No. 210209
Vancouver Registry

*In the Supreme Court of British Columbia*

Between

ALAIN BEAUDOIN, BRENT SMITH, JOHN KOOPMAN, JOHN VAN MUYEN, RIVERSIDE CALVARY CHAPEL, IMMANUEL COVENANT REFORMED CHURCH, and FREE REFORMED CHURCH OF CHILLIWACK, B.C.

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

---

**Reply Submissions of the Petitioners**

---

**Counsel for the Petitioner**

Paul Jaffe
Barrister and Solicitor,
Suite 200-100 Park Royal,
West Vancouver, B.C., V7T 1A2

Brandon Langhjelm and Marty Moore
Justice Centre for Constitutional Freedom**s**
#253, 7620 Elbow Drive SW
Calgary, Alberta T2V 1K2

## Contents

## I. REPLY

### A. Section 43 reconsideration cannot outs the Court's constitutional jurisdiction to review the orders

1. The Respondents have argued an untenable, and unconstitutional, proposition. Relying on *Yellow Cab*, the Respondents assert that if a party has applied for reconsideration of the Orders, the Court can only review the reconsideration decision. Counsel for the Respondents however, admitted in oral argument that if the Petitioners had not sought reconsideration, the Respondents would have still sought to prevent the Court from reviewing the Orders on the basis that the Petitioners failed to exhaust internal remedies.

2. The Petitioners' submit that this argument is a time-consuming distraction.

3. If accepted, the Respondents' position would be to prevent entirely this Court's constitutional jurisdiction and obligation to determine the constitutional challenge to the Orders themselves.

4. The Respondents' arguments appear to be premised on viewing this matter solely on an administrative law to the exclusion of the fact that this matter is at its heart, a challenge to Orders which are laws of general application in the nature of subordinate legislation.

5. Section 43 was not intended to prevent constitutional challenges to overbroad public health orders that limit the *Charter* rights of the population at large. Nor could it ever validly have such an effect.

6. Exemptions can save a fundamentally sound general rule from overbreadth in exceptional circumstances. But they cannot save a fundamentally unsound rule.

7. If it is constitutionally necessary to grant exemptions to everyone who applies with a Covid-19 safety plan in hand, then the underlying rule is unconstitutional and should be re-written to permit services to resume across the board with the specified safety plan requirements in place, as has been done for workplaces, gyms, restaurants, etc.

### 1. Distinguishing *Yellow Cab*

8. None of the cases relied on by the Respondents' for its argument that this Court cannot review the Orders involved a constitutional challenge to a rule of general application to the entire population. All of these cases pertain to the rights or interests of specific groups, entities or individuals in specific factual contexts. This is in contrast to the present matter, concerning Orders which everyone in British Columbia is obliged to obey.

9. In nearly all of the cited cases, the administrative decision at issue was final. In this case, the Orders, and certainly any reconsideration decision, are expressly not final. Rather, they can be varied at any time, even by oral statements of the PHO.

10. The *Constitution Act, 1867* establishes and enshrines the jurisdiction of the Superior Courts. In a recent decision from this Court, the following applicable point was made:

a. In Canada's unitary judicial system, one of the most important roles of the Canadian superior courts, if not the most important, is to uphold the rule of law, including through judicial review of legislation and government action.

*Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2021 BCSC 348, para 82.

11. As indicated in *Yellow Cab* itself, no one acting under delegated authority can be permitted "through procedural machinations, to oust the inherent, constitutionally-protected supervisory jurisdiction of the superior courts" (at para 44). As much as this applies to an administrative decision pertaining to individual interests, it applies with even greater force in relation to rules which everyone must obey, on penalty of law.

12. Section 43 of the *PHA* cannot be construed to prevent this Court from carrying out this crucial, constitutional role.

13. Nor was section 43 of the *PHA* intended to give the Respondents the opportunity to inject last minute additional arguments, disguised as evidence, into a constitutional challenge to orders issued under the *PHA*.

### 2. Respondents' use of section 43

14. Contrary to the Respondents' submissions to this Court, there is no obligation on the Provincial Health Officer to respond to requests that she reconsider her orders.

15. Section 43(3) states that "[a]fter considering a request for reconsideration, a health officer may do one or more of the following…".

