

Form 66 (Rule 16-1 (2))

S 2 10 [REDACTED]

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

No.
Vancouver Registry

JAN 07 2021



In the Supreme Court of British Columbia

Between

[REDACTED]

Petitioners

and

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH
COLUMBIA and DR. BONNIE HENRY IN HER CAPACITY AS PROVINCIAL HEALTH
OFFICER FOR THE PROVINCE OF BRITISH COLUMBIA

Respondents

PETITION TO THE COURT

ON NOTICE TO:

Deputy Attorney General
Ministry of Attorney General
PO Box 9290 Stn Prov Govt, Victoria BC V8W 9J7

Dr. Bonnie Henry, Provincial Health Officer
4th Floor, 1515 Blanshard Street,
PO Box 9648 Stn Prov Govt, Victoria BC V8W 9P4

This proceeding is brought for the relief set out in Part 1 below, by
[X] the persons named as petitioners in the style of proceedings above

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
 - (b) serve on the petitioner(s)
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.
- Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner(s),

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is: The Law Courts, 800 Smith Street, Vancouver, B.C.
(2)	The ADDRESS FOR SERVICE of the petitioners is: c/o Paul Jaffe, Barrister and Solicitor, Suite 200-100 Park Royal, West Vancouver, BC, V7T 1A2 Tel: 604-230-9155 E-mail address for service of the petitioners: jaffelawfirm@gmail.com
(3)	The name and office address of the petitioner's(s) lawyer is: Paul Jaffe, Barrister and Solicitor, Suite 200-100 Park Royal, West Vancouver, BC, V7T 1A2

Claim of the Petitioners

Part 1: ORDERS SOUGHT

Pursuant to section 2(1) and (2) of the *Judicial Review Procedure Act*, RSBC 1996,(JRPA) the Petitioners seek:

1. A Declaration pursuant to sections 24(1) and 52(1) of the *Constitution Act, 1982*, that:
 - a. Ministerial Order No. M416 entitled “Food and Liquor Premises, Gatherings and Events (COVID-19) Order No. 2” issued by the Minister of Public Safety and Solicitor General of BC, dated November 13, 2020, under the authority of sections 10 of the *Emergency Program Act*, RSBC 1996, c 111;
 - b. an order made under section 3 of the *Covid 19 Related Measures Act*, SBC 2020, c 8, entitled “Food and Liquor Premises, Gatherings and Events”, referred to as item 23.5 in Schedule 2 of that Act;
 - c. orders made by the Public Health Officer entitled “Gatherings and Events” and made pursuant to Sections 30, 31, 32 and 39 (3) *Public Health Act*, SBC 2008, c 28, including orders of November 19, 2020, December 2nd, 9th, 15th and 24th, 2020 and such further orders as may be pronounced which prohibit or unduly restrict gatherings for public protests and for worship and/or other religious gatherings including services, festivals, ceremonies, receptions, weddings, funerals, baptisms, celebrations of life and related activities associated with houses of worship and faith communities;

(collectively referred to herein as the “Orders”) are of no force and effect as they unjustifiably infringe the rights and freedoms of the Petitioners guaranteed by the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982*, c 11 (the “Charter”), specifically:

- a) *Charter* section 2(a) (freedom of conscience and religion);
- b) *Charter* section 2(b) (freedom of thought, belief, opinion and expression);
- c) *Charter* section 2(c) (freedom of peaceful assembly);
- d) *Charter* section 2(d) (freedom of association);
- e) *Charter* section 7 (life, liberty and security of the person); and
- f) *Charter* section 15(1) (equality rights).

2. In addition or in the alternative, an order under sections 2(2) and 7 of the *JRPA* in the nature of or certiorari quashing and setting aside the Orders as unreasonable;
3. A Declaration that the Orders be set aside as their scope and effect exceed statutory

authority of the Respondents to impose and are, therefore, *ultra vires*;

4. Interim and final injunctions and/or prohibition pursuant to section 2(2) of the JRPA and Rule 10-4 enjoining the Respondents from further enforcement action which prohibit or interfere with the subject activities herein;
5. An order that Violation Tickets numbers AJ19780619, AJ06525763, AJ13323225, AJ13323259 AJ16458508, AH96863545, AJ17179822 and AJ16958269 issued as described herein be dismissed and an order enjoining issuance of further such tickets relating to matters herein;
6. Costs of this Petition; and,
7. Such further and other relief as the Petitioners may seek and as this Honourable Court deems just and equitable.

