

Form 7
[Rule 3.8]

Clerk's Stamp:

COURT FILE NO.

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

EDMONTON

APPLICANTS

GRACELIFE CHURCH OF EDMONTON, JAMES
COATES, DONNA KLAY, ALLAN NEILL and ACHNES
SMITH

RESPONDENTS

THE PROVINCE OF ALBERTA AS REPRESENTED BY
THE MINISTER OF HEALTH, THE CHIEF MEDICAL
OFFICER OF HEALTH, and ALBERTA HEALTH
SERVICES

DOCUMENT

ORIGINATING APPLICATION

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT

Justice Centre for Constitutional Freedoms
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NOTICE TO THE RESPONDENTS

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: June 10, 2021

Time: 10:00 AM

Where: Edmonton Law Courts

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

Overview

1. The practical freedom to manifest religious beliefs and peacefully assemble in-person, among many other things, are permanent and fundamental features of a society that aspires to be or remain free and democratic. Constitutionally-guaranteed rights are not merely theoretical to be cast aside once government declares a public health threat. Section 1 of the *Charter* is not a free pass to government to trample fundamental freedoms; it is instead a narrow exception to limit *Charter*-protected rights only if the state can demonstrate that such limitation is justified in a free and democratic society.
2. The use of force and physical barricades by government to prevent congregants from entering their own church to gather for worship is an unjustifiable assault on freedom, despite any real or imagined public health threat. The Applicants are the victims of the seizure of their church building and grounds by Alberta Health Services (“AHS”) as part of its enforcement of unprecedented public health orders declared by Dr. Deena Hinshaw, the Chief Medical Officer of Health of Alberta (“CMOH”).
3. Being deprived of their building, the Applicants are compelled to worship underground at other locations. These gatherings are necessarily secret. Despite *Charter* protections, which are designed to guard against state tyranny, the “underground church” is now a feature of Alberta society.

The Applicants

4. The Applicant, GraceLife Church of Edmonton (“GraceLife”), is a Protestant Church located south of Spruce Grove, Alberta. It consists of approximately 400 congregants, although Sunday worship service attendance sometimes exceeds this number. Although not part of any formal denomination, GraceLife is similar in theology and doctrine to that of the Reformed Baptist tradition.
5. GraceLife congregants adhere to the belief that a local church must gather physically in-person for corporate worship on Sundays, and that this physical gathering is distinct from and pre-eminent among every other gathering in the life of a church community. Congregants of

GraceLife also believe that this physical gathering must consist of the in-person assembly of the full body of Christ as represented by the entire local church community.

6. GraceLife congregants believe that there are essential religious and physical elements of this in-person gathering, such as the reading of Scripture to be heard by the entire congregation, corporate prayer, the cooperate singing of praise and worship songs, participation in and observance of the sacraments by the entire congregation, and the sharing of fellowship with each and every member of the local body of Christ. Consequently, they believe that the corporate in-person gathering consists of both structured and unstructured elements that require active participation and the mutual religious edification and encouragement of each other.
7. The Applicant James Coates (“Pastor Coates”) is the lead pastor of GraceLife. Pastor Coates has dedicated his life to obeying the Lord Jesus Christ, not merely by being a follower of Christ, but also by being a pastor. Pastor Coates leads GraceLife by preaching the gospel and ministering to his congregants through, among other things:
 - (a) in-person preaching and teaching;
 - (b) leading worship in-person;
 - (c) praying in-person;
 - (d) counselling in-person;
 - (e) physically presiding over the sacraments of baptism and communion; and
 - (f) personal fellowship and encouraging congregants face-to-face.
8. Pastor Coates sincerely believes that the above manifestations of religious belief must be done physically, in-person and without GraceLife congregants being artificially and arbitrarily isolated from each other. Pastor Coates further believes that to comply with the CMOH restrictions on worship is to disobey Christ, the Head of the Christian Church.
9. Pastor Coates 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 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 separates his congregants, or interferes with worship through compelled masking

and physical distancing. His conscience precludes him from turning away part of his congregation or enforcing distancing and masking amongst his congregants.

10. The Applicants Achnes Smith, Allan Neill, and Donna Klay are congregants of GraceLife Church. Their freedom to manifest their religious beliefs by openly attending the church of their choice and engaging in group religious activities with their fellow congregants has been interfered with by the CMOH restrictions and the actions of AHS in seizing their church building.

