

IN THE PROVINCIAL COURT OF ALBERTA
JUDICIAL CENTRE OF CALGARY

HER MAJESTY THE QUEEN

v.

JAMES COATES

Accused

P R O C E E D I N G S

Calgary, Alberta
February 16, 2021

Transcript Management Services
Suite 1901-N, 601-5th Street SW
Calgary, Alberta, T2P 5P7
Phone: (403) 297-7392
Email: TMSCalgary@csadm.just.gov.ab.ca

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1 Proceedings taken in the Provincial Court of Alberta, Courthouse, Calgary, Alberta

2

3

4 February 16, 2021 Afternoon Session

5

6 Justice of the Peace Morris Provincial Court
7 of Alberta

8

9 K.L. Thorsrud (remote appearance) For the Crown

10 J. Kitchen (remote appearance) For the Accused

11 A. Soroka Court Clerk

12

13

14 **Discussion**

15

16 THE COURT: This is a judicial interim release hearing for
17 James David Coates; Mr. Coates, are you there?

18

19 THE ACCUSED: Yes sir.

20

21 THE COURT: And your date of birth, please?

22

23 THE ACCUSED: January 29th, 1980.

24

25 THE COURT: Thank you. Mr. Coates, my name is Morris; I am
26 a Justice of the Peace. I am sitting in a courtroom in Calgary, I also have on the line with
27 us Ms. Thorsrud, who is the Crown Prosecutor today and Mr. Kitchen who is your counsel.
28 They are appearing by video, but they are here.

29

30 Mr. Kitchen, just before he came on the line, you said something about appearing in front
31 of another JP earlier today; is that correct on these -- on these charges here?

32

33 THE ACCUSED: That's correct.

34

35 MR. KITCHEN: Yes, but --

36

37 THE COURT: Mr. Coates, thank you but Mr. Kitchen is here,
38 and I will be directing my question to him, okay? So, you can just keep quiet unless we
39 need to hear from you directly, all right?

40

41 THE ACCUSED: Yes sir.

1
2 THE COURT: Thank you. All right, Mr. Kitchen?
3
4 MR. KITCHEN: Yes, but nothing substantial was discussed, the
5 Crown and I had a -- had a brief discussion afterwards; we weren't able to resolve anything
6 so here we are again.
7
8 THE COURT: So, we are in fact resuming -- Ms. Thorsrud
9 maybe you can explain -- am I resuming a hearing or what am I doing here?
10
11 MS. THORSRUD No, no you're not. So, what had occurred -- we
12 appeared briefly in front of the JP Duxbury, the charges were read, the JP inquired as to
13 whether defence and Crown had had any discussions about any release. We'd indicated no,
14 defense counsel had indicated that he'd like an opportunity and so it was adjourned on that
15 basis, but no information was taken other than the reading of the charges in front of the
16 accused. So, this is a de novo hearing.
17
18 THE COURT: Okay. All right, so what is the position of the
19 Crown with respect to release?
20
21 THE COURT: The Crown is opposed to Mr. Coates release, on
22 the secondary and tertiary ground. There is no concern from the Crown on the primary
23 ground.
24
25 THE COURT: And Mr. Kitchen, what is the plan?
26
27 MR. KITCHEN: Well Mr. Coates opposes that, he --
28
29 THE COURT: All right, so -- I am sorry --
30
31 MR. KITCHEN: -- he wants to be let out, obviously.
32
33 THE COURT: -- I -- I apologize for interrupting you --
34
35 MR. KITCHEN: Go ahead.
36
37 THE COURT: Basically, what I wanted to know was; are we
38 going ahead with the bail hearing now, a contested bail hearing or are you adjourning?
39
40 MR. KITCHEN: No, we'd -- we'd like to proceed now.
41

1 THE COURT: All right, then in that case let me hear from
2 Crown first and then -- and then I will hear your arguments, all right. Thank you.

3
4 MS. THORSRUD Thank you and even though the Crown is not
5 concerned on the primary grounds, the Crown does also not alleging a record for the Court's
6 information.

7
8 THE COURT: Thank you.

9
10 **Submissions by Ms. Thorsrud**

11
12 MS. THORSRUD The history and the background; March 25th,
13 2020, Alberta Health Services began an investigation after receiving numerous complaints
14 from the public regarding GraceLife Church of Edmonton, of which James David Coates
15 is the Pastor. The complaints dealt with non-compliance with COVID-19 measures
16 pursuant to the *Public Health Act*. During the initial stages, Pastor James Coates was
17 identified as the lead representative for the church and provided with recommendations on
18 how to rectify some of these deficiencies.

19
20 Between July 2020 and January of this year, 2021, Public Health Inspectors conducted five
21 inspections of the facility and on each occasion found the church to be in violation of *Public*
22 *Health Act*. These violations included repeated and clear refusals to abide by COVID-19
23 measures that the church believed were restricting their religious rights. The facility was
24 observed to be over capacity by nearly three times the maximum number, inadequate
25 physical distancing measures and lack of face covering.

26
27 So, July 10th, the Alberta Health Services met church to again, indicate how the church
28 could comply with the recommendations, such as having doors to sanctuary for ingress and
29 egress, COVID individuals who would remind people to keep social distancing, signage,
30 removing chairs so that a 2-metre social distancing could be in place; but that was
31 unheeded.

32
33 November 2020, Mr. Coates said he lets -- within response to the *Public Health Act* of
34 Occupational Health Services attending, he said he lets the church members decide where
35 they want to sit and if they want to wear masks or not. He said they have an area for people
36 to sit if they're uncomfortable.

37
38 He communicated to the investigator at the time that he thinks the pandemic isn't that big
39 of a deal and he was actually expecting AHS to show up on a regular basis as they had
40 indicated they would be. To try to get compliance with the CMOH orders, the Chief
41 Medical of Health orders, which require the social distancing, require a certain limit of

1 capacity at churches and require various other orders. They -- the --- Mr. Coates has
2 indicated that they answer to higher power than AHS, they answer to a higher power than
3 the rules.

4
5 We have a number of complaints of people -- the public calling in with complaints about
6 the number of cars that are in the parking lot, the number of people they see going into and
7 going out of the church. December, they received a complaint of an email that was sent to
8 members of the congregation, this was someone who said that they were a member and
9 there is an expression in this email that the church and Mr. Coates, do not intend to follow
10 COVID-19 restrictions.

11
12 They say they will not restrict gatherings to one-third or 15 percent, which is the new
13 requirement under the CMOH order; they will not enforce masking *Bylaw* or distancing
14 *Bylaw*.

15
16 Again, December 2020, there's a notice from GraceLife Church saying they -- they're
17 anticipating a visit from AHS on Sunday; they've been instructed by legal counsel to deny
18 them access to the facility. As such, there will be additional presence at the doors as they
19 come into the building and in fact on December 13th, that's exactly what happened. Four
20 church members were at their entrance, which told the Alberta Health Services that she
21 can't enter the church to conduct an inspection. RCMP were with the inspector and advised
22 that, in fact, she does have authority to conduct her inspection under the *Public Health Act*.

23
24 It was after this discussion that the church subsequently allowed her into the facility, but
25 the initial presence and the initial position was that they weren't going to be allowed to
26 come into the church.

27
28 Again, there's education by RCMP and Alberta Health Services about the importance of
29 following the CMOH orders and the fact that they could be subject to fines if they did not
30 comply with these conditions. Again, there is communication from the church that they
31 understood that there was these laws in place and rules, but that they cannot go against the
32 need to gather to worship together with no limit on numbers. Again, there's an answer to a
33 higher power which overrides the law of man and they will not be policing their church
34 members on the current public health restrictions and they will do what is best for the
35 church.

36
37 And then, of course, as the RCMP are at this service, members are standing up and clapping
38 and cheering which of course cheering anything that has a more forceful exaltation of
39 breath is a concern, because that is how it is easier to transmit the COVID-19. There is
40 YouTube videos where it's clearly showing that no social distancing, people are shoulder
41 to shoulder, several people are not wearing masks and so, there is YouTube videos, there's

1 pictures of this behaviour.

2
3 And then on December 17th, 2020 an Executive Officer's order was delivered in person to
4 the church indicating that there was a number of deficiencies that they found, of which I
5 have already discussed, and they would have to be rectified in order for them to open. So,
6 at this point, there is a 15 percent total capacity that the church cannot operate over, which
7 is about 92 attendants. That is pursuant to the fire code. So, the numbers that we are seeing
8 -- about 178 people in the sanctuary and this -- in the sanctuary there can no -- be no more
9 than 64 people, as there's also capacity in the -- the lobby; so, these numbers are three times
10 what should be allowable under the CMOH order.

11
12 And again, on the 17th they observed the same things that we continued to see: the no
13 limits on attendees, no social distancing, no masks. There's a comment made by Mr. Coates
14 to the *Public Health Act* Inspector that say's that Dr. Deena Hinshaw is a dictator, and the
15 Premier is hiding behind her. Some of the suggestions about the row of seating's being
16 removed so that people could adhere to 2-metre distancing; again, that's not complied with.

17
18 So, they are given a ticket for overcapacity and this ticket is for December 20th, with a first
19 appearance of March 25th. It's a \$1,200 ticket and so that is outstanding at present as the
20 first appearance has actually -- we haven't even reached the first appearance.

21
22 January 21st of 2021, so now last month --

23
24 THE COURT: I am sorry, I am just going to interrupt you for a
25 minute here.