16. This is reflected in the Provincial Health Officer's failure to respond to the section 43 applications in a timely fashion, as described below referring to the requests described in the affidavits of Dr. Brian Emerson, John Van Muyen, Brent Smith, John Koopman (1st and 2nd), Garry Vanderveen, John Sikkema, Valerie Christopherson (2nd), and Vanessa Lever (1st and 4th):

| Name | Date of Request | Date of Decision | Determination |
|---|---|---|---|
| Chabad Synagogue | November 25, 2020 | November 27, 2020 (2 days later) | Granted |
| Immanuel Covenant Reformed Church | December 3, 2020 | None | Ignored |
| Riverside Calvary Chapel | November 30, 2020 | None | Ignored |
| Christ Covenant Church | December 7, 2020 | None | Ignored |
| Group of Orthodox Synagogues | December 15, 2020 | December 17, 2020 (2 days later) | Granted |
| Group of Canadian Reformed Churches | Jan 8, 14, 25, 2021 | None | Ignored |
| Religious Petitioners | Jan 29/Feb 3, 2021 | February 25, 2021 (>3 weeks) | Alternative (outdoor, no singing, 25 limit) |
| Group of Orthodox Synagogues | Feb 8, 2021 | Feb 17 + Feb 23 + March 1 (9 days) & (15 days) & (3 weeks) | Alternative (outdoor) + Granted (indoor) – Alternative (outdoor) |

21. The Affidavits of John Sikkema and Garry Vanderveen show that despite formal requests made expressly pursuant to section 43 seeking reconsideration and proposing plans pursuant to section 38, the PHO has not even acknowledged the requests, let alone issued any decision. This is despite the fact, that in the case of Rev. Vanderveen, his request was made on December 7, 2020.

22. The inconsistent and unreliable manner in which section 43 applications have been addressed by the Respondents is illustrated example of the reconsideration provided in the First Affidavit of Dr. Emerson at paras 113-119 and Exhibits 43-47.

23. On November 25, 2020, Rabbi Meir Kaplan sent an email to the PHO at her email address listed on the Orders, requesting an exemption in order to gather in person for religious services. Rabbi Kaplan indicated measures he proposed to implement, including a 25-person limit, mask wearing and conducting the service in an open tent. Two days later, on November 27, 2020, Dr. Emerson responded on behalf of Dr. Henry, noting that the request had been reviewed, Island Health officials had been consulted, and the request to gather in person was granted. Although Rabbi Kaplan

had only submitted an email and had not referenced section 43, his request was treated as a section 43 request for reconsideration and a variance of the order was granted.

24. On December 3, 2020, the Petitioner Immanuel Covenant Reformed Church sent a letter to Dr. Henry, explaining their religious beliefs requiring that they meet in-person, setting out a list of safety measures they proposed to implement and requesting that the prohibition on in-person worship services be rescinded. The Petitioners Riverside Calvary Chapel and Rev. Brent Smith sent a very similar letter and request on November 30, 2020.

AR Tab 8, Aff. #1, J. Van Muyen, para 30, Ex A.
AR Tab 12, Aff #1, B. Emerson, paras 120-121
AR Tab 10, Aff. #1, B. Smith, para 11, Ex D

25. Theses Petitioners have never received any response to, or decision on, these requests.

26. On December 15, 2020, Rabbi Kaplan sent another email requesting a further variance, this time also referencing other Synagogues in the Province. Two days later, on December 17, 2020, Dr. Emerson replied granting a further section 43 variance permitting in-person services at all the Synagogues for the "duration the Provincial Health Officer prohibitions on events."

AR Tab 12, Aff #1, B. Emerson, Ex 44

27. The two-day response time of the PHO's office to the requests of synagogues stand in contrast to the weeks-long response time to the Religious Petitioners' January 29 and February 3 request for a section 43 exemption which was not responded to until February 25, one business day before the hearing of this matter commenced.