The Impugned CMOH Orders and the *Public Health Act*

11. Over the past 14 months, the CMOH has issued 52 Orders. These CMOH Orders contain rules and restrictions of general and universal application that have resulted in an extreme deprivation of the constitutional rights of Albertans. Specifically, the CMOH restrictions on worship infringe the section 2 and section 7 *Charter* rights of the Applicants.
12. The Applicants herein impugn the following CMOH restrictions (and, for greater clarity, any subsequent manifestations of the restrictions in any future CMOH orders not specified below):
 - a. The requirement that individuals maintain 2 meters physical distance from each other unless relevant exceptions apply, including when attending worship services (most current iteration being section 2(1) of CMOH Order 26-2020, issued June 6, 2020, hereafter referred to as the “Distancing Restriction”);
 - b. The requirement that individuals cover their face, including when attending worship services (most current iteration being section 2.6 of CMOH Orders 19-2021 and 20-2021, issued May 6, 2021, hereafter referred to as the “Masking Restriction”); and
 - c. The requirement that “faith leaders” limit attendance at worship services to 15 persons or 15% venue capacity, as the case may be (most current iteration being section 7.2 of CMOH Orders 19-2021 and 20-2021, issued May 6, 2021, hereafter referred to as the “Capacity Restriction”).

(Collectively referred to hereafter as the “Worship Restrictions”)

13. CMOH Order 26-2020 is purportedly issued pursuant to section 29(2)(b)(i) of the *Public Health Act* and CMOH Orders 19-2021 and 20-2021 are purportedly issued pursuant to section 29(2.1) of the *Public Health Act*. Pursuant to section 73(1) of *Public Health Act*, anyone who contravenes “an order of a medical officer of health or physician under Part 3 is guilty of an offence”. Historically, fines issued pursuant to section 73(1) of the *Public Health Act* have been between \$1,000 - \$2,000, but fines of up to \$100,000 are possible pursuant to section 73(3). Section 29 of the Act falls under Part 3 of the Act.

Key Events Leading Up to the Barricading of GraceLife Church

14. Near the end of November 2020, AHS inspectors began weekly attendances to GraceLife on Sunday mornings demanding to enter the church building. These weekly inspections eventually involved RCMP escorts. Pastor Coates preached on most, but not all of these Sundays.

15. On December 17, 2020, Janine Hanrahan, Executive Officer, Alberta Health Services, issued an “Order of an Executive Officer” (“December 17 Executive Order”) to GraceLife and Pastor Coates. Ms. Hanrahan ordered and directed:

- 1) That the Owner immediately undertake and diligently pursue the completion of the following work in and about the above noted premises, namely:
 - a. Ensure that all persons, including but not limited to church attendees, staff, volunteers and performers, wear a face mask or other face covering that covers their nose, mouth and chin ("face mask"), at all times while inside the premises.
 - b. Ensure that physical distancing of at least 2 metres between households is strictly adhered to at all times.
 - c. Ensure individuals greeting people at the entrance of the premises are wearing a face mask and maintaining 2 meters physical distancing from others not in their household.
 - d. Ensure that performers are wearing a face mask and are spaced apart to allow for physical distancing (2 metres) between performers and the attendees ...
 - f. Do not allow the building capacity to exceed 15% of the total operational occupancy load as per the Alberta Fire Code.

16. The December 17 Executive Order purported to delegate enforcement of the CMOH Orders against individuals to GraceLife as a church and to Pastor Coates as a private citizen.

17. On December 20, 2020, GraceLife congregants gathered for their regular Sunday morning worship service. Pastor Coates delivered a sermon that discussed and criticized the Alberta Government's reaction to COVID-19 and public health restrictions. Following the service, Pastor Coates was issued a violation ticket for allegedly breaching section 73(1) of the *Public Health Act* by failing to comply with the 15% Capacity Restriction.
18. On January 21, 2021, AHS applied for an Order in the Court of Queen's Bench enforcing the December 17 Executive Order. This contested application was granted in the form sought by AHS and included direction that anyone in breach of the Order could be brought before a Justice to show cause why they should not be held in contempt of court.
19. No contempt proceedings have been initiated by AHS against GraceLife, Pastor Coates, or any GraceLife congregants.
20. AHS and RCMP continued to regularly attend at GraceLife on Sunday mornings, demanding entry each time, throughout January 2021.
21. On January 29, 2021, Janine Hanrahan issued Executive Officer Notice of Public Access Closure to GraceLife (specified as "the Owner") and James Coates (specified as "the Pastor"). The Order stated:

NOW THEREFORE, I hereby **ORDER** and **DIRECT**:

1. That the owner IMMEDIATELY CLOSE the above noted premises to public access, including congregants, members or attendees.
 2. The above noted premises shall remain closed to the public until such time as the premises comes into compliance with active CMOH Orders, the Executive Officers Order issued on December 17, 2020, and the Court of Queen's Bench Order granted January 21, 2021.
22. On February 7, 2021, RCMP arrested Pastor Coates in his office at GraceLife following the Sunday morning worship service. The RCMP officers told Pastor Coates that he was being released on an undertaking. Pastor Coates explained to the officers he could not in good conscience agree to or abide by the undertaking and therefore would not be agreeing to its terms or signing it. The officers wrote "refused to sign" on the undertaking. Pastor Coates

believed that he was not bound by the undertaking because he did not sign it. The undertaking required Pastor Coates to cease, among other things, to hold worship services in breach of the Capacity Restriction.

23. On February 14, 2021, GraceLife congregants again gathered for their regular Sunday morning worship service. Pastor Coates delivered a sermon that again discussed and criticized the Alberta Government's reaction to COVID-19 and its public health restrictions, and also detailed the theology underlying GraceLife's continued non-compliance with the restrictions.
24. On February 15, 2021, the RCMP asked Pastor Coates to attend the Parkland RCMP station to submit to arrest. 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 Restriction, and with allegedly breaching an undertaking contrary to section 145(4)(a) of the *Criminal Code*.
25. At the show cause hearing, the Crown sought the continued detention of Pastor Coates. Justice of the Peace L. Morris ordered Pastor Coates release, but on the condition that he:

...not attend or conduct services at Grace Life Church... unless [he has] complied with any existing orders of the Chief Medical Officer of Health, Alberta Health Services Executive Officers or Orders of the Court of Queen's Bench.
26. Pastor Coates could not agree to the release condition. In order to secure his liberty, he would have had to forsake his religious beliefs and violate his conscience. He was therefore remanded to the Edmonton Remand Centre.
27. On March 3, 2021, GraceLife was issued a summons for contravening the Capacity Restriction.
28. On March 22, 2021 Pastor Coates was released from remand following execution of a plea agreement with the Crown. The Crown withdrew all but one *Public Health Act* charge

against him. Pastor Coates spent 35 days in the Edmonton Remand Centre, or 53 days given the usual 1:1.5 credit for pre-trial custody.

29. During the five GraceLife Sunday worship services conducted while Pastor Coates was in remand, AHS and RCMP did not demand entry to GraceLife, but instead observed the Sunday morning worship gatherings from a distance.
30. AHS and RCMP resumed demanding entry to GraceLife on Sunday mornings once Pastor Coates returned to GraceLife on March 28. AHS and RCMP again demanded entry on Easter Sunday, April 4.
31. In the early morning hours of April 7, 2021, RCMP, under the direction of AHS, seized the GraceLife building and erected multiple barriers around both the GraceLife building and on the GraceLife property.
32. The GraceLife church building remains barricaded while congregants gather each Sunday at a secret location for their regular weekly worship service. AHS and RCMP have not yet attended the GraceLife Sunday morning worship gatherings since seizing the church building and it is not known if AHS or the RCMP have made any attempt to determine the location of GraceLife's secret worship gatherings.

Legal Basis

33. Pursuant to section 52(1) of the *Constitution Act, 1982* and as confirmed by the Supreme Court of Canada, "the Constitution of Canada is the supreme law of Canada". All legislation, regulations, orders, government decisions, and government action, including all public health orders are subject to the Constitution.
34. The Constitution of Canada includes the *Canadian Charter of Rights and Freedoms*. The *Charter* constitutionalizes and thereby guarantees particular rights and freedoms, such as the four fundamental freedoms of conscience and religion, thought, belief, opinion and expression, peaceful assembly, and association.
35. Section 52(1) of the Constitution provides that "any law that is inconsistent" with the *Charter* "is, to the extent of the inconsistency, of no force or effect." Insofar as the

impugned Worship Restrictions are determined by this Court to be “law”, they are subject to *Charter* scrutiny and to section 52(1) of the Constitution if not *Charter*-compliant.

