.

20. The Supreme Court in *RJR-MacDonald* characterized this branch of the test as a low threshold and warned against an overextended examination on the merits:

> What then are the indicators of "a serious question to be tried"? There are no specific requirements which must be met in order to satisfy this test. The threshold is a low one. The judge on the application must make a preliminary assessment of the merits of the case.
> …
> Once satisfied that the application is neither vexatious nor frivolous, the motions judge should proceed to consider the second and third tests, even if of the opinion that the plaintiff is unlikely to succeed at trial. A prolonged examination of the merits is generally neither necessary nor desirable.[20]

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[18] See *Manitoba Federation of Labour et al. v The Government of Manitoba*, 2018 MBQB 125 at para 60 [**BOA TAB 30];** see also *Hudson Bay Mining & Smelting Co v Dumas*, 2014 MBCA 6 at para 82 [**BOA TAB 23**], *Apotex Fermentation Inc. v. Novopharm Ltd.*, 1994 CanLII 16694 (MB CA), 95 Man R (2d) 241at para 14 citing R.J. Sharpe, Injunctions and Specific Performance (2nd Ed. 1992) at pp. 2, 32, 34 [**BOA TAB 5**]; *Domo Gasoline Corporation Ltd. v St. Albert Trail Properties Inc*, 2005 ABQB 69 at footnote 41 [**BOA TAB 15**].

[19] *Monsanto v Canada (Health)*, 2020 FC 1053 at paras 48-50 [**BOA TAB 31**]; see also *Google Inc. v Equustek Solutions Inc.*, 2017 SCC 34 at para 1 [**BOA TAB 20**].

[20] *RJR-MacDonald* at paras 54-55 [**BOA TAB 41**].

Charter Section 2(a) – Freedom of Conscience and Religion

21. In *Law Society of British Columbia v Trinity Western University*, the Supreme Court of Canada stated the following regarding freedom of religion as protected by section 2(a) of the *Charter*:

> Although this Court's interpretation of freedom of religion reflects the notion of personal choice and individual autonomy and freedom, religion is about both religious beliefs and religious relationships *(Amselem,* at para. 40; *Loyola,* at para. 59, quoting Justice LeBel in *Hutterian Brethren,* at para. 182). The protection of individual religious rights under s. 2(a) must therefore account for the socially embedded nature of religious belief, as well as the "deep linkages between this belief and its manifestation through communal institutions and traditions" *(Loyola,* at para. 60). In other words, religious freedom is individual, but also "profoundly communitarian" *(Hutterian Brethren,* at para. 89). The ability of religious adherents to come together and create cohesive communities of belief and practice is an important aspect of religious freedom under s. 2 (a).[21]

22. An infringement of section 2(a) of the *Charter* occurs if a claimant shows: (1) that he or she sincerely believes in a belief or practice that has a nexus with religion, and (2) that the impugned conduct interferes with the applicant's ability to act in accordance with that belief or practice in a manner that is more than trivial or insubstantial.[22]

Section 2(b) – Freedom of Thought, Belief, Opinion and Expression

23. Freedom of expression "has been recognized as a fundamental ingredient to the proper functioning of democracy for hundreds of years."[23] As the Supreme Court of Canada has found, "[i]t is difficult to imagine a guaranteed right more important to a democratic society

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[21] *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32, [2018] 2 SCR 293 at para 64 [**BOA TAB 262**].
[22] *Ktunaxa Nation v British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54, [2017] 2 SCR 386 at para 122 [**BOA TAB 25**].
[23] *Christian Heritage Party v. City of Hamilton*, 2018 ONSC 3690 at para 39 [**BOA TAB 13**].

than freedom of expression."[24] Indeed, "[f]reedom in thought and speech… are the essence of our life."[25]

24. The Supreme Court has stated: "The right to freedom of expression is just as fundamental in our society as the open court principle. It fosters democratic discourse, truth finding and self- fulfilment."[26] To summarize the jurisprudence, "[t]he vital importance of freedom of expression cannot be overemphasized."[27]

25. At the core of the protection for freedom of expression – and at the heart of democracy – is the right to peacefully, publicly, and collectively protest government action. Due to its importance as a fundamental value in our society, any government interference with freedom of expression "must be subjected to the most careful scrutiny" and "calls for vigilance."[28]

26. Expression is protected by the *Charter* if it meets the following test:

> (1) Does the activity in question have expressive content, thereby bringing it, *prima facie*, within the scope of s. 2(*b*) protection? (2) Is the activity excluded from that protection as a result of either the location or the method of expression? (3) If the activity is protected, does an infringement of the protected right result from either the purpose or the effect of the government action?[29]

Section 2(c) – Freedom of Peaceful Assembly

27. Although undeveloped, an identified purpose of freedom of peaceful assembly is to protect the physical gathering together of people.[30] Further, the right of peaceful assembly is, by

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[24] *Edmonton Journal v. Alberta (Attorney General),* [1989] 2 SCR 1326, 1989CanLII 20 (SCC) at para 3 **[BOA TAB 17].**

[25] *Committee for the Commonwealth of Canada v. Canada*, [1991] 1 SCR 139, 1991 CanLII 119 (SCC), 1991] 1 RCS 139 at para 78, quoting *Boucher v The King*, [1951] SCR 265 at page 288 [*Committee for the Commonwealth of Canada*] [**BOA TAB 14**].

[26] *Canadian Broadcasting Corp. v. Canada (Attorney General),* 2011 SCC 2 at para 2 [**BOA TAB 11**].

