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Alberta Rules of Court
 Rules 6.3 and 10.52(1)
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COURT FILE NO. 2001-14300

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANTS REBECCA MARIE INGRAM, HEIGHTS BAPTIST CHURCH, NORTHSIDE BAPTIST CHURCH, ERIN BLACKLAWS and TORRY TANNER

RESPONDENTS HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA and THE CHIEF MEDICAL OFFICER OF HEALTH

DOCUMENT NOTICE OF APPLICATION

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 AND CONTACT
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 Northside Baptist Church,
 Erin Blacklaws and Torry
 Tanner

NOTICE TO RESPONDENTS: HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA and THE CHIEF MEDICAL OFFICER OF HEALTH

This Application is made against you. You are a Respondent.

You have the right to state your side of this matter before the Justice.

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

Date:	December 18, 2020
Time:	10:00 am Virtually VIA WebEx
Where:	Calgary – Calgary Courts Centre, 601 5 Street SW, Calgary
Before Whom:	The Presiding Justice in Chambers

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

Remedy claimed or sought:

1. An Order abridging the time for service of this Application and supporting materials, if necessary;
2. An interim Declaration that CMOH Orders 38-2020, 39-2020, 40-2020, and 41-2020 are of no force and effect as they offend sections 1(a), 1(b), 1(c), 1(e) and 1(g) 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*;
3. An Order staying or enjoining the Alberta Government and the Chief Medical Officer of Health from restricting the conduct of any business in Alberta absent the Crown providing evidence to this Court that a specific business is implicated in the spread of Covid-19 to any resident of Alberta over the age of 60 or with a health condition that would result in a fatality in the event that they would become infected by Covid-19 on the balance of probability;
4. In the alternative, an Order for an interlocutory injunction staying:
 - a. CMOH Order 38, Part 1, section 3 (“**Private Residence Restrictions**”);
 - b. Order 41, Part 2, section 12 (“**Private Social Gathering at Indoor Public Place Restrictions**”);
 - c. CMOH Order 41, Part 2, section 13 (“**Outdoor Gathering Restrictions**”);

- d. CMOH Order 41, Part 2, sections 14 and 15 (“**Wedding and Funeral Restrictions**”); and
 - e. 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**”);
 - i. In the alternative, CMOH Order 38, Part 3, section 19(b), CMOH Order 38, Part 4, section 26 and CMOH Order 41, Part 4, section 20 in so far as these sections mandate mask wearing at worship services, wedding ceremonies, and funeral services (“**Mandated Mask Wearing at Solemn Events**”).
5. In the further alternative, an Order for an interim injunction staying the following until January 4, 2021:
- a. CMOH Order 38, Part 1, section 3 (“**Private Residence Restrictions**”);
 - b. Order 41, Part 2, section 12 (“**Private Social Gathering at Indoor Public Place Restrictions**”);
 - c. CMOH Order 41, Part 2, section 13 (“**Outdoor Gathering Restrictions**”);
 - d. CMOH Order 41, Part 2, sections 14 and 15 (“**Wedding and Funeral Restrictions**”); and
 - e. 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**”);
 - i. In the alternative, CMOH Order 38, Part 3, section 19(b), CMOH Order 38, Part 4, section 26 and CMOH Order 41, Part 4, section 20 in so far as these sections mandate mask wearing at worship services, wedding ceremonies, and funeral services (“**Mandated Mask Wearing at Solemn Events**”).
6. In the further alternative, an injunction against such sections of CMOH Orders 38-2020, 39-2020, 40-2020, and 41-2020 or any further CMOH Orders such as the Court is willing to enjoin;

7. An Order that the Alberta Government report the “cycle threshold” for every PCR test they run and their reference ranges, as applicable;
8. Costs of this Application; and
9. Such further and other relief as counsel may advise and this Honourable Court deems just and equitable.

