

Docket No. E12837926A

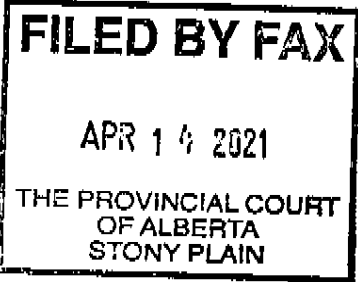
IN THE PROVINCIAL COURT OF ALBERTA
Sitting at Stony Plain

BETWEEN:

HER MAJESTY THE QUEEN

- and -

JAMES COATES



(Accused/Applicant)

NOTICE OF INTENTION TO RAISE CONSTITUTIONAL ARGUMENT
Pursuant to *Constitutional Notice Regulation, Alta Reg 102/1999*

RE: *R v Coates;*
Public Health Act, s.73(1);
Trial: May 3-6, 2021; Courtroom No. 003; Stony Plain, Alberta

WHEREAS THE ACCUSED STANDS CHARGED THAT:

COUNT 1: On or about the 20th day of December 2020, at or near Stoney Plain, Alberta, he did unlawfully contravene Section 73(1) of the *Public Health Act* by conducting a worship service at a place of worship at which the number of persons in attendance exceeded 15% of the fire code capacity (the "Charge");

TAKE NOTICE THAT counsel for the Accused will apply to the Court for the following orders:

1. A declaration pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms* (the "*Charter*") that the Charge breaches sections 2(a), 2(b), 2(c), and 2(d) of the *Charter*;

2. A declaration pursuant to section 24(1) of the *Charter* that the Accused's rights as protected by sections 7 and 9, in addition to section 2, were breached as a result of events in February that were precipitated by the laying of the Charge on December 20, 2020, specifically, the arrest, arbitrary detention and remanding for 35 days of the Accused, in addition to the imposition of an undertaking that explicitly prohibited constitutionally protected activities;
3. An order pursuant to section 24(1) of the *Charter* dismissing the Charge, or, in the alternative, entering an absolute discharge; and
4. In the alternative, an order pursuant to section 24(1) of the *Charter* granting the accused a stay of proceedings due to irreparable prejudice to the integrity of the judicial system.

AND FURTHER TAKE NOTICE THAT the grounds for the application are as follows:

5. James Coates ("Pastor Coates") is a local Christian minister and lead pastor at Grace Life Church ("Grace Life"), located southwest of Edmonton. On December 20, 2020, a worship service occurred at Grace Life at which Pastor Coates preached by delivering a sermon from the pulpit of Grace Life. Pastor Coates was issued a summons in connection with the above worship service for contravening section 73(1) of the *Public Health Act* by failing to comply with the 15% Capacity Restriction.
6. On February 7, 2021, RCMP arrested Pastor Coates in his office at Grace Life following the Sunday morning worship service. The RCMP officers told Pastor Coates he was being released on an undertaking (the February 7 Undertaking). Pastor Coates explained to the officers he could not agree to or abide by the Undertaking and therefore would not be agreeing to it or signing it. The officers wrote "refused to sign" on the February 7 Undertaking. Pastor Coates understood that he was not bound by the Undertaking because he did not agree to it. The Undertaking required that Pastor Coates cease to, among other things, hold worship services in excess of 15% of the venue capacity of the Grace Life building.
7. On February 14, 2021, a worship service again occurred at Grace Life at which Pastor Coates preached by delivering a sermon from the pulpit of Grace Life. On February 15, 2021, the RCMP requested Pastor Coates attend at the Parkland RCMP station to face charges. Pastor Coates arrived at the Parkland RCMP station on the morning of February 16.

Prior to a show cause hearing later that day, Pastor Coates was charged with allegedly breaching section 73(1) of the *Public Health Act* by failing to comply with the 15% Capacity Restriction, allegedly breaching section 73(1) of the *Public Health Act* by failing to comply with the Distancing Restrictions, and with allegedly breaching an undertaking contrary to section 145(4)(a) of the *Criminal Code*.