36. Insofar as the impugned Worship Restrictions are determined by this Court to not be “law” for the purposes of *Charter* scrutiny, but rather determined to be an “administrative decision”, the Worship Restrictions remain subject to the *Charter* and if found to be inconsistent with the *Charter* are subject to remedies issued pursuant to section 24(1) of the *Charter*, such as an Order by this Court quashing the Worship Restrictions.
37. Section 1 of the *Charter* permits government to limit or infringe *Charter*-protected rights in narrow circumstances. *Charter* rights can only be limited by laws or government decisions that are “reasonable” and “can be demonstrably justified in a free and democratic society”. The burden of proof regarding the limitation of *Charter* rights lies with the government.
38. Freedom of conscience and religion as guaranteed by section 2(a) of the *Charter* protects the manifestation of sincerely held religious belief from interference that is more than trivial or substantial. Freedom of religion is both a collective and individually held right and is held by both individuals and religious institutions such as churches.
39. The Worship Restrictions interfere with the rights of GraceLife congregants, Pastor Coates, Mrs. Klay, Mr. Neill, and Ms. Smith to act in accordance with their religious beliefs in a manner that is more than trivial or insubstantial and therefore infringes their freedom of conscience and religion.
40. Freedom of thought, belief, opinion, and expression as entrenched by section 2(b) of the *Charter* protects all human activity intended to convey a meaning, so long as the method (e.g. violence) or location of the activity does not exclude it from that protection. Freedom of expression also guarantees the right to receive expression, protecting listeners as well as speakers. Three core values have been identified as underlying the constitutional protection for free expression: truth seeking, self-fulfilment and democratic discourse.
41. The Places of Worship Restrictions interfere with the rights of GraceLife congregants, Pastor Coates, Mrs. Klay, Mr. Neill, and Ms. Smith to express themselves and receive expressive content at GraceLife worship gatherings.

42. The freedom of peaceful assembly as guaranteed by section 2(c) of the *Charter* protects the right of people to physically gather together for peaceful purposes. It is by necessity both a collective and individual right.
43. The Places of Worship Restrictions interfere with the rights of GraceLife congregants, Pastor Coates, Mrs. Klay, Mr. Neill, and Ms. Smith to physically assemble together at one time and in one place with whomever and how many ever individuals they want.
44. The freedom of association as guaranteed by section 2(d) of the *Charter* protects the rights of individuals to join together to, among other things, collectively exercise their other section 2 fundamental freedoms. The purpose of freedom of association is to “recognize the profoundly social nature of human endeavours and to protect the individual from state-enforced isolation”. It also, by necessity, both a collective and individual right.
45. The Worship Restrictions interfere with the rights of GraceLife congregants, Pastor Coates, Mrs. Klay, Mr. Neill, and Ms. Smith to come together—physically, socially and spiritually—to manifest their religious beliefs, their right to peaceful assembly, and their right to speak with and hear from each other in person.
46. Life, liberty, and security of the person, and the right not to be deprived thereof except in accordance with the principles of fundamental justice is guaranteed by section 7 of the *Charter*. These principals guard against laws, government decisions, or state action that is overbroad, arbitrary, or grossly disproportionate.
47. The liberty interest protects the right of individuals to bodily autonomy, free bodily movement, core lifestyle choices, and fundamental relationships. The security of the person interest protects the right of individuals to be free from state action that threatens physical harm to their bodies, or a “serious and profound effect on a person’s psychological integrity”.
48. The Worship Restrictions prohibit and penalize individuals for showing their full face and for coming too close to or physically interacting with their peers and co-congregants. The Worship Restrictions therefore interfere with the rights of GraceLife congregants, Pastor Coates, Mrs. Klay, Mr. Neill, and Ms. Smith to liberty in a manner that is overbroad, arbitrary, and grossly disproportionate. Further, insofar as face coverings are harmful to physical and psychological

health, the Mask Restriction interferes with the Applicants' rights to security of the person in a manner not in accordance with the principles of fundamental justice.