[27] *Committee for the Commonwealth* at para 95, quoting *R v Kopyto* (1987), 24 OAC 81 at pp 90-91, 62 OR (2d) 449 [**BOA TAB 14**].

[28] *R v Sharpe,* [2001] 1 SCR 45, 2001 SCC 2 (CanLII) at para 22 [**BOA TAB 39]**; *Little Sisters Book & Art Emporium v Canada (Minister of Justice),* 2000 SCC 69 (CanLII), [2000] 2 SCR 1120 at para 36 [**BOA TAB 27**].

[29] *Greater Vancouver Transportation Authority v Canadian Federation of Students - British Columbia Component*, 2009 SCC 31 para 37 [*Greater Vancouver*] [**BOA TAB 21**].

[30] *Roach v Canada (Minister of State for Multiculturalism and Citizenship),* [1994] 2 FC 406, 1994 CanLII 3453 (FCA) at para 69 [**BOA TAB 42**].

definition, a collectively held right: it cannot be exercised by an individual and requires a coming together of people.[31]

28. The right to peacefully assemble is separate and distinct from the other section 2 *Charter* rights, and it requires the state to refrain from interfering in such assembly. It may also require the state to facilitate such assembly.[32] Although freedom of assembly cases have typically been determined on other *Charter* grounds, most notably freedom of expression,[33] freedom of peaceful assembly is an independent constitutionally-protected right.

Section 2(d) – Freedom of Association

29. A purposive approach to freedom of association defines the content of this right by reference to its purpose: "to recognize the profoundly social nature of human endeavors and to protect the individual from state-enforced isolation in the pursuit of his or her ends".[34] Freedom of association allows the achievement of individual potential through interpersonal relationships and collective action.[35]

30. The purpose of the right to freedom of association encompasses the protection of (1) individuals joining with others to form associations (the constitutive approach); (2) collective activity in support of other constitutional rights (the derivative approach); and (3) collective activity that enables "those who would otherwise be vulnerable and ineffective to meet on more equal terms the power and strength of those with whom their interests interact and, perhaps, conflict".[36]

Section 7 - the Right to Life, Liberty and Security of the Person

31. Section protects the triple interests of life, liberty and security of the person. The liberty interest protects the right of individuals to be free from state restrictions upon the freedom or

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[31] *Mounted Police Assn. of Ontario v Canada (*Attorney *General)*, 2015 SCC 1 at para 64 [*MPAO*] [**BOA TAB 33**].
[32] See e.g. *Garbeau c Montreal (Ville de)*, 2015 QCCS 5246 at paras 120-156 [**BOA TAB 18**].
[33] Basil S. Alexander, "Exploring a More Independent Freedom of Peaceful Assembly in Canada" (2018) 8: I, UWO J Leg Stud 4 online: https://ojs.lib.uwo.ca/index.php/uwojls/article/view/5715/4809 [**BOA TAB 47**].
[34] MPAO at para 54, citing from Reference re Public Service Employee Relations Act (Alta.), [1987) 1 SCR 313, 1987 CanLII 88 (SCC) at 365 [*Re Public Service*] [**BOA TAB 33**].
[35] *Dunmore v Ontario (Attorney General)*, *2001 SCC 94* at para 17 [**BOA TAB 16]**.
[36] MPAO, at para 54, citing from *Re Public Service*, at 366 [**BOA TAB 33**].

movement.[37] It also protects bodily autonomy, core lifestyle choices, and fundamental relationship.[38]

32. The security of the person interest protects the right of individuals to be free from state action that threatens physical harm to their bodies, and also has a "serious and profound effect on a person's psychological integrity."[39]

Section 7's Inherent limits – The Principles of Fundamental Justice

33. Limitations of the section 7 interests are only lawful so long as the infringements caused by government action or a law are in accordance with the principles of fundamental justice.[40] According to the Supreme Court of Canada, the principles of fundamental justice "are about the basic values underpinning our constitutional order."[41] The Court has recognized a number of principles of fundamental justice, but three have "emerged as central… laws that impinge on life, liberty or security of the person must not be arbitrary, overbroad, or have consequences that are grossly disproportionate to their object."[42]

34. Regarding gross disproportionality, the Supreme Court has stated, "if the impact of the restriction on the individual's life, liberty or security of the person is grossly disproportionate to the object of the measure", the restriction will not be found to accord with the principles of fundamental justice.[43] The Court further found:

> The inquiry into gross disproportionality compares the law's purpose, "taken at face value", with its negative effects on the rights of the claimant, and asks if this impact is completely out of sync with the object of the law.[44]

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[37] *R v Heywood*, [1994] 3 SCR 761, 1994 CanLII 34 (SCC) at 789 [**BOA TAB 38**].
[38] *B. (R.) v. Children's Aid Society of Metropolitan Toronto*, 1995 CanLII 115 (SCC), [1995] 1 SCR 315 at paras 83-85 [**BOA TAB 8**]; *Godbout v Longueuil (City)*, 1997 CanLII 335 (SCC), [1997] 3 SCR 844 at para 66 [**BOA TAB 19**].
[39] *New Brunswick (Minister of Health and Community Services) v G(J)*, [1999] 3 SCR 46, 1999 CanLII 653 (SCC) at para 60 [**BOA TAB 35**].
[40] *Canada (Attorney General) v Bedford*, 2013 SCC 72, [2013] 3 SCR 1101 at paras 74-78 [*Bedford*] [**BOA TAB 9**].
[41] *Bedford* at para 96 [**BOA TAB 9**].
[42] *Carter v Canada (Attorney General)*, 2015 SCC 5, [2015] 1 SCR 331 at para 72 [*Carter*] [**BOA TAB 12**].
[43] *Carter*, at para 89 [**BOA TAB 12**].
[44] *Carter*, at para 89 [**BOA TAB 12**].