Part 2: FACTUAL BASIS

Legislative Background

1. The Respondent Dr. Bonnie Henry is British Columbia's Provincial Health Officer (the "PHO"), appointed under Part 6 of the *Public Health Act*, SBC 2008, c 28 (the "PHA").
2. On March 17, 2020, the PHO declared a "public health emergency" under Part 5 of the *PHA* by which she unlocked a range of emergency powers. Among other things, this empowered her to issue verbal and written orders that have immediate effect. A person who contravenes the orders of the PHO may, among other things, be fined or imprisoned (*PHA*, s. 108).
3. On March 18, 2020, British Columbia declared a "state of emergency" under the *Emergency Program Act*, RSBC 1996, c 111 (the "EPA"). This enabled sweeping statutory powers which, among other things, seek to establish and enforce the restrictions and prohibitions which are at issue herein.
4. On March 28, 2020, BC's "Provincial Covid-19 Task Force" published guidelines called "Covid-19 Ethical Decision Making" (Ex. A to O'Neil affidavit). Under "Ethical Principles and Values", the BC government is committed to exercise its powers in accordance with, *inter alia*:

"Respect: To whatever extent possible, individual autonomy, individual liberties, and cultural safety must be respected";

"Least Coercive and Restrictive Means: Any infringements on personal rights and freedoms must be carefully considered, and the least restrictive or coercive means must be sought";

"Proportionality: Measures implemented, especially restrictive ones, should be proportionate to and commensurate with the level of threat and risk";

"Decision makers should take into account all relevant views expressed";

"Take into account any disproportionate impact of the decision on particular groups of people"; and

"Practical - have a reasonable chance of being feasible to implement and to achieve their stated goals".

5. Ministerial Order No. M416 was issued on November 13, 2020, pursuant to section 10 of the *EPA*. Section 4 of the order reads as follows: "*A person must not promote a gathering or event referred to in section 3 [of the order] or encourage another person to attend such a gathering or event.*" Reference to "gathering and event" in this enactment is broadly defined and includes the activities at issue herein. A person who contravenes the *EPA* or a regulation may be fined or imprisoned (section 27).

6. Under section 3 of the *Covid-19 Related Measures Act*, SBC 2020, c 8 (the "*CRMA*"), *EPA* instruments are incorporated including item 23.5 in Schedule 2 of the *CRMA*, called "Food and Liquor Premises, Gatherings and Events" and which is at issue herein.

7. On November 19, 2020, the PHO issued an oral order prohibiting activities which include those at issue herein. It was affirmed by subsequent written orders pertaining to "Gatherings and Events," including those dated December 2, 9, 15, and 24 2020 (Exhibits C, E and F to Gusdal Affidavit).

8. Subject to certain exemptions, the Orders seek to prohibit certain "events", referring to "*in-person gathering of people in any place whether private or public, inside or outside, organized or not*", including, among other things, "*a worship or other religious service, ceremony or celebration*".

9. The Petitioner [REDACTED] lives in [REDACTED]. The facts below are set out in his affidavit.

10. [REDACTED] is a patriotic Canadian and was raised by parents who served in the

Canadian Armed Forces. Further, through his family's experience advocating for [REDACTED] [REDACTED] he has learned the importance of standing up for the rights of others.

11. He is very concerned by recent government acts that he sees as violating the fundamental rights and freedoms of Canadians. His background informs his present activism and the need to challenge constitutionally impermissible actions of governments.

12. [REDACTED] organized public protests against what he believes to be an abuse of government power in the present COVID-19 pandemic by imposing unnecessary and "draconian" restrictions in the name of "safety." He believes this to contradict what is permissible in a free and democratic society.