AR Tab 14, Aff # 1 of V. Lever, Ex. D and E
AR Tab 19, Aff. #2, J. Koopman, Ex

28. Rather respond to the Religious Petitioners' request for reconsideration in a timely fashion by offering an accommodation for the religious belief and practices of the Petitioners, the Respondents proceeded with a punitive, stressful and expensive injunction application. The injunction application sought to engage this Court's contempt powers against the Petitioners for continuing to conduct in-person services with at least as robust safety precautions and limitations as are employed in permitted gatherings.

29. In contrast to a good faith attempt to offer accommodation to the Religious Petitioners, they sought an order authorizing police to

> detain a person who has knowledge of this Order and of whom the Police have reasonable and probable grounds to believe that the person is intending to attend a worship or other religious service, ceremony or

celebration prohibited by this Order in order to prevent the person from attending the worship or other religious service, ceremony or celebration.

AR Tab 1, Notice of Application, para 5

30. After the injunction application was denied, the PHO did eventually offer the Religious Petitioners essentially the same exemption (25 person limit, outdoors, etc.) that had been provided to the Synagogues since November.

31. This was not however equal treatment of those requesting section 43 exemptions. Just two days before, the PHO office granted Orthodox synagogues in the province permission "to hold [] Purim and weekly Sabbath services indoors".

Aff. #4, V. Lever, Ex A

32. The Petitioners happened to become aware of the exemption through a media report, yet the Respondent's refused the Petitioners' request to have this updated information provided to the Court, forcing the Petitioners to prepare and file an affidavit and bring an application requesting that the Respondents provided to the synagogues. Pursuant to this Court's direction, the Respondents' then provided the 4th Affidavit of Vanessa Lever.

Aff. #3, J. Koopman

33. This additional information further discloses the Respondents' arbitrary and inconsistent application of section 43. While both the Synagogues and the Religious Petitioners described to the PHO religious beliefs and practices that require in-person rather than virtual services, the response both in terms of content and response time, have been significantly different. On February 23 the synagogues were granted in-person "weekly Sabbath services", while on February 25, the Religious Petitioners were offered only out-door in-person services.

34. Immediately after being informed by counsel for the Petitioners that they intended to rely on the exemption granted to the synagogues in argument, the Respondents revised the exemption granted to the Jewish synagogues, requiring them to again to meet outdoors rather than indoors.[4]

See Aff. #3, J. Koopman, Ex D

See Aff. #4, V. Lever, Ex B

35. The use of section 43 by the Respondents shows that for most, the availability of reconsideration of the Orders is entirely "illusory", as many have failed to prompt a decision or even a response from the office of the PHO. When a request is considered, the procedure, timing and determination of the request is not consistent, indicating that factors other than science may be dictating section 43 determinations.

*R v Llyod*, 2016 SCC 13, para 34
*R v Nur*, 2015 SCC 15, para 91, 94-95
See *R v Parker*, paras 172-174, 177-185

## B. Restrictions on the Record

36. At para 77 of their argument, the Respondents assert that none of the Petitioners' evidence can be considered on whether the effect of the Orders constitutes unjustified breaches of the *Charter* because that information was not the record before Dr. Henry. (Petitioners' affidavits cannot only be used to show standing and demonstrating prima facie Charter infringements (para 77(a)).

37. The concept of a formal "record of the proceeding" is inapplicable to this case.

38. The primary focus of this proceeding is on a constitutional challenge to what amount to laws—rules of general application—binding on everyone in British Columbia, with potential penalties for contravention rising to imprisonment. The determination requires a sufficient factual foundation and is required by the Supreme Court of Canada not be addressed in a factual vacuum.

39. In the present context, the Respondents' cannot simply confine the record to whatever Dr. Henry chose to review, and leave the Petitioners' with no means to address the *Charter* section 1 analysis with conflicting evidence of their own.

40. To accept the Respondents' urging would artificially limit the scope of constitutional review to what the Respondents decided to make public.

*Crowder v British Columbia (Attorney General)*, 2019 BCSC 1824 at para 39

41. This cannot be the way the case at hand is resolved.

42. Further, the injustice which can result in applying restrictive rules of evidence to a judicial review of administrative decisions that limit *Charter* rights is reflected in the following passage from a law review article by lawyers Lauren Wihak and Benjamin Oliphant:

> […] the old, historic rules restricting the content of the record on judicial review, and the admissibility of ''extrinsic" evidence on judicial review generally, to a large extent persist. We suggest that continuing to restrict the evidence admissible on a judicial review on the basis of these rules can, in certain cases, lead to incongruence and injustice, particularly when applied to specific types of administrative decisions. These concerns are most salient with respect to the decisions of non-adjudicative or quasi-legislative decision makers, and can be especially pernicious when it comes to administrative decisions that are alleged to infringe upon or engage Charter rights and interests.