35. As for overbreadth, if an impugned law or government measure which limits section 7 rights "goes too far and interferes with some conduct that bears no connection to its objective," it will be overbroad.[45]

36. Arbitrariness involves:

> …whether there is a direct connection between the purpose of the law and the impugned effect on the individual, in the sense that the effect on the individual bears some relation to the law's purpose. There must be a rational connection between the object of the measure that causes the s. 7 deprivation, and the limits it imposes on life, liberty, or security of the person. A law that imposes limits on these interests in a way that bears *no connection* to its objective arbitrarily impinges on those interests.[46]

Private Residence Restrictions

37. The **Private Residence Restrictions** unjustifiably infringes constitutional rights in a manner that is utterly repugnant to the ideal of a free society that Canada and Alberta aspire to. The state can scarcely more severely overreach and intrude into the personal affairs of the free people of Alberta than to declare illegal the bringing friends and family into one's own home. Especially at what is supposed to be the most festive time of the year: Christmas. Absent rare and extreme exceptions, who passes through the doorway of one's home should never be controlled by government.

38. The emotional harm the **Private Residence Restrictions** will inflict upon Albertans is capricious and intolerable.[47] Diane Hachey describes the impact of this prohibition on her as follows:

> I was planning to visit with my daughter and son-in-law's family during Christmas, but now I cannot because to do so would be illegal and we could be fined. I am extremely anxious, devasted and heartbroken over this whole situation.
> …
> This Christmas will be my grandson's first, and I cannot be there to celebrate it with him.
> …

[45] *Bedford* at para 101 [**BOA TAB 9**].
[46] *Bedford* at para 111 [**BOA TAB 9**].
[47] Affidavit of Rebecca Marie Ingram, filed on December 9, 2020 [Ingram Affidavit]; Tanner Affidavit; Affidavit of Maria Keibel, filed December 10, 2020 [Keibel Affidavit]; Affidavit of Diane Hachey, filed December 11, 2020 [Hachey Affidavit].

> If these restrictions continue, I will not see my daughter, son-in-law or my grandson before they move to Nova Scotia in January 2021. I can hardly bear the thought of that.
> …
> I will never get back this Christmas with my only grandson, which the Alberta Government has stolen from me. I have never felt so sad, helpless, and hopeless in all my life. I am dismayed that government is able to violate my rights to such an extreme degree that I have lost even the right to visit my family at Christmastime.[48]

39. The Applicant Torry Tanner:

> The thought of being stripped of Christmas together with family is devastating and demoralizing. … This is extremely sad and disheartening, both for myself and the rest of my family.
> I never would have thought that the Alberta government would issue orders attempting to cancel Christmas. Even less did I think it would be possible for the government to do such a thing.
> I feel like I am living in a nightmare I cannot wake up from. I feel like I do not recognize anymore the society in which I live. I feel oppressed by the government and as though I can no longer depend on my constitutional rights to protect me from the government.[49]

40. Evidencing not merely how appalling, but also arbitrary and irrational the **Private Residence Restrictions** are, Maria Keibel describes in her affidavit that:

> Our daughter lives alone in Brooks. She moved to Brooks a few weeks ago to start a new job.
> …
> The [Private Residence Restrictions] prohibits my daughter from coming home to spend Christmas with her family.
> …
> The [Private Residence Restrictions] force my immediately family to choose between adhering to the law, or being together at Christmas, which I can hardly believe is possible.
> …
> This means our daughter will have to spend Christmas alone, away from her family. This is not merely saddening for us, it breaks my heart.[50]

[48] Hachey Affidavit, paras 3, 5-7.
[49] Tanner Affidavit, paras 5-7.
[50] Keibel Affidavit, paras 1-4.

41. The **Private Residence Restrictions** infringe liberty in a manner that is overbroad, arbitrary and grossly dipropionate. Overbroad because they apply to everyone regardless of whether they may have COVID-19, regardless of where the home is and regardless of who the people are. Arbitrary because there is no direct connection between friends and family celebrating Christmas together at their homes and any legitimate objective behind the **Private Residence Restrictions**. Grossly dipropionate because any potential harm related to COVID-19 flowing from people retaining the right to decide who enters their home pales in comparison to the harm, both qualitatively and quantitatively, inflicted by taking away the right. The harm encompasses the loss of the right itself and also the loss of the types of essential human interaction that make life worth living in the first place.

42. The **Private Residence Restrictions** further infringe freedom of religion in a manner that is not justified by section 1 of the *Charter*. Such **Restrictions** outlaw at people's houses Bible studies, prayer groups and house churches. This is in addition to the fact that spending Christmas together is, for many, overtly religious.[51] The extreme circumstances that could potentially justify such egregious breaches of section 2(a) are just not existent.[52]

43. Lastly, on their face, the **Private Residence Restrictions** limit freedom of peaceful assembly and freedom of association in manner that is not demonstrably justified.

Indoor Social Gathering Restrictions

44. The definition of a "public place" is so broad in the *Public Health Act*[53] that it includes virtually any "public place". The **Indoor Social Gathering Restrictions** infringe the same

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[51] Tanner Affidavit, paras 3-4; Schoenberger Affidavit, para 11; Ingram Affidavit, paras 15-16. There are many other examples, such as Hannukah for Jews.

