

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

THE ATTORNEY GENERAL OF ONTARIO

Applicant (Responding Party)

- and -

TRINITY BIBLE CHAPEL, JACOB REAUME, WILL SCHUURMAN, DEAN
WANDERS, RANDY FREY, HARVEY FREY and DANIEL GORDON

Respondents (Moving Parties)

**NOTICE OF MOTION
(To Set Aside Order)**

The Respondents will make a motion on 2021, at 10:00 a.m., to be spoken to,
or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard by videoconference.

THIS MOTION IS FOR:

- a) An Order setting aside and/or discharging the Order of The Honourable Mr. Justice P.R. Sweeny, dated January 22, 2021 (the “**Order**”), directing compliance with Ontario Regulation 82/20;
- b) A Declaration that Section 1(1)(d) of both Schedule 4 (Shutdown Zone) and Schedule 9 (Grey Zone) of Ontario Regulation 82/20 (Rules for Areas Under Stage

- 1) of the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*, S.O. 2020, c. 17 (the “**Regulation**”) violates the Respondents’ freedom of religion guaranteed by section 2(a) of the *Canadian Charter of Rights and Freedoms* (the “**Charter**”), and that this violation is not justified under section 1 of the *Charter*;
- c) A Declaration that the Regulation violates the Respondents’ freedom of peaceful assembly guaranteed by section 2(c) of the *Charter*, and that this violation is not justified under section 1 of the *Charter*;
- d) A Declaration that the Regulation violates the Respondents’ freedom of association guaranteed by section 2(d) of the *Charter*, and that this violation is not justified under section 1 of the *Charter*;
- e) A further Declaration that the said Regulation is therefore of no force or effect, pursuant to s. 52(1) of the *Constitution Act, 1982*;
- f) The Respondents’ costs of this motion on a substantial indemnity basis; and,
- g) Such further and other relief as counsel may advise and this Honourable Court deems just, including but not limited to further and other relief under section 24 of the *Charter* and section 52 of the *Constitution Act, 1982*.

THE GROUNDS FOR THE MOTION ARE:

1. On January 22, 2021, on application by the Attorney General for Ontario, The Honourable Mr. Justice P.R. Sweeny made an Order pursuant to s. 9 of the *Reopening Ontario (A Flexible Response to COVID-19) Act*, S.O. 2020, c. 17 (the “**ROA**”).

2. The Order provides in part:

THIS COURT ORDERS that the respondents, their servants, employees, agents, assigns, officers, directors and anyone else acting on their behalf or in conjunction with any of them, and any and all persons with notice of this order, are restrained from directly or indirectly, by any means whatsoever, contravening Ontario Regulation 82/20, by holding gatherings of more than 10 persons in conjunction with the operations of Trinity Bible Chapel.

3. The Order further provides that:

THIS COURT ORDERS that the respondents may, within thirty (30) days of the making of this order, deliver notice of a motion before this Court to vary or discharge this Order.

THIS COURT ORDERS that in the event the respondents bring a motion under paragraph 3, it will be adjudicated pursuant to a timetable endorsed by the Court and this Order remains in force unless and until it is varied or discharged by the Court.

4. The Order enforces compliance with an unconstitutional provision, namely s. 1(1)(d) of Schedules 4 (for regions subject to “shutdown”) and 9 (for regions classified as “grey zone”) of the Regulation, which limits gatherings for the purposes of a wedding, a funeral, or a religious service, rite, or ceremony to a maximum of ten people.

5. On or about March 17, 2020, the Ontario cabinet (“**Ontario**”), by way of an Order in Council, declared a state of emergency as a result of the outbreak of a communicable disease, namely Covid-19, triggering the application of the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9 (the “**EMCPA**”). The stated goal of these

measures was to ensure that hospitals would not be overwhelmed by a sudden increase in patients requiring care, and that the best way to do that was to 'flatten the curve' and slow the spread of the virus.

6. Section 7.0.2 of the *EMCPA* sets forth the purpose and limitations of the emergency legislation as follows:

Purpose

7.0.2 (1) The purpose of making orders under this section is to promote the public good by protecting the health, safety and welfare of the people of Ontario in times of declared emergencies in a manner that is subject to the *Canadian Charter of Rights and Freedoms*.

