



# Justice Centre

for Constitutional Freedoms

May 19, 2020

Hon. Jason Kenney  
Premier of Alberta  
Legislative Assembly of Alberta  
10800 - 97 Avenue  
Edmonton, AB, T5K 2B6

Dear Premier Kenney,

**Re: irrational and unscientific double-standard for houses of worship relaunch**

As you know, the *Canadian Charter of Rights and Freedoms* safeguards liberty as its first priority.

The *Charter* is intended to prevent governments from infringing the rights and fundamental freedoms of Canadians. It permits infringement of those rights and freedoms only in exceptional circumstances, and only to the extent that a government can show such infringements to be “demonstrably justified in a free and democratic society.” Once citizens are able to show that their *Charter* rights have been violated, the onus shifts to the government to justify its violation of those rights. Again, this burden is on the government—not the citizens—and is intended by the *Charter* to be an onerous one.

By way of lockdown measures, your government is violating the *Charter* freedoms of Albertans to move, travel, associate, assemble peacefully and practice their religion. Temples, mosques, synagogues and churches have been deemed non-essential, as have schools. Further, Albertans’ *Charter* rights to life, liberty and security of the person have also been compromised.

Your government claims “saving lives” as the justification for lockdown measures that severely violate *Charter* rights and freedoms severely. This goal is a worthy one that potentially justifies violating the *Charter* rights and freedoms of Albertans, at least for a limited and specified period of time. However, even when a court recognizes the legitimacy of a such a goal, the government must still prove to the court that the good of the lockdown measures outweighs their harm.

With this context in mind, we have carefully reviewed your government’s relaunch guidelines for restaurants and for houses of worship. We reprint them further below, for ease of reference.

We note that when Alberta’s restaurants, cafes, pubs and bars re-open, they cannot exceed 50% capacity, but there is no limit to the number of customers allowed in at one time. So, a large restaurant that seats 300 people can still serve 150 customers at a time.

In contrast, you are asking houses of worship to reduce attendance to 50 people or one third (not 50% like restaurants) of normal worship service attendance, *whichever is smaller*. This means that a large temple that seats 1,000 or 2,000 people must still limit its attendance to only 50 people.

Why are churches and mosques limited to 50 people when large restaurants can host 100 or 200 people?

We note that multiple diners at restaurants can sit together at the same table, *even if they are not from the same household*. Alberta's Chief Medical Officer, Dr. Deena Hinshaw, has been saying for more than nine weeks that six-foot social distancing is a life-saving necessity. Why is it suddenly fine for six restaurant patrons from six different families to sit side-by-side, one or two feet apart?

In stark contrast, you are asking worshipers from differing households to maintain six-foot social distancing "at all times." Why this difference? Where is the science? Why must people from differing households in a synagogue or temple maintain six-foot distancing when this is not required at a restaurant that every week will host and facilitate far more interactions amongst far more people than a typical house of worship?

Your government states that "infants and children" in houses of worship "should remain with their parents or guardians at all times" and that "nursery/children's church is not permitted." But daycares and day camps became legal again on May 14. How is it scientific to ban nurseries and children's programs at houses of worship, while allowing day camps and daycares to open?

We note that your guidelines for houses of worship open with the following words:

It is critically important that places of worship understand the potential for spread within their congregation and take steps to minimize the risk of spread and the impacts of COVID-19 on some high-risk populations.

In contrast, the guidelines for restaurants open with these words:

This document should be used to support operators in reducing the risk of transmission of COVID-19 among guests and workers in restaurants, cafes, pubs and bars.

Why do you feel it is necessary to tell houses of worship that it is "critically important" to "understand the potential for spread," but not say the same thing to restaurant owners? Why this difference?

Houses of worship are told they cannot provide "cooked food, open food, or beverages." This attacks the central and long-standing Sikh tradition and practice of feeding all people, Sikhs and non-Sikhs alike, who come to the temple. Why is it not good enough for a Sikh temple—and other houses of worship—to adhere to the same standards that are imposed on restaurants?

We note that you are banning communion, also known as the Lord's Supper: "Services must not include sharing food or beverages. Services must not include any contact between congregants such as hand shaking or the sharing of communal items (e.g. communion chalice)."