13. In the course of these protests, the RCMP, in reliance on the PHO's "Gathering and Events" orders, demanded that [REDACTED] record personal information of the protestors attending these protests. Even if that was possible (in the context of outdoor protests with people coming and going), [REDACTED] is terrified at the prospect of being required to provide such information to the government. The RCMP has threatened him with penalties for noncompliance.

[REDACTED]

15. Prior to that protest, [REDACTED] was contacted by [REDACTED] of the [REDACTED] RCMP whose main concern was violence and vandalism. [REDACTED] told [REDACTED] that the protestors are peaceful and do not wish to hurt their own community. In the interest of keeping the protest as safe as possible, he provided some information about the protest.

16. That protest included marching through downtown [REDACTED] to the local provincial building. Upon arriving at the building, they peacefully assembled to allow citizens to speak openly and voice their frustrations. There was no violence or vandalism.

17. [REDACTED] conferred with the RCMP again after the protest to discuss the event and whether any issues he was unaware of had occurred. It seemed everything had gone well. Given that it took place in a large open space, physical distancing was regulated naturally by the attendees. There had been less than 50 people in a large parking lot capable of accommodating thousands of people.

18. [REDACTED] helped organize a second protest which took place on Saturday, [REDACTED]. This protest was aimed at the COVID-19 restrictions being placed on Canadians across the nation. He informed the RCMP of the plan for the protest, which was for protestors to gather outside the [REDACTED] and have some speakers talk

about these restrictions going too far. Staff [REDACTED] informed him that he could not have over 50 people attending, but [REDACTED] could not control exactly how many people arrived at such a protest. The social media page for the protest showed only 45 coming. Once again, this protest involved gathering in a large parking lot where recommended social distancing was easy to maintain.

19. After the speakers finished, part of the group marched through [REDACTED] again and looped back to the [REDACTED] to rejoin the others. The protesters that stayed at the [REDACTED] spread out along the sidewalk beside [REDACTED] with signs expressing dissatisfaction with government restrictions.

21. On [REDACTED] [REDACTED] received a visit from Staff Sgt. [REDACTED] who presented him with a copy of the order of the PHO of December 2, 2020 regarding "Gatherings and Events".

22. On [REDACTED] [REDACTED] helped organize another public protest which, once again, was outside at the [REDACTED]. He was the MC of that protest.

23. He initially addressed any safety concerns, informing everyone that they should maintain social distance. He then confirmed that they stand against any violence or vandalism and finished with an advisory regarding the cold temperature. It was -25C with the windchill and he made sure to tell the protestors to watch for signs of frostbite and hypothermia. He showed substantial concern for the safety of attendees. After other speakers finished at about 12:45 pm, they marched a short distance though the [REDACTED] ending back at the [REDACTED] all without incident.

24. On the drive home, [REDACTED] was pulled over by an unmarked RCMP unit. Staff Sgt. [REDACTED] in plain clothes and not wearing a mask, spoke to [REDACTED] on the sidewalk. They were joined by two other RCMP members arriving in another unit.

25. Sgt. [REDACTED] asked if a COVID response plan required under the "Gathering and Events" order was followed for the protest. One of the required elements of a "COVID response plan" is documenting all attendees' information. [REDACTED] explained this was impossible for a large group coming and going in an open area and further expressed reluctance to divulge particulars about the protestors to the government. Sgt. [REDACTED] then issued him a violation ticket in the amount of \$2300 (Ticket AJ17179822, Ex. A to [REDACTED] affidavit).

26. Sgt. [REDACTED] later told [REDACTED] that, upon failure to comply with all of the requirements of the "Gathering and Events" order in subsequent protests, he will be fined a further \$2300 and each protestor will be fined \$230. [REDACTED] will defy these threats as he believes Canadians are at risk from state action and that Canadians have a fundamental right to assemble to seek the redress of public grievances.

and

27. The Petitioner [REDACTED] is the Pastor of the [REDACTED] which meets in [REDACTED]. The following facts are set out in his affidavit and in the affidavit of Assistant Pastor [REDACTED].