26
27 MS. THORSRUD Yes, of course.

28
29 THE COURT: I have the Executive Officer Order of December
30 17th you were telling me about and then I take it there was noncompliance such that it --
31 or alleged noncompliance such that a ticket issues December 20th?

32
33 MS. THORSRUD Yes, the ticket was issued because of the
34 observations found on the -- the church services on the December 20th. The Executive
35 Order it's a remedy through the Civil Department, so they have an order and then they go
36 to Queen's Bench, which happened on January 21st --

37
38 THE COURT: Stop, stop --

39
40 MS. THORSRUD -- so there's an Executive --

41

1 THE COURT: -- stop --
2
3 MS. THORSRUD -- m-hm --
4
5 THE COURT: The ticket that you are talking about, the offence
6 date on the ticket is December 20th?
7
8 MS. THORSRUD Correct.
9
10 THE COURT: Okay, so it is basically breaches of -- so after the
11 Executive Order issued on December 17th, there was allegations of breach or breach of
12 that order or violations of the health -- *Public Health Act* on December 20th, such that the
13 ticket issued and was served, March 31st is the court date; right?
14
15 MS. THORSRUD Yes, March 25th is the court date of that --
16
17 THE COURT: Which one?
18
19 MS. THORSRUD -- and you are correct, Your Worship, yes --
20
21 THE COURT: All right, okay.
22
23 MS. THORSRUD Yes.
24
25 THE COURT: Clear.
26
27 MS. THORSRUD Yes, okay, thank you. And in parallel to that, as
28 I'd indicated, the order of the Executive Officer --
29
30 THE COURT: M-hm.
31
32 MS. THORSRUD -- which indicates that there must be compliance
33 in order for the church to continue, that actually was put into force by a Court of Queen's
34 Bench order on January 21st.
35
36 So, in addition to a ticket being issued, there's a parallel process that's happening by Alberta
37 Health Services in issuing an order and then going to Queen's Bench and actually having
38 that order. So, we know have a Queen's Bench order --
39
40 THE COURT: Okay, so wait a minute. Stop.
41

- 1 MS. THORSRUD -- saying that they are -- sorry, m-hm.
2
- 3 THE COURT: An order of an Executive Officer issued on
4 December 17th; are you saying that until and unless it is confirmed or something by Court
5 of Queen's Bench it is not enforceable?
6
- 7 MS. THORSRUD No.
8
- 9 THE COURT: Okay.
10
- 11 MS. THORSRUD Sorry, not --
12
- 13 THE COURT: All right.
14
- 15 MS. THORSRUD -- at all, the order --
16
- 17 THE COURT: Go ahead.
18
- 19 MS. THORSRUD -- outlines various things that the person must do.
20
- 21 THE COURT: Okay.
22
- 23 MS. THORSRUD It says that the owner immediately undertake and
24 diligently pursue the completion of the following work and then the order goes on to say,
25 ensure that all persons wear a face mask, ensure physical distancing -- I'm actually reading
26 from the order right now --
27
- 28 THE COURT: And I am sure that it says all those things, I -- get
29 the general point of that. Why are we going to Court of Queen's Bench then; what does it
30 do with respect to the December order?
31
- 32 MS. THORSRUD So, if this order is not complied with, the order
33 of Queen's Bench is -- it's an order of the Court, so this order is of Executive Officer and
34 then the further step under this process is to go to Queen's Bench and get an order of
35 closure, subject to there being the listed items that are being met.
36
- 37 THE COURT: Remedial measures, okay. So, what you are --
38
- 39 MS. THORSRUD Correct.
40
- 41 THE COURT: -- saying then -- and I just want to understand

1 this, is that there are two streams then that can happen. One is -- and I looked at the -- the
2 -- the -- I looked at section 73 of the *Act*, I do not know if I still have it there - oh look I do.
3 There can be charges of breaches of an Executive -- of an order of Executive Officer.

4

5 MS. THORSRUD Yes, so that's exactly right; there's two streams.
6 So, there's the one stream where we are ticketing, I talked about the tickets --

7

8 THE COURT: Right.

9

10 MS. THORSRUD -- that is one stream and then the other -- and
11 that's one that the *Public Health Act* Crown Protector, that is what I am responsible for.

12

13 THE COURT: Okay.

14

15 MS. THORSRUD The other stream is a civil procedure where the
16 Alberta Health Inspector outlines deficiencies --

17

18 THE COURT: M-hm.

19

20 MS. THORSRUD -- if there's noncompliance they then go to a
21 Queen's Bench to get a Judges order.

22

23 THE COURT: Okay, which they did in January --

24

25 MS. THORSRUD So that is the escalation.

26

27 THE COURT: Okay.

28

29 MS. THORSRUD Correct.

30

31 THE COURT: And in -- so on January 21st, I think you said?

32

33 MS. THORSRUD Yes.

34

35 THE COURT: They go to Queen's --

36

37 MS. THORSRUD The Court of Queen's Bench -- m-hm, correct --

38

39 THE COURT: -- okay.

40

41 MS. THORSRUD -- and this was put on the door January 31st, so

1 it's basically a closure notice on the church from a Queen's Bench Order, which is separate
2 from the ticketing scheme under the --

3

4 THE COURT: *Public Health Act.*

5

6 MS. THORSRUD -- CMOH orders -- yup, exactly.

7

8 THE COURT: All right, so that is a closure notice on January
9 21st?

10

11 MS. THORSRUD Correct, that was put on the door of the church
12 with the police January 31st.

13

14 THE COURT: It took them 10 days to bring the order over and
15 put it on the door? Just -- whatever, okay. All right.

16

17 MS. THORSRUD So then on -- sorry?

18

19 THE COURT: All right.

20

21 MS. THORSRUD And if the Court has any other questions, please
22 let me know?

23

24 THE COURT: Yes, go ahead.

25

26 MS. THORSRUD Okay, January 24th the Police and Alberta
27 Health Inspectors attended the church, over 290 people there. Of course, unmasked, not
28 social distancing and part of what that QB order requests is that they do a relaunch plan,
29 which would outline how they are managing the risk mitigation. So, the next step in order
30 for them to open is they have to file a plan that says we will do (a), (b) and (c), to comply
31 with the CMOH orders, which has not been done. So, they are in effect operating in the
32 face of a QB closure order.

33

34 Then on February 7th, the RCMP and Alberta Health Services attend, they are -- there's
35 about 250 people, again sitting next to each other, no masks, no social distancing. They at
36 this time, receive an Information - so not just a ticket but like a long-form Information
37 outlining they are being charged with two breaches of the CMOH orders; the one being the
38 15 percent capacity and the second one being they're not social distancing based on what
39 the Police and the investigator observed on the 7th.

40

41 THE COURT: Okay, and who is --

1
2 MS. THORSRUD -- at that --
3
4 THE COURT: -- who -- who is charged? Is it just Mr. Coates or
5 -- you said they, so --
6
7 MS. THORSRUD It's Mr. Coates.
8
9 THE COURT: Okay, just --
10
11 MS. THORSRUD Sorry, Mr. Coates.
12
13 THE COURT: All right, okay.
14
15 MS. THORSRUD That's correct, yes, thank you. At that time, Mr.
16 Coates is arrested and released with on a promise to appear with an undertaking; the
17 undertaking being that he is to comply with CMOH orders in an effect to draw the attention
18 to seriousness of continuing noncompliance. So now there is an undertaking given to an
19 officer and that was February 7th.
20
21 The incident that brings us before you today, is on February 14th, so the next week, we
22 have the officer as well as AHS attend and now there are over 330 people in the auditorium
23 and there's another 57 in the lobby, which -- 57 people in this lobby is in no way could
24 there even be social distancing even if that was an attempt or a goal.
25
26 Officer observed at least one patron attendant excessively coughing with as they're there in
27 this very tightly bundled group of people, they're not wearing -- this person's not wearing
28 a mask, they're not covering their mouth, they're standing next to other people and there's
29 shaking of hands, there -- there -- there's absolutely no attempt to comply at all with any of
30 the social distancing or any of the measures of the CMOH order.
31
32 I can advise that at one point, in this -- I believe it was the summer, there was actually a
33 couple of the patrons or people in the congregation who actually tested positive of COVID
34 and the church had to deal with this. So, I would submit this is not a situation that is not
35 within their reality; it is within their reality and it has happened.
36
37 So those are the allegations in relation to the matters before the Court. So, on the secondary
38 ground the -- the police and Alberta Health Services has tried at every opportunity to inform
39 and to educate to -- absolutely not -- not only is there inability, I'm going to suggest there's
40 a outright refusal.
41

1 We have a QB order telling them to close, that is not being followed and I would suggest
2 that at some point they might be found in civil contempt for not following a QB order.
3 They have openly stated that they know what they should be doing --
4

5 THE COURT: Stop saying --

6
7 MS. THORSRUD -- but they --

8
9 THE COURT: -- please stop saying "they". That's very
10 confusing.
11

12 MS. THORSRUD Yes, fair enough, fair enough. He knows what he
13 should be doing but refuses.
14

15 With regards to the tertiary ground, there are videos, there are photos, there are in fact the
16 church -- Mr. Coates on behalf of the church has posted press releases that -- to public
17 addresses, indicating that he will not comply with the CMOH orders. The police and AHS
18 has received numerous calls from the public, very concerned about this outward show of
19 numbers and defiance of the CMOH order which, of course, I would suggest, goes directly
20 to eroding the confidence in the administration of justice.
21

