

Clerk's Stamp:

COURT FILE NUMBER 2101-05742
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANTS TIMOTHY STEPHENS
RESPONDENT ALBERTA HEALTH SERVICES
DOCUMENT **NOTICE OF APPLICATION**

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT Justice Centre for Constitutional Freedoms
 #253, 7620 Elbow Drive SW
 Calgary, AB T2V 1K2
 Attention: Leighton B. U. Grey, Q.C.
 James S. M. Kitchen
 Phone: [REDACTED]
 Email: [REDACTED]

NOTICE TO THE RESPONDENT

This application is made against you. You are a respondent.
You have the right to state your side of this matter before the Court.
To do so, you must be in Court when the application is heard as shown below:

Date: May 27, 2021
Time: To be determined by Justice Germain
Where: Calgary Courts Centre
 601 5th Street SW Calgary Alberta
Before: Justice in Chambers

Go to the end of this document to see what you can do and when you must do it.

GROUNDS FOR MAKING THIS APPLICATION

1. This is an application by the Applicant, Timothy Stephens (“Pastor Stephens”) to strike the application by Alberta Health Services (AHS) to find Pastor Stephens in contempt of a Court of Queen’s Bench Order issued by Justice Rooke on 6 May 2021 (the “6 May Order”).

Notice is a condition precedent under the terms of the 6 May Order. No person who has not been served with the 6 May Order can be found in contempt of it, or arrested pursuant to it.

Pastor Stephens was not served with the Order and had no notice of it.

Facts

2. Fairview Baptist believes that a local church must gather physically for corporate worship each Sunday. Fairview Baptist further believes and that this physical gathering is distinct from and pre-eminent among every other gathering in the life of a church and must consist of the full body of Christ belonging to that local assembly.¹
3. Following the Fairview Baptist worship service on 9 May, Calgary Police Service (CPS) officers hand delivered to an individual named Kent Pederson a copy of the 6 May Order.² CPS officers mistook Kent Pederson for Pastor Stephens such that they mistakenly believed they were hand delivering a copy of the 6 May Order to Pastor Stephens.³ Pastor Stephens was not served with the May 6 Order. Mr. Pederson deposes that he did not provide the 6 May Order to Pastor Stephens.⁴

¹ Affidavit of Timothy Stephens [Stephens Affidavit], paras 2-4.

² Affidavit of Kent Pederson [Pederson Affidavit], para 2; Stephens affidavit, para 6.

³ Pederson affidavit, paras 2-3.

⁴ Pederson affidavit, para 7.

4. Pastor Timothy Stephens was arrested by CPS on Sunday, 16 May 2021 following the regular Sunday morning worship service at Fairview Baptist Church (“Fairview Baptist”).⁵ Pastor Stephens was informed by CPS that his arrest was pursuant to the 6 May Order, the same being the Order that he had no notice of.⁶
5. At the time of his arrest, Pastor Stephens had not been personally or substitutionally served with the 6 May Order, nor was he made aware of the content of such Order by CPS.⁷ At no time prior to his arrest on 16 May 2021 had he been shown a copy of the 6 May Order, had the Order been read to him, or had he otherwise read the 6 May Order.⁸

Legal Basis

6. Notwithstanding its failure to comply with the condition precedent of service on Pastor Stephens, AHS asks this Honourable Court to find that Pastor Stephens acted in contempt of the 6 May Order by holding a church service at Fairview Baptist on 16 May 2021. The Applicant says that this Court has no procedural jurisdiction to hear the merits of the contempt application, and that such application is hopeless.
7. Pursuant to Rule 3.68, this Court has the discretion to strike applications that are hopeless and have no reasonable prospect of success.⁹ Striking applications with no reasonable chance of success promotes litigation efficiency and allows all parties to focus their time and energy

⁵ Stephens affidavit, para 8.

⁶ Stephens affidavit, para 10.

⁷ Stephens affidavit, para 9.

⁸ Stephens affidavit, para 11.

⁹ [HOOPP Realty Inc v The Guarantee Company of North America, 2015 ABCA 336](#) at para 13 [*HOOPP Realty*], citing [O’Connor Associates Environmental Inc v MEC OP LLC, 2014 ABCA 140](#) at para 14 [*O’Connor*]; [Ernst v EnCana Corp, 2014 ABCA 285](#) at para 14, affirmed [2017 SCC 1](#), summarizing from [R v Imperial Tobacco Canada Ltd., 2011 SCC 42](#) at paras. 19-21.

on serious claims.¹⁰ Pastor Stephens submits that “it is plain and obvious” that AHS’ contempt application “cannot succeed” because he was not made aware of the content of the 6 May Order, which is a clear procedural pre-requisite to being found in contempt.¹¹

8. The test is “fairly settled” in Alberta.¹² Courts should interpret claims generously,¹³ but allegations must be supported by material facts that are not absurd on their face if they are to survive a striking application.¹⁴ A failure to provide material facts sufficient to demonstrate the core elements of the relief sought are ripe for being struck.¹⁵

9. The ABCA recently summarized the test for striking for no reasonable cause:

When applying the test under r 3.68(2)(b), the Court must accept the allegations of fact as true **except to the extent the allegations are based on assumptions or speculations or where they are patently ridiculous or incapable of proof.** [emphasis added].¹⁶

10. Paragraph 1 of the 6 May Order states:

The named individual Respondents and any other person acting under their instructions or in concert with them or independently to like effect **and with Notice of this Order**, shall be restrained anywhere in Alberta from:

- a. organizing an in-person gathering, including requesting, inciting or inviting others to attend an "Illegal Public Gathering";
- b. promoting an Illegal Public Gathering via social media or otherwise;

¹⁰ [R v Imperial Tobacco Canada Ltd, 2011 SCC 42](#) at paras 19-20 [*Imperial Tobacco*].