Restaurants serve food on plates that have been touched by at least several people and are then carried through the restaurant, past other patrons, before being placed in front of the customer.

In contrast, in Catholic churches the priest is the only person who touches the communion bread prior to its distribution directly to the communicant. Nevertheless, your government has effectively banned communion, which for Catholics is the heart, soul and focal point of the mass. If you intended the Eucharist to be exempt from your mandatory prohibition, you have not made this clear in your government's official documents that are posted online.

Your policies also reveal that you trust and respect restaurant patrons to make their own personal decisions about shaking or not shaking hands, whereas you tell people attending houses of worship that they are to refrain from shaking hands. Again, why the difference?

Your guidelines also prohibit social gathering before and after worship services: "Social activities (e.g. communal dinners, lunches) outside of services are not permitted." Restaurants are in the business of serving "communal" dinners and lunches every day, serving far more food to far more people than houses of worship do. If the government's goal is to "reduce the spread," why are restaurants permitted to serve meals while houses of worship may not?

We note that houses of worship in Calgary and Brooks are being asked to stay at the prior lockdown limit of 15 people until June 1, unable to hold their weekly services with 50 or more people until Friday June 5, Saturday June 6, or Sunday June 7.

In contrast, bars, pubs, restaurants and cafes in Calgary and Brooks can open on May 25, almost two weeks earlier than houses of worship. If the "relaunch" is truly about "stopping the spread," and if the relaunch is intended to be gradual, then why would restaurants open ahead of mosques, temples and synagogues?

Restaurants will see dozens or hundreds of unrelated strangers come and go every day, seven days a week. In contrast, houses of worship have gatherings once per week, but are largely empty the other six days. If the re-opening is supposed to be slow and gradual, why are houses of worship in parts of Alberta permitted to celebrate their first weekly service almost two weeks after restaurants are open? And why impose a 50-person limit on houses of worship but not on restaurants?

We further note the statement in the guidelines that if houses of worship host "drive-in" services, "vehicles should be separated by a minimum of two metres." No such requirement is imposed at Tim Hortons drive-throughs, where staff serve hundreds of customers every day, handing food and beverages to cars that are very close to the serving windows. Social distancing is a crucial life-saving measure, or it is not. Why single out houses of worship with this requirement? Do you and Dr. Hinshaw believe this qualifies as "evidence-based" public policy?

*Most alarming and pernicious of all*, your government now directs houses of worship to "keep a listing of congregants who were present for services" and "maintain an up-to-date contact list for all staff and volunteers, including names, addresses and phone numbers."

Stores, restaurants, pubs, cafes, and bars do not have to inform your government about who their patrons are, let alone ask patrons for their addresses and phone numbers. Why should houses of worship be any different?

Only in a police state is the government interested in tracking and recording the activities and movements of citizens.

Regardless of what ideology or philosophy a government may adhere to, governments never fail to invent a pretext for violating fundamental freedoms: building the worker's paradise, fighting terrorism, national security, public health, preventing bullying in schools, etc. We suggest to you that no pretext is worth turning Alberta into a police state, and we are confident that a court would interpret the *Charter* accordingly.

In all respects, your government's legal requirements for houses of worship are irrational and arbitrary when compared to the legal requirements for restaurants. There is a glaring difference when it comes to permissible numbers of people, social distancing, the service of food, the requirement to record the names of Albertans who enter the building, the spacing of cars, the shaking of hands, and even the lecturing tone directed at religious leaders but not at restaurant owners.

In the course of a "gradual" re-opening—which is what your government claims as its goal—what is the rational and scientific basis for these differences? At best, it appears that they are explained by a philosophy or worldview that sees restaurants as far more important than churches. At worst, these differences are an expression of anti-religious bigotry.

The *Charter* requires that your government's restrictions on religious freedom be rational, not arbitrary. Leaving in place the current irrational and arbitrary policies, which do not qualify as evidence-based public policy, will mean that you leave houses of worship with no reasonable alternative but to assert, in practice or before the courts or both, their rights and freedoms as protected by the *Charter*.