22 The fact that we have calls from the public speaks to the reasonable community perception.
23 We have -- the -- the police as well as AHS have tried to have a -- a compliance, they've
24 tried to address this with varying levels of enforcement, to no avail. The Crown submits
25 that there's going to be no conditions that are going to be able to be imposed that will
26 succeed in compliance with the - with the law, compliance with following the CMOH
27 order.
28

29 The -- typically what one -- and I'll leave Mr. Kitchen to his submissions, but I would
30 submit that typically what we'll see at a bail hearing, people saying, Oh I will comply, and
31 in this case, we see at a bail hearing someone saying, I will not comply.
32

33 Subject to any questions, those are the Crown's submissions.
34

35 THE COURT: All right, thank you and just give me one moment
36 Mr. Kitchen, before I turn it over to you. I will just -- just one question Ms. Thorsrud, at
37 least one question at this point; what is the potential penalty for the charges that are before
38 me -- well the undertaking is a *Criminal Code* offence but what are the potential penalties?
39

40 MS. THORSRUD Good question, sorry I didn't address that. So,
41 under the *Public Health Act*, because the -- it's a part 2 ticket as opposed to part 3 ticket. A

1 part 3 would have a specified penalty but this ticket was issued on a part 2 so there's a
2 minimum fine of (INDISCERNIBLE) a maximum fine of \$100,000 and it also has
3 conditions of any other conditions that Court would deem appropriate. Which would also
4 incorporate the summary conviction procedure, which would be 6 months in gaol, in
5 addition to probation or any other orders that a Court could impose.

6

7 THE COURT: I am not --

8

9 MS. THORSRUD For a second offence --

10

11 THE COURT: I am not so sure about that, usually if a Provincial
12 offence is a fine or specific -- expressly states that imprisonment is a -- is a possible penalty.
13 I am not sure that a section that says any other -- any other conditions the Court may impose
14 somehow brings all forward summary conviction offences and the possibility of 6 months
15 in gaol; I have never heard that.

16

17 MS. THORSRUD -- sorry that was --

18

19 THE COURT: I would be very surprised at that, that would
20 mean every -- almost every Provincial offence has a -- has a potential liability of gaol time.

21

22 MS. THORSRUD Well under the *Public Health Act*, it has this
23 section and it also incorporates the *Provincial Offences and Procedures Act*.

24

25 THE COURT: Right, but that does not impose gaol time, unless
26 an -- an enactment expressly has gaol time. For example, the *Traffic Safety Act*, there are
27 some convictions where it is a fine up to a certain amount or 6 months or up to 6 months
28 in gaol. Others are just a fine, so unless it states that there is the potential of gaol time, I
29 am not sure it can read in through some mechanism of any other condition. I am doubtful
30 of that; I am not sure we are going to get than answer tonight.

31

32 In other words, I am not sure that gaol time is -- I am not convinced at this moment that
33 gaol time is a potential penalty for this offence. For -- for the first two on the list here,
34 obviously a conviction under the -- under the 145.4 of the *Criminal Code* would have some
35 potential gaol time, right?

36

37 MS. THORSRUD Okay, thank you.

38

39 THE COURT: All right. It is an interesting question, but I think
40 that would be a bit of a stretch there, myself. But anyway, carry on, okay. Just a second
41 Mr. Kitchen, I have run out of paper, now I have more paper. Okay, go ahead.

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Submissions by Mr. Kitchen

MR. KITCHEN: Thank you, Your Worship. Briefly I want to address is that my friend says that they're -- Pastor Coates gave an undertaking to the RCMP. That's not accurate, he did not do any undertaking. If you look at the undertaking --

THE COURT: He did not sign it.

MR. KITCHEN: -- do you have the undertaking in front of you?

THE COURT: Yes, he refused to sign it; I saw that, yes.

MR. KITCHEN: He didn't sign it, that's right and it specifically says in there -- I understand that I do not have to accept the conditions and that if I do not accept the conditions I will be brought before a Justice for a bail hearing, well that didn't happen.

THE COURT: No, it did not.

MR. KITCHEN: So now what they're saying, now the Crown comes and says he's breached an undertaking because -- because of church on the 14th, but he never agreed to this undertaking on the 7th and he wasn't brought before -- before a Justice of the Peace on the 7th of the 8th or the 9th. So, I don't see how we have an enforceable undertaking here. I don't see how the Court has jurisdiction to -- to find that he's -- he's breached section 145 -- I believe it's (4) of the *Criminal Code*. We don't -- we don't have a proper undertaking. I mean if this had a been a bail hearing last Tuesday, where we -- where he came in because he didn't agree to the undertaking, that'd be a different story.

THE COURT: Right.

MR. KITCHEN: That's what should have happened, that's what we should be doing.

THE COURT: So, essentially you are arguing that with respect to count 3, the detention in terms of the -- the circumstance to consider with respect to detention, one of them being the apparent strength of the prosecutor's case, with respect to count 3, you are suggesting that Crown's case is weak by virtue of the fact he never signed the undertaking and therefore cannot be bound by it. That is with respect to count 3.

1
2 MR. KITCHEN: Well, that's right.
3
4 THE COURT: Okay, does not address counts 1 and 2.
5
6 MR. KITCHEN: That's with respect to count 3, I -- I don't --
7
8 THE COURT: Yes.
9
10 MR. KITCHEN: Well, I don't see how he could be -- he could be
11 held on, you know, in response to counts 1 and 2. If we want to get into that ...
12
13 THE COURT: Counts 1 and 2 are just a long-form of --
14
15 MR. KITCHEN: There's -- there's confusion about count 2 --
16
17 THE COURT: Sorry, go ahead; I apologize, I was interrupting.
18
19 MR. KITCHEN: All right, no, that's okay. With count -- with
20 count 2, there's some confusion here because Pastor Coates doesn't know if this was -- if -
21 - if this is an allegation that he personally failed to maintain 2-metres distance from other
22 people or if he is being blamed for a lack of distancing between people in his congregation.
23 That's -- that's not clear; that needs to be.
24
25 But in any event, of the defences submissions is that for count 1 and count 2, he cannot and
26 ought not be -- be held in custody simply on those. It goes back to what you -- what you
27 said, My Worship -- and Your Worship, that the fact that there's no gaol time for these
28 offences, these are -- these are -- these are fining offences.
29
30 Just to speak to the secondary grounds, my friend has alluded to the fact that statements
31 had been made about a lack of -- of an ability to comply and it's -- it's not -- it's not a matter
32 of willingness or refusal or -- or defiance it's -- it's an inability. These -- these are -- these
33 are Protestant Christians that hold to a strong and literal interpretation of the Holy
34 Scriptures which command they meet in person, physically. That they gather as the whole
35 church together, that they do not cover their face, which is the image of God, when they
36 are worshiping their God and that they -- they minister to each other, they fellowship with
37 each other, they pray with each other, they lay their hands on each other to pray. They hug,
38 they cry each other, they eat the Lord's supper with each other, they baptize each other.
39 This -- this -- this is their religious beliefs; they are compelled to follow those religious
40 beliefs.
41

1 Right, they -- they -- they don't -- they don't engage in noncompliance with a light heart or
2 -- or do so lightly. It's because they are compelled to adhere to their religious beliefs, they
3 are compelled to follow their Lord Jesus, their Lord Jesus is -- is -- is their Lord, the
4 Government's not their Lord. They follow the Government as much as they possibly can,
5 they certainly want to but it's -- it's an inability, not a (INDISCERNIBLE) and that -- that
6 needs to be -- that needs to be clear. To go to the harm issue --

7

8 THE COURT: I am sorry -- I am sorry to interrupt you, you are
9 saying -- I just want to, because there is a lot of paper being shuffled, and you said it is not
10 matter of willingness or refusal it is an inability; is that what you said?

11

12 MR. KITCHEN: Yes.

13

14 THE COURT: Okay. Sorry, carry on; I just wanted to make sure
15 I had the right words. Go ahead.

16

17 MR. KITCHEN: Thank you. As for the -- the issue with harm to
18 the public, well there is no demonstrable harm to the public. I understand there's -- there's
19 -- there's these generalized assertions that there's a virus going around, but that's not
20 enough. There is no -- there is no objective demonstrable evidence that there's going to be
21 harm to the public. This church has been open, it's been doing what it's been doing for --
22 for several months, there's been no outbreaks.

23

24 The only -- the only -- the only person that's died in the church has died because of
25 lockdown measures, because they couldn't get their cancer treatment, not because of
26 COVID. So, there has to be something more from the Crown to say that there's going to be
27 actual harm to public, were not talking about a criminal that's going to go out and actually
28 harm somebody, that's actually going to do something that's going to be harmful.

29

30 To speak to the tertiary ground, this is a Christian minister, it would be a stain on the
31 administration of justice to put a Christian minister behind bars for doing exactly what
32 Christian ministers do, which is to hold church. So, if we want to talk about the repute to
33 the justice system, then it would be far more damage to that repute to put this Christian
34 minister in gaol, because he was doing his duty as a Christian minister, to treat him like a
35 criminal when he's not, than to let him out.

36

37 The Crown has mentioned complaints, well of course, there's always complaints. There's
38 always lots of people complaining to the Government about other people doing things they
39 don't like; that's nothing new, that's nothing surprising. And -- but and that's just it, the
40 Government -- the -- the public is going to disagree on things. Some -- some of the public
41 completely disagreed with the lockdowns, they do not regard what the Government is doing

1 as -- as intelligent, let alone justified. And that's why you have hundreds of people showing
2 up at this church on Sunday, that's why the numbers seem to be going up and not down,
3 because people are coming to where other people are living life normally and they want to
4 be there.