Lauren Wihak and Benjamin J. Oliphant, "Evidentiary Rules in a Post-Dunsmuir World: Modernizing the Scope of Admissible Evidence on Judicial Review, (2015) 28 CJALP 323 at page 325

43. In any event, the Respondents' effectively admit in their written brief—without saying it directly—that there is no fixed record in this case. Instead, they have allowed a constantly expanding conception of what constitutes "the record" and reasons underlying the Orders under challenge whenever Dr. Henry reads new academic articles, every time she speaks at news conferences, and every time she issues new Orders.

See Respondent's Written Brief at para 76

44. To bolster their case, the Respondents have also tendered evidence well beyond what would fit within the bounds of "the record" on a judicial review—as opposed to a constitutional challenge to a law.

45. The Respondents cannot have it both ways. In *Air Canada v. British Columbia (Workers' Compensation Appeal Tribunal)*—concerning the scope of admissible evidence in a traditional judicial review not involving constitutional issues—Justice Groberman stated that

> Courts must be vigilant, however, not to accept affidavits that simply seek to shore up weaknesses in the record, or serve to provide a revisionist version of the tribunal's reasons.

*Air Canada v British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 BCCA 387 at para 40

46. The Respondents have attempted to utilize this same decision to keep the Petitioners evidence out, while filing a number of affidavits to shore up their position in this proceeding.

47. Unless Dr. Henry tenders everything that informs what leads to her Orders, including the underlying data, there is no way for the Petitioners or the public to discern the full scope of the "record" as it continues to expand and evolve.

48. The material before Dr. Henry prior to her issuing the most recent Gatherings and Events Order on February 10 includes the vast majority of the evidence that the Petitioners have tendered in this proceeding.

49. Among the evidence is that provided in this proceeding by Drs. Kettner and Warren, both of whom indicate that there is no disproportionate risk of COVID-19 transmission at in-person worship services conducted with the safety measures adhered to by the Religious Petitioners. This expert evidence was provided by counsel for Dr. Henry well in advance of filing and was in any event before Dr. Henry on the reconsideration application.

### C. None of Dr. Henry's Reasons address key issue: why must houses of worship be entirely closed, when bars, restaurants, gyms, etc. are open.

50. The Respondents assert that this Court should evaluate the Orders under *Vavilov*. We assert that in fact, the appropriate test to review this under is *Oakes*. One must note that *Vavilov* was not a *Charter* challenge, but rather a more traditional "reasonableness" review of an adjudicative administrative decision.

51. However, even reviewing the Order's prohibition on worship services merely on a Vavilov basis, the decision cannot stand as it fails. Vavilov at para 83 requires that "the reviewing court must consider only whether the decision made by the administrative decision maker—including both the rationale for the decision and the outcome to which it led—was reasonable.

*Canada (Minister of Citizenship and Immigration v Vavilov*, 2019 SCC 65, at paras 83, 85, 86, 95-96, 98-100, 102

52. It must also be recognized that since this is *Charter* case, unlike *Vavilov* as described as para 100 the burden of proof is on the Respondents to show that the restrictions on *Charter* rights and freedoms are justified.

*UAlberta Pro-Life v the Governors of the University of Alberta*, 2020 ABCA 1 at paras 161-162

53. Why are religious gatherings prohibited? In the reasons in the Order themselves, no explanation is provided as to why worship gatherings are treated less favourably than other permitted settings where persons can gathering in person.

54. In light of the record before Dr. Henry, in fact, there appear to be more reasons to close restaurants and Bars in order to prevent transmission.

See e.g. Exhibit A to Anthony Roy Affidavit
See also Emerson Aff#1 Ex 15 "Covid-19 public exposures", in contrast with number at paras 101-105 re religious services.