49. To justify the Worship Restrictions' limitations of the rights protected by sections 2(a), 2(b), 2(c), 2(d), and 7 pursuant to section 1 of the *Charter*, the Respondents must demonstrate these limitations are justified in a free and democratic society. This is done through cogent and persuasive evidence. That evidence does not exist. On the contrary, a large and growing body of evidence irrefutably demonstrates that the Worship Restrictions are not remotely justified in a truly free and democratic society.
50. The Worship Restrictions are not rationally connected to any pressing and substantial objective, they are not minimally impairing of *Charter* rights, and they are the furthest thing from proportionate.

REMEDY SOUGHT

51. An Order for an interlocutory injunction staying the Worship Restrictions and suspending enforcement thereof, including all orders issued by AHS Executive Officers pursuant to the Worship Restrictions.
52. In the alternative, an Order for an interlocutory injunction exempting GraceLife from enforcement of the Worship Restrictions, including any orders issued by AHS Executive Officers against GraceLife.
53. An Order returning the possession, control and enjoyment of the GraceLife church property to GraceLife and removing the barricades surrounding the GraceLife church property.
54. An Order prohibiting the Respondents from attempting to collect from the Applicants the cost of the unlawful seizure and occupation by the Respondents of the GraceLife property.
55. An Order directing the Respondents to pay to GraceLife amounts for any damage to the property or its contents as a result of the unlawful seizure and occupation by the Respondents of the GraceLife property.

56. A Declaration that the purported sub-delegation of enforcement of CMOH Orders by AHS Executive Officer Janine Hanrahan to GraceLife and Pastor Coates is unlawful and of no force or effect.
57. An interlocutory Order prohibiting the Respondents from interrupting or disturbing GraceLife Sunday morning worship services, including prohibiting the Respondents from attending the GraceLife property on Sunday mornings and demanding entry until such time as the Court determines the constitutionality of the impugned Worship Restrictions.
58. A Declaration pursuant to section 52(1) of the *Constitution Act, 1982* that the Capacity Restriction limits sections 2(a), 2(b), 2(c), and 2(d) of the *Charter*, is not justified pursuant to section 1 of the *Charter*, and is therefore of no force or effect.
59. A Declaration pursuant to section 52(1) of the *Constitution Act, 1982* that the Distancing Restriction limits sections 2(a), 2(b), 2(c), 2(d), and 7 of the *Charter*, is not justified pursuant to section 1 of the *Charter*, and is therefore of no force or effect.
60. A Declaration pursuant to section 52(1) of the *Constitution Act, 1982* that the Masking Restriction limits sections 2(a), 2(b), and 7 of the *Charter*, is not justified pursuant to section 1 of the *Charter*, and is therefore of no force or effect.
61. In the alternative, a Declaration pursuant to section 24(1) of the *Charter* quashing the Worship Restrictions, and that the Worship Restrictions are unreasonable because they disproportionately interfere with the rights protected by sections 2(a), 2(b), 2(c), 2(d), and 7 of the *Charter*.
62. Aggravated costs in the form of a multiplier applied to column 1; and
63. Such further and other relief as counsel may advise and as this Honourable Court deems just and equitable.

Affidavit or other evidence to be used in support of this application:

64. The Affidavit of Allan Neill, sworn May 3, 2021;
65. The Affidavit of Achnes Smith, sworn May 2, 2021;

66. The Affidavit of Donna Klay, sworn May 11, 2021;
67. The Affidavit of Robert Chomiak, to be filed;
68. The Affidavit of James Coates, to be filed;
69. The Expert Report of Dr. Thomas Warren;
70. The Expert Report of Dr. Byram W. Bridle;
71. The Expert Report of Dr. Martin Koebel; and
72. Such further and other material or evidence as counsel may advise and as this Honourable Court may permit.

Applicable Acts and regulations:

73. *Alberta Rules of Court*, Alta Reg 124/2010;
74. *Judicature Act*, RSA 2000, c J-2;
75. *The Constitution Act, 1982*, Schedule B to the Canada Act 1982 (UK), 1982, c 11;
76. *The Canadian Charter of Rights and Freedoms*;
77. *Public Health Act*, RSA 2000, c P-37; and
78. Such other enactments as counsel may advise.

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 give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.