5
6 Some people disagree with that, some people complain about that, some people call the
7 Government and complain about that; that's not surprising. So, were going to -- the Crown
8 is talking about catering to one part of the public while ignoring the other part of the public.
9 Right? The other half of the public that thinks, oh this is ridiculous is -- is going to look at
10 this and think -- and think what a stain on the -- on the public justice system, that this --
11 that this Pastor, who's been put in gaol for doing nothing more than being a pastor.

12
13 Sure the other half will think it's great, but we don't -- we don't put people in gaol just
14 because one half of the public is going to think it's a good idea.

15
16 Your Worship, subject to any questions you have, those are my submissions.

17
18 **Discussion**

19
20 THE COURT: Do you have a proposal for release, Mr. Kitchen?
21 I appreciate it is not -- it is not a reverse onus situation, but I am curious what -- what in
22 fact you suggest?

23
24 MR. KITCHEN: I suggest that Pastor Coates is let go until it's time
25 for his trial. He will come, obviously the Crown has already conceded that he will come
26 and at that point there will be a challenge to the restrictions that he's been ticketed under.
27 They'll be challenges to the tickets, they'll be -- they'll be *Charter* challenges, they'll be
28 expert reports and the best thing for the administration of justice is for those things to run
29 their course. It's for -- it's for the -- it's for the Crown and the Court to let that happen, as it
30 should. Not to hold this man in custody until it happens.

31
32 The only condition the Crown is looking to impose is compliance with the CMOH orders,
33 my client isn't able to do that, it would violate his conscience.

34
35 THE COURT: On that point and then straying a little out of my
36 own ballpark, if you will, but with respect to constitutional challenges et cetera, I presume
37 that you must be mustering some kind of -- or somebody on behalf of the church is
38 mustering some kind of applications for injunctive relief or something with respect to the
39 order. The order that I have, which I will advise you, I have an order in the package that I
40 was given, it's the order from January 29th, it's an order of an Executive Officer that makes
41 reference to the December 17th order and then the January 21st, Court of Queen's Bench

1 order and then another inspection on the 24th and it basically is another order shutting the
2 thing down -- shutting public access until compliance basically with those orders.

3
4 Is there any challenges to those order on the basis of *Charter* et cetera? Is that -- is any of
5 that booked -- planned going ahead, anything like that?

6
7 MR. KITCHEN: The CMOH orders that the orders of an
8 Executive Officer are based on, are currently being challenged. The challenge to those was
9 filed in December, not by GraceLife, it was filed on behalf of two other churches and five
10 individuals, that is ongoing. So they have been challenged in the Queen's Bench, the orders
11 of an Executive Officer, the December 17th one was appealed to the Public Health Appeal
12 Board. The Public Health Appeal Board declined to hear the appeal on the basis that the
13 Board feels they cannot adjudicate on *Charter* matters and of course, the *Charter* was part
14 of what was appealed on.

15
16 So as it is, the AHS Executive Orders are not currently being appealed or challenged in
17 court, one of the reasons that they haven't been challenged at the Queen's Bench through
18 many an application for judicial review, for example, is because currently the December
19 17th Executive Order is being enforced through a court order and the church is essentially
20 in contempt of that and as such, I forget the *Rule* it might be 10.53 or something like that,
21 if they were to apply to challenge it, I would expect the respondent, the Government, to
22 apply to the Court to have it struck because the church is in contempt. So they're kind of -
23 - kind of stuck and what's open to Paster Coates and the church indirectly, is to challenge,
24 you know, these orders and the CMOH orders through the tickets and the charges that have
25 come their way and that's what their intention is.

26
27 THE COURT: Ms. Thorsrud, the Queen's Bench order from
28 January -- no when it -- January 21st --

29
30 MR. KITCHEN: That would be January 21st.

31
32 THE COURT: -- right. Is that an order against GraceLife
33 Church and Mr. Coates or just GraceLife Church, do you have that order there? You're on
34 mute.

35
36 MS. THORSRUD: Sorry.

37
38 THE COURT: You don't have that order there?

39
40 MS. THORSRUD: I do not have the order in my package.

41

- 1 MR. KITCHEN: Your Worship, it is against both.
2
- 3 THE COURT: Okay. Does it provide for contempt, is there --
4 you know -- usually -- well not usually -- more often than not at the end of some kind of
5 Queen's Bench order there's a -- if anybody finds anybody to be -- they shall be brought --
6 taken to prison and held until they can be brought before a Justice of the Court of Queen's
7 Bench to show why they should not be held in contempt. Is that clause in there?
8
- 9 MR. KITCHEN: Yes, yes, Your Worship, it is.
10
- 11 THE COURT: And has not been used.
12
- 13 MR. KITCHEN: It has not been used.
14
- 15 THE COURT: Well, Ms. Thorsrud, there's a thought, but
16 anyway.
17
- 18 MS. THORSRUD: M-hm.
19
- 20 THE COURT: Because at the end of the day and I'm just
21 speaking off the top of my head here and I just want to ask -- madam clerk -- you were
22 printing up a bunch of other files there, right?
23
- 24 THE COURT CLERK: Yes, Your Worship.
25
- 26 THE COURT: Did any of them include a release order?
27
- 28 THE COURT CLERK: From any file?
29
- 30 THE COURT: From any file, 'cause they're standard in terms of
31 the standard wording and then you add in all the other --
32
- 33 THE COURT CLERK: I do have one right here, Your Worship.
34
- 35 THE COURT: Okay. You see at this point, you know, Mr.
36 Kitchen, you're right -- well I don't -- I'm not making a ruling on that, in terms of whether
37 or not the undertaking is unenforceable and the charge should be dismissed et cetera, I don't
38 mean that, but the undertaking hasn't been signed, which is only relevant with respect to
39 count 3 here. But in any event and does clearly say that -- I don't have to accept the
40 conditions, if I don't accept, I will be brought to a Justice for a bail hearing. That was not
41 -- that didn't happen, it could've happened, didn't happen.

1
2 But not it's happening on a new ticket, so the reason I asked for a release order is -- okay -
3 - at the very end of a release order, I don't know if you've seen one Mr. Kitchen, I don't
4 know do you practice -- oh I shouldn't ask you this -- it's none of my business -- but in any
5 event --

6
7 MR. KITCHEN: Your Worship, I'm a constitutional litigator at the
8 Queen's Bench, I'll openly admit that, so this is --
9

10 THE COURT: Okay. Well, I'm holding up before you, waiving
11 in the air, a standard form release order, okay? You know, it states the person's name, the
12 charge, how they've been released, whether it's a promise to pay or cash or whatever, the
13 conditions that go along, you know, with the release, right, the court date. And then at the
14 end, it lists some things, you know, consequences of non-compliance, you know, you could
15 be charged under 145 and a warrant could be issued and you know, blah, blah, et cetera.

16
17 And right at the end it says, and this is the accused:

18
19 I understand the contents of this form and agree to comply with the
20 conditions that are indicated. I understand that I do not have to accept
21 the conditions and that if I do not accept the conditions I will be
22 detained.

23
24 Okay. I flag that for you because I agree with you on the undertaking, that that is the
25 situation here. Now, here's the thing. Ms. Thorsrud, this is not a detainable offence at this
26 point. I appreciate what you're saying and there certainly are some aspects here, but at the
27 end of the day, I'm not sure that a penalty would be gaol time here. That's subject to further
28 discussion, debate, et cetera.

29
30 But even if there -- even if it was obvious that there was a potential for gaol time, I'm not
31 sure in the light of the circumstances the man's lack of record et cetera, that gaol time would
32 result in this case. Okay.

33
34 MS. THORSRUD: Yes.

35
36 THE COURT: So when I look at the grounds for detention, is it
37 necessary for the protection and the safety of the public including victims or witnesses of
38 the offence, having regard to all the circumstances; it's a bit of a -- we have to twist it a
39 little bit for these circumstances. There is an argument to be made that on the secondary
40 grounds that there is a risk to the public, his continued non-compliance with enforcing the
41 orders.