28. The [REDACTED] is an Evangelical Church which involves expositional Bible teaching verse by verse. A fundamental tenet of [REDACTED]'s religious beliefs is that Christians are called to assemble, in-person, for worship services. They believe that gathering together for worship is essential to their spiritual health and the benefits include mutual encouragement, caring for one another, praying for one another and singing together.

29. At the onset of the COVID-19 pandemic in the spring of 2020, [REDACTED] stopped in-person worship services, being unsure of the severity of the risk posed. Negative effects on church members from a lack of in-person meetings included extreme loneliness, depression, anxiety, a sense of not belonging, and not receiving in-person prayer. Further, some Church members were unable to access [REDACTED]'s online service.

30. On May 31, 2020, health officials announced that houses of worship were permitted to host worship services for up to 50 people. To accommodate this limitation, the [REDACTED] held 3 services on Sunday mornings with no more than 50 people each. It also removed chairs from the sanctuary in order to maintain physical distancing and set up sanitizer stations for attendees. The sanctuary was cleaned between each service and masks were also provided. A reservation link was put on its website for people to reserve seats and it complied with all public health directives.

31. During the [REDACTED]'s [REDACTED] service, two by-law officers and six RCMP officers attended the church and issued Violation Ticket AJ19780619 indicating a fine of \$2300. (Ex. C to [REDACTED] affidavit)

32. The officers threatened to return that day to issue more tickets if gatherings continued, stating that individuals attending the [REDACTED] may be ticketed as well. The officers did return later that day for the next service. They were asked as to the legal basis for issuing tickets but were unable to answer that question. They issued no ticket for that particular service.

33. The next day [REDACTED], Pastor [REDACTED] sent a letter to Premier Horgan, BC Health Minister Adrian Dix and the PHO explaining the circumstances of the [REDACTED] and confirming its decision to continue with in-person worship services (Ex. D to [REDACTED] Affidavit)

34. On Sunday [REDACTED] two by-law officers were observed conducting surveillance of [REDACTED] members from inside their vehicles in the church parking lot.

35. On Sunday, [REDACTED], the [REDACTED] was again visited by two RCMP officers during a worship service. Although Pastor [REDACTED] was not preaching that Sunday who I observed parked in our parking during the service. Although PASTOR [REDACTED] was not preaching that

Sunday, the officers issued him personally a \$2300 Violation Ticket (Ex. E, [REDACTED] affidavit)
The officers warned of more tickets if our Church continued to meet.

[REDACTED] and [REDACTED]

36. The Petitioner [REDACTED] is Pastor of the Petitioner [REDACTED]
[REDACTED] The following facts are set out in his affidavit.

37. A fundamental religious belief of the [REDACTED] is that God calls upon people to gather together to worship. To forbid in-person worship services is to undermine the essence of service to God for members of the [REDACTED]

38. The onset of the COVID-19 pandemic caused significant changes in how the [REDACTED] operates. While it continued to conduct in-person worship gatherings, it did so with reduced numbers and adopted various health protocols recommended by the BC government.

39. Early in the pandemic, the [REDACTED] commissioned a study on how many people could meet in the sanctuary while maintaining appropriate social distancing between family groups.

40. Each Sunday, specific people are called to certain services to ensure that there are never too many people present. A 'doorman' ensures that only those called for that service attend. They conduct contact tracing of attendees and keep an online spreadsheet updated at each service with that information.

41. At the beginning of the pandemic, the [REDACTED] hired a professional cleaner to ensure frequent cleaning of the facility. It also increased ventilation of the facility by leaving doors open during services and designated one person at the beginning of each Sunday to open the doors. Since March, rather than a collection plate passed amongst members, they may eTransfer or place gifts in the collection plate as they leave the service. In addition, "coffee time" after services was cancelled and members are encouraged to go home.

42. They regularly remind members that if they are feeling unwell with even one symptom of COVID-19, they are requested to not come to church for any reason and to stay home until they have recovered. They also have developed procedures whereby the congregation would be notified within hours if someone tested positive for COVID from within our congregation.