[52] Affidavit of Dr. Stephen Tilley, filed December 7, 2020 [Tilley Affidavit]; Affidavit of Dr. Bao Dang, filed December 11, 2020 [Dang Affidavit]; Affidavit of Dr. Dennis Modry, sworn December 12, 2020 [Modry Affidavit].

[53] Public Health Act, section 1(1)(ii) "public place" includes any place in which the public has an interest arising out of the need to safeguard the public health and includes, without limitation,

(i) public conveyances and stations and terminals used in connection with them,
(ii) places of business and places where business activity is carried on,
(iii) learning institutions,
(iv) institutions,
(v) places of entertainment or amusement,
(vi) places of assembly,
(vii) dining facilities and licensed premises,

Charter rights as the **Private Residence Restrictions**, and for some of the same reasons, but these restrictions capture important events that can only reasonably occur at places other than people's homes.

45. People that are reasonably free can peacefully meet with nearly anybody they want, nearly wherever they, however they want and for any purpose. But, the result of the **Indoor Social Gathering Restrictions** is that all Albertans are prohibited from socially meeting anyone outside their own household within a "building, structure or place visited by or accessible to the public". This blanket restriction, in combination with the **Private Residence Restrictions**, means citizens are effectively depraved of almost all meaningful social interaction, regardless of its purpose, importance or benefit.

46. It is cruel and capricious to use compulsion to isolate individuals from each other and the repercussions are palpable.[54] It is trite that human beings are inherently social and deprive much of their meaning, fulfillment and contentment from their relationships. In a free society those who are willing to shoulder some risk to themselves so as to benefit from social interaction should be as free to do so as those who self-select to isolate themselves because they prioritize the protection of their health above social interaction.

47. The **Indoor Social Gathering Restrictions** catch life events and ceremonies of deep personal importance that are literally "once in a lifetime". Gatherings such as weddings and funerals go to the core of the purposes underlying the protection of liberty, peaceful assembly, association, and the free exercise of religion. Funerals only happen once and cannot be delayed. Weddings are not much different, especially for religious people who believe that marriage is for life and that co-habiting prior to marriage is morally unacceptable. Both ceremonies are deeply religious for many people, in addition to being deeply emotional and relational.

(viii) accommodation facilities, including all rental accommodation,
(ix) recreation facilities,
(x) medical, health, personal and social care facilities, and
(xi) any other building, structure or place visited by or accessible to the public; [**BOA TAB 1**].

[54] Tilley Affidavit, paras 12 and 14.

48. The **Indoor Social Gathering Restrictions** arbitrarily limit social gatherings to zero and weddings and funerals to 10, all while ignoring venue capacity. It is irrational and capricious to limit all weddings and funerals to an almost meaningless 10 people when there are facilities, both religious and secular, that can hold 200 or more people, even at 15% capacity. The Supreme Court of the United States recently granted an injunction staying a mandate that only permitted a limited number of people to attend houses of worship with no consideration of the building size or capacity, all while services arbitrarily deemed essential could have any number of people.[55]

Outdoor Gathering Restrictions

49. In addition to infringing liberty for the same reasons as articulated above, and freedom of religion in so far as an outdoor gathering is for a religious purpose,[56] the **Outdoor Gathering Restrictions** curtail freedom of expression, association and peaceful assembly in a uniquely oppressive and dangerous manner.

50. Democracy quickly withers in an environment where citizens are deprived of the most effective means of communicating their disagreement with government policies and informing their elected representatives of the suffering imposed upon them by government decisions. Letters can be ignored. Online comments can be blocked and deleted. Phone calls can be evaded. Emails can go unanswered. But large, outdoor, public protests, demonstrations and rallies cannot be hidden. Nothing more powerfully articulates and communicates the will of the people short of a general election. The purpose underlying the **Outdoor Gathering Restrictions** may be merely misguided, but the effects are dire. Democracy can fade into authoritarianism just as summer fades into autumn unless governments are vigilantly held accountable.

51. In this regard, Justices of the Supreme Court of Canada once eloquently delivered the following comments:

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[55] *S Roman Catholic Diocese of Brooklyn, New York v Andrew M. Cuomo, Governor Of New York*, 592 U. S. ____ (2020) [**BOA TAB 43**].

[56] Examples include praying in certain important outdoor locations, performing and attending outdoor Christmas plays, attending live, interactive nativity displays and Christmas carolling.

> … Canadian government is in substance the will of the majority expressed directly or indirectly through popular assemblies. This means ultimately government by the free public opinion of an open society, the effectiveness of which, as events have not infrequently demonstrated, is undoubted.
>
> But public opinion, in order to meet such a responsibility, demands the condition of a virtually unobstructed access to and diffusion of ideas. Parliamentary government postulates a capacity in men, acting freely and under self-restraints, to govern themselves; and that advance is best served in the degree achieved of individual liberation from subjective as well as objective shackles. Under that government, the freedom of discussion in Canada, as a subject-matter of legislation, has a unity of interest and significance extending equally to every part of the Dominion. …
>
> This constitutional fact is the political expression of the primary condition of social life, thought and its communication by language. Liberty in this is little less vital to man's mind and spirit than breathing is to his physical existence.
> …
> The right of free expression of opinion and of criticism, upon matters of public policy and public administration, and the right to discuss and debate such matters, whether they be social, economic or political, are essential to the working of a parliamentary democracy such as ours.[57]

Masks

52. The state-compelled wearing of face-coverings grossly interferes with bodily autonomy, infringing the liberty interests of all Albertans. This is not trivial. Not only does the **Mandated Mask Wearing** violate one's freedom to decide what goes on one's body, it interferes with individuals' very identity by covering the lower half of the face. Open, unhindered communication, including communication by facial expression, is now curtailed, infringing free expression.[58] In so far as masks cause harm to wearers, the **Mandated Mask Wearing** also infringes security of the person.