1
2 And I have to say, by the way, Ms. Thorsrud, that counts 1 and 2 are extremely badly
3 worded, Mr. Kitchen pointed out that count 2 leaves the accused in some doubt as to,
4 whether or not, he was only supposed to maintain 2 metres himself or require all of the
5 congregants to do so. But count 1 says that he did exceed capacity of 15 people, which I
6 don't know how any one human body does that, but anyway ...
7

8 MS. THORSRUD: Sorry to interrupt. I just want to alert the JP that
9 that was actually amended to 15 percent, it was an error. That doesn't take anything away
10 from the Court has said, but that has been amended just for your information to 15 percent.
11

12 THE COURT: Okay, so it reads that he at or near Stony Plain,
13 did exceed capacity of 15 percent, that's what it reads? It's still badly worded.
14

15 MS. THORSRUD: I agree.
16

17 THE COURT: Okay. In any event, presumably that's fixable
18 and whatnot, so I'm not tossing it on that basis. But at the end of the day -- sorry I lost
19 track of what I was trying to say here -- at the end of the day, there are Public Health orders,
20 he is in violation of them, he has some arguments, that is his counsel has suggested will be
21 the arguments at the time of trial, as to why he is unable, which is kind of a stretching of
22 that word, but I won't argue the semantics there. I get the point of what you're saying, as
23 opposed to the semantics of the word, he's clearly able to, it's just that he is not going to,
24 physically he's able to do this.
25

26 But there -- there is obvious danger to the public by the circulations of peoples through that
27 church in excess of what Public Health has ordered to be the requirements. So there is some
28 argument to be made there about the risk. But it is also the tertiary grounds where in terms
29 of the strength of the prosecutions' case, ignoring -- setting aside any *Charter* argument
30 that would defeat everything, I think the math is simple, that there is violations and you
31 know, the numbers are. I am not even sure the defence is even arguing those kinds of
32 violations.
33

34 So the strength of the case is there. The gravity of the offence is arguable, in a pandemic,
35 the Crown has pointed out that there are numerous people going in and out of that church,
36 but I don't have -- other than there were some positives back in the summer, I don't have
37 any sort of contract tracing evidence, now I would expect it necessarily at a bail hearing,
38 to suggest that as those people leave the church and go out in the big, wide world, that there
39 has been any kind of spread. I don't know that they are the -- I've forgotten the word that
40 they're using for that nowadays.
41

1 Having said that, there's an argument with respect to the public aspect in that if everybody
2 else is, in fact, complying and he is and his church members are capable of complying,
3 nobody is saying they can't worship, nobody is saying they can't worship in that church;
4 they might have to hold several sessions through the day, you know, I'm sure all of these
5 options have been discussed. But the public has been dealing with these rules and
6 complying with them and keeping the numbers down and Mr. Kitchen, in response to your
7 argument about there hasn't been any deaths other than the one with respect to the fellow
8 or the person who could not get cancer treatments, it is not just a matter of deaths, it's a
9 matter of illness and severity of illness that are potential here, as well. We are not just
10 counting up, well nobody's died, so it doesn't matter. There may be other issues that need
11 to be addressed.

12
13 At the end of the day, however, it's a provision offence which does not appear to carry any
14 gaol time at this point and detention, in my view, is at this point not required. Now, having
15 said that we're going to do a release. Having said that, there's going to be conditions on
16 that release and having said that, he's going to have to sign those conditions and agree to
17 them and if he does not, then he will be detained. I've got no -- that's how it works. Okay,
18 because there will obviously be conditions of his release.

19
20 I'm curious, Mr. Kitchen, quite often Pastors live at or on the church premises, I don't know
21 -- does he or is he somewhere away from the church?

22
23 MR. KITCHEN: He's somewhere away from the church.

24
25 THE COURT: Okay. The only reason I ask -- madam clerk --
26 I'm going to give you this back so I don't get it mixed in with this package there.

27
28 There's the form of release and conditions. We are going to impose conditions which, in
29 this case, there are a couple of things that need to be considered. Number 1, as I said, if he
30 doesn't comply with the conditions or doesn't sign the release, then he will not be released
31 period. Okay. Number 2, if he signs it saying that he will comply with it and then of course
32 goes out and doesn't comply, on the assumption that's what he does, then of course he will
33 face charges. Those charges will be criminal charges. They will no longer be in the *Public*
34 *Health Act* area of life and Mr. Kitchen presumably understands that, as well, and that's a
35 whole different ballpark, right? And continual violations of that will ultimately lead to
36 detention. There's no question.

37
38 So he needs to be aware of that. I am not here to rule on the efficacy or the wisdom of the
39 *Public Health Act*, that's not my job here tonight, it's not my job here during the day either,
40 but it's just not my job to be doing that and I appreciate that there are going to be some
41 challenges to it, but at the end of the day, what we have is an individual that had, for some

1 reason or another, I hate to do this but it's like, Who incited the riot? That's what I feel like
2 we are talking about in some ways.

3
4 Because my other concern, Ms. Thorsrud, is it's all well and good, even if I detained this
5 individual or put him under house arrest or some other thing, which I can't think of at the
6 moment, that's not going to stop all these people from showing up at GraceLife Church
7 next Sunday, right? Which is the real concern here. You're on mute.

8
9 MS. THORSRUD: Sorry, so annoying to have to be on mute. Yes,
10 but he is the leader. He is the one who is giving the sermon. He is the one calling these
11 people to church, but-for him, I would suggest they wouldn't necessarily be there in that
12 number because they would not have him to provide the sermon.

13
14 THE COURT: I think you're underestimating the --

15
16 MR. KITCHEN: Your Worship, I just --

17
18 THE COURT: Yes, go ahead Mr. Kitchen.

19
20 MR. KITCHEN: -- I just want to note that he -- he isn't calling
21 anybody to church, it's their belief in their Lord that calls them there. He doesn't -- you
22 know -- there's no -- there's no, Hey, come to church and we can see how many orders we
23 can disobey and see how much we can, you know, snub the government. That's not what's
24 going on. They come of their own free will. They come because they want to. They come
25 because of what they believe in, not because of him. It's not -- it's not, you know, the Lord
26 James Coates, it's the Lord Jesus Christ. So that's important to understand here.

27
28 THE COURT: If I recall, Ms. Thorsrud's argument was that
29 there had been various emails which I presume came from Mr. Coates to the congregants
30 saying, We're open for business notwithstanding AHS, come on down, Sunday service at
31 10, right, or words to that effect?

32
33 MR. KITCHEN: Yeah, that's a free will invitation, right?

34
35 THE COURT: Fair enough, fair enough.

36
37 MR. KITCHEN: There's no -- there's no please come, you know.

38
39 THE COURT: No, I get that but he didn't say we're closing
40 because we have these orders or we're going to work things differently somehow or we're
41 going to rearrange our lives, whatever we are going to do. He didn't do that either. And

1 that's what their argument is.

2

3 My point is simply this, we take him out of the picture, assuming we do take him out of
4 the picture, if I detained him, which I'm not doing, but if I did, I would bet money, which
5 I should not do sitting in the position I'm in, that there will be people at GraceLife church
6 on Sunday the 21st. And Ms. Thorsrud that's -- that's an issue that the Crown has, which I
7 also am not responsible for solving tonight, but I am not sure that detention of this
8 individual at this time is going to solve that, right?

9

10 And in light of all of the other reasons that I've given my detention is not appropriate at
11 this stage of proceedings, we aren't -- I am not going to order detention. My problem now
12 is crafting a release order. So I could say well, you know, let's make him put down \$10,000
13 cash, which I have not even canvassed with Mr. Kitchen, as to whether or not that would
14 be doable, but I would suspect that the money would be obtained; is that right, Mr. Kitchen?
15 For the principle of the thing?

16

17 MR. KITCHEN: It's possible.

18

19 THE COURT: Yes.

20

21 MR. KITCHEN: Yeah, I think it's possible.

22

23 THE COURT: It's really a matter of the -- in other words, people
24 pay cash bail on the theory that -- it's not a theory -- it is how it works, is that you pay cash
25 and if you don't show up in court or you violate the conditions, then you lose the cash,
26 right? That's how it works. So your incentive to obey the conditions and go to court is that
27 you don't want to lose the cash.

28

29 Given what I'm hearing from Mr. Kitchen, I'm not sure that that will be much of a -- that
30 won't change anybody's mind here from what I'm gathering, other than it might be a very
31 high amount.

32

33 MR. KITCHEN: It may not, I guess it would depend on what the
34 primary condition is or are you suggesting, Your Worship, that that would be the only
35 condition?

36

37 THE COURT: No, no there will -- I mean quite clearly, the
38 conditions would have to be -- I mean at this point so far as I know, there's an order that
39 this church not be open at all. Is that right, Ms. Thorsrud?

40

41 MS. THORSRUD: Yes, that's correct, Your Worship.

1
2 THE COURT: Based on this January 20 --
3
4 MS. THORSRUD: There's a closure order.
5
6 THE COURT: Right.
7
8 MS. THORSRUD: A QB closure order.
9
10 THE COURT: A QB closure order, no, no all I have is an order
11 of an Executive Officer from January 29th.
12
13 MR. KITCHEN: So the December 17th Executive Officer order
14 was basically saying you need to comply with CMOH's order, AHS went to the Queen's
15 Bench and got a court order enforcing that. Subsequently, a closure order was issued
16 against the church because it was not complying. The closure order has not been taken to
17 the QB.
18
19 THE COURT: Right. But at the end of the day there was --
20
21 MS. THORSRUD: Thank you for that clarification. Thank you.
22
23 THE COURT: All of which is to say, there's at least one or two
24 orders out there that say, close this place until you show us that you've got -- what did you
25 call it? You had a special name for it, some kind of compliance --
26
27 MS. THORSRUD: Compliance.
28
29 THE COURT: A relaunch plan.
30
31 MR. KITCHEN: A relaunch template.
32
33 THE COURT: Yes, a relaunch template. Okay. There you go.
34 So that means an obvious condition that is, you know, under the Supreme Court cases that
35 I need to be concerned with in terms of setting of conditions and their rationality in
36 connection with the charges et cetera. The obvious condition would be, you will ensure
37 that you and GraceLife Church comply with any necessary requirements of Alberta Health
38 Services Chief Medical Officer of Health and any Court of Queen's Bench orders or words
39 to that effect, okay?
40
41 Basically, telling him to do what he's charged with not doing, okay? That would be an

1 obvious and rationally connected condition to this release. And again, so then that puts us
2 to the, will he sign it and will he be detained and all that sort of thing? So that would be
3 the condition. It's either that or ...
4