43. As Pastor [REDACTED] deposes, the [REDACTED] does more to limit potential transmission of COVID-19 than other [REDACTED] establishments such as Walmart and Best Buy, which are not shut down, but are instead permitted to have up to 911 and 131 persons, respectively, in their establishments at one time. Furthermore, whereas those businesses are open throughout the week, the [REDACTED] sanctuary only holds services for a few hours on Sundays. In addition, unlike those businesses, the [REDACTED] is attended almost exclusively by the same members each week and with contract tracing.

44. Pastor [REDACTED] observes detrimental effects in the lives of many [REDACTED] members as a

result of the restrictions on worship services. He is confident that worship services help people with loneliness, depression, anxiety, and fear and that they enable identifying the needs of vulnerable people.

45. Pastor [REDACTED]'s observations are corroborated by recent polling in the United States which shows that the only segment of the population reporting improved mental health from 2019 was those who attend a religious service weekly (Gallup, Ex. B to [REDACTED] affidavit).

46. In addition, his views about negative mental health implications are corroborated in surveys, such as that of the Canadian Mental Health Association and the University of British Columbia (Ex. C to [REDACTED] affidavit).

47. On [REDACTED] (the first Sunday after the November 19 "Gatherings and Events" order was issued), after a number of vehicles entered the parking lot for the 9.30 AM service at the [REDACTED], an RCMP officer approached Pastor [REDACTED]. The officer advised he was present for the purpose of education and mentioned the November 19 order. He left and the worship service began at 9:30 am. The [REDACTED] had two further services that day without any further police attendance.

48. The following Sunday [REDACTED], all three of the worship services proceeded as usual without any contact from the police. However, over the week that followed, the RCMP communicated with the [REDACTED] urging them to not hold in-person worship services. On Sunday, [REDACTED], the police conducted surveillance at the church.

49. On [REDACTED], the RCMP issued two tickets to Pastor [REDACTED] each for \$2300, relating to the worship services of [REDACTED] (Tickets AJ06525763 and AJ13323225, Ex. G to [REDACTED] affidavit).

50. In addition, a ticket was also issued to Reverend [REDACTED] who preached at the [REDACTED] service (Ticket AJ13323259, Ex. H, to [REDACTED] affidavit). The RCMP threatened more tickets if the [REDACTED]'s services continued.

51. On [REDACTED] Pastor [REDACTED] received correspondence from the PHO suggesting he seek an exemption from the Orders (Ex. I to [REDACTED] affidavit). This suggestion was declined, as was communicated by Pastor [REDACTED] in his letter of December 22, 2020 (Ex. J to [REDACTED] affidavit).

[REDACTED] and [REDACTED]

52. The Petitioner [REDACTED] is the Chair of the Council of [REDACTED] in [REDACTED] and the below facts are set out in his affidavit.

53. [REDACTED] has approximately [REDACTED] members and gathers in [REDACTED] building in [REDACTED], BC. Its sanctuary seats about 270 and it has several classrooms plus a large Fellowship Room.

54. In March, 2020, after the PHO issued an order prohibiting gatherings of more than 50 people, ██████'s Council held a meeting to address matters, including their duty to those most vulnerable, their beliefs, conscience and other related issues.

55. After much discussion, ██████ suspended its activities until further notice. Members were encouraged to take in live-streamed services from other churches producing them.

56. ██████ deposes that members experienced fear, anxiety, depression, loneliness because of the restrictions on gathering together. He observes those most vulnerable including seniors, singles, those with mental and emotional distress and those with physical illnesses who seek solace by getting together to worship.

57. ██████ resumed in-person services on May 3, 2020, keeping the numbers below 50 persons. They put up COVID-19 related signage all around the church, established hand sanitizing stations and contact tracing. After-service times of fellowship and coffee were suspended, the ██████ urging people to go home soon after the service ended.

58. In addition, ██████ marked off rows of chairs to make sure there were two meters between people at all times. Eventually they added an eight-foot high, thick transparent vinyl curtain bisecting the sanctuary, allowing them to have groups of up to 50 people in each of those areas. They also established further groups of up to 50 people to gather in the Fellowship Room and at a member's nearby shop.