55. There a conflicting statements of Dr. Henry on whether adhering to safety protocols prevents transmission.

56. The Respondents' argument relied on labelling the Petitioners' religious services as social settings rather than transactional interactions. This however is contrary to evidence of the Petitioners that they have taken action to prevent social interactions at their services, including eliminate fellowship and coffee time and encourage attendees to leave promptly following the services. Claiming categorically that individuals attending religious services have less "compliance with infection-control measures"

than persons in bars and restaurants is damaging and inaccurate stereotyping. There is no evidence that religious people attending services don't socially distance, etc.

AR Tab 9 Aff. #1, J. Koopman, para 19 and Ex I.

57. Why persons can sit in a bar watching sports for an unrestricted period of time, but the Petitioners can't attend a religious service for any period of time, regardless of lack of social interactions, is a fundamental gap in the reasons (Vavilov s 96). The PHO has failed to fulfill its responsibility to justify in a transparent and intelligible manner the basis on which it actually banned in-person services while allowing other in-person gatherings in places like restaurants, gyms, bars, and support groups.

58. One is left with the impression that Dr. Henry just does not view such in-person religious services as essential or a government priority (while workplaces and schools are prioritized).

59. Subjugating *Charter* rights below political or economic priorities is not justified in a free an democratic society.

### D. <u>Addressing Criticism of Kettner's Affidavit</u>

60. The Respondents claim that the affidavit of Dr. Kettner is "replete with instances of unidentified or incorrect factual assumption" (written submission at para 82). The Respondents assert that little if any weight should be given to the conclusions of Dr. Kettner.

61. As an example, the Respondents assert that Kettner "misconstrued the safety protocols in place at the Free Reformed Church". Kettner's statement, found at paragraph 72 of his affidavit, references the practice that those over age 65 be advised not to attend. This practice is noted in Koopman's First Affidavit at Exhibit L, which refers in fact to the practices of Christ Covenant Church. However, Dr. Kettner does not in fact misconstrue the practices at the Free Reformed Church pastored by John Koopman. Since April 11, 2020, the Free Reformed Church as asked "those who are elderly; weak; or compromised in any way" to worship from home. (Koopman Second Aff, Exhibit D).

62. Another example referenced by counsel is the claim that Kettner's testimony was somehow undermined by his claims that "During these same four months, about 11,000 cases were reported in the VCHA. Based on these data. about 0.5% or one in 200 reported cases were associated with exposures at a place of worship." (Kettner, para 62). Dr. Kettner indicates that he review the affidavit of Dr. Emerson, which at Exhibits

19 and 38 provide data that would enable Dr. Kettner to make his general estimate of "about 11,000 cases"

### E. <u>The need for the Court to rule on the continued restrictions on demonstrations</u>

63. We understand from the Respondents' oral submissions that they concede that the limitations of the Orders in so far as they prohibited outdoor gatherings for public protest constituted unjustified violations of section 2(b) and 2(c).

64. We understand that the Respondents' consented to an order that those Orders are of no force and effect.

65. The Respondents argue that since the February 10th Order permits outdoor protests to express a perspective on a matter of public concern or controversy, this limit on freedom of expression is reasonable.

> "In consequence I am not prohibiting, outdoor assemblies for the purpose of communicating a position on a matter of public interest or controversy, subject to my expectation that persons organizing or attending such an assembly will take the steps and put in place the measures recommended in the guidelines posted on my website in order to limit the risk of transmission of COVID-19."
>
> Feb 10 Order, Recital J, Petitioners' BOA Tab 48

66. We reply with the following points.

A. Since the Respondent cannot point to any transmission associated with outdoor protests, we assert that there is no justification for permitting restrictions on those outdoor gatherings.

B. "Demonstrations" remain generally prohibited, with individuals having to rely on a "whereas" clause to protect their *Charter* right to protest.

C. Whether persons are gathered outside to discuss a matter deemed of "public concern or controversy" or rather are gathered outside to discuss religion or the Canucks does not affect the transmission risk. The requirement that outdoor gatherings involve the communication of a position "on a matter of public interest or controversy" should be struck down as not justified by the evidence.

D. Since the orders continue to infringe freedom of expression and peaceful assembly, the Respondents have the burden to present evidence that justifies the continued limitations. They have not done so in regard to the gatherings on outdoor events, at all.