I look forward to hearing an announcement from your government that you will modify existing Orders and regulations governing houses of worship, such that these Orders and regulations start to comply with the *Charter*.

Yours truly,

John Carpay, B.A., LL.B.  
President  
Justice Centre for Constitutional Freedoms

cc. Dr. Deena Hinshaw, Chief Medical Officer of Health

## Alberta government guidelines for houses of worship

It is critically important that places of worship understand the potential for spread within their congregation and take steps to minimize the risk of spread and the impacts of COVID-19 on some high-risk populations. Places of worship should also follow the Workplace Guidance for Business Owners. Worship leaders are encouraged to continue to hold services remotely and using other creative mechanisms such as drive-in services. All places of worship should follow the public health guidance below and review their programming and worship services to keep everyone, especially the most vulnerable, safe. COVID-19 Risk Mitigation Supporting Congregants' Safety • Staff, visitors and congregation should use the self-assessment

tool before attending. • Offer multiple services and opportunities to worship to reduce the attendance to 50 people or one third of normal worship service attendance, whichever is smaller and whichever ensures physical distancing will be maintained. • Staff, visitors, and congregation should be provided information on the requirements for operation and the importance to prevent the spread of COVID-19. • Consider posting signs indicating COVID-19 physical distancing protocols. • Physical distancing must be maintained between people who are not from the same household at all times. • Staff, visitors, and congregation may choose to wear non-medical masks, however, it is not required if physical distancing is maintained at all times. • Infants and children should remain with their parents or guardians at all times. Nursery/children's church is not permitted. • Individuals not from the same household should be reminded to maintain physical distancing when returning to vehicles or homes. • Consider having cohort families, whereby two cohort families sit together with sufficient spacing between them and other cohort family pairs. Supporting Staff and Religious Leaders • Religious leaders should support COVID-19 prevention activities, procedures, and education. • Staff and volunteers should be given information and training about appropriate physical distancing, processes, and hygiene practices. • Staff should wear appropriate PPE if they are unable to maintain 2 metres of separation from congregants. Facilities • Control and stagger entry into facilities. • Congregant lineups should be reminded of the importance of physical distancing. This should be clearly marked to prevent congestion. • Organizations should maintain a single point of entry and a separate point of exit. • Hand sanitizer containing at least 60% alcohol content must be available at facility entrance and exit and available throughout the venue. • Congregants should be reminded to clean their hands on entry and exit. • Develop and implement procedures for increasing the frequency of cleaning and disinfecting of high traffic areas, common areas, public washrooms. • Frequently clean and disinfect high-touch/shared surfaces such as: doorknobs, light switches, toilet handles, faucets and taps, elevator buttons, railings. • Facilities should be cleaned and sanitized at least once between services. • Seating should be arranged or marked (in case of pews) to ensure social distancing. • Facility rental programs should be suspended if they cannot adhere to gathering restrictions. COVID-19 INFORMATION GUIDANCE FOR PLACES OF WORSHIP [alberta.ca/BizConnect](https://alberta.ca/BizConnect) Email: [BizConnect@gov.ab.ca](mailto:BizConnect@gov.ab.ca) ©2020 Government of Alberta | Published: May 2020 Cultural and Religious Practices • Services should not include providing cooked food, open food, or beverages. • Services must not include sharing food or beverages. • Services must not include any contact between congregants such as hand shaking or the sharing of communal items (e.g. communion chalice). • Social activities (e.g. communal dinners, lunches) outside of services are not permitted. Singing • Congregational singing is a high-risk activity and is not allowed. Infected people can transmit the virus through their saliva or respiratory droplets while singing. Consider soloist music or piano/guitar offertories as an alternative. • While there is no evidence of exactly what a safe distance would be to prevent transmission from someone singing, if one or two people are singing as part of a live streamed or recorded service, factors that would reduce risk would be having the singers face away from others, or having barriers (e.g. Plexiglass) that separate those singing from each other and any others, and ensuring that there are no individuals with chronic medical conditions or those over 65 present. • Note that if the singers are members of the same household, risk mitigation between them would be unnecessary. Drive in Services • Drive-in services may be held in designated parking lots or staging areas, and must meet the following conditions: o Event organizers must have measures in place to keep people from leaving their vehicles at the service. o Vehicles should be separated by a minimum of two metres. o Where washroom access is provided, frequent cleaning and disinfection must occur. o People leaving their vehicles to use the washrooms must maintain a minimum of two metres of separation from others at all times. Support for Public Health • To enable management of cases through contact tracing and follow-up, keep a listing of

congregants who were present for services. • Maintain an up-to-date contact list for all staff and volunteers, including names, addresses and phone numbers.