59. Volunteers presented detailed plans for grouping by families and floor plans of how people would sit. A group of up to 50 people would become a 'bubble' and would meet together in these spaces, rotating weekly from space to space to allow everyone to have as uniform an experience as possible.

60. Shortly after the PHO order of November 19, 2020, the ██████ Council met on two occasions to address the announced ban of worship gatherings and decided to proceed with the worship gathering set for November 29, 2020.

61. On November 28, 2020, ██████ sent a letter to Premier Horgan, Health Minister Dix, and the PHO setting out ██████'s belief that they are commanded by God to gather for in-person worship, and requesting that they rescind the restriction on worship services (Ex. A to ██████ affidavit).

62. ██████ held in-person worship services on November 29, 2020, and again complied with all safety precautions such as social distancing, sanitizing and contact tracing.

63. On December 6, 2020, ██████ met again for morning worship when four police vehicles from the ██████ Police Department pulled up. Officer ██████ requested that the worship service be shut down and everyone sent home. ██████ declined, advising that the ██████'s religious beliefs compel such gatherings and that the Constitution of Canada protects this right to gather and worship.

64. In addition, ██████ told them that ██████ had been diligent in social distancing, using hand sanitizer, wearing masks, contact tracing and taking whatever precautions were recommended. After informing the officers that the service would conclude in about twenty minutes, ██████ was handed a Violation Ticket against the ██████ for \$2,300.00 (Ticket AJ16458508, Ex. B to ██████ affidavit).

65. Officer ██████ warned that if the church met for a second service at ██████ another fine of \$2,300.00 would be imposed and that individuals attending would be fined \$230.00. As church members left, they and their licence plates were videoed by the police upon leaving the church. ██████ held its second worship service at ██████ which took place with no interruptions by the police.

66. The ██████ held a further in-person worship service on ██████ and were again visited by the ██████ Police. Officer ██████ made himself known by loudly banging on the church doors while the service was in progress. When the door was opened to him, Officer ██████ was belligerent and rude, moving well within two meters when speaking with ██████ to aggressively berate and threaten him about the service being held.

67. Four police vehicles and four police officers had come to the church that day, parking their vehicles so as to block the exit and entry to the parking lot. It appeared that they were videotaping license plates and attendees and another Violation Ticket with a fine of \$2,300.00 was issued to ██████ (Ticket AH96863545, Ex. C to ██████ affidavit).

Additional Facts

68. ██████ is an Elder of Faith with the ██████ B.C. He has deposed as to the ambiguity of the subject Orders, specifically whether the annual budget meeting at his church on December 4, 2020 involving 34 people was permissible under the Orders. The police attended and shut down the meeting.

69. ██████ is Pastor of ██████ He disposes that in-person worship is an essential component of the exercise of his church's religious faith.

70. He further deposes as to the profound impact of the pandemic on ██████ In the spring of 2020, in-person services were halted to better understand this unfolding crisis. However, on Sunday, June 28, 2020, in-person worship services resumed with no more than 50 persons in each service. ██████ also took such precautions as social distancing, leaving right after the service, hand sanitizing, maintaining family bubbles and canceling child programs.

71. Pastor ██████ further deposes that, to the best of his knowledge, there has not been a single case of COVID-19 among his church members in over 6 months of meetings.

72. With 24 years experience at the pulpit, Pastor ██████ deposes to the stress and anxiety caused by the pandemic and as to the value of meeting together to lift the burdens of

suffering people who are troubled, fearful, distressed, weak and ailing or being mistreated.

73. On [REDACTED] Pastor [REDACTED] was issued two tickets for \$2,300 each, relating to his hosting of the in-person services on December 6 and 13, 2020. (Ex. B, [REDACTED] Affidavit)

74. [REDACTED] is a Deacon and the Treasurer of [REDACTED]. On Sunday, [REDACTED] during [REDACTED] service, there was a loud knocking on the exterior windows interrupting the service. He and another member went to see what was going on and were greeted by Corporal [REDACTED] of the [REDACTED] RCMP.