Criteria for emergency orders

(2) During a declared emergency, the Lieutenant Governor in Council may make orders that the Lieutenant Governor in Council believes are necessary and essential in the circumstances to prevent, reduce or mitigate serious harm to persons or substantial damage to property, if in the opinion of the Lieutenant Governor in Council it is reasonable to believe that,

(a) the harm or damage will be alleviated by an order; and

(b) making an order is a reasonable alternative to other measures that might be taken to address the emergency.

Limitations on emergency order

(3) Orders made under this section are subject to the following limitations:

1. The actions authorized by an order shall be exercised in a manner which, consistent with the objectives of the order, limits their intrusiveness.

2. An order shall only apply to the areas of the Province where it is necessary.

3. Subject to section 7.0.8, an order shall be effective only for as long as is necessary.

7. By Order in Council on March 24, 2020, (Ontario Regulation 82/20) Ontario ordered the closing of “non-essential” businesses and institutions, including churches and other faith settings.
8. The state of emergency and the orders (as varied from time to time) made pursuant to the *EMCPA* were extended by both the cabinet and the legislature periodically until approximately July 24, 2020, at which time the state of emergency was ended and the *ROA* came into force.
9. Pursuant to section 2 of the *ROA*, certain orders made under the *EMCPA* were continued, amended, and renewed regularly as though there was still a state of emergency in effect. This included restrictions on gatherings, which saw a maximum permissible limit for religious gatherings of 30% of building capacity anywhere in the province, and at any time since, March 24, 2020.
10. On or about December 26, 2020, Ontario placed the entire province under a “shutdown”, which severely limited many of the activities of Ontarians, including their attendance at a place of worship. Numerous places of business were granted exemptions, including but not limited to “big box” or discount retailers and liquor stores, provided they limited the number of persons inside to 25% of their building capacity; warehouses and distribution centres that support online retail (such as Amazon); various manufacturing facilities; construction activities; and fitness centres catering to “elite” athletes.
11. On or about January 12, 2021, the Province of Ontario was once again placed under a state of emergency, which lasted until approximately February 9, 2021, and

provisions of both the *EMCPA* and the *ROA* were applicable during this period. The *ROA* continues in force to date, with various regions of the province moving in and out of certain “stages”. Although the Region of Waterloo is currently operating under the “red zone” and is subject to a different regulation, Regulation 82/20 remains in force and the region may be returned at any time to the more restrictive “grey zone” or “shutdown” levels.

12. Ontario has failed to provide a fixed timeline for the removal of these restrictions.
13. Ontario has advised that any loosening of restrictions may be rescinded, and further lockdowns imposed, according to undisclosed factors and arbitrary measures. Ontario has failed to undertake study and debate about restrictions in the legislature, including on their efficacy, the research claimed to justify them, or their impact on constitutional, economic, and socio-demographic interests.
14. Accordingly, the “lockdown” and restrictions on the fundamental freedoms of the Respondents and all Ontarians has continued unabated for approximately 11 months, with no fixed end in sight, and no clear benchmark by which the Respondents and other citizens can anticipate an end to the infringement of their liberties.
15. Ontario has failed to provide a satisfactory, reasonable, rational or any evidentiary basis on which this continuing *de facto* state of emergency, including ongoing limits on worship services in numbers greater than ten, is justified.
16. Ontario has failed to demonstrate that there is a risk of harm in attending religious services that outweighs the detrimental impact of the denial of access to religious services for those who have sincerely-held religious beliefs.

17. Ontario has failed to consider or balance the harms that flow from lockdown measures and restrictions on civil liberties, including the right to corporate worship, for any period of time, let alone nearly a year of such restrictions.
18. The very purpose and effect of the Regulation is to prevent the peaceful assembly and association of citizens, rights which are guaranteed under sections 2(c) and 2(d) of the *Charter*. Section 2(c) protects the physical gathering together of people from unlawful restriction by government.
19. By expressly prohibiting religious services in numbers greater than ten persons, Ontario has effectively and arbitrarily declared the corporate worship of churches and other faith-based organizations as “non-essential”. The Regulation thus violates the freedom of religion of the Respondents and the members of Trinity Bible Chapel, as guaranteed under section 2(a) of the *Charter*.
20. The Supreme Court of Canada has referred collectively to section 2 *Charter* freedoms as protecting rights fundamental to Canada’s liberal democratic society. The fundamental importance of these freedoms requires that any attempt to restrict them must be subject to the most exacting scrutiny.
21. The rule of law and the constitutional rights of the Respondents and all Ontarians are not suspended by the declaration of a public health crisis. The Constitution, both written and unwritten, continues to apply to all legislation and government decisions and operates to protect the fundamental freedoms and civil rights of all Ontarians, notwithstanding the presence of an infectious illness.