5 MR. KITCHEN: Well, perhaps it's best to deal with that now, as
6 opposed to continuing on.
7

8 THE COURT: Sure, what argument?
9

10 MR. KITCHEN: So I -- well you know -- I would want to hear
11 directly from my client just to confirm this. My understanding is that my client's not going
12 to be able to sign that.
13

14 THE COURT: That's his choice.
15

16 MR. KITCHEN: Right.
17

18 THE COURT: I mean no matter what we do -- madam clerk --
19 can you hand me that release order again, sorry? Yes, -- I'm sorry, Mr. Kitchen, where
20 were you going with that? What was it that --
21

22 MR. KITCHEN: No, I wasn't going anywhere, I was just -- I was
23 just saying that we -- we -- well why don't we look at the conditions and then we'll see if
24 my client is willing to sign.
25

26 THE COURT: If I may then, what you're saying to me here is
27 that okay -- so we've established we're not doing detention that's not on the table. The form
28 of release, whether it's a promise to pay or some cash bail, that's still in limbo, but it will
29 be a releasable release of some kind, okay? The question here now is conditions and it
30 would seem patently obvious, the Crown is going to ask for it, I don't even need to ask Ms.
31 Thorsrud, I know she's going to ask for something to effect of, okay, the previous
32 conditions and I have to tell you, Mr. Kitchen, that that would be standard operating
33 procedure and standard operating issuance from this Court, if I get a guy in whose charged
34 with theft under and I got a condition to not go to 7-Eleven and he's charged with breaching
35 that condition and/or showing up at a 7-Eleven, I'm throwing that condition in again, right?
36 It just -- it goes without saying.
37

38 I don't know what argument you would make to say he should be released without
39 conditions, that's really what your argument would be. So I will give you a chance to make
40 that argument, go ahead.
41

1 MR. KITCHEN: That is ultimately our position, but I understand,
2 Your Worship, what you're saying. I understand that's the only condition -- I mean I
3 would've expected that, but you know, it's the defence's position that in this case, that
4 shouldn't be there. You know, this is not typical situation. You know, we have this
5 systemic dismantling of civil liberties in this country, we live in essentially a police state
6 and you know, we're dealing with somebody who's not wanting to break the law, in fact,
7 they wish they didn't have to, they wish they weren't, they're just doing now what they
8 always did, in accordance with their conscientious religious beliefs. It just so happens that
9 that thing, going to church, has suddenly been outlawed in this brave new world that we're
10 in now and so you know, it's not like can just agree to violate his beliefs as a price for his
11 freedom, you know. That would violate his conscience right there.

12
13 So if the Court's not in a position to release him, to let him live his life until it's time for
14 trial then it's unfortunate but --

15
16 THE COURT: I am not ordering him detained, Mr. Kitchen, I
17 am not ordering him detained. It will be his choice whether he signs the release order.
18 Detention will be his choice not --

19
20 MR. KITCHEN: But if I understand, Your Worship, if he does
21 refuse --

22
23 THE COURT: Go ahead --

24
25 MR. KITCHEN: I'm sorry.

26
27 THE COURT: -- go ahead.

28
29 MR. KITCHEN: If he does refuse to sign, he will remain detained.

30
31 THE COURT: That is certainly what the document says. Now,
32 having said all of that, madam clerk, have you been up at Remand and signing release
33 orders with people?

34
35 THE COURT CLERK: No, Your Worship.

36
37 THE COURT: Okay. She hasn't done that -- I know that our
38 clerks are often up there doing that work. I have seen a release orders come through that
39 have not been signed, much like the undertaking that are unsigned, why that is the case, I
40 don't know. I wasn't there at the time when the thing happened. So I am not going to tell
41 you, Mr. Kitchen, that I'm making an order -- because I don't need to -- it's right on the

1 paperwork, it's part of the deal of a release, okay, I'm saying that that's what the wording
2 says and if he doesn't sign then I would expect that at the police station, they will not release
3 him. It's the same with a cash bail, a warrant of committal is issued and until -- this person
4 might be held for an hour or you know, 3 days before somebody comes up with cash, so
5 they have to be committed in the meantime.

6

7 Having said that, I'm not the one that's going to make the martyr out of your client. I'm not
8 detaining him, right?

9

10 MR. KITCHEN: I understand. I understand what you're saying.

11

12 THE COURT: Either way, there's going to be some fall-out
13 from this whole thing, there's no question, this is an ongoing battle and it's too bad that you
14 guys can't get in earlier on getting the whole Constitutional challenge business dealt with.
15 But that's way above my paygrade so that's not happening here tonight much as it would
16 be interesting to do. It strikes me from my old law school days, section 1 is the argument
17 here, but anyway ...

18

19 MR. KITCHEN: (INDISCERNIBLE)

20

21 THE COURT: It is all right, so things haven't changed that
22 much. All right.

23

24 MR. KITCHEN: Well, they've changed a little bit.

25

26 THE COURT: They've changed a little, all right. Just one
27 second here. All right.

28

29 I am going to release him -- Ms. Thorsrud, I didn't give you an opportunity so I will give
30 you an opportunity to weigh in on what form of release there should be outside of detention.
31 If you have any thoughts on that, you may not, I don't know.

32

33 MS. THORSRUD: Well, I would ask for the strongest measures the
34 Court would deem appropriate in order to -- if -- to et compliance with the behaviour. So
35 that would be -- of course the Court is absolutely right and as you said, it goes without
36 saying, so I didn't even pop up about having to comply with the orders and the Alberta
37 Health Services Executive Orders. And I mean even the Queen's Bench, I don't even know
38 if that is necessary -- you have to comply with the Queen's Bench order, but I think those
39 are absolutely at the minimum those would be significant.

40

41 Whether there's an interest in the Court to have some restriction, where he can't attend at

1 the church and offers livestreaming of his sermons; whether the Court considers bail to be
2 perhaps again a condition that may assist with compliance if the Court considers it
3 appropriate.
4

5 THE COURT: Okay, this is probably outside of -- just out of
6 curiosity, Mr. Kitchen, if Mr. Coates was -- I don't know -- in hospital having heart surgery
7 or something, wasn't able -- you know was down for the count, as it were, who's running
8 the church? Whose giving sermons, whose doing ...
9

10 MR. KITCHEN: Well it's -- well it's my understanding, Your
11 Worship that there is another pastor on staff. That pastor would most likely give sermons.
12 There's also a board of elders, and all of them, you know, have had some theological
13 training, you know, and would be willing and able to preach and give sermons and
14 generally conduct the worship service. Even in absence of that, you know -- I don't know
15 -- I can't predict the future, I don't know exactly what would happen. It would be my guess
16 that worship would continue. I mean these people do seem to believe -- really actually
17 believe what they say they believe, which means they will meet until they're dragged away.
18

19 THE COURT: I was partly wondering out of the old -- I mean
20 the orders just are to GraceLife Church, I was just wondering if that's a corporate body, the
21 board of elders et cetera and all that sort of thing, which is another -- again not before me.
22

23 MR. KITCHEN: I don't believe the church is incorporated, but I
24 couldn't tell you that with certainty.
25

26 THE COURT: Okay. Just one second.
27

28 THE ACCUSED: We are.
29

30 THE COURT: There you go.
31

32 MR. KITCHEN: Okay, thank you.
33

34 THE ACCUSED: Right, we are a religious society and
35 (INDISCERNIBLE) --
36

37 THE COURT: In my distant past as a lawyer, there was an
38 opportunity of suing -- I had some litigation with respect to the Catholic Church and that
39 was a lot of fun trying to weave through the who one names as the defendants in the thing.
40 Completely irrelevant to what we're dealing with here today, but I was wondering if Mr.
41 Coates is out of the picture for whatever reason, who then does the Government or anybody

1 else deal with in terms of that church? It's not a question we need to answer tonight. I was
2 just raising it because I'm that way.

3

4 I'm also trying to write out a condition and talk at the same time, which is never a good
5 idea, unless somebody else has already done so, Ms. Thorsrud, I don't suppose you have?

6

7 MS. THORSRUD: I'm sorry, I missed that question.

8

9 THE COURT: Let me just ask, this relaunch thing that is
10 supposed to be done in theory and all of these orders, all sort of conclude with, you can't
11 do anything until you're in compliance is effectively how it all plays out, right?

12

13 MS. THORSRUD: Right.

14

15 THE COURT: Who determines compliance?

16

17 MS. THORSRUD: So in relation to the order of an Executive
18 Officer, it would be the Executive Officer.

19

20 THE COURT: Right.

21

22 MS. THORSRUD: So that is a positive obligation, so that would be
23 complying with an order of the Executive Officer and if the Court wanted a date --

24

25 THE COURT: I don't want any dates.

26

27 MS. THORSRUD: Okay. Thank you. So that is something that
28 must be done and it's ensuring -- words like ensuring, not allowing, things like that and
29 there's a relaunch plan templated that must be provided. It was to be submitted for review
30 by December 19th, 2020. And then there's also, of course, the other orders that talk about
31 maintaining the social distancing. So I think if the Court was inclined, it would be
32 something of the effect of to comply with the Chief -- the CMOH orders, the Chief Medical
33 of Health Orders and Alberta Health Services order of an Executive Officer and any such
34 orders as may be directed by the Courts. I think that that would give -- that would cover
35 the various levels of orders that are in existence.

36

37 THE COURT: Which takes me back to the Court of Queen's
38 Bench order, which Mr. Kitchen kindly advised me that does have the, thou shalt, you
39 know be brought before a Justice to be held in contempt clause.