8. Pastor Coates has pled “not guilty” to the Charge and contends that the Charge breaches all of his fundamental freedoms as guaranteed by section 2 of the *Charter* and that he is entitled to a section 24(1) remedy. He further contends that:
 - 1) the February 7 Undertaking breached sections 2(a), 2(b), 2(c), 2(d), and 7 of the *Charter*;
 - 2) the February 7 arrest and February 16 arrest and detention breached section 9 of the *Charter*;
 - 3) the release condition imposed following the February 16 show cause hearing breached sections 2(a), 2(b), 2(c), 2(d), 7, and 11(e) of the *Charter*; and
 - 4) his remand for 35 days breached sections 2(a), 2(b), 2(c), 2(d), 7, 9 (and 11(e)) of the *Charter*.

SECTION 2(a) – FREEDOM OF RELIGION

9. An infringement of section 2(a) of the *Charter* will be made out where a claimant has a sincerely-held religious belief that has a nexus with religion and where the impugned government action interferes with the claimant’s ability to act in accordance with his or her religious beliefs in a manner that is more than trivial or insubstantial.¹
10. According to the Supreme Court of Canada:

The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, **the right to declare religious beliefs openly and without hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination.**²

¹ *Alberta v Hutterian Brethren of Wilson Colony*, 2009 SCC 37, 2 SCR 567 at para 32; *Ktunaxa Nation v British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54, [2017] 2 SCR 386 at para 122

² *R v Big M Drug Mart Ltd*, [1985] 1 SCR 295 at para 94.

11. Pastor Coates has dedicated his life to obeying his Lord, Jesus Christ, not merely by being a follower of Christ, but also by being a pastor. Pastor Coates has pastored Grace Life by preaching the gospel and ministering to his congregants through, among other things:

- 1) in-person preaching and teaching;
- 2) leading worship in-person;
- 3) praying in-person;
- 4) counselling in-person;
- 5) physically presiding over the sacraments of baptism and communion; and
- 6) through fellowshipping and encouraging his congregants in-person.

12. Pastor Coates sincerely believes the above manifestations of religious belief must be done physically, in-person and without the Grace Life congregations being artificially and arbitrarily divided and separated by government. Pastor Coates further believes that to limit the worship gatherings of Grace Life congregants is an act of disobedience to Christ, the Head of the Christian church. He believes he is called as a pastor to care for the whole health of his congregants: physical, spiritual, mental, emotional, and relational. He believes that the CMOH Orders generally, but especially the 15% Capacity and Distancing Restrictions, are hurting his congregants far more than COVID-19 ever could and is compelled by his conscience to minister to them through worship services that are not restricted to a small number that divides and separates his congregants or interfered with by compelled masking and compelled avoidance of physical interaction.

13. Pastor Coates and the congregants of Grace Life sincerely believe in the spiritual and theological necessity of physically gathering together as the entire Grace Life church family for the purposes of edifying each other, listening to the preaching of the Word of God together, praising their Lord together, praying together, together partaking in the Lord's Supper, and witnessing baptisms in-person. They further believe in the spiritual and theological necessity of physical touch with each other, such as the laying on of hands for prayer and physically and emotionally comforting and ministering to each other through handshakes, hugs and other expressions of brotherly and sisterly affection.

14. The Charge penalizes Pastor Coates and Grace Life congregants for manifesting their religious beliefs to gather in-person for the purposes of worship and therefore interferes with their freedom of religion in a manner that is more than trivial or insubstantial.

SECTION 2(b) – FREEDOM OF EXPRESSION

15. The Supreme Court has established a three-part test for whether freedom of expression protected under section 2(b) of the *Charter* is engaged.³ Adapted to the present context, the three-part test asks the following three questions:
- 1) Is there protected expressive content captured by the 15% Capacity Restriction?
 - 2) Did the method or location of the expression remove that protection?
 - 3) If the expression is protected by section 2(b), is the effect of the 15% Capacity Restriction to infringe that protection? Further, and specifically, if the expressive content of Pastor Coates' December 20, 2020 and February 14, 2021 sermons, and Grace Life's public statement posted to its website the morning of February 7, 2021, is protected by section 2(b), was the purpose of the December 20 ticket, the February 7 arrest, and the February 16 arrest to censor Pastor Coates' criticism of the Alberta Government thereby infringing that protection?
16. Conducting a worship service necessarily includes expressive content, such as preaching, Scripture reading, the singing of praise and worship songs, and prayer. This content is not excluded from constitutional protection by means of the method or location of the expression.
17. The 15% Capacity Restriction severely limits the number of congregants that Pastor Coates can preach to in-person at any one time. The Charge resulted in Pastor Coates being penalized for exercising his right to free expression, which includes protection from government restricting the size of his in-person audience. Considering free expression also