53. These section 7 and 2(b) limitations are arbitrary, overbroad and unjustified because everyone is required to wear a mask in all indoor spaces regardless of whether they are healthy or sick and notwithstanding the mounting evidence masks are do not

[57] *Switzman v Elbling and A.G. of Quebec*, 1957 CanLII 2 (SCC), [1957] SCR 285, pages 306 and 326 [**BOA TAB 44].**
[58] Schoenberger Affidavit, para 14.

meaningfully prevent the transmission of COVID and cause more harm than they could ever prevent.[59]

54. **Mandated Mask Wearing** further infringes freedom of religion in so far as masks are also required at churches, funerals and weddings. As discussed, such events have significant emotional, relational and spiritual implications for those attending and participating, and the resulting interference with one's appearance, identity, expression and open communication is utterly disproportionate with the, at best, speculative benefits of masks.[60] The state has no place in covering the faces of those worshiping their God, mourning their dead, or celebrating the union of lovers.

C. Irreparable Harm

55. "Irreparable" refers to the nature of harm, whether it is compensable by monetary damages. As the Supreme Court of Canada has stated:

> At this stage the only issue to be decided is whether a refusal to grant relief could so adversely affect the applicants' own interests that the harm could not be remedied if the eventual decision on the merits does not accord with the result of the interlocutory application.
> …
> "Irreparable" refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other.[61]

56. Irreparable harm should not be viewed narrowly.[62] The nature of the harm which can be considered irreparable is broad; there are no defined or fixed categories of irreparable harm, and the damages from irreparable harm do not have to be unquantifiable.[63] The Saskatchewan Court of Appeal has warned that setting too high a standard on this part of the test will "stultify" the purpose sought to be achieved by giving a Court the discretion to grant

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[59] Modry Affidavit, Exhibit "B"; Affidavit of Denise Buchner, filed December 7, 2020, Exhibit "E".
[60] Schoenberger Affidavit, paras 6, 12.
[61] *RJR-MacDonald*, at paras 62-64 [**BOA TAB 41**].
[62] Robert J. Sharpe in *Injunctions and Specific Performance, Looseleaf Edition, Canada Law Book, Toronto,* at para 2.411, referenced in *Livent Inc. v Deloitte & Touche*, 2016 ONCA 395 at para 10 [**BOA TAB 28**].
[63] *Optilinx Systems Inc. v Fiberco Solutions Inc*., (2014) OJ. No. 5708, 2014ONSC 6944 (CanLII) at para 12 [**BOA TAB 36];** *Bell Canada v. Rogers Communications Inc. et al.*, 2010 ONSC 2788 at paras 38-39 [**BOA TAB 6**].

interlocutory relief. [64] Further, the Applicants need only show a *likelihood* of irreparable harm.[65]

57. The Applicants submit that they have and will continue to suffer irreparable harm as a result of the loss of several of their constitutionally-protected rights and in so far as they will suffer devastating emotional, relational and spiritual harm that categorically cannot be financially compensated.

58. No amount of money can compensate for the wholesale and prolonged loss of one's civil liberties. What sum of money could bring a father and husband back from the dead, after he finally succumbed to the endless despair of never finding a job in a government-ravaged economy?[66] No financial recompense can buy back a cancelled Christmas with friends and family, or transport a grandmother back in time to be present for her grandson's first Christmas.[67] Maintaining a sense of purpose through providing for one's family, celebrating Christmas together, attending a loved one's funeral, and salvaging democracy are all priceless.

D. The Balance of (in)Convenience

59. This third prong of the test weighs the harm the Applicants would suffer if the injunction is not granted versus the harm the Respondents would suffer if the injunction is granted. In the context of a case like this one, involving *Charter* rights, the weighing is of harm to the public interest.[68]

60. It is trite law that it is typically in the public interest to not suspend the operation of *democratically enacted legislation* prior to a determination of the constitutionality of the

[64] *Mosaic Potash Esterhazy Limited Partnership v Potash Corporation of Saskatchewan Inc*., 2011 SKCA 120 at paras 59-61 [**BOA TAB 32**].
[65] *Canada (Attorney General) v Oshkosh Defense Canada Inc*, 2018 FCA 102 at para 30 [**BOA TAB 10**].
[66] See Affidavit of RK, filed December 7, 2020 [RK Affidavit].
[67] See Hachey Affidavit.
[68] *Harper*, para 5 [**BOA TAB 22**].

challenged legislation.[69] However, the presumption is rebuttable.[70] Additionally, the Supreme Court has found that "denying … the injunction may deprive plaintiffs of constitutional rights simply because the courts cannot move quickly enough."[71]

61. The within application is not directly caught by the presumption applied in *Harper*,[72] which emphasized the "duly enacted" nature of the democratically passed legislation being challenged.[73]

62. The impugned Restrictions were imposed by the order of a single, democratically unaccountable civil servant: a medical officer. Absolutely no democratic process was engaged by the CMOH in making her pronouncements. No widespread feedback from the public was received or considered. Those suffering the destruction of their liberty, livelihoods, mental health and relationships have not been consulted. No mandate for a lockdown on society was sought from that society through any type of election.