75. Corporal [REDACTED] came inside. After removing his face mask, because, as he said, "I can't talk properly with this thing on my face", he asked them why we were still holding services. They explained they did so in obedience to God. He was understanding, leaving it to his superiors to decide whether a ticket would be issued.

76. On Sunday, [REDACTED] two other police officers attended [REDACTED]. Officer [REDACTED] referred to the PHO orders and demanded the service be stopped. He was surprised at being told this would not happen. Officer [REDACTED] threatened jail and massive fines. Then, knowing that Pastor [REDACTED] was preaching a sermon, barged into the sanctuary and in a very loud voice, demanded to talk with him immediately.

77. Officer [REDACTED] told him to stop the service or he would start handing out fines to everyone in the service. Pastor [REDACTED] gave reasons for holding the service. After some discussion between the officers, they took down Pastor [REDACTED]'s contact information and left the building without further interference that day.

78. The police raid was traumatic for some members, with some women and children crying in the sanctuary as a result. It appears the police also conducted undercover surveillance at the Church during the services of [REDACTED].

Part 3: LEGAL BASIS

1. Section 2 of the JRPA requires this proceeding be by way of petition and specifically provides for the specific remedies sought herein, stating:

2 (1) *An application for judicial review must be brought by way of a petition proceeding.*

(2) *On an application for judicial review, the court may grant any relief that the applicant would be entitled to in any one or more of the proceedings for:*

(a) *relief in the nature of mandamus, prohibition or certiorari;*

(b) *a declaration or injunction, or both, in relation to the exercise, refusal to exercise, or proposed or purported exercise, of a statutory power.*

2. As to declaratory relief, section 7 of the JRPA provides the court with options, stating:

7. *If an applicant is entitled to a declaration that a decision made in the exercise of a statutory power of decision is unauthorized or otherwise invalid, the court may set aside the decision instead of making a declaration.*

3. In addition to the *JRPA*, the Petitioners assert section 24(1) of the *Charter*, which states:

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

4. If, as contended here, the Orders unjustifiably infringe the freedoms and rights asserted herein, section 52(1) of the *Constitution Act, 1982* applies:

(1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

5. The constitutionally protected freedoms and rights asserted by the Petitioners herein fall within *Charter* sections 2, 7 and 15 as below summarised.

6. Section 2 of the *Charter* states:

2. Everyone has the following fundamental freedoms:

(a) freedom of conscience and religion;

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

(c) freedom of peaceful assembly; and

(d) freedom of association.

7. The in-person worship services described herein are religious practices mandated by beliefs, and have a nexus with religion. The prohibition of such in-person worship services under the Orders is more than trivial or insubstantial and, consequently, an infringement of *Charter* section 2(a).

8. An infringement of expression rights under *Charter* section 2(b) will be made out when government action, in purpose or effect, restricts an activity with expressive content in circumstances where neither the method or location of the expression removes its protection.

9. The public protests of [REDACTED] have expressive content. They occurred on public property and did not involve any violence or threats of violence. The Orders purport to impose unreasonable requirements and restrictions on these public protests and, in organizing them, [REDACTED] has been ticketed for violating the Orders.

10. The in-person worship services described herein also are expressive activities, which occur within houses of worship specifically designed for such expression. The Orders prohibit such in-person worship services, and multiple tickets have been issued to Petitioners for violating the Orders.

11. As to *Charter* section 2(c), "peaceful assembly" has been described by the courts as "speech in action". Section 2(c) protects the right to gather for religious purposes as well as for protests on public property. The Orders purport to impose unreasonable requirements and restrictions on these activities and Petitioners have been ticketed and prosecuted for organizing them.

12. As to freedom of association under *Charter* section 2(d): this protects the right to establish, belong to and maintain any sort of organization, unless that organization is otherwise illegal. Related to peaceful assembly, it is engaged herein in both the context of worship services and lawful protests. The Orders prohibit associating in-person for worship services. The Orders purport to impose requirements and restrictions for associating in person for other events, interpreted to include protests. The Petitioners have been ticketed for allegedly violating these Orders interfering with their associations.