³ *Montréal (City) v 2952-1366 Québec Inc*, 2005 SCC 62 [*Montreal*] at para 56; *Greater Vancouver* at para 37.

protects the right to hear,⁴ the free expression rights of Pastor Coates' in-person audience or would-be audience are also infringed.

18. The sermons preached by Pastor Coates on December 20, 2020 and on February 14, 2021, and the February 7 public statement by Grace Life, explicitly criticized the actions of the Alberta Government regarding, among other things, its COVID-19 restrictions and resulting devastation to civil liberties, the economy, and mental health. All of the arrests and Charges faced by Pastor Coates followed immediately after the delivery of either of these two sermons or the posting of Grace Life's public statement.

SECTION 2(c) – FREEDOM OF PEACEFUL ASSEMBLY

19. Although largely undeveloped, an identified purpose of freedom of peaceful assembly is to protect the physical gathering together of people.⁵ Further, the right of peaceful assembly is, by definition, a collectively held right: it cannot be exercised by an individual and requires a literal coming together of people.⁶
20. The right to peacefully assemble is separate and distinct from the other section 2 *Charter* rights, and it requires the state to refrain from interfering in such assembly. It may even require the state to facilitate such assembly.⁷ Although freedom of assembly cases have typically been determined on other *Charter* grounds, most notably freedom of expression,⁸ freedom of peaceful assembly is an independent constitutionally-protected right that is directly engaged by the Charge.
21. Both the purpose and the effect of the 15% Capacity Restriction and the Charge are to severely restrict the assembling together of the congregants of Grace Life. Although the scope of what collective activities section 2(c) of the *Charter* guarantees is not yet fully defined, there can be no doubt that assembling for religious purposes goes to the core of what 2(c) protects, on the same level of importance as assembling for political purposes.

⁴ *Little Sisters Book and Art Emporium v Canada (Minister of Justice)*, [2000] 2 SCR 1120 at para 41.

⁵ *Roach v Canada (Minister of State for Multiculturalism and Citizenship)*, [1994] 2 FC 406, 1994 CanLII 3453 (FCA) at para 69

⁶ *Mounted Police Assn. of Ontario v Canada (Attorney General)*, 2015 SCC 1 at para 64 [MPAO]

⁷ See e.g. *Garbeau c Montreal (Ville de)*, 2015 QCCS 5246 at paras 120-156

⁸ Basil S. Alexander, "Exploring a More Independent Freedom of Peaceful Assembly in Canada" (2018) 8: 1, UWO J Leg Stud 4 online: <https://ojs.lib.uwo.ca/index.php/uwojls/article/view/5715/4809>

SECTION 2(d) – FREEDOM OF ASSOCIATION

22. A purposive approach to freedom of association defines the content of this right by reference to its purpose: "to recognize the profoundly social nature of human endeavors and to protect the individual from state-enforced isolation in the pursuit of his or her ends".⁹ Freedom of association allows the achievement of individual potential through interpersonal relationships and collective action.¹⁰
23. The purpose of the right to freedom of association encompasses the protection of (1) individuals joining with others to form associations (the constitutive approach); (2) collective activity in support of other constitutional rights (the derivative approach); and (3) collective activity that enables "those who would otherwise be vulnerable and ineffective to meet on more equal terms the power and strength of those with whom their interests interact and, perhaps, conflict".¹¹
24. The purpose and effect of the 15% Capacity Restriction and the Charge is to severely limit the exercise of the collective right of the congregants of Grace Life, as a private religious association, to peacefully assemble together for the purposes of manifesting their religious beliefs, therefore engaging section 2(d). During a Sunday morning service at Grace Life, all four fundamental freedoms are exercised together, at both an individual and collective level.