22. The *EMCPA*, and by extension the *ROA*, expressly limits its own purpose, namely to promote the public good by protecting the health, safety and welfare of the people of Ontario in a manner that is subject to the *Charter*.
23. Ontario has imposed measures on its citizens which clearly violate their fundamental freedoms in a manner which does not minimally impair those freedoms and is not rationally connected to the purpose of the law. The regulation is overly broad geographically, in duration, and in the oppressive scope which prevents citizens from exercising their fundamental freedoms.
24. The restriction on gatherings for religious services to ten persons, particularly when other facilities remain open or based on capacity limits, is arbitrary, disproportionate, and not based on evidence that would demonstrably justify the restriction. The Regulation is not a minimal or reasonable impairment of the fundamental freedoms guaranteed under the *Charter*.
25. The Respondents, in particular, have attempted to exercise their sincerely-held religious beliefs which require regular in-person services, and their rights and freedoms as guaranteed under the *Charter*, but have faced harsh, excessive, and draconian punishment under a Regulation that is unconstitutional and should be declared to be of no force or effect.
26. Such further and other grounds as counsel may advise and this Honourable Court will permit.

THE RESPONDENTS INTEND TO RELY ON THE FOLLOWING AUTHORITIES:

27. *Emergency Management and Civil Protection Act*, R.S.O. 1990, c.E.9;
28. *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*, S.O. 2020, c. 17;
29. Ontario Regulation 82/20: Rules for Areas in Stage 1, *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*, S.O. 2020, c. 17;
30. *Canadian Charter of Rights and Freedoms*, sections 1, 2(a), 2(c), 2(d) and 24(1);
31. *Constitution Act, 1982*, section 52(1);
32. *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, including Rules 1.08, 2.03, 37, 37.14(4);
33. *Courts of Justice Act*, R.S.O. 1990 c. C.43, section 97;
34. Such further and other enactments as the counsel may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

1. Affidavit of Jacob Reaume, to be sworn;
2. Additional affidavit and expert evidence, to be sworn;
3. Such further and other material as counsel may advise and this Honourable Court may permit.

February 21, 2021

**JUSTICE CENTRE FOR
CONSTITUTIONAL FREEDOMS**

253-6720 Elbow Drive SW
Calgary, Alberta T2V 1K2
Tel: 403-475-3622

Lisa D. S. Bildy, LSO #36583A

Tel: 519-852-6967

lbildy@jccf.ca

Sayeh Hassan, LSO #53406E

shassan@jccf.ca

Counsel for the Respondents Trinity
Bible Chapel, Jacob Reaume, Will
Schuurman, Dean Wanders, Randy
Frey, Harvey Frey and Daniel
Gordon

TO:

MINISTRY OF THE ATTORNEY GENERAL

Crown Law Office – Civil
720 Bay Street, 8th Floor
Toronto, Ontario M7A 2S9
Tel: 416-326-4008

Richard Ogden, LSO #57534F

Tel: 416-573-9263

richard.ogden@ontario.ca

Andrea Huckins, LSO #50774W

Tel: 647-241-4536

andrea.huckins@ontario.ca

Matthew Chung, LSO #74244K

Tel: 416-262-6770

matthew.chung@ontario.ca

Counsel for the Applicant, The Attorney
General of Ontario

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TRINITY BIBLE CHAPEL ET AL.

CV-21-00000095-0000

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Proceedings commenced at Kitchener

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253-6720 Elbow Drive SW
Calgary, Alberta T2V 1K2
Tel: 403-475-3622

Lisa D. S. Bildy, LSO #36583A
Tel: 519-852-6967
lbildy@jccf.ca

Sayeh Hassan, LSO #53406E
shassan@jccf.ca

Counsel for the Respondents Trinity Bible
Chapel, Jacob Reaume, Will Schuurman,
Dean Wanders, Randy Frey, Harvey Frey
and Daniel Gordon