40

41 MS. THORSRUD: Right.

1
2 THE COURT: But it also provides -- you don't have it, so you
3 wouldn't know, does also provide for charges? Often the Court of Queen's Bench order,
4 Mr. Kitchen, you will appreciate an officer attempting to enforce this order, may charge
5 the person or bring them to an institution where they'll be held for a civil contempt hearing.
6

7 THE ACCUSED: Pretty sure that's not there.
8

9 THE COURT: Well, Mr. Coates --
10

11 MR. KITCHEN: I'm just reading here --
12

13 THE COURT: Again, it's another one of my curiosities, Mr.
14 Kitchen, so if it's -- he's looking it up Mr. Coates, you don't need to answer, because that
15 potentially is a charge under the *Criminal Code* if that exists in that order, which is
16 something that --
17

18 MR. KITCHEN: No, it's --
19

20 THE COURT: It's only the civil contempt?
21

22 MR. KITCHEN: -- it's not in there. Yes, exactly.
23

24 **Decision** 25

26 THE COURT: All right. Okay. Well, here's what I've drafted
27 in the meantime whilst everybody was looking up things for me. You will not attend at or
28 conduct services -- no you will not attend or conduct services at GraceLife Church of
29 Edmonton, we can throw in the address when we get that in a minute, and I've tried to keep
30 it simple, but you guys can complicate this if you like; unless you have complied with any
31 orders issued by Alberta Health Services, its Executive Officers or the Court of Queen's
32 Bench. We could say any existing order, it would probably be better to say any existing
33 orders, so it's not future orders that might come into play. Mr. Kitchen? Ms. Thorsrud?
34

35 MR. KITCHEN: So you've listed CMOH orders, orders that have
36 an Executive Officer of Health and the Queen's Bench orders.
37

38 THE COURT: I didn't say CMOH, what I said was orders issued
39 by Alberta Health Services, mainly because I'm not sure about all these acronyms. I
40 appreciate Alberta Health Services or I could say CMOH. I'm not -- I was trying to cover
41 it off. Ms. Thorsrud?

- 1
2 MS. THORSRUD: The Crown would prefer the CMOH orders
3 'cause it's very specific to certain behaviors contained in various orders. So I would also
4 ask that the -- and if the CMOH causes problems, the Chief Medical Officer of Health
5 orders or Alberta Health Services orders or any Queen's Bench orders.
6
- 7 THE COURT: Okay.
8
- 9 MS. THORSRUD: But I would ask specifically that CMOH or the
10 Chief Medical of Health order is included, please.
11
- 12 THE COURT: That's what the Executive Officer's was -- order
13 of an Executive Officer. All right.
14
- 15 MS. THORSRUD: Except that, just to be clear, the relaunch is
16 actually an order of an Executive Officer, which is actually different than Chief Medical
17 of Health order. So if it different.
18
- 19 THE COURT: I'm aware of that, that's why I was saying, the
20 orders of which there is at least one that he is alleged to be in non-compliance of --
21
- 22 MS. THORSRUD: Yes --
23
- 24 THE COURT: -- is an order of an Executive Officer, it is not an
25 order of the Chief Medical Officer of Health.
26
- 27 MS. THORSRUD: Yes, you're correct.
28
- 29 THE COURT: And that Executive Officer is an Officer of
30 Alberta Health Services, are they not?
31
- 32 MS. THORSRUD: Correct.
33
- 34 THE COURT: Okay. So when I say any orders issued by
35 Alberta Health Services, its Executive Officers or the Court of Queen's Bench, then I've
36 covered it off, 'cause I see no orders from the Chief Medical Officer of Health anywhere.
37
- 38 MS. THORSRUD: So the Chief Medical Officer of Health, are
39 actually those are the CMOH orders --
40
- 41 THE COURT: Yes --

1
2 MS. THORSRUD: -- that define all of the orders, pursuant to Dr.
3 Hinshaw. She's the Chief Medical Officer of Health --
4
5 THE COURT: Right --
6
7 MS. THORSRUD: -- and these are her orders.
8
9 THE COURT: Right.
10
11 MS. THORSRUD: Right.
12
13 THE COURT: And he's charged in the order of the Executive
14 Officer, he's effectively, I'm using the word loosely now, charged with non-compliance of
15 her overreaching Chief Medical Officer of Health orders that relate to everybody and their
16 dog doing everything.
17
18 MS. THORSRUD: Correct.
19
20 THE COURT: So if he's in breach of the Executive Officer
21 orders.
22
23 MS. THORSRUD: As well as the CMOH orders, right.
24
25 THE COURT: Not all of them.
26
27 MS. THORSRUD: No, but he's in breach of at least two of them.
28
29 THE COURT: Right.
30
31 MS. THORSRUD: So he's in breach --
32
33 THE COURT: He's only in breach of them by virtue of an
34 Executive Officer saying that he's in breach of them and issuing an order telling them to
35 comply with them, right?
36
37 MS. THORSRUD: No, I don't think that's the legal framework -- so
38 he -- what you said is correct, but he's also in breach of the CMOH orders --
39
40 THE COURT: Not charged with it --
41

- 1 MS. THORSRUD: -- issued by the --
2
- 3 THE COURT: -- is he? Section 783 of the *Act*, is he's charged
4 with breaching these Executive Orders, is he not?
5
- 6 MS. THORSRUD: No, I mean well he is breaching -- he's charged
7 with breaching section 73(1), whoever contravenes this Act, the Public Health Act, the
8 Regulations and order under section 62, that doesn't apply to us, or an order of a Medical
9 Officer of Health or a physician.
10
- 11 THE COURT: All right. So which one is it?
12
- 13 MS. THORSRUD: So it's the CMOH order, the order of the Medical
14 Officer of Health. That's what he's charged with, but at the same time, he is in non-
15 compliance with Alberta Health Services order of an Executive Officer. But those two are
16 still distinct in the sense that the orders that all of us are bound by, all of the CMOH orders
17 are in existence right now and so he -- we're asking that he be bound by those and I believe
18 the Court was also giving it a latitude that he must also comply with the order of an
19 Executive Officer, that's the subject of the QB order, right that's where the QB order comes
20 from, is the order of Executive Officer, which is separate and distinct from the CMOH
21 orders that all of us are bound by. If that explains the question?
22
- 23 THE COURT: It does not.
24
- 25 MR. KITCHEN: If I may, Your Worship, the root of all this is the
26 order of the Chief Medical Officer of Health, which is referred to in 72(1) as the Medical
27 Officer of Health, the Chief is just tacked on because Dr. Hinshaw happened to be the
28 Chief, there's all kinds of medical officers of health, there's one Chief and she's it.
29
- 30 THE COURT: Right. Okay.
31
- 32 MR. KITCHEN: And all the orders are coming through her. So
33 ultimately, if you were to say -- and I'm just saying this to assist the Court.
34
- 35 THE COURT: Thank you.
36
- 37 MR. KITCHEN: If you were to say comply with all applicable
38 CMOH orders, you'd have it covered because everything else flows from that. If the
39 CMOH order 02-2021 was repealed or struck down, everything else in this case and in all
40 the other cases would all fall by the wayside as well, right? The Queen's Bench, the order
41 of an Executive Officer or the AHS Executive Officer, everything is based on CMOH order

1 -- in this case, CMOH order 02-2021 section 18, which is the 15 percent and then there's
2 order 26 of 2020 --

3

4 THE COURT: Right --

5

6 MR. KITCHEN: -- just going back (INDISCERNIBLE) -- and
7 that's the one with social distancing.

8

9 THE COURT: All right.

10

11 MS. THORSRUD: I do agree, but the Crown would also seek for
12 those other wordings that the Crown had suggested because I do --

13

14 THE COURT: The Crown didn't suggest them, I did. You just
15 agreed with me.

16

17 MS. THORSRUD: Okay. I did. I would also ask that those also be
18 put in place because it allows for there to be a relaunch plan in place, so that the Alberta
19 Health Services will have the ability to ensure that the church is open and the people are in
20 compliance with the health safety measures and having that also be in compliance, I think
21 assists Alberta Health Services to, in the event that they're able to work with Mr. Coates,
22 be able to implement some of the measures before the church opens. As an example, taking
23 away seating so that people are being seated 2 metres distance, as an example. I think that
24 there's value to that.

25

26 MR. KITCHEN: The only problem with that, is that it is not an
27 offence, non-compliance with an Executive Officer's order, it's only an offence to be in
28 non-compliance with an order of the Chief Medical Officer of Health.