13. Section 7 of the *Charter* states:

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

14. The principles of fundamental justice include the principles against arbitrariness, overbreadth and gross disproportionality. A deprivation of a right will be arbitrary and thus unjustifiably limit section 7 if it bears no connection to the law's purpose.

15. Security of the person is generally given a broad interpretation and has both a physical and psychological aspect. The Orders trigger the possibility of imprisonment for non-compliance as does default in payment of the fines imposed.

16. In terms of the psychological impact, the right is engaged when state action causes a serious and profound effect on the person's psychological integrity. Such harm need not necessarily rise to the level of nervous shock or psychiatric illness. Implications to the members of the three church Petitioners meet this threshold.

17. Section 15 of the *Charter* states:

15. (1) *Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.*

18. The Orders seek to prohibit some activities but not others on what appears to be an arbitrary basis. In-person worship services and public protests are prohibited yet other aspects of society which present at least similar if not great health risks are not. Legal equality between Canadians requires that laws must not be discriminatory as regards to enumerated grounds (religion) or analogous grounds (the right to protest).

19. Section 1 of the Charter states:

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

20. Once infringement of the asserted *Charter* rights and freedoms have been established, it is constitutionally valid only if the Respondents prove on a balance of probabilities that they are acting to meet a pressing and substantial objective and satisfy the proportionality requirement under the *Oakes* test.

21. To do this, the Respondents must show that the Orders are carefully designed to achieve the objective in question and are not arbitrary, unfair or based on irrational considerations. In short, the scope and effect of the Orders must be rationally connected to the objective.

22. In addition, even if rationally connected to the Respondents' objective, they must also prove that the Orders minimally impair the right or freedom in question.

23. Thirdly, there must be a proportionality between the effects of the measures which are responsible for limiting the rights or freedoms in question and the objective which has been identified as of sufficient importance.

24. As to the doctrine of *ultra vires*: the Orders constitute subordinate legislation which, to be valid, must fit within the objectives of the enabling statutes. The Orders target activities in a broad and excessive manner not rationally connected to the objectives of the PHA, CRMA and the EPA and, accordingly, are *ultra vires* and of no legal force.

25. As to injunctive remedies: interlocutory relief pending final determination of the substantive issues is available upon demonstrating that: a) there is a serious issue to be tried; b) the Petitioners will suffer irreparable harm if an interlocutory injunction is not granted; and

c) the balance of convenience favours the Petitioners.

26. Permanent injunctive relief should follow upon determination that the Orders constitute unjustifiable infringement of Charter rights and freedoms and, pursuant to section 52(1) of the *Constitution Act, 1982*, are of no force and effect.

27. As to injunctive remedies, interlocutory relief to enjoin enforcement of the Orders pending final determination of the substantive issues is available upon demonstrating that a) there is a serious issue to be tried; b) the Petitioners will suffer irreparable harm if an interlocutory injunction is not granted; and c) the balance of convenience favours the Petitioners.

28. Permanent injunctive relief should follow upon determination that the Orders constitute unjustifiable infringement of *Charter* rights and freedoms and, pursuant to section 52(1) of the *Constitution Act, 1982*, are of no force and effect.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit#1 of [REDACTED] made 18/12/2020
2. Affidavit #1 of [REDACTED] made 21/12/2020
3. Affidavit # 1 of [REDACTED] made 21/12/2020
4. Affidavit # 1 of [REDACTED] made 21/12/2020
5. Affidavit # 1of [REDACTED] made 21/12/2020
6. Affidavit#1 of [REDACTED] made 21/12/2020
7. Affidavit#1 of [REDACTED] made 22/12/2020
8. Affidavit#1 of [REDACTED] made 23/12/2020
9. Affidavit#1 of [REDACTED] made 05/01/2021
10. Affidavit#1 of [REDACTED] made 05/01/2021

The Petitioners estimate that the hearing of the petition will take 2 days .

Date: 07/01/2021



Signature of lawyer for petitioners
Paul Jaffe

To be completed by the court only:

Order made

in the terms requested in paragraphs of Part 1 of this petition

with the following variations and additional terms:

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.....
.....

Date:[dd/mmm/yyyy].....

.....
Signature of Judge Master