SECTION 7 – LIBERTY

25. Section 7 protects the triple individual interests of life, liberty, and security of the person. The liberty interest protects the right of individuals to be free from state detainment and state restrictions upon the freedom of movement.¹² It also protects bodily autonomy, core lifestyle choices, and fundamental relationships.¹³

⁹ MPAO at para 54, citing from Reference re Public Service Employee Relations Act (Alta.), [1987] 1 SCR 313, 1987 CanLII 88 (SCC) at 365 [*Re Public Service*] [Emphasis added].

¹⁰ Dunmore v Ontario (Attorney General), 2001 SCC 94 at para 17

¹¹ MPAO, at para 54, citing from *Re Public Service*, at 366.

¹² R v Heywood, [1994] 3 SCR 761, 1994 CanLII 34 (SCC) at 789

¹³ B. (R.) v. Children's Aid Society of Metropolitan Toronto, 1995 CanLII 115 (SCC), [1995] 1 SCR 315 at paras 83-85; Godbout v Longueuil (City), 1997 CanLII 335 (SCC), [1997] 3 SCR 844 at para 66

Section 7's Inherent limits – The Principles of Fundamental Justice

26. Limitations of the section 7 interests are only lawful so long as the infringements caused by government action or a law are in accordance with the principles of fundamental justice.¹⁴

According to the Supreme Court of Canada, the principles of fundamental justice “are about the basic values underpinning our constitutional order.”¹⁵ The Court has recognized a number of principles of fundamental justice, but three have “emerged as central... laws that impinge on life, liberty or security of the person must not be arbitrary, overbroad, or have consequences that are grossly disproportionate to their object.”¹⁶

27. Regarding gross disproportionality, the Supreme Court has stated, “if the impact of the restriction on the individual's life, liberty or security of the person is grossly disproportionate to the object of the measure”, the restriction will not be found to accord with the principles of fundamental justice.¹⁷ The Court further found:

The inquiry into gross disproportionality compares the law's purpose, "taken at face value", with its negative effects on the rights of the claimant, and asks if this impact is completely out of sync with the object of the law.¹⁸

28. As for overbreadth, if an impugned law or government measure which limits section 7 rights “goes too far and interferes with some conduct that bears no connection to its objective,” it will be overbroad.¹⁹

29. Arbitrariness involves:

...whether there is a direct connection between the purpose of the law and the impugned effect on the individual, in the sense that the effect on the individual bears some relation to the law's purpose. There must be a rational connection between the object of the measure that causes the s. 7 deprivation, and the limits it imposes on life, liberty, or security of the person. A law that imposes limits on these interests in a way that bears *no connection* to its objective arbitrarily impinges on those interests.²⁰

¹⁴ *Canada (Attorney General) v Bedford*, 2013 SCC 72, [2013] 3 SCR 1101 at paras 74-78 [*Bedford*]

¹⁵ *Bedford* at para 96

¹⁶ *Carter v Canada (Attorney General)*, 2015 SCC 5, [2015] 1 SCR 331 at para 72 [*Carter*]

¹⁷ *Carter*, at para 89.

¹⁸ *Carter*, at para 89

¹⁹ *Bedford* at para 101

²⁰ *Bedford* at para 111

30. The February 7 Undertaking and release condition breached Pastor Coates' liberty in a manner that is grossly disproportionate, arbitrary, and overbroad by purporting to restrict his liberty through incarceration unless he agreed to demands to effectively cease fulfilling his constitutionally-protected duties as a minister. Grossly disproportionate because they were imposed in response to a flu-like illness that has resulted in *below normal* ICU admissions in 2020, has not resulted in excess death in 2020, and has not resulted an average age of death below that of life expectancy in Alberta (being 82 years of age). Arbitrary and overbroad because the February 7 Undertaking and release condition are based on a capacity restriction that might as well have been picked out a hat and has no basis in reality or science other than the incredible theory that lockdowns produce a net public health benefit.

SECTION 9 – ARBITRARY DETENTION

31. Contrary to section 176(1)(b)(ii) of the *Criminal Code*, Pastor Coates was arrested in his office at Grace Life immediately following the Sunday morning worship service at Grace Life. Contrary to section 176(1)(a) of the *Criminal Code*, the arresting RCMP officers attempted to prevent and obstruct Pastor Coates from celebrating religious services or performing other functions in connection with his calling as a minister by threatening him with a criminal charge in connection with a breach of an undertaking, that undertaking being that he not perform his religious functions as a minister. The above follows conduct by the RCMP officers earlier that morning, and on many other Sunday mornings, that disrupted and interrupted Grace Life's Sunday morning worship service, contrary to section 176(2) of the *Criminal Code*.