63. The CMOH Orders are not "legislation" enacted by a democratically elected Legislative Assembly where there is open and public debate by the elected representatives of the public. Neither have the CMOH's Orders been brought before the Legislature for study, proposed amendments or democratic approval. There are no sunset clauses in the *Public Health Act* that restrain these orders or make them go for review before the Legislative Assembly after a certain timeframe. There is no record of debate, no consideration of competing interests like financial, educational, religious, or even the infringement of *Charter*-protections;

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[69] *National Council of Canadian Muslims (NCCM) c. Attorney General of Quebec*, 2017 QCCS 5459, at para 45 [*NCCM 2017*] [**BOA TAB 34**].

[70] Examples of such cases were listed in *British Columbia (Attorney General) v Alberta (Attorney General),* 2019 FC 1195 at para 163 [**BOA TAB 7**]: *Law Society of British Columbia v Canada (Attorney General),* 2001 BCSC 1953; *Québec (Procureur général) v Canada (Procureur général)* [the Long-Gun Registry case], 2012 QCCS 1614; *Alberta Union of Provincial Employees v Alberta, 2014 ABQB 97* [AUPE]; *Thcho Government v Canada (Attorney General),* 2015 NWTSC 9; *National Council of Canadian Muslims v Québec (Procureur général),* 2018 QCCS 2766 [Council of Muslims]

[71] *Harper*, para 5 citing R. J. Sharpe, *Injunctions and Specific Performance* (loose-leaf ed.), at para. 3.1220 [**BOA TAB 22**].

[72] *Harper* [**BOA TAB 22**].

[73] *Harper* at paras 5, 9 and 11 [**BOA TAB 22**].

64. Further, the CMOH has provided no meaningfully reviewable reasons in support of her Orders, which she is mandated by the *Doré*/*Loyola* requirements to do.

65. The CMOH Orders are the farthest thing from "duly" or "democratically" enacted legislation. The Orders therefore do not benefit from the initial presumption that the public interest does not favour staying the **Restrictions**. The CMOH has no prior claim to the public interest over that of the Applicants or the rest of Albertans.

66. Even when dealing with legislation, individual claimants can establish that the public interest favours immediately upholding their *Charter* rights over protecting constitutionally-suspect legislation.[74] In *National Council of Canadian Muslims*, the Quebec Superior Court recognized:

> …public interest includes both the concerns of society at large and the particular interests of identifiable groups. Moreover, public interest does not always gravitate in favour of enforcement of existing legislation. If this was to be the case, the values of our free and democratic society would be compromised.[75]

67. As definitively stated by the Supreme Court of Canada:

> [T]he government does not have a monopoly on the public interest. As Cassels points out at p. 303:
>
> > While it is of utmost importance to consider the public interest in the balance of convenience, the public interest in *Charter* litigation is not unequivocal or asymmetrical in the way suggested in Metropolitan Stores. The Attorney General is not the exclusive representative of a monolithic "public" in *Charter* disputes, nor does the applicant always represent only an individualized claim. Most often, the applicant can also claim to represent one vision of the "public interest".
>
> …
>
> Each party is entitled to make the court aware of the damage it might suffer prior to a decision on the merits. In addition, either the applicant or the respondent may tip the scales of convenience in its favour by demonstrating to the court a compelling public interest in the granting or refusal of the relief sought. "Public interest" includes both the concerns of society generally and the particular interests of identifiable groups.[76]

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[74] *NCCM 2017* [**BOA TAB 34**].
[75] *NCCM 2017*, at para 59 [**BOA TAB 34**].
[76] *RJR-MacDonald* at paras 65-66 [**BOA TAB 41]**; see also *NCCM 2017*, at para 33 [**BOA TAB 34**].

68. The Respondent is going to say that we are in the middle of a pandemic. But, as Supreme Court Justice Brown once said, "saying so does not make it so".[77] Despite "case count" hysteria in the media, the evidence before this Court is that what Alberta is experiencing is not significantly worse than a bad flu year and certainly not calamitous or catastrophic.[78]

69. Clearly, it is in the public interest to address the transmission of a communicable illness such as COVID-19, and to attempt to protect those vulnerable to the illness. But, only to the degree efforts to do so have a demonstrated reasonable chance of success and will not result in more harm than possible benefit. It is decidedly not in the public interest to impose upon society more harm through government decisions than the impact of COVID-19 itself. The public interest demands the government not make a bad situation far worse.

70. In addition to the lack of evidence lockdowns actually meaningfully reduce the negative impact of COVID-19, there is significant disagreement with and denouncement of lockdowns as effective and somehow no more harmful than COVID-19 itself.[79]

71. Further, and most importantly, it has become incontrovertible since the Spring of 2020 that lockdown measures such as the **Restrictions** causes a dramatic degree of harm that far outweighs the speculative harm of COVID-19 with no lockdowns.[80] The statistics mathematically quantify lockdown harms on society, but the Affidavits filed herewith put a human face to the suffering than appears on paper and it is tragic. The public interest favours the Applicants and the staying of the **Restrictions** because the harm from the **Restrictions** is both avoidable and more severe than the harm COVID-19 is capable of causing and avoidable, whereas the benefit of the **Restrictions** is speculative.