29

30 MS. THORSRUD: Unless the Court so orders it, then it will be a --

31

32 THE COURT: Unless this Court is what you're saying, unless
33 this Court.

34

35 MS. THORSRUD: Exactly, yes, yes. Then it will be --

36

37 THE COURT: That's what his point is, I believe, if I'm reading
38 between the lines there.

39

40 MR. KITCHEN: Yes.

41

1 THE COURT: Not very thing lines -- you can walk truck
2 through that.
3

4 THE ACCUSED: Your Worship, can I speak (INDISCERNIBLE)
5 --
6

7 THE COURT: Is that Mr. Coates?
8

9 THE ACCUSED: Yes, it is.
10

11 THE COURT: I'm sure you would love to say a few words, Mr.
12 Coates, but your lawyer is here speaking on your behalf doing a good job, as best he can
13 here, you are not being detained --
14

15 THE ACCUSED: (INDISCERNIBLE) --
16

17 THE COURT: -- but Mr. Kitchen, I don't know if you want to
18 let him speak or not, I don't know what more he would have to add.
19

20 MR. KITCHEN: I'm fine with that, Your Worship, if you're
21 (INDISCERNIBLE) --
22

23 THE COURT: Pardon me? What did you say, Mr. Kitchen?
24

25 MR. KITCHEN: I'm fine with that if you are.
26

27 THE COURT: Mr. Coates, what did you want to say?
28

29 THE ACCUSED: In saying what I'm going to say, I'm not
30 expecting it to impact anything but just want to express it for the record. When we had
31 two COVID cases that touched two gatherings back-to-back in July, we shutdown our
32 services completely to livestream for two Sundays and shutdown every other ministry for
33 14 days.
34

35 THE COURT: Okay.
36

37 THE ACCUSED: So I just want it to be known that the precedent
38 that we've set for dealing with COVID cases that due implicate our church.
39

40 THE COURT: It will all be in the defence package, I'm sure,
41 when the thing goes to trial. Thank you, Mr. Coates.

1
2 At the end of the day, I am releasing you but it will be a promise to pay in the amount of
3 \$5000, that's not cash bail, it's a promise to pay of \$5000. That's what's on the line here. I
4 am doing that high of an amount -- I think there needs to be an amount here, so as to
5 incentivize compliance in the ways that are sledgehammer of a bail system allows me to
6 incentivize compliance, okay, and that's a \$5000 risk there.

7
8 The condition again, I don't have an address for this place, where is this church? Who is
9 going to give me an address? Ms. Thorsrud?

10
11 MS. THORSRUD: It's 51529A Range Road 262, Parkland County,
12 Alberta.

13
14 THE COURT: All right. I'll give everybody a chance to weigh
15 in on this final or penultimate wording here. You will not attend at or conduct services at
16 GraceLife Church at 51529A Range Road 262, Parkland County, unless you have complied
17 with any existing, which I still think is an important word here, any existing orders of the
18 Chief Medical Officer of Health, Alberta Health Services Executive Officers or orders of
19 the Court of Queen's Bench.

20
21 So I'll give both parties an opportunity to weigh in on, whether or not, I've got all of the --
22 I didn't want to use all the acronyms there, although I'm sure everybody involved in this
23 would know what they are, but just for the sake of that.

24
25 All right. Ms. Thorsrud, is that satisfactory to you?

26
27 MS. THORSRUD: It is. Thank you.

28
29 THE COURT: Mr. Kitchen, comments? I know it's not what
30 you want, but the wording?

31
32 MR. KITCHEN: The wording is fine, Your Worship.

33
34 THE COURT: All right. I just needed to think about it myself
35 for a minute again. Just give me one minute, I just want to review some notes here, I want
36 to make sure that we've -- I think that's all we can do here. Again reminding that no matter
37 what we did here, he would have to be signing a release order and we'll see how that plays
38 out for him.

39
40 I'm going to suggest on that basis that if that be the case, Mr. Kitchen, I would've thought
41 -- I would've expected that we're now setting a court date, that you would probably want

1 to tie this in with the date for the other matters, appear to be heading to, I think it was
2 March something or another. Having said that, if you think there's a concern about him
3 being detained by virtue of not signing this release, then you might want to put this into
4 court a day or two from now, if that's a possibility so that you can revisit bail or reopen
5 bail, if the Crown consents, I don't know or to take whatever steps you might want to do at
6 that point. It's sometimes a thought that people -- you know -- they're not sure that they're
7 going to come up with the cash, they don't put their court dates off six weeks hence, right?
8 They put them up a couple of days, just in case, at least gets the charges underway.

9

10 So your choice, Mr. Kitchen, what do you want to do with that?

11

12 MR. KITCHEN: Thank you.

13

14 THE COURT: So what date do you want?

15

16 MS. THORSRUD: I'm sorry to interrupt, would this go to a docket
17 in Stony Plain?

18

19 THE COURT: Yes, this will go to docket in Stony Plain, 'cause
20 that's where the charges are, so that's Wednesdays.

21

22 MS. THORSRUD: Thank you.

23

24 THE COURT: Unless of course, it's provincial offence -- no it's
25 criminal never mind, you at least have the one criminal charge there so it has to -- otherwise
26 I might've put it into traffic court, which isn't sitting, so I don't even know why I brought
27 that up.

28

29 MS. THORSRUD: And just for the Court's information, all of the
30 *Public Health Act* orders that relate to the COVID, all have the jurisdiction of the Provincial
31 Court, all of them, none of them go to the traffic. Thank you.

32

33 THE COURT: I am the Provincial Court.

34

35 MS. THORSRUD: Right, right but --

36

37 THE COURT: Provincial Court Judge is what you're saying, as
38 opposed to Justice of the Peace.

39

40 MS. THORSRUD: Correct, they can't go -- exactly, they can't go
41 into traffic court.

1
2 THE COURT: I am a Worship but not an Honour, but I don't
3 know anyway -- I've also (INDISCERNIBLE)
4
5 MS. THORSRUD: Right, yes, thank you. So perhaps next
6 Wednesday?
7
8 THE COURT: I don't know, Mr. Kitchen is the one driving that
9 bus here on a court date, it's defence that will pick a court date.
10
11 MR. KITCHEN: I guess the only choice is between tomorrow
12 morning and next Wednesday; is that correct?
13
14 THE COURT: That's pretty much it.
15
16 MS. THORSRUD: Can we get it into a docket for tomorrow, Your
17 Worship?
18
19 THE COURT: We could, I mean I would just say the words and
20 you know in the immortal words of Jean Luc Picard, Make it So, right? So ...
21
22 MS. THORSRUD: I would ask --
23
24 MR. KITCHEN: Let's try for tomorrow actually.
25
26 THE ACCUSED: Can I ask my lawyer a question?
27
28 THE COURT: Let me ask the question, Mr. Coates is trying to
29 say something here, but I'm not going to let him for a minute, 'cause I'm still talking. Mr.
30 Kitchen, if we do set it for tomorrow, if he's still in custody, he'll appear by closed circuit
31 TV et cetera in the courtroom. Will there be a lawyer available to be there tomorrow?
32 'Cause if we set it for tomorrow, someone has got to be there. If he does sign the release
33 and signs it under protest or just signs it or whatever and he's released, the court date will
34 still be tomorrow, someone has to be there, whether it's him or you or somebody else on
35 whatever day we pick actually.
36
37 MR. KITCHEN: I can't be there in person, I mean I -- I can be
38 there just like I am now, but I can't be there in person.
39
40 THE COURT: And I have no idea what they're doing there, I'm
41 sure they must be doing WebEx, I don't know, do you know madam clerk?

1
2 THE COURT CLERK: No, Your Worship.
3
4 THE COURT: No she's shaking her head, she doesn't know.
5 Wednesday are Stony Plain, that's all I can say, I mean pick a date and that will be the date.
6 At this point we'd be putting it into Stony Plain, into their CMO at 8:30 and then if it turns
7 out a Judge's order might be required if he is still in custody, okay? That's how I would be
8 wording it.
9
10 MS. THORSRUD: And I just -- just for the sakes of the clerks, I'm
11 always mindful of the clerks and then if there is a requirement to get a Judge's order, the
12 fact that it is in tomorrow, is that going to cause any difficulties for the administration of
13 justice?
14
15 THE COURT: Yeah, they won't be real happy about it, but they
16 can do it, right, madam clerk?
17
18 THE COURT CLERK: Right.
19
20 THE COURT: They won't be happy, but they can do it.
21
22 MR. KITCHEN: Well, I would suggest tomorrow morning then,
23 or sometime tomorrow whenever we can make it work.
24
25 THE COURT: All right. I'm putting it in as I said, so it will be
26 February 17th, CMO, Stony Plain at 8:30 AM, closes at 1:00. So I'm presuming he's
27 released and someone is going to show up for the first appearance and basically adjourn
28 the date to some other date, probably the March date, 'cause he's out and that's fine.
29
30 But if he is not released then a Judge's order may be required for his appearance to be made
31 by closed circuit TV and I leave it to you, Mr. Kitchen, to figure out the WebEx -- I'm sure
32 there's a website for the criminal side of Provincial Court about appearing. Okay. It will
33 be on the Alberta Courts website.
34
35 MR. KITCHEN: Okay.
36
37 THE COURT: Is there anything else on this matter, Ms.
38 Thorsrud?
39
40 MS. THORSRUD: No, thank you so much for the Court's time.
41

1 THE COURT:

Mr. Kitchen, anything else from your end?

2

3 MR. KITCHEN:

Nothing on my end, Your Worship. Thank you.

4

5

6

7 PROCEEDINGS CONCLUDED

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1 **Certificate of Record**

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3 I, Amye Soroka, certify that this recording is the record made of evidence in the
4 proceedings of Provincial Court, held in courtroom 203, at Calgary, Alberta, on the 16th
5 day of February, 2021 and I was the court official in charge of the sound-recording machine
6 during the proceedings.

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1 **Certificate of Transcript**

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I, Su Zaherie, certify that

(a) I transcribed the record, which was recorded by a sound recording machine, to the best of my skill and ability and the foregoing pages are a complete and accurate transcript of the contents of the record, and

(b) the Certificate of Record for these proceedings was included orally on the record and is transcribed in this transcript.

TEZZ TRANSCRIPTION, Transcriber
Order Number: AL9349
Dated: February 19, 2021