32. In addition to breaching Pastor Coates section 7 rights, the above conduct breached his rights as protected by section 9 of the *Charter*. The arrest on February 7 and arrest and detention on February 16 of Pastor Coates were unlawful pursuant to both section 176 of the *Criminal Code* and section 2 of the *Charter* and therefore arbitrary.²¹

REMEDY ANALYSIS – SECTION 24(1) OF THE CHARTER

33. Pastor Coates seeks declarations pursuant to section 24(1) of the *Charter* that the Charge breaches sections 2(a), 2(b), 2(c), and 2(d) of the *Charter* and that the arrests, detentions, and

²¹ *R v Grant*, 2009 SCC 32 at paras 54-55.

impositions of conditions that occurred on February 7, 14 and 16, 2021 breached sections 7 and 9 of the *Charter*.

34. As a result of the above *Charter* breaches, Pastor Coates seeks a dismissal of the Charge, or, in the alternative, an absolute discharge, or, in the further alternative, a stay of proceedings.
35. Where a *Charter* violation occurs as a result of government action, section 24(1) of the *Charter* permits this Court to provide an appropriate and just remedy.²² The Supreme Court of Canada has stated:

Section 24(1) of the *Charter* requires that courts issue effective, responsive remedies that guarantee full and meaningful protection of *Charter* rights and freedoms. ... A superior court may craft any remedy that it considers appropriate and just in the circumstances.²³

36. This Court has stated, “by application of s. 24(1), a court of competent jurisdiction may issue a judicial stay (or other *Charter* remedies) in respect of the criminal proceedings.”²⁴ More specifically, this Court is a court of competent jurisdiction to grant a judicial stay “where a breach of s. 9 of the *Charter* rights has been established and the presiding judge determines that a judicial stay is the appropriate and just remedy under s. 24(1) of the *Charter*.”²⁵
37. In *R v Elliot*²⁶, this Court found that a just and appropriate remedy under s 24(1) of the *Charter* was to grant the accused an absolute discharge, due to a violation of the accused’s right not to be arbitrarily detained, despite the fact that the accused was found guilty of the charge.²⁷ In addition, the Ontario Court of Appeal restored a trial judge’s decision to dismiss charges against the accused because of an unlawful strip and search which violated the accused’s *Charter* section 8 rights, even though it had no bearing on the driving offence for which the accused was charged.²⁸

²² *R v 974649 Ontario Inc.*, 2001 SCC 81 at para 14.

²³ *Doucet-Boudreau v Nova Scotia (Department of Education)*, 2003 SCC 62 at para 87.

²⁴ *R v Pringle*, 2003 ABPC 7 at para 95.

²⁵ *R v Pringle*, 2003 ABPC 7 at para 94.

²⁶ [1984] AJ No 940, 57 AR 49

²⁷ *R v Elliott*, [1984] AJ No 940, 57 AR 49 at paras 13-14.

²⁸ *R v Flintoff*, [1998] OJ No 2337, 111 OAC 305

38. In *R v Pringle*²⁹, this Court held that an appropriate remedy for a *Charter* section 9 violation includes a stay even if there is no nexus or temporal connection between the breach and the evidence that ultimately would lead to conviction.³⁰ In *R v Herter*³¹, this Court stayed the proceedings of an accused based on his *Charter* section 9 rights having been breached.³² Likewise, the Supreme Court of Canada has stayed proceedings against an accused due to a breach of their *Charter* section 7 and 11 rights.³³
39. A stay of proceedings would be appropriate when two criteria are fulfilled:
- 1) The prejudice caused by the abuse in question will be manifest, perpetuated or aggravated through the conduct of the trial, or by its outcome; and
 - 2) No other remedy is reasonably capable of removing that prejudice.
40. These guidelines apply equally to prejudice to the accused or to the integrity of the judicial system.³⁴ The presence of either one of the criteria justifies the exercise of discretion in favour of a stay.³⁵
41. The Supreme Court of Canada has stated that a stay of proceedings can be entered “where irreparable prejudice would be caused to the integrity of the judicial system if the prosecution were continued.”³⁶ It would bring the administration of justice into disrepute and prejudice the integrity of the judicial system to permit the prosecution of a Christian pastor for exercising his most fundamental rights to lead his congregation in the manifestation of their religious beliefs to worship together in-person. This, without any evidence that his actions or the actions of his congregants in any way caused harm to another person or to the health care system, or that the prosecution’s outlandish theory that restricting worship gatherings to 15% contributes to a net benefit in public health.