72. The observations by Dr. Stephen Tilley, a Cardiologist, are that critical health determinants of "income, employment and working conditions, social supports and health behaviours"

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[77] *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32, [2018] 2 SCR 293 at para 304 [**BOA TAB 26**].

[78] Tilley Affidavit, at paras. 3-5; Dr. Dang Affidavit, at paras 3-8; Modry Affidavit, Exhibit "B".

[79] See, for example, the Great Barrington Declaration: Dang Affidavit, para 13, Exhibit "B" and Modry Affidavit, Exhibit "B".

[80] Tilley Affidavit, paras 6-14; Schoenberger Affidavit, paras 14-18; Modry Affidavit, Exhibit "B"; Ingram Affidavit, paras 7, 15, 21, 24-29, 33-36; Hachey Affidavit; Keibel Affidavit; Tanner Affidavit; R.K. Affidavit.

have fallen over the last nine months.[81] Some of his patients have stopped "taking critical cardiovascular medications, simply because they cannot afford them."[82] Over the past nine months he has seen a high number of patients with "symptoms that resemble cardiac disease, such as chest pain, shortness of breath, racing heart" but many of them have a completely normal heart and these symptoms are a reflection of "underlying stress and anxiety."[83] Additionally, "the stress of unemployment and financial strain also manifest themselves as poor health choices, which in turn impact health outcomes."[84] Dr. Tilley also speaks to the social isolation and how a few of his patients have considered prolonged social isolation worse than the risk of death from COVID-19.[85]

73. Yet, as has become widely known, ICUs are not overrun, the accuracy of COVID-19 testing is suspect, the effectiveness of masks is unproven, and COVID-19 poses no credible threat to people under 60 with no co-morbidities.[86] "For people 70 and over, the infection survival rate is 95%. For people under 70, it is 99.95%."[87] The **Restrictions** are an overreaction, driven by fear, and the consequences of the loss of liberty, livelihoods and mental health are grossly disproportionate.

74. Rational and significantly less intrusive means exist to protect the limited people who are vulnerable (above 60 with one or more co-morbidities) that the government inexplicably refuses to use instead. Further, the Alberta Government's own pandemic response notes the importance of "mitigating societal disruption in Alberta through ensuring the continuity and recovery of critical services" and "minimizing adverse economic impact".[88]

75. The **Restrictions** are apparently only aimed at attempting to control COVID-19—they give no thought to social disruptions (including mental health and the impact of social isolation)

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[81] Tilley Affidavit, para 6.
[82] Tilley Affidavit, para 9.
[83] Tilley Affidavit, para 10.
[84] Tilley Affidavit, para 11.
[85] Tilley Affidavit, para 14.
[86] Modry Affidavit, Exhibit "B"; Affidavit of Rebecca Maria Ingram, Exhibit "A"; Affidavit of Denis Lynn Buchner paras 7 and 12, Exhibit "E"; affidavit of Dr. Bao Dang at para 5, Exhibit "A")
[87] Affidavit of Dr, Dennis Modry, Exhibit "B" at page 93: December 8, 2020 Senate Testimony of Dr. Jay Bhattacharya.
[88] Alberta Government, Alberta's Pandemic Influenza Plan, March 2014 at page 9 [**BOA TAB 46];** See also Modry Affidavit, Exhibit "C".

and how to minimize adverse economic impacts. In Alberta during the spring lockdown months, the rates of unintentional opioid poisoning deaths dramatically increased. The report stated that:

> [b]eginning in March 2020, the number of harms associated with opioid use began to increase significantly, reaching record levels not previously seen, in conjunction with a decrease in the utilization of treatment and harm reduction services. Some key findings include: … in the **second quarter of 2020, 301 individuals** died of an unintentional opioid poisoning.…"[89]

76. As shown in Alberta's pandemic goal planning, wholistic goals need to be considered including economic and mitigating social disruption. This weighs in favour of the **Restrictions** not being in the public interest as they are exclusively focused on COVID-19 with no consideration of balancing the mental or psychological impacts or economic consequences of them.

77. The deaths of those who have died with COVID are tragic, and obviously not in the public interest. However, the unnecessary widespread suffering felt by all of society and herein detailed is no less tragic. Ultimately, on balance, removing the avoidable and government-imposed harm experienced by all Albertans as a result of the **Restrictions** is more in the public interest than the continued imposition of such harms on the mere speculation the Restrictions reduce the unavoidable, natural harm as a result of COVID-19.

IV. CONCLUSION

78. Albertans are currently experiencing the greatest collective violation of civil liberties this Province has ever known. Yet, there is no war, no calamitous natural disaster, no catastrophic loss of critical infrastructure, and no dramatic, overwhelming, sweeping loss of life.

79. Select individual rights and freedoms have been constitutionalized in this country for a reason. Not merely because living in a free society is convenient, because of the recognition that the activities, experiences and endeavours those rights protect are what make life truly worth living. History has borne out that maximum individual freedom is directly linked to

[89] Alberta, COVID-19 Opioid Response Surveillance Report, Q2 2020 September 2020 [**BOA TAB 45**]. (emphasis added)

maximum human flourishing and suffocating government control is directly linked to less human flourishing, and, sometimes, none at all.