¹¹ *HOOPP Realty*, *supra* note 9 at para 13 [TAB 7], citing [Tottrup v Lund, 2000 ABCA 121](#) at para 7.

¹² [Fort McKay Métis Community Association v Métis Nation of Alberta Association, 2019 ABQB 892](#) at para 26.

¹³ [PricewaterhouseCoopers Inc v Perpetual Energy Inc, 2021 ABCA 16](#) [*Perpetual Energy*] at para 70 citing, *Imperial Tobacco* at para 21; [Atlantic Lottery Corp Inc v Babstock, 2020 SCC 19](#) at para 19.

¹⁴ [Arabi v. Alberta, 2014 ABQB 295](#) at para 74.

¹⁵ [GH v Alcock, 2013 ABCA 24](#) at para 58.

¹⁶ [Grenon v Canada Revenue Agency, 2017 ABCA 96](#) at para 6.

c. attending an Illegal Public Gathering of any nature in a "public place" or a "private place", which each have the same meaning as given to them in the Public Health Act.¹⁷

11. Paragraph 3 of the 6 May Order states:

Any member of any Police Service, as defined in the Police Act, RSA 2000, c P-17, or any peace officer as defined in the Criminal Code, RSC 1985, c C-46 (collectively, "Law Enforcement"), is authorized to use reasonable force in arresting and removing any person **who has notice of this Order** and whom Law Enforcement has reasonable and probable grounds to believe is contravening this Order.¹⁸

12. Apart from the issue of the amendment of the May 6 Order by ACJ Rooke on May 13, 2021, three days prior to the arrest of Pastor Stephens, the 6 May Order clearly stipulates that only those who "have notice" of the Order can be arrested for reasonably appearing to be acting in breach of it. It is trite law that no steps to enforce a civil court order can be taken unless and until the applicant seeking to enforce it has served or otherwise provided notice of the court order upon a respondent.¹⁹

13. The 6 May Order defines "notice" at paragraph 5:

A person shall be deemed to have Notice of this Order **if that person is shown a copy of the Order, or it is posted in in plain sight where it can be easily read by them, or if it is read to them.**²⁰

14. Pastor Stephens did not have notice of the 6 May Order prior to holding church at Fairview Baptist on 16 May 2021. He was not shown a copy of the Order, it was not posted in plain sight at Fairview Baptist where it could have easily been read by Pastor Stephens, and the

¹⁷ Stephens Affidavit, Exhibit "A" [emphasis added].

¹⁸ Stephens Affidavit, Exhibit "A" [emphasis added].

¹⁹ See [Morquard Trust Company v. Doonanco, 1980 CarswellAlta 448](#).

²⁰ Stephens Affidavit, Exhibit "A" [emphasis added].

Order was not read to him. The Respondent has not filed with this Honourable Court an Affidavit evidencing that Timothy Stephens was personally served with a copy of the 6 May Order prior to his arrest. Nor has this Court granted an Order permitting AHS to effect a form of substitutional service. Finally, Timothy Stephens has never and does not now admit that he was either personally or substitutionally served with a copy of the 6 May Order prior to his arrest. The contempt application is thus procedurally flawed in a manner which cannot be judicially remedied.

15. AHS cannot show that Pastor Stephens had notice of the 6 May Order. CPS did not notify Pastor Stephens of the 6 May Order. The individual who CPS notified, mistaking that person for Pastor Stephens, has provided this Court with sworn testimony that CPS served the 6 May Order on him instead.
16. It is therefore impossible for AHS to establish the necessary procedural basis to succeed in a contempt application against Pastor Stephens. The allegation that Pastor Stephens breached the 6 May Order is hopeless and without any reasonable prospect of success due to a procedural defeat which cannot be cured.

REMEDY SOUGHT

17. An Order pursuant to Rule 3.68(1) striking AHS' contempt application against Pastor Stephens;
18. In the alternative, granting the Applicant unconditional judicial interim release;
19. Costs of this Application; and
20. Such further and other relief as this Honourable Court deems just.

Materials to be Relied on

21. The Affidavit of Timothy Stephens, sworn May 19, 2021;
22. The Affidavit of Kent Pederson, sworn May 19, 2021; and
23. Such further and other material as counsel may advise and as this Honourable Court may permit.

Applicable Acts and Rules

24. Alberta *Rules of Court*, Alta Reg 124/2010, including Rules 3.68

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given, or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must reply by giving reasonable notice of that material to the applicant(s).