²⁹ 2003 ABPC 7

³⁰ *R v Pringle*, 2003 ABPC 7 at para 95.

³¹ 2006 ABPC 221, AJ No 1058

³² *R v Herter*, 2006 ABPC 221, AJ No 1058 at para 45.

³³ See *R v Demers*, 2004 SCC 46, 2 SCR 489 and *R v Carosella*, [1997] 1 SCR 80.

³⁴ *R v O'Connor*, [1995] 4 SCR 411, 4 RCS 411 at para 75.

³⁵ *R v Carosella*, [1997] 1 SCR 80 at para 56.

³⁶ *R v O'Connor*, [1995] 4 SCR 411, [1995] 4 RCS 411 at para 82.

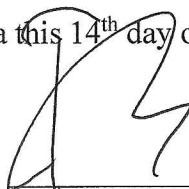
AND FURTHER TAKE NOTICE THAT in support of this application the Accused may rely on the following cases and such other authority as counsel may advise:

- *Alberta v Hutterian Brethren of Wilson Colony*, 2009 SCC 37, 2 SCR 567 at para 32;
- *Baars v Children's Aid Society of Hamilton*, 2018 ONSC 1487 at paras 200-202;
- *Canadian Broadcasting Corp v Canada (Attorney General)*, 2011 SCC 2, 1 SCR 19 at para 38;
- *Doucet-Boudreau v Nova Scotia (Department of Education)*, 2003 SCC 62 at para 87;
- *Greater Vancouver Transportation Authority v Canadian Federation of Students — British Columbia Component*, 2009 SCC 31, [2009] 2 SCR 295;
- *Montréal (City) v 2952-1366 Québec Inc.*, 2005 SCC 62, 3 SCR 141 at para 74;
- *R v 974649 Ontario Inc.*, 2001 SCC 81, 3 SCR 575.
- *R v Big M Drug Mart Ltd.*, [1985] 1 SCR 295.
- *R v Carosella*, [1997] 1 SCR 80 at para 56.
- *R v Demers*, 2004 SCC 46, 2 SCR 489.
- *R v Elliott*, [1984] AJ No 940, 57 AR 49.
- *R v Ferguson*, 2008 SCC 6 (“Ferguson”).
- *R v Flintoff*, [1998] OJ No 2337, 111 OAC 305.
- *R v Grant*, 2009 SCC 32.
- *R v Herter*, 2006 ABPC 221.
- *R v O'Connor*, [1995] 4 SCR 411, 4 RCS 411.
- *R v Pawlowski*, 2011 ABQB 93.
- *R v Pringle*, 2003 ABPC 7 at para 95.
- *R v Weaver*, 2005 ABCA 105, 27 C.R. (6th) 397.
- *R v Whatcott*, 2011 ABPC 336.
- *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41.

AND FURTHER TAKE NOTICE THAT the Accused expressly reserves the right to raise additional constitutional arguments that are disclosed by the evidence and that are not the subject of this notice.

AND FURTHER TAKE NOTICE THAT any statements of fact contained in this notice should not be interpreted as admissions of fact, but rather, merely as anticipated evidence based on disclosure provided by the Crown.

DATED at the City of Calgary in the Province of Alberta this 14th day of April 2021.



Leighton B. U. Grey, Q.C.

James S. M. Kitchen

Counsel for James Coates

Justice Centre for Constitutional Freedoms
253-7620 Elbow Drive SW
Calgary, AB T2V 1K2
Phone: 403-667-8575
Fax: 587-352-3233
Email: jkitchen@jccf.ca