80. There can nothing more antithetical to the public interest than the systemic dismantling of the freedoms of the Alberta people, even if that dismantling is an unintended consequence of government efforts to respond to a perceived crisis. It is Albertans who should be on holiday during this Christmas, not their freedoms.[90]

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 13th day of December 2020:

Jocelyn Gerke

_____ _____

James S. M. Kitchen Jocelyn Gerke

Counsel for the Applicants, Heights Baptist Church, Northside Baptist Church, Erin Blacklaws and Torry Tanner

[90] See *S Roman Catholic Diocese of Brooklyn, New York v Andrew M. Cuomo, Governor Of New York*, 592 U. S. ____ (2020) at para 3 [**BOA TAB 43**].

V. BOOK OF AUTHORITIES

TAB	STATUTES AND ORDERS
1.	Public Health Act, RSA 2000, c P-37
2.	RECORD OF DECISION – CMOH Order 01-2020
3.	RECORD OF DECISION – CMOH Order 38-2020
4.	RECORD OF DECISION – CMOH Order 42-2020
	CASELAW
5.	*Apotex Fermentation Inc. v. Novopharm Ltd.*, 1994 CanLII 16694 (MB CA), 95 Man R (2d) 241
6.	*Bell Canada v. Rogers Communications Inc. et al.*, 2010 ONSC 2788
7.	*British Columbia (Attorney General) v Alberta (Attorney General)*, 2019 FC 1195
8.	*B. (R.) v. Children's Aid Society of Metropolitan Toronto*, 1995 CanLII 115 (SCC), [1995] 1 SCR 315
9.	*Canada (Attorney General) v Bedford*, 2013 SCC 72, [2013] 3 SCR 1101
10.	*Canada (Attorney General) v Oshkosh Defense Canada Inc, 2018 FCA 102*
11.	*Canadian Broadcasting Corp. v. Canada (Attorney General)*, 2011 SCC 2
12.	*Carter v Canada (Attorney General)*, 2015 SCC 5, [2015] 1 SCR 331
13.	*Christian Heritage Party v. City of Hamilton*, 2018 ONSC 3690
14.	*Committee for the Commonwealth of Canada v. Canada*, [1991] 1 SCR 139, 1991 CanLII 119 (SCC)
15.	*Domo Gasoline Corporation Ltd. v St. Albert Trail Properties Inc*, 2005 ABQB 69
16.	*Dunmore v Ontario (Attorney General)*, 2001 SCC 94
17.	*Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 SCR 1326, 1989CanLII 20 (SCC)
18.	*Garbeau c Montreal (Ville de)*, 2015 QCCS 5246
19.	*Godbout v Longueuil (City)*, 1997 CanLII 335 (SCC), [1997] 3 SCR 844
20.	*Google Inc. v Equustek Solutions Inc.*, 2017 SCC 34

21.	*Greater Vancouver Transportation Authority v Canadian Federation of Students - British Columbia Component*, 2009 SCC 31
22.	*Harper v Canada (Attorney General)*, 2000 SCC 57, [2000] 2 SCR 764
23.	*Hudson Bay Mining & Smelting Co. Limited v Dumas et al*, 2014 MBCA 6
25.	*Ktunaxa Nation v British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54, [2017] 2 SCR 386
26.	*Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32, [2018] 2 SCR 293
27.	*Little Sisters Book & Art Emporium v Canada (Minister of Justice)*, 2000 SCC 69 (CanLII), [2000] 2 SCR 1120
28.	*Livent Inc. v Deloitte & Touche*, 2016 ONCA 395
30.	*Manitoba Federation of Labour et al. v The Government of Manitoba*, 2018 MBQB 125
31.	*Monsanto v Canada (Health)*, 2020 FC 1053
32.	*Mosaic Potash Esterhazy Limited Partnership v Potash Corporation of Saskatchewan Inc.*, 2011 SKCA 120
33.	*Mounted Police Assn. of Ontario v Canada (*Attorney *General)*, 2015 SCC 1
34.	*National Council of Canadian Muslims (NCCM) c. Attorney General of Quebec*, 2017 QCCS 5459
35.	*New Brunswick (Minister of Health and Community Services) v G(J)*, [1999] 3 SCR 46, 1999 CanLII 653 (SCC)
36.	*Optilinx Systems Inc. v Fiberco Solutions Inc.*, (2014) OJ. No. 5708, 2014ONSC 6944 (CanLII)
37.	*PT v Alberta*, 2019 ABCA 158
38.	*R v Heywood*, [1994] 3 SCR 761, 1994 CanLII 34 (SCC)
39.	*R v Sharpe*, [2001] 1 SCR 45, 2001 SCC 2 (CanLII)
40.	*Reference re Public Service Employee Relations Act (Alta.)*, [1987) 1 SCR 313, 1987 CanLII 88 (SCC)
41.	*RJR – MacDonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311, 1994CanLII 117 (SCC)
42.	*Roach v Canada (Minister of State for Multiculturalism and Citizenship)*, [1994] 2 FC 406, 1994 CanLII 3453 (FCA)
43.	*S Roman Catholic Diocese of Brooklyn, New York v Andrew M. Cuomo, Governor Of New York*, 592 U. S. (2020)

44.	*Switzman v Elbling and A.G. of Quebec*, 1957 CanLII 2 (SCC), [1957] SCR 285
	SECONDARY SOURCES AND GOVERNMENT REPORTS
45.	Alberta, COVID-19 Opioid Response Surveillance Report, Q2 2020 September 2020
46.	Alberta Government, Alberta's Pandemic Influenza Plan, March 2014
47.	Basil S. Alexander, "Exploring a More Independent Freedom of Peaceful Assembly in Canada" (2018) 8: I, UWO J Leg Stud 4 online: https://ojs.lib.uwo.ca/index.php/uwojls/article/view/5715/4809