E. Permitting protests "subject to my expectation that persons organizing or attending such an assembly will take the steps and put in place the measures recommend in the guidelines posted on my website" is a vague and unjustified limitation on the *Charter* rights of individuals like Mr. Beaudoin, who continue to protest.

F. We have not been able to identify with any certainty what these "guidelines" referred to are. As such this limitation is not "prescribed in law" and therefore cannot be a reasonable limit on *Charter* freedoms pursuant to section 1. If the "guidelines" do require the that the personal data of all protestors be collected, then a protest organizer such as Mr. Beaudoin could be ticketed or jailed on account of 1) his inability to collect all that data from everyone who would join an outdoor protest, and 2) because Mr. Beaudoin strongly objects to recording names of protestors as such a government requirement is very concerning to him. To prohibit Beaudoin from participating in a protest because he refuses to record the names of attendees is not a justified limitation on the freedom of peaceful assembly. With not demonstrated transmissions at protests, the need to a list to potentially "contact trace" is not apparent. Further, there are many permitted gathering settings where contact tracing is not required (a store, or even this court room).

67. Freedom is the absence of coercion and constraint: continued coercive restraints on Mr. Beaudoin's right to protest risk him being further ticketed and even thrown in jail for violating a public health order. Since the government has not provided evidence to justify these restrictions on outdoor gatherings, the requirement that Mr. Beaudoin comply with unidentified guidelines should be struck down, including specifically any requirement that he control access to his public outdoor protest and gather the names and contact information of any persons who attend the protest.

*R v Big M Drug Mart Ltd*, [1985] 1 SCR 295 [*Big M Drug Mart*], p 336 (paras 94-95)

## II. RELIEF SOUGHT

3. The following relief is sought as stated in the Petition:

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).

4. Items 2, 3, 4 and 5 under "Orders Sought" in the Petition are subsumed by the above relief and not argued separately.

5. To be clear, the Petitioners do not seek to set aside the Orders in their entirety but, as *per* the wording of section 52 of the *Constitution Act, 1982*:

52. (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. [Emphasis added].

6. The Petitioners request the opportunity to speak to the issue of costs upon the determination of this matter.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of March, 2021.

Paul Jaffe
_____

Counsel for the Petitioners

**Appendix A: Difference in Variances**

| **February 23, 2021 Variance for "Purim and Sabbath Services to be held indoors"*** | **February 25, 2021 Variance for Petitioners**** | **March 1, 2021 Updated Variance for "Sabbath Services to be held outdoors"***** |
|---|---|---|
| 25-person limit, provided there is space to maintain 2 metre physical distance | 25-person limit | 25-person limit |
| Indoors | Outdoors | Outdoors |
| Encourage people over age 60 not to attend | Encourage people over age 70 not to attend | Encourage people over age 70 not to attend |
| | "pre-register participants to assure maximum number of attendees is not exceeded" | "pre-register participants to assure maximum number of attendees is not exceeded" |
| "not allowed to sing" | "not permitted to sing or chant" | "not permitted to sing or chant" |
| Ventilation maximized w/ mechanical means or open doors/windows | | |
| Time to ensure cleaning, sanitization and ventilation prior to next service | | |
| | "pre-register participants to assure maximum number of attendees is not exceeded" | "pre-register participants to assure maximum number of attendees is not exceeded" |
| 2 paragraphs of reasons | 5 pages of reasons | 4 paragraphs of reasons |
| No attachments | Attached:<br>1. Public Health Agency of Canada, "Epidemiology and Modelling"<br>2. Open research article, "What settings have been linked to SARS-CoV-2 transmission clusters?"<br>3. Dr. Dove, Literature Review: Covid-19 transmission risk in faith-based gatherings<br>4.Dr. Dove, Assessing request for variance on restrictions on faith-based gatherings | Attached:<br>1. Public Health Agency of Canada, "Epidemiology and Modelling" |

*See Exhibit "A" to 4th Affidavit of Vanessa Lever
**See Exhibit "B" to 2nd Affidavit of Valerie Christopherson
***See Exhibit "B" to 4th Affidavit of Vanessa Lever