## Alberta government guidelines for restaurants, bars, cafes and pubs

GUIDANCE FOR RESTAURANTS, CAFES, PUBS, AND BARS [alberta.ca/BizConnect](https://alberta.ca/BizConnect) Email:

[BizConnect@gov.ab.ca](mailto:BizConnect@gov.ab.ca) ©2020 Government of Alberta | Published: May 2020 Overview This document should be used to support operators in reducing the risk of transmission of COVID-19 among guests and workers in restaurants, cafes, pubs and bars. Operators should also follow the Workplace Guidance for Business Owners and are required to follow the Food Regulation and Food Retail and Foodservices Code.

Contact your local Public Health Inspector with Alberta Health Services for more information. COVID-19 Risk Mitigation Dining Areas • Restaurants, cafes, pubs and bars must operate at no more than 50% seating capacity. Outdoor patio seating areas must also be at 50% capacity or less. • Arrange tables and chairs so that a 2-metre distance is maintained between each dining party. • Aisles should be wide enough to allow room for people to maintain physical distancing. Consider using one-way traffic flow help maintain distancing. • Physical barriers should be installed where tables cannot be adequately separated. For example, heighten barriers between adjoining booths. • Businesses should facilitate ways to prevent infection transmission, such as: o The use of dividers between booths or tables, o Setting limits on the number of patrons per table, based on size. A maximum number of patrons sitting together at larger tables should be 6. o Removing chairs. • Remove table condiments and other frequently touched items (for example, salt and pepper shakers, ketchup, hot sauce). • Consider keeping music to a low volume to help customers avoid leaning in to hear each another. Entry and Waiting Areas • Control access to the dining area, by asking guests to wait to be seated. • Ensure that customers have space to maintain physical distancing in waiting areas. • Encourage table reservations to prevent lineups. • Where possible, ask guests to wait outside until their table is ready, and use technology to provide notice that a table is ready. • Encourage guests to wash their hands or use hand sanitizer with at least 60% alcohol content when entering and leaving. Facility • To maintain awareness, post COVID-19 signage throughout the facility. • Washroom capacity must allow for distancing between guests. For example, consider closing alternate urinals. • Thoroughly sanitize each table after customers leave. • Washroom sanitation and supervision should be enhanced. • Staff should perform hand hygiene frequently. COVID-19 INFORMATION GUIDANCE FOR RESTAURANTS, CAFES, PUBS, AND BARS [alberta.ca/BizConnect](https://alberta.ca/BizConnect) Email: [BizConnect@gov.ab.ca](mailto:BizConnect@gov.ab.ca) ©2020 Government of Alberta | Published: May 2020 Service • All dining must be table service only. • Wait staff and servers who cannot be protected by 2 metres of distance or a physical barrier must wear a cloth or surgical mask. • Digital ordering devices, check presenters and other common touch areas must be thoroughly cleaned and disinfected after use. • Where reusable menus are used, thoroughly clean and sanitize between clients. Paper menus must be discarded after use. • Use rolled silverware and do not preset tables. The person performing this task must follow hand hygiene practices. • There can be no buffet service or self-service. • Guests dining inside the restaurant must order food and drinks from the table. • Continue to follow existing occupational health and safety (OHS) requirements. Quick Service and Take Out • Demarcate floors with physical distancing markers in areas where line-ups occur. Keep line-ups away from dining areas. • Provide signage and guidance to guests regarding ordering and mobile orders. Amusement • Facilities are open for dining, delivery and take out only. Recreational activities within bars, cafes, or pubs are not allowed at this time. This includes dancing on dance floors, VLT play, billiards, pool tables, karaoke, shisha, hookah and water pipes, and other activities.