Grounds for making this application:

10. Rebecca Marie Ingram, Heights Baptist Church, Northside Baptist Church, Erin Blacklaws and Torry Tanner, which are collectively referred to as the “**Applicants**”, filed an Originating Application against Her Majesty the Queen in Right of the Province of Alberta (“**Alberta**”) and the Chief Medical Officer of Health (“**CMOH**”), which are collectively referred to as the “**Respondents**”, on December 7, 2020.
11. This Originating Application claims that the CMOH Orders in Alberta, in response to the communicable viral infection SARS-CoV-2 (“**COVID-19**”), breach the *Constitution Act, 1867*, the *Canadian Charter of Rights and Freedoms*, and the *Alberta Bill of Rights*.
12. At the time of filing the Originating Application, Dr. Deena Hinshaw, in her role as the Chief Medical Officer of Health, had pronounced 40 CMOH orders since March 16, 2020. These orders have been issued pursuant to section 29 of the *Public Health Act*.
13. On December 8, 2020, the CMOH created CMOH Order 41 that further restricted the Applicants’ constitutional rights and freedoms.
14. The CMOH Orders are *ultra vires* as they violate sections 1(a), 1(b), 1(c), 1(e), and 1(g) of the *Alberta Bill of Rights*.
15. Sections 29 of the *Public Health Act*, which the CMOH Orders rely on for authority, offends the *Alberta Bill of Rights*.
16. Section 66.1 of the *Public Health Act* violates the *Alberta Bill of Rights*.

17. The CMOH Orders are capricious and arbitrary. On the face, the opaque nature of the CMOH Orders lack justification and are *ultra vires* the CMOH for violations of the principles of the rule of law and natural justice.
18. Due to a complete absence of cognizable reasons being provided in the Records of Decision, the CMOH Orders on their face appear to be little more than an assertion by the CMOH that an emergency exists because she said so. As such, the CMOH Orders must fail on the basis of principles of natural justice and the rule of law.
19. As over 99% of Albertans do not have COVID-19, the CMOH Orders are not proportionate and create more harm to Albertans. The Government has not explored alternative measures such as protecting the most vulnerable by providing resources such that the vulnerable can properly quarantine, including but not limited to income support, medical resources or delivery of groceries and other goods to meet their immediate needs. Further, the government has not explored COVID-19 treatment options to treat the vulnerable.
20. The CMOH Orders closing or otherwise restricting the conduct of business in Alberta unjustifiably infringe 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. The Applicants submit that the impugned provisions of CMOH Orders 38 and 41 listed in paragraph 4 unjustifiably infringe sections 2(a), 2(b), 2(c), 2(d), and 7 of the *Canadian Charter of Rights and Freedoms*. These sections are and will continue to cause irreparable harm to Albertans because the extraordinary loss of constitutional rights and, as a result, the ability to gather and be with friends and family cannot be compensated by damages.
22. The Applicants submit that they meet the tripartite test for injunctive relief as set out by the Supreme Court of Canada in *RJR MacDonald Inc v Canada (Attorney General)*:
 - a. there is a serious issue to be tried;
 - b. irreparable harm will result if the injunction is not granted; and
 - c. greater harm or inconvenience will result if the application is not granted, than would result if it were.

Material or evidence to be relied on:

23. The pleadings filed in the within Action, including this application.
24. The Affidavit of Rebecca Marie Ingram, filed herewith.
25. The Affidavit of Patrick Schoenberger, filed herewith.
26. The Affidavit of Denise Lynn Buchner, filed herewith.
27. The Affidavit of Dr. Stephen Tilley, filed herewith.
28. The Affidavit of RK, filed herewith.
29. Memorandum of Argument of the Applicant Rebecca Marie Ingram in support of Application for Injunctive Relief.
30. Memorandum of Argument of the Applicants Heights Baptist Church, Northside Baptist Church, Erin Blacklaws, and Torry Tanner in support of Application for Injunctive Relief.
31. Such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable Rules:

32. *Alberta Rules of Court*, Alta Reg 124/2010, including Rules 1.3, 1.5, 6.1, 6.3, 6.11, 10.29 and 13.5, the inherent jurisdiction of this Honourable Court and such further and other rules and authorities as counsel may provide and this Honourable Court may permit.
33. *Constitution Act*, 1867, 30 & 31 Vict, c 3
34. *Canada Act 1982 (UK)*, 1982, c 11, including the *Canadian Charter of Rights and Freedoms*;
35. *Constitution of Alberta Amendment Act*, 1990, RSA 2000, c C-24;
36. *Alberta Bill of Rights*, RSA 2000, c A-14;

37. *Public Health Act*, RSA 2000, c P-37;
38. *Bill 10: Public Health (Emergency Powers) Amendment Act*, 2020;
39. *Judicature Act*, Revised Statutes of Alberta 2000, Chapter J-2; and
40. Such other enactments as the Applicants may advise.

Any irregularity complained of or objection relied on:

41. None.

How the application is proposed to be heard or considered:

42. In person, with one, some or all of the parties present for December 18, 2020 or such other date prior to December 24, 2020 as determined by the Court.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.